



# It takes Nepal to end child marriage



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## DISCOURSE BOOK ON CHILD MARRIAGE

World Vision



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# ACRONYMS

SDG	Sustainable Development Goal
WVIN	World Vision International Nepal
ITAW	It Take a World to End Violence against Children
CBOs	Community Based Organisations
FBOs	Faith Based Organisations
UNICEF	United Nations Children's Fund
WCC	Women and Children Centre
DCC	District Coordination Committee
DAO	District Administrative Office
VDC	Village Development Committee
NGOs	Non-Governmental Organisations
UNFPA	United Nations Population Fund
TV	Television
NYP	National Youth Policy
NYC	National Youth Council
CRC	Committee on the Rights of the Child
HRC	Human Rights Committee
CEDAW	Convention on the Elimination of Discrimination against Women
ESCR	Economic, Social and Cultural Rights
UPR	Universal Periodic Review
KCA	Kathmandu Call for Action to End Child Marriage in South Asia
MoWCSW	Ministry of Women, Children and Social Welfare
NPA	National Plan of Action
CCWB	Central Child Welfare Board
DCWB	District Child Welfare Board
GDP	Gross Domestic Product



## Chapter 1 Introduction

### 1.1. “It Takes a World to End Violence Against Children” Campaign

World Vision International launched a Partnership-wide new global campaign to end violence against children in 2017. The campaign aims to strengthen local, national, and global accountability for implementation of the SDG<sup>1</sup> targets related to ending violence against children by 2021. Given an increasing commitment to invest in ending violence against children at global, regional and national levels, this campaign will give impetus for the implementation of plans that address issues relating to violence.

The Ending Violence against Children Campaign is not about trying to do the minimum needed, rather about making a major effort for change in the issue of violence against children. Given the fact that the root causes of violence against children are multi-sectoral, as well as the fact that the benefits of addressing such violence are also multi-sectoral, it is a multi-sectoral and whole-of-organization campaign. This campaign is about putting our full weight behind ending violence against children and leveraging the good work we are doing in all sectors to ensure sustained change on a single issue. The campaign will also seek to influence policy, measurement, and implementation of SDG targets regarding Violence against Children. This campaign will be the cornerstone of the next partnership strategy, putting into action new directions and principles in practical, immediate ways.

### 1.2. “It Takes Nepal to End Child Marriage”

To launch the global campaign, World Vision International Nepal, WVIN, chose to focus on the issue of Child Marriage. However, through system strengthening, this campaign automatically helps contribute to ending all forms of violence against children. The issue of child marriage was chosen by Nepal after analyzing the results of surveys conducted by FGD and KII field offices in all the areas WVIN works. The results were discussed at the national level, both internally and externally. . Formal discussion among sector leads and rapid assessment conducted during workshops showed child marriage to be the most prevalent of the many issues raised, issues such as corporal punishment, and child labour.

Analysis has shown that poverty, existing traditions, religious roots and beliefs, social norms and cultural practices in Nepalese society perpetuate child marriage. The Nepal Multiple Indicator Cluster Survey<sup>2</sup> shows that with 49% of Nepali girls marrying before 18, Nepal is second of the top 10 countries in the world in terms of prevalence of child marriage. That same study found that of women aged 15-49 years, 16% were married before the age of 15, and, of women aged 20-49 years, 49% were married before the age of 18. The study also found that about one in four young women aged 15-19 years were currently married or in a

<sup>1</sup> Sustainable Development Goal

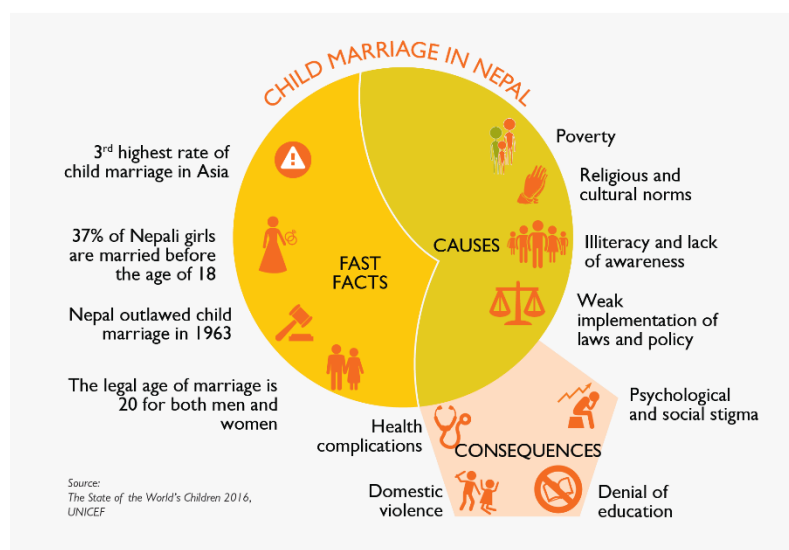
<sup>2</sup> NMICS, a 2014 report, published by the National Planning Commission

relationship akin to marriage. 52% of women aged 20-49 years were married under the age of 18, with about 17% married under the age of 15<sup>3</sup>. According to the Nepal Demographic Health Survey, 41% of women in Nepal aged 20-24 were married by the age of 18<sup>4</sup>. Although child marriage is found all across Nepal, at 53 and 48%, in 2011 the Mid-western and Far-western regions had the highest incidence of child marriage<sup>5</sup>.



**It takes Nepal**  
to end child marriage

**World Vision**



WVIN's campaign to end child marriage aligns with the Organization's Country Strategy to reduce child marriage by 2020. It's one of WVIN's top priorities, so the campaign aligns well with to the priorities of the Nepalese government and given that the government intends to eliminate child marriage by 2030.

The campaign will focus on partnering with other stakeholders (i.e. Ministries, parents, children, media, teachers, faith and community leaders) to create a sustainable reduction in the percentage of child marriages across the country. These partnerships will contribute to improved programmes and implementation, increased funding, and effective advocacy. WVIN's campaign to end child marriage will focus on building new strategic partnerships, especially with government ministries, FBOs, and CBOs, in order to strengthen the impact of the campaign, and advocate for enforcement of laws/policies/structures and change in community attitude's regarding child marriage. With such an approach of intervention, the campaign will focus on three aspects: i) Strengthening legal and social system for protection of vulnerable women and children from local to national level; ii) Increasing community resilience including children for better protection of women and children from GBV and abuse; and, iii) Multi-Sectoral response to end child marriage.



**The legal age of marriage is 20 for both men and women.**

**THE GOVERNMENT** is also committed to ending **CHILD MARRIAGE BY 2030** in line with the **SUSTAINABLE DEVELOPMENT GOALS** SDGs 5 and 16

Government of Nepal endorsed a National Strategy to End Child Marriage in Nepal in 2016.



**CHILD MARRIAGE IS A HUMAN RIGHTS VIOLATION**

because it deprives those involved, especially girls, of education and health services, the chance to learn skills and develop their personalities, and leaves them vulnerable.

Ending child marriage as the theme of the campaign, WVIN aims to reduce child marriage amongst the most vulnerable population through improved community practices and government system by 2021 in line with Sustainable Development Goals 5 and 17. The five year-long campaign will focus on prevention, empowering children, protection, partnership, and advocacy. The campaign was launched internally, appointing employees as campaign ambassadors. Soon after f the campaign was launched in the presence of the Right Honorable President of Nepal, Bidya Devi Bhandari. Her presence and appeal to all organizations, government bodies, and all the sectors and individuals, to end child

marriage reflected not just the seriousness of the issue but was also an expression of solidarity with the campaign. President Bhandari said, "The culture of child marriage has not only curtailed children's rights but also has affected all aspects of their life. Thus, collective efforts are necessary to ensure proper education to children and guarantee human rights. This practice has pushed the life of girls and women to a vicious cycle of difficulty and violence, and an elimination of this bad practice, a blot on modern society, is possible through collective efforts." At the external launch of the campaign, various high-level dignitaries, ministers, and legal experts all affirmed the seriousness of the issue.

<sup>3</sup> UNICEF, 2014

<sup>4</sup> NDHS, 2012; UNFPA, 2012b

<sup>5</sup> UNFPA, 2012b



### **1.3. Rationale of the discourse book**

As part of the external launch, and given the causes and consequences of child marriage, discussion on various aspects were conducted in three parallel thematic sessions. The discourse book captures the discussion that took place during the event and is intended to generate a discourse on the practice of child marriage. It also aims to suggest to policymakers, policies that might prevent the violation of children's rights that child marriage results in. It summarizes available data and evidence, offers advice on the many issues involved, and suggests actions to reduce and eventually eliminate child marriage. Chapter 1 offers a background on the ITAW campaign and why Nepal will be working to end child marriage through 'It Takes Nepal to End Child Marriage' campaign. Chapter 2 offers an understanding on the causes and consequences of child marriage, followed in Chapter 3 by three discussion papers on the laws and policies that restricts child marriage, the role of the media on child marriage, and the role of youth in end child marriage. Chapter 4 briefly discusses international instruments relating to child marriage, and why child marriage is prevalent world-wide, despite efforts at international level. Chapter 5 presents the national instruments to end child marriage. The final chapter summarizes the points made in the book, with key points of the discourse on child marriage.



## Chapter 2

# Situating Child Marriage in the Development Agenda

The main concern with child marriage is that, in developing countries like Nepal, children are often married under the legal age of maturity, before they are physically and emotionally ready for adult-commitment of marriage, thus prematurely ending their childhood. In light of these age-based, legal definition of 'child', the dominant discourse has been that "child marriage is a human rights abuse" that is forced on children, often by their parents and close relatives. International conventions declare that child marriage is a violation of human rights as it denies children their right to decide when and with whom to marry. In such a scenario, the child marriage is seen to have multiple causes and potentially damaging consequences. Some of the most prevalent causes and consequences of child marriage are discussed in this chapter.

### 2.1. Dominant understanding on the causes of child marriage

Nepal outlawed child marriage in 1963. However, it is still deeply rooted in society, even today<sup>6</sup>. Child marriage is prevalent in Nepal, where the incidence of it is as the third highest in Asia<sup>7</sup>. Deeply rooted in our cultural norms, government resistance to implementing that law, illiteracy, ignorance, lack of awareness of rights, and poverty have all withstood the efforts made for its abolition.

Most of an extensive body of literature points at the interplay of social norms, economics, patriarchal social structures, and familial motivations as the reasons behind the practice of child marriage<sup>8</sup>, gender inequality and girls' lower social status being the main reasons. These systems in turn perpetuate patriarchal structures where men hold most of the decision-making power while women are passive and docile. They also lower the social value of investing in girls' education, as well as perpetuate perceptions of girls as an economic burden to their families. This perception is exacerbated when gender norms strongly define femininity in terms of women's reproductive role and care giving duties. Consequently, younger brides are preferred as they can contribute to their husband's household for a longer time. Additionally, where religious norms place family honour in girls' bodies and pre-marital relationships and intercourse bring shame to the family, child marriage is promoted as a way to protect girls' sexuality.

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<sup>6</sup> HRW Report, "Our Time to Sing and Play", 2016.

