ISSN 2676-1491
ISSN 2705-4438

संवाहक

मानव अधिकार शोध-पत्रिका

अङ्क २५

वर्ष २०८२

SAMBAHAK

Human Rights Journal

Vol. 25

Year 2025

राष्ट्रिय मानव अधिकार आयोग
National Human Rights Commission
केन्द्रीय कार्यालय, ललितपुर
Central Office, Lalitpur

जि.प्र.का.ल.पु.द.नं. ३२८/D.A.O. Lalitpur: R.N. 328

संवाहक

मानव अधिकार शोध-पत्रिका
(समकक्षी समिक्षीत)

Sambahak

Human Rights Journal
(Peer Reviewed)

वर्ष १०	असार, २०८२	अङ्क २५
Year 10	July, 2025	Vol. 25

प्रकाशक :

राष्ट्रिय मानव अधिकार आयोग
पुल्चोक, ललितपुर, नेपाल

Publisher:

National Human Rights Commission, Nepal
Pulchowk, Lalitur, Nepal

Email: nhrc@nhrcnepal.org
Facebook: NepalNHRC
LinkedIn: @NepalNHRC
Web: www.nhrcnepal.org
X (Twitter): @NepalNHRC
Instagram: @NHRCNepal

प्रकाशन मिति : असार, २०८२
प्रति : १०००

मुद्रणः साइनिङ ट्रेड लिंक प्रा. लि.

Publication Date: July, 2025
Copies: 1000

Printing Press: Shining Trade Link Pvt. Ltd.

Contents

The articles are listed according to the alphabetical order of the name of writers.

Sambahak: Human Rights Journal (2025), Vol. 25, 1-17

Climate Justice, Constitution, and the Court: A Quick Reflection on the Right-Based Approach

Dr. Ananda Mohan Bhattarai[1]

Email: anandamohan77@gmail.com

To cite this article:
Bhattarai, A. M. (2025). Climate Justice, Constitution, and the Court: A Quick Reflection on the Right-Based Approach. *Sambahak: Human Rights Journal*, *25*(1), 1–17. https://doi.org/10.3126/sambahak.v25i1.83911

Keywords: Climate Justice, Science, Constitution, Court, Environmental rights

Abstract

Climate change impacts on the livelihood of people. Climate change can be studied in constitutional and legal context. This paper focuses on the rights provisioned in the constitution and law for ensuring the climate justice. The challenges of Climate change in Nepal is highlighted with special focus on the constitutional provisions of fundamental rights, directive principles and state policies. This paper addresses the questions about the role of law for climate justice, constitutional provisions about the green transition and the role of Supreme Court in this process. The conclusion of this paper rests on law-science inter face that plays role in securing justice to people. This paper helps understand the sustainable development as provided in The Constitution of Nepal. It even highlights the need of the international environmental courts to address the accountability gaps witnessed in international climate negotiations especially in areas of climate finance, loss and damage and tardiness in transitioning to carbon neutral economy. The gaps also create obstacles in securing climate justice at the domestic level. So the policy makers at the domestic level need to address for safeguarding the environmental safety for all the generations.

Introduction

Climate change is essentially a science led discourse (The Paris Agreement, 2015)[2]. However, it is also studied in the context of the existing and evolving constitutional and legal system. This is

[1] Retired Justice of Supreme Court of Nepal; Currently visiting Professor of Kathmandu University

because of the deep impact posed by climate change on the life and livelihood of the people. The paper reflects on the rights embodied in the constitution and law see how the legal regime can contribute to green transition by ensuring climate justice. For this purpose, the paper first highlights the challenges brought about by climate change in Nepal. Following this, it presents constitutional highlights with special focus on fundamental rights and Directive Principles and State Policies (DPSPs). It then addresses pointed questions such as: a) the role of law in securing climate justice; b) whether or not the substantive conception of environmental rights makes a difference; c) whether or not the constitution has anything to say about green transition; and d) whether or not the Supreme Court assist this process by providing safeguards of fairness and legitimacy. These questions are relevant not only for lawyers but also for policy makers and others interested in law and justice. The paper concludes by highlighting how the law-science interface could be employed for securing justice to the people. It is hoped that the paper will contribute to better understanding of the concept of "ecologically sustainable development' promised by the Constitution to the people of Nepal.

Climate Change and Nepal

A country of moderate physical size in the Himalaya system, Nepal is bordered by two giant neighbors –China and India, who are gigantic not only in terms of their physical size or population but also in terms of Green House Gas (GHG) emission. They along with the USA contribute 42.6% emissions while the bottom 100 countries account for only 2.9% (Friedrich, 2023).[3] Nepal falling in the bottom 100, emits only 0.027%. However, today she bears brunt of climate induced devastation such as flood, cloud storm, dusty winds, melting of the mountain, permafrost and glaciers melting, massive floods even in traditionally rain-shadow areas, upward shifting of tree-line and vegetation commensurate with shifting climate boundaries (Taylor, 2025). Due to temperature rise, one witnesses the spread of malaria and dengue in high mountain areas (Poudel, 2023), aggravated fires creating havoc to life and livelihood of the people. Reduced productivity and crop failure and resultant ecological imbalance have changed the face of Nepali mountains. If climate change, biodiversity loss and pollution are prominent existential crises facing humanity, their impacts are intensely visible in Nepal. A study by the government of Nepal reveals that climate-induced disasters account for around sixty-five percent of annual disaster-related deaths (Ministry of Forest and Environment, 2021; Bhattarai et al., 2024). The average annual economic loss from these disasters is approximately 0.08

[2] The warning bell on devastating impact of climate change was first raised by scientists. Since then heavy reliance is put on "best available science" while exploring the possible way forward. The importance of science is illustrated in Paris Agreement Science.

[3] Currently, China is the first and India the third emitter of GHG gases

percent of the GDP (Ministry of Forest and Environment, 2021). The injustice