<sup>7</sup> UNICEF Report, 2016

<sup>8</sup> Hodgkinson, 2016:18

These causes are interrelated and contribute to child marriage. Poverty, and the added financial burden children represent to poor families is another major cause as girls are considered to be burden to the family who has to feed and clothe them. So, parents see marriage as an easy way out. Marriage of the girl child saves the family the expense of food, clothes, and education of. However, the negative consequences of early pregnancy, loss of the opportunity of education, and the possibility of domestic abuse, are often ignored. The parents' decision deprives them of their childhood and of their right to decide for themselves.

A report by World Vision<sup>9</sup> found that vulnerability to child marriage is increased when girls are under the care of the extended family because both parents have died, or when there are other shocks to the household such as natural disaster, migration, or conflict. In such situations, existing social networks and protection mechanisms are disrupted, which leaves girls more vulnerable to being married off early. When beset by poverty, parents face economic pressure to ensure their daughter's financial security and reduce the economic burden daughters place on a family.

Religious and cultural beliefs are that girls are women once menstruation starts and they are compelled to get married. According to UNICEF 37% of Nepali girls are married before the age of 18. In much of Nepalese culture, as women were also the victims of child marriage, they believe that marriage should be at an early age. So now that practice has become their culture, often believing it to be based on religious values. Illiteracy and ignorance often exacerbates the practice of child marriage. Parents usually may not send the child to school as the school may be more than an hour's walk away. Even if accessible, many families cannot afford to buy educational materials like text books, exercise books, stationery, and school uniforms. Though Part 3 Article 31 of the Constitution<sup>10</sup> states that primary education is compulsory and free, that secondary education is free and that every community has the right to education in their mother tongue/first language, because of inadequate infrastructure and incomprehensible policies, the government is still unable to implement it.

Despite national laws and international agreements, child marriage remains a blight on the lives health, and human rights, of children, especially girls, in more than a hundred countries. The prevalence of child marriage is a consequence of weak legal systems and poor law enforcement, lack of information, and limited legal services that undermine girls' protection and means that the practice goes unpunished. While the international community has fought long and hard to make the minimum age for consent to marriage 18, in 88% of countries<sup>11</sup>, in most countries like Nepal, there are still a number of exceptions, such as where there is rape, parental consent, or under customary laws, that continue to allow early marriage.

The World Policy Analysis report 2015 states that one in three girls in low and middle-income countries will marry before the age of 18 and one in nine girls will marry before their fifteenth birthday. In the least-developed countries the prevalence of child marriage is even higher, nearly one in two. If present trends continue, the number of child marriages each year, 14.2 million in 2010, will be 14% higher by 2030, nearly 15.1 million. In South Asia alone, between 2010 and 2030, 130 million girls are likely to marry as children.<sup>12</sup> In Nepal child marriage is highest in the mid-western region (53%), followed by the far-west (48%). These regions are geographically remote, poverty is widespread, and food security is a considerable problem.<sup>13</sup>

Nevertheless, significant changes have taken place over the years. Whereas, in 1961 nearly 25% of female children in the age group 10-14 were married, in 1991 it was about 7%, a significant decline.

Moreover, during times of humanitarian crisis, child marriages increase as families marry their daughters off to decrease the financial burden and protect them from sexual abuse/violence<sup>14</sup>. Nepal has suffered many such crises. The devastating 7.8 magnitude earthquake in April 2015, with several strong aftershocks, resulted in massive damage to life and property, and compounded the problem of poverty and vulnerability at such a time. As a result, for instance, adolescent girls end up marrying either for protection, from sexual abuse/violence, or because the parents cannot afford the girls' upkeep. Although before such a

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<sup>9</sup> 2013

<sup>10</sup> Constitution of Nepal, 2015 Part 3 Article 31

<sup>11</sup> WORLD Policy Analysis Centre, 2015; <https://worldpolicycenter.org/topics/marriage/policies>

<sup>12</sup> Marrying Too Young: End Child Marriage, UNFPA, 2012. Pg. 10

<sup>13</sup> Spatial Inequality in Child Nutrition in Nepal: Implications of Regional Context and Individual/Household Composition, Ramu Bishwokarma, Doctor of Philosophy, 2011; University of Maryland

<sup>14</sup> Girlsnotbrides. (2015). Fact Sheet: Nepal's multi-sectoral strategy to address child marriage. from <http://www.girlsnotbrides.org/resource-centre/fact-sheet-nepals-multi-sectoral-strategy-to-address-child-marriage/>



disaster they had not intended to marry, following such a disaster the incidence of child marriage is likely to soar<sup>15</sup>. With several immediate relief responses, the protection of vulnerable women and children was one of the focal issues.

## 2.2. Multiple consequences of child marriage

Child marriage has multiple consequences. The girls are often ignorant about reproductive health, sanitation, and their rights. A 2012 UNFPA report noted that childbirth is a leading cause of death for girls age 15-19 in developing countries. Conceiving a child early can have an adverse effect on the health of both the mother and child. “Being pregnant was not easy. I didn’t look after myself or eat carefully. I didn’t know we were supposed to seek medical care, nor did my husband. The delivery happened at home with the help of a local lady who used a scythe to cut the umbilical cord. It was extremely painful”, Chaadani who is now 18, shared her experience of getting married at the age of 13. Chaadani is one of thousands of girls who are talked into child marriage at a very young age.

A report in 2012 by World Vision, Plan International, and Save the Children shows that the marginalized and disadvantaged Dalit castes marry early. 87% married before they reached 19, and 65% in hilly region. Nepal being a culturally diverse country, the incidence of child marriage within the country differs widely across different regions, classes, castes, and ethnic groups. Child marriage is most prevalent among the most deprived and disadvantaged groups, people especially the poor, illiterate, indigenous ethnic groups, and Dalits, the so called lower castes.<sup>16</sup>

There was a substantial decline in child marriage from 2001 to 2006. The 2001 Nepal demographic health survey found that 40% of women aged 15-19 were married, whereas this fell to 32.2% in 2006<sup>17</sup>. From 2006 to 2011, the age of marriage was increasing, among both men and women. According to research conducted in 2012, Muslims had the highest rate (60.5%) of marrying under 19 years, followed by Hindus (43.5%). Data from respondents who married young revealed that 52.7% of child marriages among males occurred because of parental pressure whereas the rate among females was 67.1%. Another leading cause among males was support for household chores (45.2%). About 30% of both sexes reported cultural influences as being the cause.<sup>18</sup>

Child marriage not only brings problems of physical health, too often it’s also attended by psychological abuse. As a bride, one is expected to fulfill responsibilities towards the husband and his family, often leading to the sudden end of childhood, as girls take on adult roles and responsibilities before they are developmentally ready. If unable to do so, girls often face domestic violence often having psychological consequences. Moreover, the usual age difference between spouses disrupts girls’ ability to assert themselves, meaning they are less likely to state their opinion and have less power to make decisions in household matters.

Girls’ poor educational attainment is also concerned serious consequence of child marriage. Child marriage leads to high rates of school dropout because girls are expected to devote all of their time to the care of their husband’s home and having children. This increases indices of illiteracy among girls and stops them from learning skills that could lead to income-generating activities, both of which have long-term economic repercussions. Poor educational attainment perpetuates girls and women’s low participation in the paid economy, while reinforcing gender stereotypes and increasing girls’ financial dependency on their husbands.

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<sup>15</sup> Emma Batha, Child marriages, trafficking will soar after Nepal quake-charity Reuters (May 19, 2015), <http://www.worldbank.org/content/dam/Worldbank/document/SAR/nepal-pdna-executive-summary.pdf>; CarE, NEPal: gENDER aND ProtECTIoN ovErVIEW 10 (2015)

<sup>16</sup> Human Rights Watch (2016), Our Time to Sing and Play, child marriage in Nepal

<sup>17</sup> Maharjan, R. K., Karki, K. B., Shakya, T. M., & Aryal, B. (2012). Child Marriage in Nepal a Research Report. Kathmandu: Society for Integrated Local Development Nepal

<sup>18</sup> All Children in School: Global Initiative on Out of School Children, UNICEF, 2016



## Chapter 3

### Seminar Papers: Gap Analysis and Way Forward

#### 3.1 Laws, Policies and Practices related to Child Marriage in Nepal

*\*By Bishnu Maya Bhusal<sup>19</sup>*

##### 1. Background of the Study:

Marriage, though considered a 'social institution' from a sociological perspective, the decision to enter into marriage or not is a fundamental right of every human being. According to human rights law, every person is entitled to pursue their freedom while choosing their spouse. Countries have their own set of rules and criteria regarding marriage. The National Code of 1963 following its multiple amendments that aimed to accommodate the changing times, has stated 20 as the minimum age for marriage, for both men and women. For the first time in history of Nepal, child marriage is considered as a crime and a violation of Child Rights, in the 'Constitution of Nepal 2015'<sup>20</sup>. But in practice, the basic criteria related to marriage are not strongly implemented. According to the report published by the Nepal Planning Commission in 2014, 48.5% of women were said to have been married before the age of 18. A Human Rights Watch report on child marriage in 2016, noted that 37% of women in Nepal marry below the age of 18. Nepal is ranked third in South Asia after India and Bangladesh when it comes to child marriage. Comparative analysis of legal frameworks to counter child marriage among South Asian nations suggests that Nepal has comparatively better legal provisions, to counter child marriage. Nepal has ratified many human rights treaties/conventions and expressed a strong commitment to implement them but has failed to follow up. Child marriage has negative impacts on the physical, mental, psychological, and overall development of women. Unfortunately, the government has no official data regarding child marriage. But the reports and statistics presented by governmental and non-governmental organisations suggests that child marriage is a serious problem in Nepal. Although Nepal government has passed laws, laws that reflect modern understanding, national plans and strategies related to child marriage, lack of accountability and interest on the part of authorities like Nepal Police and National Investigation Department the goal of alleviating child marriage is still a considerable challenge. Illiteracy, lack of awareness, poverty, superstition, gender inequality, and society's failure to play a responsible role, there are some of the obstacles to efforts on reducing child marriage. This paper will shed light on the legal provisions enacted to end child marriage in Nepal and explain how these laws are implemented in practice. It will also try to include areas that require improvement or amendment of laws to reach the goal of ending child marriage in Nepal.

<sup>19</sup> Bishnu Maya Bhusal, an advocate practicing law since 1998, an executive member of the Nepal Bar Association, and Assistant Professor in the Faculty of Law at Tribhuvan University.

<sup>20</sup> formulated by the Constitutional Assembly

## 2. Legal Initiatives to Ending Child Marriage in Nepal

In Nepal the National Code 1963 was formulated with the aim of ending child marriage, which for the first time defined child marriage as a crime. The legal age of marriage for both men and women was amended over time. To align with the international standard, a 2015 amendment made 20 as the legal age of marriage for both men and women. The government has been cooperating with national and international organisations, making plans, policies, and setting strategy to bring an end to child marriage. The following are the legal initiatives taken by government to date.

### a) Constitution of Nepal, 2015

For the first time, the Constitution of Nepal (2015) defined child marriage as criminal offence, a step which can be taken as a positive sign towards ending child marriage. According to the constitution, child marriage, illegal transport, and kidnapping or detention are considered to be criminal acts. The Constitution has given the following rights to every child: every child has a right to birth registration and a name that reflects their identity; they have rights to education, health, proper care, games, entertainment, and a right to their overall development. Every child has a right to primary child development and a right to participation. Further, no children may be exposed to misconduct of any kind, neglect or physical, mental, sexual, or any kind of exploitation or their inappropriate use in the name of cultural or religious practice. No child shall be exposed to torture of any kind in any place, including school, home or elsewhere. Every child has a right to child-friendly justice.

There is a provision for punishment for anyone involved in carrying out child marriage and provision for appropriate reparation for the victim as decreed by law. Every woman has a right to reproductive health related rights and to a healthy motherhood, and shall not be subject to physical, mental, sexual, psychological abuse, or exploitation of any kind based on religious, social, or cultural grounds. Such acts are punishable according to the law and thus, victims have a right to claim against loss or damage caused by such acts. According to the 'principle of equality' every citizen is equal under the rule of law. And no one shall be deprived of 'equal protection' under the law. In the practice of law, discrimination on the ground of origin, caste, gender, physical status, disability, health condition, birth, economic or marital status, language or region, ideological orientation or on any similar ground is not permitted. Every citizen has a right to equal access to basic education and it is the state's responsibility to provide free education up to primary level. At the same time every citizen has the right to claim free education up to secondary level. With the aim of ending 'Child Marriage', and to safeguard legal remedies under the constitution, courts are given the right to exercise unprecedented authority (jurisdiction) if needed, over any perceived violation of fundamental rights.

### b) General Code, 1963

Age of Children	Legal Punishment for entering into, or arranging a child marriage
Marrying or arranging a marriage that involves a girl under the age of 10	From 6 months to 3 years' prison and a fine of 1,000 to 10,000 rupees
Arranging a marriage or marrying a girl above 10 and below the age of 14	3 months to 1 year in prison and fine of up to 5,000 rupees
Arranging a marriage or marrying a girl of 14 and below the age of 18	Up to 6 months in prison or a fine of up to 10,000 rupees or both
Arranging a marriage or marrying where either boy or girl is below the age of 20	Up to 6 months in prison or a fine up to 10,000 rupees or both
Marrying or arranging a marriage being unaware of the legal criteria of marriage	No punishment
A person involved in child marriage: family members, religious person (priest), and other adults who arrange child marriage	Up to 1 month in prison or a fine up to 1,000 rupees
A person who finalises arrangements for a child marriage which has not yet taken place	Fine of up to 500 rupees and the arrangement for child marriage is invalid under the law.

According to the National Code, as amended the minimum age for both girls and boys to enter into marriage, is 20. If any person is found to be arranging a marriage or marrying a child, the following provisions apply:

All the fines mentioned above must be paid to the victims of child marriage. If a person involved in child marrying refuses to pay the fine, there is provision under the law for the fine to be taken out of their property.

If the person involved is unable to pay the fine, he/she has to spend 3 months in prison. But to date victims of child marriage have not received any reparation. The legal process itself does not favour the victim. If marriage has already taken place, even if it is a child marriage, a common question is, what could be the proper remedy for loss caused by such marriage? This reflects the typical traditional mindset and punishment based on such traditional attitudes, in most cases results in the lowest penalty for the party involved.

Existing laws conflict- In the case of the birth of a child from a couple married before the legal age of marriage or in the case of divorce, for example after the age of 20, if either husband or wife do not accept the marriage relationship the relationship becomes invalid or void by law. . The responsibility of raising and educating a child, giving identity to a newborn, normally falls on women. Such legal provisions do not favour women. Findings from different studies shows that reluctance on the side of state to provide citizenship in the name of mother is one of it. At the same time, the conclusion reached by different field studies suggests that women and children are in real danger and if this situation remains unchanged, women and children will always suffer of consequences of child marriage even more.

#### **c) National Criminal Code, 2017 and Country Civil Code, 2017**

In 2017, the House passed two bills: The National Criminal Code 2017 and the Country Civil Code 2017 by replacing the decades-old General Code 2020, B.S. The new law came into effect after receiving Presidential authentication on 16 October 2017. Previously, civil and criminal offences were both dealt with by the General Code of 1963, but with the endorsement of the new criminal code, the two are now treated separately, with two separate codes. To replace the General Code of 1963, three criminal offence-related codes and two civil law-related codes were passed and came into effect from August 17, 2017. Under Article 69 of the Country Civil Code 2017, 'every citizen has the right to marry, establish a family, and to live peacefully'. As per the code, marriage is considered to be a union based on mutual understanding. And, according to Article 173 of the Criminal (Code) Act, the age of marriage is set at 20, as it was in the General Code 1963. Any marriage that takes place that involves people below the age of 20, will be revoked, and the new criminal code has the provision to charge fine of up to thirty thousand Nepali rupees .And 3 years of prison for anyone involved in marrying or arranging such a marriage. But, the Act fails to differentiate as to age, and as regards punishment, treats every case as being the same. The separate Criminal Procedure Act 2017 and Criminal Offence (Determination of Punishment and Implementation) 2017, deals with the investigation, prosecution, and to determination of punishment related to child marriage, and come into effect, on August 17, 2018. Although separate Acts are formulated, other legal arrangements related to child marriage are the same.

#### **Procedures for Filing a Complaint Against Child Marriage**

The issue of child marriage comes under the purview of the government. A complaint against someone involved in marrying or arranging child marriage, can be filed by anyone within 3 months at the nearest police station. Following the complaint, police opens an investigation followed by a government lawyer (prosecutor) registering a lawsuit against the person/s who're alleged to have broken the law. But in Nepal few complaints against child marriage are registered. In 2016, from the whole of Nepal only 20 complaints were registered with the 'Women and Children Center', the Nepal Police department that looks after cases related to women and children. As child marriage is accepted in society and girls leave their parental home and become part of the husband's family, the girl's parents do not want to take further responsibility for their daughter or bother registering a case, which will be the main reason thatso few cases are registered. Although the government's record of registered cases seems to contradict it, many studies and reports have highlighted the fact that, in Nepal, the practice of child marriage is very common. With the endorsement of the new criminal code for criminal investigation, prosecution, and determination of punishment, related to child marriage, two separate bills were passed by house; Criminal Procedure Code 2017 and Penal Code 2017 related to child marriage which will come into effect from August 17, 2018. And other laws and procedures remain as it is.

#### **d) Children's Act, 1992 and Regulation 2051**

According to the Children's Act (1992), a child is defined as any human being below the age of 16. But, according to Section 2 (d) of the Civil Code (2017), which will take effect from August 17 2018, a child is any human being below the age of 18. The definition of a child in the Civil Code criteria is in line with the United Nation Convention on the Rights of the Child, 1989. Under the Children's act, every child after birth shall receive a name from his/her father, mother if there is no father, or from relatives, in the absence of both parents, according to their religion, culture or local custom. Based on the family's economic status and available resources, parents shall take all appropriate measures to ensure a child's proper care, and provide education, health care, and opportunities including sports and entertainment. Institutions formed under the Nepal government that are responsible for the care and protection of children shall submit a report based on the government's directives and formulate policy and long term national plan safeguarding the physical and mental well-being of children. Such policy and national plan shall be implemented through particular institutions working for the welfare of children. But in practice such laws are not effectively implemented. The Ministry is working to revise this Act.

**e) Birth, Death and Other Personal Events (Registration) Act, 1976**

Under this Act, the facts of the marriage shall be registered within 35 days at the Office of Local Registrar of Village Development Committee (VDC) or Municipality. But in practice marriage registration can be made anytime. Still there are incidents where, in the absence of her husband, a woman's request for registration of the birth of a child is denied by local officials. It generally occurs when the father of a child is not identified or when the mother of a child separates from her husband and chooses to live with her parents. In such cases officials are reluctant to register the birth. There is also the misconception, on the side of the women's relatives, that if registration takes place in the VDC or Municipality of her parents' residence, the child has the right to claim on their properties. That misconception has only made the registration of birth more complicated. The purpose of the Act is to keep a record of the birth, death, marriage, divorce, and migration of persons residing in Nepal. It is the duty of the state to maintain a record of life events of its citizens, and if marriage takes place without meeting the legal minimum age, such marriage would not receive legal recognition.

**f) National policy for Children, 2012**

Child marriage is identified as an obstacle to the realisation of child rights in Nepal. Provision 8.9 of the National policy envisions cooperation with development partners to mobilise local social organisations to reduce child marriage. Actively involving and encouraging the filing of complaints against child marriage and making local bodies more responsible is part of national policy. Further, national policy and Provision 9.3 includes mobilisation of local and other media to raise awareness among locals that they can raise their voice against child trafficking and child marriage. The year 2013-2014/2015-2016 are considered as the years focused on preventing child marriage and ending other different kind of violence against children. Similarly, the National Plan for 2013/14-2017/2018 aims to reduce different forms of violence and the impact of local customs and practices on the development of children, particularly on children from marginalised groups. Further, the purpose of the National Plan is to formulate policy to discourage violence against children by focusing on bringing victims of child marriage, specifically girls, into the mainstream of education and provide them with an alternative education.

**g) National Initiatives to End Child Marriage in Nepal, 2015**

This national plan came into force after receiving approval of the cabinet meeting of March 11, 2016. It is regarded as a positive initiation taken by the government to bring to an end to child marriage in Nepal. In collaboration with UNICEF Nepal and with technical help from 'Girls not Brides', the Ministry of Women, Children and Social Welfare is plans to end child marriage by 2030. Following its approval at the cabinet meeting of March 11, 2016, the National Plan is now in effect. The national initiatives 2015 stresses the principles envisioned by the constitution. Based on the principle of equality, overall development of children, child protection, child welfare, the purposeful participation of children, sustainable development and equal access to justice, which are aligned with Nepal's commitments in international fora, National Initiatives 2015 puts responsibility on the government and gives it an enhanced role in preventing child marriage which is in itself a violation of child rights. It's the responsibility of the government to end child marriage by 2030, to create a child-friendly environment, and to guarantee that child rights are realised. To achieve these goals, National Initiatives focuses on broader cooperation among the major stakeholders, which includes the National Planning Commission, Ministries, Office of Attorney General, Civil Society, and other concerned government authorities..

**h) Marriage Registration in District Registration Office**



Under the law of Nepal, men and women who have reached the age of 20 are free to marry. With a recommendation letter from the relevant Ward, application to register a marriage can be made by submitting the required documents and following the process detailed within 15 days to the Marriage Registrar at the District Coordination Committee (DCC). After following the required process, the marriage is registered. Although it is difficult to find the exact number of those whose marriages are registered in the District Administrative Office (DAO), few couples only choose to register their marriage there. Usually it is only where both husband and wife want to go abroad and need to prove their marital status or where one party to the marriage is a foreigner, that couples resort to registering their marriage with the DAO. Given the requirements of the federal structure, marriage registration in District Registration Office is being revised.

**i) Marriage Registration in Court (Court Marriage)**

A person who wants to establish the relationship of marriage, can register their marriage in the court in Nepal. Under Nepalese law, if a man or woman desire to marry, after following certain legal procedures, which includes 3 witnesses from each side, with an application, after consulting both parties, a district court can give legal recognition to the relationship. But such marriage is less common. It's mostly sought when a parent or parents are against the marriage, and a court will only recognise a marriage if both parties are of marriageable age. That is another reason why court marriages are less common.

- j) Child marriage is seen as a major hurdle in achieving Millennium Development Goals (MDGs), worldwide. Thus, while setting Sustainable Development Goals (SDGs-2016-2030), special attention was given towards ending child marriage.
- k) With the UN's Human Rights Council proposal on 'Strengthening efforts to prevent and eliminate child, early and forced marriage: challenges, achievements, best practices, and implementation gaps', in September 2013 the UN passed the Human Rights Council Resolution on 'Child, Early and Forced Marriage'. Co-sponsored by Nepal, Nepal took it as an opportunity to express its strong commitment against child marriage. With the the 68th General Assembly of the UN passing that resolution, initiatives to end child marriage have received high priority.
- l) In 2016, Nepal organised the International Convention on The Girl Child and expressed its commitment to ending child marriage by 2030.

### **3. Weakness Noted on the Implementation of Child Marriage Related Laws**

#### **3.1. Lack of awareness**

Ignorance of the law is not an excuse for committing crime is a basic principle of law. But unless and until people are made aware of the law or of the penalties for breaking it, it's obvious that people will not follow the law. This can be attributed to the state's failure while formulating the law, in not including the target group. It makes implementation of the law weak from the outset. Such problem is prevalent in almost every area in Nepal. Although the National Code 1963 defined child marriage as a crime and punishable act, it has not been effective in reducing the number of child marriages. The problem lies with the social construct of child marriage. Instead of seeing child marriage as a punishable act, society and parents consider it as their responsibility to marry their children at an early age, which is one of the reason why child marriage still remains as a serious problem. Given illiteracy, poverty, and the desire to have a son, families generally end up having more children, mostly girls. Lack of resources limits a family's ability to provide a good education and proper care to their children, so the practice of early marriage becomes an accepted practice in society. But it has negative effect on overall development of children.

As child marriage has negative impacts on the life of children, particularly girls, the social practice of child marriage must be brought to an end. Until people responsible for marrying and arranging child marriage are made accountable with punishment under the law the issue of child marriage will remain as it is in the society. Incidents of child marriages happen due to lack of awareness. If society itself fails to see its responsibility to end child marriage, the task becomes extremely difficult. Even though laws, policy, strategy, and plans are in place, because of a lack of awareness of such initiatives the practice of child marriage is still too prevalent in society. It is the state's responsibility to make people aware.

#### **3.2. Lack of Concern on the Part of Local Bodies Regarding Marriage Registration**

According to experts, among South Asian nations Nepal has best set of laws and policies formulated against violence against children. However, implementation as such remains problematic. Being indifferent toward the rule of law, protection of human rights and the Constitution, legislation, rules, policy, directives and plans from government institution and officials, the incidence

of child marriage had not been reduced. Nepal has played a positive role in expressing commitment verbally as well as in writing to ending child marriage at national and local level, but its positive role is not reflected in the results so far seen. The law states that a marriage must be registered in the VDC, Municipality or metropolis within 35 days of the marriage, and both parties must present themselves to a marriage registrar. But the Act does not mention that the couples should be of 20 years of age at the time of marriage. There is no record of fine being charged for not registering marriage within 35 days. This indicates that local officials have accepted the general practice that people register their marriage only when they require legal document.

At the time of registration, the married couple do not have to show the certificate that would validate their age. In the absence of such a requirement, a couple below the age of 20 can also register their marriage. Registration of marriage is not obligatory. Due to such loose provision, marriages remain unregistered long after the marriage ceremony and sometimes create legal problems for the couple. If the Office of the Registrar were to make it mandatory for a couple to register their marriage within the given timeframe and require them to present a citizenship certificate or document proving their age, it would go a long way towards discouraging child marriage. Neither is there any requirement to register the birth of a child regardless of the place of birth within the country. Add to that a weak recording system, and it is understandable why child marriage persists.

### 3.3. Gender Discrimination

According to one report, 37% of women marry before the age of 18 and have their first child between the age of 15 and 18. A study on women found that 47% have their first sexual experience at the age of 15. Due to patriarchal attitudes, even today women are treated as second class citizens, suffering inequality and discrimination against them. Parents desire to have a son in the belief that it preserves the legacy of the family, often resulting in women giving birth to many girls for the want of a son. Given a lack of resources in the family and the higher priority given to the son, parents are reluctant to invest in girls. Thus, girls often miss out on proper care, and education.

On one hand, child marriage is the result of a patrilocal social arrangement where girls are considered as guests who will leave their parents' house after marriage, and hence are not worth spending money on. This perception has its impact on the overall upbringing of girls. On the other hand, given the religious belief of earning, blessing and securing a place in heaven after death, parents are anxious to marry off their daughter before her first menstrual cycle. Such superstitious beliefs, most prevalent in the rural remote areas, a girl's marriage is arranged before she has the physical and mental maturity for marriage. Within well-to-do families, sons are provided with a good education and are sent to college in big cities whereas daughters are left to study in local community schools near their home so that they can help with the household chores. If a girl is sent to college it is with the intention of getting her married to a well-educated and well-to-do family. In some parts of the Terai there is a practice of arranging marriage for girls under the age of 10, a practice called *Gauna*. After living with her parents for a few years after marriage, the bride leaves her parent's home to settle with her husband and his family. As a result, there are numerous examples of physical and sexual abuse, and child birth at an early age, which has a disastrous effect on women's health.

### 3.4. Impact of Dowry System

Dowry in itself is a blight on society. Many women every year lose their lives because of the socially institutionalised dowry system. Although the exchange of dowry is illegal under the Marriage Act 1971, in practice, particularly in the Terai, many women are deprived of education because of it. It is believed that women with a good education will require a well-educated groom, which in turn means a more expensive dowry. Hence, to avoid the economic burden of dowry, many families prefer to arrange marriage for their daughter while she is still a child. It means that unless a separate law pertaining to dowry practice and appropriate punishment for those who demand a dowry is enacted, the goal of mitigating child marriage will remain a challenge.

### 3.5. Lack of Registration of Complaints Against Child Marriage

Although child marriage was made a crime as early as 1963 in Nepal it still remains as a very common social practice. People are reluctant to register complaints against child marriage. Registration of only 20 child marriage related cases from April 2016 to March 2017 highlights the fact that people are very reluctant to register complaints of child marriage, and registering a case against such an offence is still a challenge. Normally, arrangement for child marriage is made by the parents themselves and if a complaint is filed, the responsibility to look after their daughter will fall back on the parents. The underlying reason for this could also be social taboos related to second marriages, which are not readily accepted by society which is another reason why there are so few complaints registered. Under the Government Cases Act 1992, if any information regarding child marriage is received, and such information is found to be true, Nepal police are authorised to intervene and stop the marriage. Even though Nepal Police have the power to intervene, they very seldom do so. The general trend that investigation is made only after receiving a complaint is ineffective in reducing child marriage. Given the power Nepal police have in rural areas as well as in

towns, a greater willingness by Police to enforce the law in this area would help greatly to discourage the practice of child marriage.

### 3.6. Less Punishment from the Court

The punishment provided is minimal, it only applies to those involved in marrying and arranging the marriage. Although complaints related to child marriage are registered in a court the law allows a couple to live together as husband and wife after fulfilling the given punishment leaving women in a more vulnerable position, which can easily lead to domestic and sexual abuse/violence against women, often resulting in serious adverse effects on their reproductive health. Because punishment for those involved in child marriage is minimal, very few cases are registered. If a complaint comes to the notice of the court, the culprit can easily escape being punished. Family and society both consider child marriage as the fulfilment of their responsibility and an opportunity to avoid the 'burden' of spending money on their daughters. Marriage of a son, on the other hand, means the addition of helping hands to the family.

### **Necessary Amendments to the Act, Rules, Policy, and other Legal Instruments to End Child Marriage**

There is a need for amendment of all laws that discriminate against women. They need to be in accordance with international human rights law, and its standards, for the purpose of women's empowerment.

Birth, Death and Other Events Act 1976 must be amended by making it mandatory to apply for citizenship within 3 months of turning 18 years of age.

Children's Act 1992 defines a child as a person below the age of 16, whereas the Muluki Ain (Civil Code) Act, 2017 defines a child as a person below the age of 18. The Children's Act needs to be amended to accord with the Muluki Ain Act.

To give effect to the intent of the Birth, Death and Other Events Act 1976, it should be amended to make registration of marriage within 35 days at a local registrar's office mandatory, and appropriate punishment and fine for both husband and wife if they fail to comply.

Amendments need to be made to laws relating to child marriage, i.e. property rights, divorce, marital rape, dowry, birth registration, marriage registration, citizenship, etc., so that they are consonant with the provisions of the law on child marriage.

Under the Criminal (Code) Act 2017, any sexual relation with a girl under the age of 16 is considered a crime and sexual relation with a girl over the age of 16 if consensual is not considered as a criminal act. These provisions have not been effective in reducing sexual violence against women.

As a result of the dowry system, particularly in some districts of the Terai, there are reports indicating an increase in child marriage. To counter child marriage, a separate act that could bring people involved in giving and receiving dowry under the authority of the law needs to be enacted. Implementation of the law requires the Nepal police to take proactive role by intervening the child marriages when necessary, and taking action against those involved in exchanging dowry.

The Nepal Government must take initiatives to make people at the local level aware of the provisions in the Criminal (Code) Act (2017) and the Muluki Ain (Civil Code) Act, related to child marriage that are coming into force on August 17, 2018.

Since the Nepal Police has access to every ward committee, they can play a vital role in making people aware at grassroots level. To do so, they need to raise people's awareness that child marriage is a social crime. Where child marriage occurs, even though formal registration of complaint against child marriage is not made, the police need to exercise their power to intervene and bring people involved under the law.

Child marriage is a social crime. It has an adverse effect on children's education, health, and general development. The practice needs to come to an end for which a plan and its implementation should come from the local level. To effectively implement such plans, any campaign to raise awareness must include civil society, i.e. local representatives, schools, colleges, children's clubs, women volunteers.

To determine whether the Office of the Local Registrar is implementing its responsibility to register births and marriages, a yearly progress report should be submitted to the Ministry of Women, Children, and Social Welfare through District Coordination Committees. And the report must be made public.

To implement the law related to child marriage, the government must allocate an adequate budget for the formulation of legislation, sustainable development goals, and national plans- the purpose of which is to end child marriage.

Any initiative to make people aware of the legal requirement to register births and marriages within 35 days at the Office of the Registrar must include local representatives.

Child marriage is a social crime and its effect on children's development should be included in the school curriculum from primary to at least secondary level as a separate subject, i.e., social studies. That subject must follow a discussion model underpinned by the government's education directives.

The media can play an influential role in spreading awareness regarding of the law, rules, policies, plans, and strategy related to child marriage. Wards and municipalities must forge a policy of cooperation with local television, news papers, radio and electronic media, to achieve the goal of ending child marriage in society.

To monitor the implementation of laws, there needs to be a government mechanism at the regional level to prepare a report which can be made public through the Ministry of Women, Children, and Social Welfare. The practice, under the government's yearly programme, of rewarding local bodies with good records, must be included in the new programme.

## Conclusion

Freedom to marry has long been recognised as a fundamental human right. From a human rights' perspective, every person is entitled to choose their spouse. Every country has their own set of rules regarding marriage and the legal age of marriage. In Nepal, new legislation has recently been passed to replace the decades-old General Code 1963. Both the Muluki Ain (Civil Code) Act, 2017 and the Criminal (Code) Act (2017) have set 20 years as minimum legal age of marriage age, for both men and women. For the first time, the Constitution of Nepal 2015 has defined child marriage as a crime and violation of childrights. But in practice, the criteria that needs to be fulfilled under the law before marrying, is not strictly followed. Among South Asian nations, the rate of child marriage in Nepal is the third highest, after India and Bangladesh. To counter such a widespread practice, legislation, rules, policies, strategies, and plans needs to be put in place. And where necessary amendment to existing laws needs to be made. For effective implementation of the law, responsible authorities such as local bodies and the Nepal Police should play their part by monitoring implementation of the law, preparing reports and making them public. If they fulfilled their responsibility, and exercised their lawful powers, child marriage could be reduced and eventually cease to exist.

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### 3.2. Role of media in ending child marriage

*\*By Subash Ghimire <sup>21</sup>*

#### Introduction

Of late, there has been plenty of news coverage, both nationally and internationally, on the issue of Chaupadi. Many young girls die while sleeping in huts during the four days of menstruation. Despite massive coverage and discussion on the issue, little seems to have changed on the ground. What role can the media play in ending such practice? How does the coverage affect policy changes and what must be done to change the mindset of people on the ground? There are serious questions but no easy answers.

If judged solely by official documents, Nepal's attitude towards women looks perfectly fine. The constitution of Nepal has guaranteed the right to dignified lives for women and children in Nepal. The Constitution of Nepal (2015) says that "there shall be no discrimination in the application of general laws on the grounds of origin, religion, race, caste, tribe, sex, physical conditions, disability, health condition, matrimonial status, pregnancy, economic condition, language or geographical region, ideology or any other such grounds." In the same constitution, under the right against exploitation, it is provided that "no person shall be subjected to human trafficking or bonded labor, and such an act shall be punishable by law", and "no person shall be subjected to forced labour." Under the right to education it says, "every citizen shall have the right to compulsory and free basic education, and free education up to secondary level."<sup>22</sup>

There is also a strong provision against violence against women. "There shall not be any physical, mental, sexual or psychological or any other kind of violence against women, or any kind of oppression based on religious, social and cultural tradition, and other practices. Such an act shall be punishable by law and the victim shall have the right to compensation as provided for in law."<sup>23</sup>

For children the constitution provides that "No child shall be subjected to child marriage, illegal trafficking, kidnapping, or being held hostage. No child shall be abused physically, mentally, or sexually, or exploited through any other means. No child shall be subjected to physical, mental, or any other form of torture at home, in school, or in any other place or situation."

But what the constitution clearly prohibits continues to happen in Nepal. In practice, there is a considerable gap between fine-sounding provisions enshrined to ensure the -wellbeing of women and children in Nepal, and how they are treated.

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<sup>22</sup> The Constitution of Nepal, 2015, Secretariat of Constituent Assembly, Kathmandu

<sup>23</sup> Article

## **Status of child marriage in Nepal**

According to the 2016 Human Rights Watch report on Child Marriage<sup>24</sup>, 37% of girls in Nepal marry before they turn 18, while 10% marry before they reach 15. This is in spite of the fact that the minimum age of marriage under Nepali law is 20. It is estimated that 11% of boys also get married in their teens. In the Tarai alone, more than half a million girls are married between the ages of 10 and 14. One of the reasons for the prevalence of child marriage is a lack of seriousness on the part of law enforcement agencies. The police can file a complaint if they hear about a child marriage, even if no one formally lodges a complaint. However, in most cases police are apathetic about the issue. Even though the government has fixed 20 as the minimum age to get married, an overwhelming majority of rural girls are married much earlier. There is a provision for three years imprisonment and a fine of up to 10,000 nepalese rupees. For those who break this law, but in reality, very few child marriages result in a complaint.

UNICEF's 2011 State of the World's Children report ranked Nepal among the ten worst countries for child marriage. Nepal ranks third, after India and Bangladesh, in South Asia, according to that report.

According to Sancharika Samuha media monitoring report released in June 2016, in an average month, 19 women are murdered and 28 are victims of rape. The victims, said the report, were from various age groups, though most were girls aged 10-15 and women aged 20-55.

The country is 18th in a list of the 20 countries with the highest absolute number of child marriage, according to Girls Not Brides, an international NGO. This has been reported on by the press in foreign countries. Aljazeera reported on September 8, 2016, that Nepal has failed to prevent child marriage. Under the heading "Rights group: Nepal failing to stop child marriage."<sup>25</sup> Al Jazeera presented Nepal as a country that has failed to control this serious social ill. The Guardian reported on May 18, 2016, that "Child marriage in Nepal is denying girls' education and the country a boost in GDP."<sup>26</sup> We must not allow this situation to continue.

## **Why child marriage takes place**

A number of factors contribute to the continuation of this social ill. According to the Human Rights Watch report "[child marriages] result from a web of factors including poverty, lack of access to education, child labour, social pressures, and harmful practices. Cutting across all of these is entrenched gender inequality and damaging social norms that mean that girls are less valued than boys in Nepali society."

Many of the marriages, says the report, are "often, forced—by girls' parents, or other family members. In some areas of the country, families marry girls at ages as young as one and half years old." Needless to say, the consequences are predictable. Once married the children drop out of school. They have babies early because they lack information about and access to contraception. Early childbearing puts the lives of both mother and child at risk. Those who marry as children are liable to become victims of domestic violence.

Partly borne of poverty, child marriage keeps girls and their families in a cycle of poverty. Married girls are also more likely to be victims of domestic violence. The Government of Nepal has been developing, with UN agencies and Girls Not Brides Nepal, the National Strategy to End Child Marriage, but it has not been properly implemented. As part of the Sustainable Development Goals, the Government has also committed itself to ending child marriage by 2030. Thus, we need to prioritise the implementation of the SDG target.

## **Role of Media**

This is the most important part of this paper. No matter how progressive are the constitutional provisions a country has to deter child marriage unless people are made aware of those legal provisions, they will be meaningless. That is to say it is important that media report not only the incidents of child marriage but also report on both possible victims (the girl and the boy) and those who encourage this practice.

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<sup>24</sup> Human Rights Watch Report, September 8, 2016 (<https://www.hrw.org/report/2016/09/08/our-time-sing-and-play/child-marriage-nepal>)

<sup>25</sup> "Rights group: Nepal failing to stop child marriage." September 8, 2016, Aljazeera (<http://www.aljazeera.com/news/2016/09/rights-group-nepal-failing-stop-child-marriage-160908074225985.html>)

<sup>26</sup> "I just got trapped': Nepal tries to expand girls' horizons beyond marriage" The Guardian, May 18, 2016 (<https://www.theguardian.com/global-development/2016/may/18/trapped-child-marriage-nepal-attempts-to-expand-girls-horizons>)

What Maryam Mohsin, Communications Officer at Girls Not Brides says bears reflection on?<sup>27</sup> “The media informs people about important issues and helps shape how child marriage is spoken about and understood by the general public,” says Mohsin. “The media adds a human face to the issue. Hearing and understanding things from a young girl’s perspective encourages empathy in a way that research and facts are unable to. By using stories with emotional and personal content we can show the public and decision-makers that girls aren’t numbers, they are people.”

Media can hold law enforcement agencies to account by praising or criticizing their acts. “A media outlet can praise a government’s actions when it does good things for girls, such as increasing the minimum age of marriage or adopting a national strategy on child marriage, but it can also call them out for a lack of action.” It can explore multi-faceted sides of child marriage. “More nuanced narratives are needed to describe the multitude of causes which lead girls to marry. ... Information about the context of their lives and possible solutions to the constraints they face should be included so readers know how to engage when there is a clear call to action.”

In recent times, Nepali media have started to report child marriage with more frequency, but such reports are not accorded the first priority. Often issues relating to children are printed on the second or third pages of a newspaper. Cases relating to violence against children are not big news, either in electronic or in print media. Editorial advocacy to eradicate child marriage is rare. Yes, editorials are written now and then but only when the worst crimes against children are reported. Child marriage has found social acceptability. The media has the power to influence that acceptability and is the only institution which can do so with efficacy.

## **Conclusion**

Despite having good constitutional and legal provisions to eliminate violence against children and women, Nepali children (like children elsewhere) are bearing the brunt of child and early marriage. Nepal’s children are suffering, and the practice has earned the country a bad reputation. The media can change attitudes to child marriage in a number of ways. But the issue does not seem to be the primary focus in their reporting and editorial advocacy. Legally child marriage has been abolished, the Nepali media should play their part and help to make it happen) in practice as well.

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<sup>27</sup> “How can the media do its part to end child marriage?” February 24, 2016, Girls Not Brides (<http://www.girlsnotbrides.org/child-marriage-emerging-trends-in-the-media>)



### 3.3. Child Marriage in Nepal and the Role of Youth: A critical brief

*\*By Brabim Kumar KC<sup>28</sup>*

#### 1. Child Marriage in Nepal

According to UNICEF, child marriage is a “formal marriage or informal union before the age 18”<sup>29</sup> and early-marriage is defined as “formal marriage or customary and statutory unions recognized as marriage before the age of 18”<sup>30</sup>. It is a violation of human rights<sup>31</sup>, which hinders the growth of an individual, regarding their right to health, to education, and their right to choose a partner<sup>32</sup>.

Despite the rise over 25 years in socio-economic and political well-being in Nepal, the pace of reduction in childhood marriage has been very slow. Although the Government of Nepal has signed many international conventions and passed laws against this problem, due to weak enforcement of the law and people’s lack of awareness that it is a problem, much still remains to be done.<sup>33</sup>

#### 2. Some moral and critical questions related to child marriage from the lens of youth

##### **Moral prerequisites to ending child marriage:**

Both family and child are influenced by different factors. "Marriage" for a family is associated with honor – judged by the ability of the parents to protect their daughter from any relationship; and their ability to spend well during the marriage including provision

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<sup>29</sup> UNICEF, 2016

<sup>30</sup> UNICEF, 2005

<sup>31</sup> Greene, 2014

<sup>32</sup> Loaiza Sr & Wong, 2012

<sup>33</sup> Dahal 2016



of a hefty dowry. For the girl, resisting child marriage means a revolt – a revolt against her family and also her biological and psychological needs.

The work to end child marriage stands at a difficult moral crossroad if we take into account the obligations and necessities causing child marriage. If we agree to see the whole picture, and feel for the people who are pushed towards child marriage, two considerable moral prerequisites lie ahead:

### **Ending Tilak (Dowry)**

Marriage is a family burden, and by asking families to delay a girl child's marriage, we are in a way asking their parents to prolong that stress. To talk of child marriage ignoring *tilak* might mean inflicting injustice to the parents – especially parents of poorer families who are already burdened with the pressure to find a groom at a cheaper rate. During a recent visit to Siraha district, the mother of the child and a victim of child marriage said, "Would I want to marry my daughter off if I was not forced to"?

The presence of a girl who has reached puberty in a poor family is like being burdened with a high-interest loan – the longer you keep her, the higher the interest. If a mother can't marry her girl child early, it would be costlier to find a groom later. Also, she would have a problem finding a groom for any younger daughter. The family is stressed.

The moral question here is, 'Do we have the right to talk of just one facet of the problem while completely ignoring the structural injustices that cause the problem'. Does our effort to decrease child marriage without ending dowry cause injustice to the families and ultimately the girls? Do we as NGOs claim to care for the daughter more than their mothers? If not, we need to rethink child marriage and how we approach it.

### **Accepting relationships**

For parents, a major risk associated with delaying a girl child's marriage is the risk of her getting into a relationship. When a girl gets into a relationship her dowry rate increases. Her relationship can also cause humiliation to the parents. It will become more problematic if the girl or boy is in a relationship with a boy from a higher or lower caste than she is. Even if a boy from a lover caste comes from the same economic and cultural background, the parents, to save face may marry her off to another man. This marriage is often done in haste and the girl often ends up with an older man or as a second wife.

The idea that society might accept a relationship as a way of testing a relationship before getting into formal marriage is still too far away to imagine. Once there was an advert from UNFPA on the front page of major media on Valentine's Day with an image of a girl child saying, "I want a future, not flowers". Unfortunately, even NGOs understanding, and idea of relationships does not differ much from that of their girls' mothers'. Both believe that the start of a relationship means marriage. The idea that 'relationship is marriage' is passed on to the children. There are cases where a boy and a girl exchange eye contact, followed by a smile, followed by a love letter, followed by another letter planning an elopement, and finally elopement followed by regret.

Delaying child marriage puts the girl in an impossible position. On one hand, the government and NGOs ask young people to delay marriage in exchange for a 'future', on the other hand they are asked to abstain from any contacts with the opposite sex – creating a societal obligation, which is completely against their psychological and biological needs. The desire to form a relationship is natural. Satellite TV reinforces it even in the remotest of places. Of course, the future is a long way away, biological and emotional needs are immediate. Such needs are too basic if we subscribe to Maslow's hierarchy of needs. The increasing trend of self-initiated child marriage (often against the family's will), accounting for 25% of all child marriages, is a consequence of society's inability to accept relationship as a natural human phenomenon.

A prerequisite to ending child marriage would be working to create a society that differentiates between pre-marital relationships and marriage. Society needs to accept relationships as a means to test compatibility rather than defining or even stigmatizing a girls' character based on the number of male friends she has.

Challenging child marriage should start by challenging the belief systems and concepts. The traditional way of dealing with child marriage, which normally ends with naming and shaming the parents and the girls without dealing with the structural problems and injustices, will not help to end child marriage. Hence, a massive campaign both at national and grassroots level and led by youth and children will be the best way to deal with child marriage.



## Redefining the concept of youth in Nepal

### What we talk about, when we talk about youth?

Before discussing the role of youth, let's discuss the concept and definition of youth, though there is no universally agreed definition of youth. It is a social and cultural construct bound by a range of indicators including age, marital status, financial dependency, responsibility and emotional dependence on primary caregivers. These indicators vary considerably across cultures and contexts. However, globally there is a trend to define youth in terms of age group. Though the Nepal government has defined youth as being from 16 to 40), the definition is too wide and the upper age too high, to design and implement programmes for the benefit of the target age group.

The concept of youth in Nepal is heavily dominated by the political definition, where a person of 60 is still regarded as a youth within the youth 'un-friendly' political structures of political parties and state bureaucracies.

The youth population is different across different countries and institutions. The United Nations, for instance, considers youth as an age group between 16-24; according to the World Bank it is the population between 15-24; in India those aged between 13-30 are considered to be youth; the corresponding figures for Pakistan and Japan are 13-35 and 0-24 respectively; whereas in Nepal, National Youth Policy (NYP) defines youth to be within the age bracket of 16-40 years. But controversies have surrounded the state's definition of youth, due to the wide age range it covers. A study by Asia-Pacific Interagency Group on Youth in 2011 states that the age range of 16-40 years in Nepal means that it is hard to give effective attention to the specific needs of adolescents and young people, given the differing needs of people aged 16-24 and those aged 25-40. Amanda<sup>34</sup> highlights a problem in the current definition by pointing out that the NYP incorporates two generations including both parent and child within the same demographic category.

In 2010, the government of Nepal endorsed the National Youth Policy, and updated it in 2015. The policy defines youth via two main categories: social and age. Within the social category, there are six sub-categories (priority group, special priority group, youth victim of conflicts, vulnerable youth, youth with disability, and youth of marginalized minority group). The age category has been defined as covering the ages of 16 to 40. The essence of NYP is to 'forge the involvement of youth in nation building by developing their capacity in all spheres of life including economic, social, political and cultural spheres'. The definition of the age range was widely debated and was one of the most contested issues during and after the formulation of the National Youth Policy.

This might affect programme design for the implementation of youth policy as it is hard to give 'strong credence to the specific needs of young people; given the different needs between youth with different social, economic and biological characteristics'<sup>35</sup>. In many policy arenas, inappropriate target populations can be found which affects the implementation of policy measures<sup>36</sup>. Furthermore, Weaver states that, 'in cases where resources are limited, which is almost always, it is important to analyze how much compliance is "good enough," and by whom, for the policy to be a success.'<sup>37</sup>

The current definition of youth stated by NYP emphasizes resource distribution. In the context of this study resource distribution refers to programmes and opportunities especially provided by government implementing agencies like the Ministry of Youth and Sports, programmes and opportunities such as training programmes, fellowships, exchange visits, youth funds, representation in public positions, etc.

Though the definition of youth has been accepted at government level will not be allowed youth of younger age to be at the leadership level. The ideal definition of youth in Nepal would be 16-31.<sup>38</sup>

The definition of youth by the government is a mere reflection of the political parties' definition of youth. The structure of political parties at the moment is very youth-unfriendly. The central committees and national bodies do not usually encourage enough space for youth.

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<sup>34</sup> 2014

<sup>35</sup> Asia-Pacific Interagency Group on Youth, 2011

<sup>36</sup> Schneider and Ingram, 1993

<sup>37</sup> 2009

<sup>38</sup> Brabim Kumar, 2010. The youth age definition for Nepal

## **Limited space for youth policies to practice**

The government's youth policy categorizes fifteen thematic areas; the policy aims to provide good education and employment opportunities for youth and envisions the role of youth in sustainable development. However, the policy itself doesn't speak about the problem of child or early age marriage and role of youth in stopping it.

In addition to youth policy, the government has formulated the National Youth Council Act 2015 and Youth Vision 2025, 2015. The Act has given enough rights and responsibilities to Youth Council on several aspects of youth development and leadership to formulate plans and programmes from central to district and community levels. However, as a part of normal practice such initiatives have often been politicized by the political parties and the government. Civil society groups criticized the formation of the Youth Council team as being heavily politically motivated. Youth civil groups claimed that more than 90% of the members nominated for Youth Council were active members of political parties.

Youth Vision 2025, the 15 year long strategic plan formulated by the Ministry of Youth and Sports, is a comprehensive plan put forward by the Ministry. However, the document is silent about child marriage and the role of youth in ending that. The issue of youth being a cross-cutting issue for several ministries, the resources being scattered across several ministries and government departments. In 2014, the Ministry of Youth and Sports received 0.6% of the government's total budget, of which 80% was allocated for the sports sector only. That figure speaks of the lack of institutional commitment to support youth development programme. Having good policies and plans are not enough.

The government of Nepal has formulated the National Strategy to End Child Marriage in Nepal, 2016, through a consultative process. The national strategy has given some space to civil society actors at central and district level. The strategy is clear as to the role of several stakeholders, but silent as to the role of youth.

## **The Youth bulge, its potential and challenge**

For the first time in its history, Nepal is experiencing a huge demographic dividend. According to Nepal's National Youth Policy (where youth are defined as being those aged 16-40), approximately 20.8% of the population are aged 16-25 years, 40.68% of the population are aged 16-40, and 70% of the population is under the age of 35. This phenomenon, where youth account for the largest segment of the population of any country is defined as the 'population dividend' or 'youth bulge'. This provides a unique opportunity for Nepal.

The term "youth bulge" was coined by a German social scientist, Gunnar Heinsohn in the mid-1990s. It is a common phenomenon in many developing countries. It is used to describe a situation where there is an increase in the proportion of the youth population relative to other age groups.

Gunnar Heinsohn, a social scientist and genocide researcher at the University of Bremen, has explained the negative effects of youth bulge in an under-developed country. In Mr Heinsohn's view, when 15 to 29-year-olds make up more than 30% of the population, violence tends to happen; when large percentages are under 15, violence is often more likely. The 'causes' in the name of which that violence is committed can be immaterial. There are 67 countries in the world with such "youth bulges" now and 60 of them are suffering some kind of civil war or mass killing.

Nepal is going through the highest youth bulge in its history, yet the participation of youth in the civic space is very low.

One of the major challenges facing Nepal's development is the integration of Nepali youth into the development process. There is a shortage of institutional platforms for harnessing the myriad of youth-based resources and translating them into refined materials for the nation's development, yet. Nepali youth contribute significantly to the political and economic development of their country.

Politically, they have been in the frontlines of major political changes, from reinstituting multiparty democracy to ending the monarchy. Recently, the country benefited immensely from the role youth played in the post-earthquake rescue, relief and recovery work<sup>39</sup>. Therefore, the contributions that youth have made during the ordinary and extraordinary times push an

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<sup>39</sup> The Kathmandu Post report <http://kathmandupost.ekantipur.com/news/2015-05-07/youth-led-organisation-lends-hand.html>

important question into the public domain: how to produce a collaborative platform for harnessing youth-based skills and spirit and turning it into something more concrete?

This question presents challenges as well as opportunities for the state and the public sphere. On the one hand, the opportunities lie in transforming the massive resource that young people are in the fields of advocacy, activism, journalism, entrepreneurship, and scholarship into formal, institutional platforms, like Youth Councils, youth resource centers, and policy-making bodies from national to grassroots levels. On the other hand, challenges lie in addressing institutional barriers; lack of innovation and entrepreneurial interventions for youth; and highly politicized and bureaucratized systems that discourage the innovation in governance that is required to include youth into the planning and development process.

Lately, there have been some space created for youth input, but in reality, this is more tokenism rather than a genuine desire to be inclusive. Taking stock of these potential challenges and opportunities may be the first step in the long march towards building an equitable, ecological, and egalitarian Nepal. When it comes to achieving SDGs, the current levels of official youth participation, which is only symbolic; has to be changed and the good things mentioned on paper have to be translated into action through meaningful youth participation from the center to the grassroots.

Despite the limitations and weakness at multiple levels, Nepali youth has to come up with solid plans and strategies to tackle some of our social and cultural problems. Nepali youth has shown determination and courage during the political struggle and a willingness to help during the time of disaster. The same level of energy and commitment is required to deal with child marriage.

#### **Youth Leading during the disaster, the case of April 2015 Earthquake**

Nepali youth have proved their ability, capacity and dedication to be able to take the lead and mobilize themselves during this recent disaster. Hundreds of informal youth groups immediately responded helping communities in rescue and relief. The youth were able to reach communities that the state failed to serve and reach in a timely manner.<sup>40</sup>

Inactive youth groups organized themselves and aided with rescuing people in various parts of Kathmandu; they volunteered at hospitals that were crowded with unmanageable numbers of injured people. They helped in managing public and private hospitals. Local youth clubs coordinated themselves to start cleaning the streets of Kathmandu to prevent potential health epidemics. Informal youth groups were and continue to deploy teams to provide emergency relief (supplies and service) to the affected areas to the best of their capacity, fundraising through their personal and professional networks. Despite the absence of proper infrastructure, information, particularly road and transportation networks, which were further destroyed due to the quake, their commitment to reach those affected persisted.<sup>41</sup>

They played and continue to play a very critical role in protecting, rehabilitating, and rebuilding the lives of many. Among all the stories, the story of youth mobilizing and volunteering (both Nepali and even some foreign students) to reach out to communities with relief materials has been one of the most inspiring stories.

A key factor that aided this large-scale mobilization of youth was the use of social media. As a response to this disaster, one of the largest youth led campaign; #act4quake was initiated, the group in 45 days of work the #act4quake was able to reach out to more than 15,000 families from 340 communities/villages in the affected areas with the help of more than 1000 volunteers. A campaign that started deploying self-motivated volunteers, documenting dispatch details on sticky notes, became a full-fledged campaign that emerged as one of the largest youth led relief campaign in Nepal.

The tremendous impacts of this campaign, led ably and with vision by Nepali youth, have been felt across the country. Community participation, along with the endless energy and national pride of the young people of Nepal, has been a core reason for the massive success of the youth relief efforts. Local Nepali communities have been involved at every step of the campaign, from the beginning of the decision-making process through each stage of implementation.

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<sup>40</sup>Al-jazeera

<sup>41</sup><http://cafedissensusblog.com/2015/05/20/youth-in-the-time-of-earthquake-in-nepal/>

Through the youth led relief efforts, young people of Nepal have demonstrated that they are ready, willing and able to get to work to rebuild Nepal.

Youth are often presented as future and leader of tomorrow, young people in today's world have more access to digital tools and technologies, and young people can use those tools effectively and productively. In addition, youth can take risks in asking question and challenging the societal and cultural stereotypes. The youth of today are more educated than the past and elder generations; they have sense of volunteerisms and are ready to volunteer to learn and to contribute on social cause. If enabling environment is created and opportunities are given for young people to stand and work against the child marriage, we can expect some quick results.

## Recommendations

- Given the fact the country is going to huge demographic dividend and youth bulge, it shows the huge potential of and for youth for the overall development of the country. A youth strategy should be formulated to engage youth from national to grassroots level.
- Youth should be proactive at central level and at the grassroots level and eradication campaign of child marriage should be established as crosscutting issue and mainstreamed in to all development works. It should be important agenda for any development initiative.
- Youth initiatives and small youth groups are often reluctant to take actions because of the resource constraints. The newly elected local government should create structures for youth engagement, which could open the door for the youth participation in local decision level and mobilizing resource wouldn't be a big challenge for youth.
- The national and district coordination and collaboration committees as per the national strategy should engage youth volunteer groups.
- Adolescent boys and girls should be empowered to manage their sexual and reproductive health issues through different approaches such as the peer-to-peer approach, comprehensive sexuality education in schools, life skills-based education, and youth information centers. The focus of the empowerment should be given on not marrying below the age of 20 and, if a child marries before 20, on delaying pregnancy and adopting safe sexual practices as a way of life. Adolescent-friendly health services and easy access to contraception and other health services reduce the consequences of unsafe sex. Therefore, in addition to empowering adolescent girls and boys in communities, their linkages to primary health service outlets in their communities should be strengthened so that they can utilize the existing health services, as they need to.
- Aid agencies and NGOs should re-evaluate their approach; the current approach of shaming campaigns might not be the sustainable solution to end the practice.
- Ending child marriage requires the consolidated efforts of all organizations. Therefore, networks, the coordination and collaboration of different stakeholders, and organizations from community to national level should be strengthened. National responses to end child marriage should be linked with global partners such as Girls Not Brides, an initiative of the Elders. Ending child marriage should be established as a crosscutting issue and mainstreamed into all development works. It should be an important agenda of any development initiative.
- Open discussion on SRHR and marriages. SRHR and marriage are regarded as a private subject in Nepali cultures. Extensive communication campaigns can help create circumstances in which traditional beliefs about marriage can be discussed and examined. To foster behavioral change from within communities, human rights, particularly those of women, should be emphasized, including rights to equality, access to education, and freedom from exploitation and discrimination.
- Community education must emphasize the need to respect the decisions of boys and girls to remain unmarried as long as they wish, rather than stigmatizing the unmarried ones.
- Youth can come-up with creative and innovative tools and techniques to reach out to the community members through songs, drama, sms campaigns etc.
- The cultural events like deusi, bhailo, sakela, udhauri –udhauri, deuda are the place where people from all ages and backgrounds come together. Youths should use such opportunities to create meaningful dialogues and discourse on child marriages and create awareness through songs and music.
- The newly elected government has more power, authority and resources – youth groups should make alliances and should negotiate with local government in collaborating for local development and social cause making local bodies accountable and transparent.
- There are more than 500 local radio stations; half of them are community radio stations. Community radios can play a vital role in creating awareness. Youth groups should collaborate with community radios in delivering messages in youth and children friendly ways.
- The local grassroots campaign should be connected with national groups, youth groups operating in Kathmandu should come out of their comfort zone of traditional workshop, seminar activities and should make collaborate with local youth groups operating outside district headquarters for meaningful dialogue and exchange of ideas and action.
- The youth groups should work with children groups and women groups to make alliance to fight against child marriages and structural injustices.

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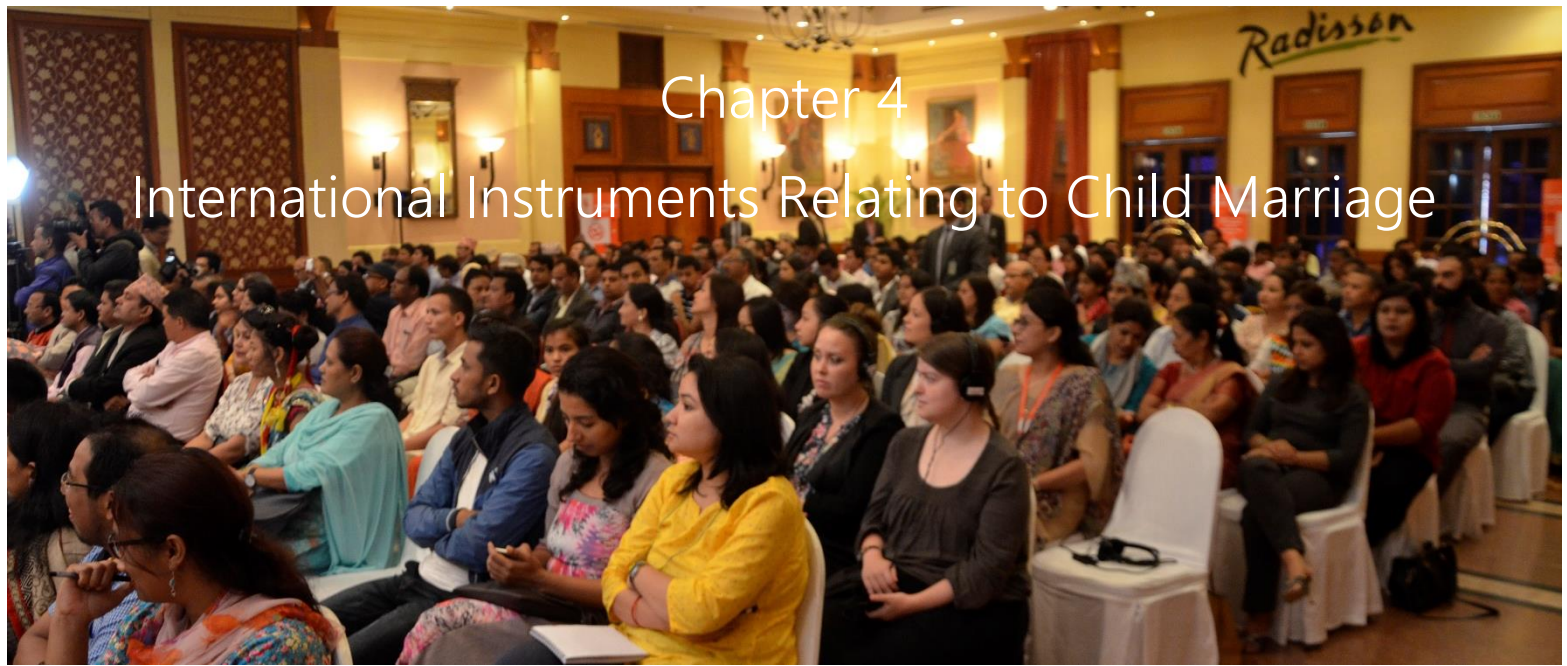
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## Chapter 4

# International Instruments Relating to Child Marriage

Child marriage is a violation of human rights and is prohibited by a number of international conventions and other human rights instruments, to which Nepal has ratified and is a party, and which has explicitly denounced the practice of child marriage.<sup>42</sup> Besides, United Nations Treaty Monitoring Bodies and other mechanisms, including the Universal Periodic Report (UPR) have recurrently reminded Nepal of its obligations to eradicate child marriage and other harmful practices. The Universal Declaration of Human Rights (1948) states that men and women of full age are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending parties. Convention on the Rights of Children (CRC), in Article 24, states “States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.” Similarly, Article 28 says “States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity.” And on Article 34 says “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.” Below are some of the illustrations that treaty bodies have urged the Government of Nepal to take effective measures to eliminate child marriage in Nepal:

1. **Committee on the Rights of the Child (CRC):** The CRC has repetitively urged the government of Nepal to take active and effective measures to eliminate child marriage. The Committee, in 2016, specifically recommended that the government develop awareness-raising campaigns and programs on the harmful effects of early marriage, targeting households, local authorities, religious leaders, judges, and prosecutors, as well as establish a protection and support scheme for children who wish to annul their marriages.<sup>43</sup>

<sup>42</sup> UN Committee on the Rights of the Child; UN Committee on the Elimination of Discrimination against Women; UN Committee on Economic, Social, and Cultural Rights; the UN Special Representative of the Secretary General on Violence Against Children; the UN Special Rapporteur on Sale of Children, Child Prostitution and Child Pornography; the UN Special Rapporteur on Contemporary forms of slavery, including its causes and consequences; the UN Special Rapporteur on Violence Against Women; the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children; the UN Working Group on Discrimination Against Women in Law and Practice; Joint Statement by a group of UN human rights experts to mark the first UN International Day of the Girl Child, Thursday, 11 October 2012, Forced child marriage, slavery like reality in every single region of the world, <http://www.un.org/en/events/girlchild/2012/hrexpert.html> (last accessed Dec. 9, 2014); and CEDAW Committee and CRC Committee, Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, paras. 20- 24, 40-41, U.N. Doc. CEDAW/C/GC/31-CRC/C/GC/18 (2014).

<sup>43</sup> CRC Committee, Concluding Observations: Nepal, para. 40, U.N. Doc CRC/C/NPL/CO/3-5 (2016).

2. **Human Rights Committee (HRC):** The HRC Committee, in 2014, took reference of the “prevalence of harmful traditional practices such as child marriage” as a principle matter of concern and urged Nepal to ensure effective implementation of domestic law in practice.<sup>44</sup>
3. **Committee on the Elimination of Discrimination against Women (CEDAW Committee):** The CEDAW Committee, in 2011, recommended undertaking awareness-raising measures throughout the country on the negative effects of early marriage on women’s enjoyment of their human rights and called for the enforcement of provisions banning early marriage.<sup>45</sup>
4. **Committee on Economic, Social and Cultural Rights (ESCR Committee):** The ESCR Committee, in 2008 and 2015, repeatedly urged Nepal to “Strictly enforce” existing laws prohibiting harmful practices that violate the rights of women and girls, including child marriage.<sup>46</sup>
5. **Universal Periodic Review (UPR):** Nepal, during its second UPR in November 2015, received specific recommendations to take specific actions to eliminate child marriage. These include stepping up “efforts to eliminate gender inequity and implement the national strategy on ending child marriages” and strengthening “measures to combat violence against children, particularly with regard to the prevention of early and forced child marriages... in particular through awareness-raising campaigns among families”.<sup>47</sup>

In 2014, jointly with other South Asian countries, Nepal adopted the Regional Action Plan to End Child Marriage in South Asia, which reflects governments’ commitment to address the socio-economic causes of child marriage and promote laws and policies aimed at eliminating child marriage. The same year, Nepal also hosted the first regional convening of representatives from SAARC member states and key stakeholders focusing on the use of the law to promote legal accountability to end child marriage, which concluded with the adoption of the Kathmandu Call for Action to End Child Marriage in South Asia (KCA). The KCA enumerates concrete steps to address child marriage, including strengthening national laws and addressing married girls’ reproductive health needs.<sup>48</sup>

Similarly, in August 2014, at the first Girl Summit hosted in London, the Nepal government made a pledge to end child marriage. Following that, it organized the first Girl Summit in Nepal in March 2016, where it announced the adoption of the National Strategy to End Child Marriage in Nepal.<sup>49</sup>

Nepal is the only South Asian country with a high incidence of child marriage that has co-sponsored the Human Rights Council Resolution on “Strengthening efforts to prevent and eliminate child, early and forced marriage: challenges, achievements, best practices and implementation gaps”. The Resolution recognizes child marriage as a violation of human rights and calls for strengthened efforts to prevent and eliminate child marriage and support married girls.

Nepal has committed to achieving the Sustainable Development Goals (SDGs), adopted in September 2015, which establish the elimination of child marriage as part of the global agenda that aims “to achieve gender equality and the empowerment of all women and girls” including through “eliminat[ing] all harmful practices, such as child, early and forced marriage...”<sup>50</sup>

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<sup>44</sup> HRC, Concluding Observations: Nepal, para. 8, U.N. Doc CCPR/C/NPL/CO/2 (2014).

<sup>45</sup> CEDAW Committee, Concluding Observations: Nepal, para. 28, U.N. Doc CEDAW/C/NPL/CO/4-5 (2011).

<sup>46</sup> ECSR Committee, Concluding Observations: Nepal, para. 34, U.N. Doc E/C.12/NPL/CO/2 (2008).

<sup>47</sup> See, Human Rights Council, Report of the Working Group on the Universal Periodic Review, Draft Report of the working group on the universal periodic review of Nepal, para. 123.20, U.N. Doc A/HRC/WG.6/23/L.6 (2015).

<sup>48</sup> Human Rights Committee, Report of the Human Rights Council on its twenty-fourth session. Part Two: Summary of proceedings, para. 195, U.N. Doc. A/HRC/24/2 (2014). 156 General Assembly, Draft outcome document of the United Nations summit for the adoption of the post-2015 development agenda, goal 5.3, U.N. Doc. A/69/L.85 (2015).

<sup>49</sup> Press Release, Girl Summit 2014 Commitments, Nepal Commits to End Child Marriage (July 2014), available at <http://www.girlsummit2014.org/Commitment/Show>.

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### 5.1. Children Act 1992

Children Act 1992 defines Child as “A minor not having completed the age of sixteen years”. The Children Act provides rights to the children under different chapters. Some of the major rights provided are: Right to name and determination of date of birth of child, Right to maintenance and upbringing, education and health care, Discrimination not to be made between son or daughter and between sons and daughter themselves in matters related to upbringing. The act also provides a provision relating to the protection of the child and relating to the guardian. This Section mainly puts an emphasis on the abandoned child. The act safe guards the abandoned child and provides rule for the guardian on what to perform and what not to perform. The act also provides with a provision of punishment for the violation of the given sections. The Children Act 1992 overviews the physical, emotional and mentally issue of the child to be protected and to provide all the required facilities by the guardian to ensure the well-being of the child. Children Act is being revised currently.

### 5.2. National Plan of Action for Children 2004/5- 2014/15

National Plan of Action for Children was developed by Ministry of Woman, children and Social Welfare (MoWCSW) along with different partner organization and civil society helping the ministry. The plan of action was implemented on 2004/5. Nepal adopted UNGASS plan of action called “First Call for Children” which asked all the nation adopting the plan of action to develop a 10-year national plan of action. This requirement helped Nepal to develop its first National Plan of Action for the Children. “First Call for the Children” highlighted and questioned issue which countries had to focus on. Issues like Healthy life through adequate nutrition and to control infectious diseases, quality education, and protection from abuse, exploitation and violence (armed conflict, child labor, sale and sexual exploitation), and to campaign against HIV and AIDS.

National Plan of Action of Children was also aligned with National Plan where for the first-time child rights themes was mentioned as crosscutting issue in the Tenth Five-year plan 2002/03-2006/07. The Plan also shed a light upon creating a child-friendly environment by eliminating all forms of violence, exploitation, abuse and discrimination against children by protecting and promoting child rights. The Three-Year Interim Plan 2007/08-2009/10 also had child-friendly environment as objective but overviewing the physical, emotional, mental, intellectual development and protection of child rights. Whereas the Three-Year Plan 2010/11-2012/13 focused on overall development of children for protecting and promoting their fundamental rights.

Education, Health, Protection from abuse, exploitation and violence being the major issues which was focused, and different strategies has been implemented with the objective of well-being and protection of the child right. The National Plan of Action of



Children final evaluation report 2015 has also shown the activities conducted and the problem and loopholes of the effectiveness of the national plan. The National Plan of Action of Children addressed most of the causes and consequences of the child marriage focusing on overall wellbeing of children, however, it is not specific to child marriage.

### 5.3. National Strategy to End Child Marriage

National Strategy to End Child Marriage, 2016 puts forward its goal to end child marriage by 2030 by providing strategies and principles to guide towards the goals. The strategy not only implements the existing laws and policies but also helps to overview the loopholes for the implementation of new policies and laws. The strategy emphasizes on girls to be saved from social stigma but also highlights the importance of participation of boys and men to eradicate the problem. Likewise, it also puts forward importance of all the stakeholders like Government, Private, Developmental and Civil society's roles and responsibility towards this national problem. The Strategy includes principles like:

1. Providing Equal Rights
2. Protection
3. Meaningful Participation
4. Nations responsibility
5. Saving Children and development
6. Well-being of the children.

Whereas the strategic direction is headed by Theory of change which includes **six strategic directions** they are:

- 1) Empowering girls
- 2) Quality education
- 3) Engaging boys
- 4) Mobilizing families and communities
- 5) Access to service
- 6) Strengthening and implementing laws and policies.

The Strategy also highlights works of different local government bodies to end child marriage by 2030. Yet the action plan found on this strategy is in the process of being drafted. It is very important for the authority to make the Action Plan realistic as well as achievable. The Action Plan should also be answerable to the results that aims to achieve by 2030.

### 5.4. Child Protection Mechanism

Nepal Ratified Convention on Rights of Children, which helped Nepal to identify and prepare different strategies, framework, rules and act. Through this ratification various number of child protection issues were used, such as: Child labor, gender-based violence, trafficking, juvenile justice, child marriage, HIV&AIDS and so forth. This also helped in initiating a framework to protect the children's.

Nepal does not have specific Child protection mechanism but has issue specific national plan of action which is said to provide the overall framework for the action to improve child protection in the country. But mechanism seems to be less effective as no authority is responsible for implementing and monitoring the child protection. MoWCSW, Department of Women and Children, Central Child Welfare Board and local bodies are the agencies interlinked in national level where as CCWB and DCWB<sup>51</sup> have the task of coordinating with the local bodies. The local body like ward (in the system of government) has to register birth and also has to maintain information on orphaned, helpless children as well as children with disabilities. Administrative Chiefs also run different programs for the children, child welfare homes to be facilitated as per the requirement which are some of the examples of child protection mechanism practiced.

This dependency of mechanism on the National plan raises many questions and does not specifically help put forward ending the practice of child marriage. Most importantly, the government should form a consolidated child protection mechanism with specific responsibility to maximise its effectiveness.

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<sup>51</sup> The function of CCWB and DCWB is not clear yet on what its exact role will be on these issues.





## Chapter 6

### Conclusion

A human rights violation, child marriage directly impacts children's education, health, psychological well-being, and the health of their offspring. Their offspring are at an increased risk for premature birth and, subsequently, neonatal or infant death. The tradition driven by poverty, is perpetuated to ensure girls' (of boys' too) financial futures and to reinforce social ties.

Analyzing these causes and consequences that child marriage can lead to, the need for separate consolidated child marriage Act to End Child Marriage is seen crucial one. Too many general laws and regulations have further created confusion to end the problem of child marriage in Nepal. Likewise, strengthening monitoring mechanism system for existing laws and policy implementation on child marriage would be a milestone in ending child marriage. Furthermore, state needs to shift its focus upon the aspect of awareness on existing policies with clear legal provisions specific to ending child marriage.

Similarly, media could play a role as an effective instrument contributing to end child marriage. Coverage of social issues on regular basis would create wider perspective and a possibility to end the social problem. Similarly, providing training opportunities for reported focusing more on instilling knowledge of how to use and play with information, methods of visual storytelling and many more would change the traditional ways of reporting. Investigative journalism with a blend of aesthetic methods of reporting including theaters, songs focusing more on providing information on consequences of child marriage rather than plain message on raising awareness to ending child marriage.

Likewise, in a scenario where youths in early ages opt for child marriage because of curiosity in their physical and mental changes during the adolescent years, it is equally important that youth talk about sexual and reproductive health rights and sexuality education more openly. Education alone is never sufficient to bring positive change, change in attitude of people most importantly youth is vital to end child marriage.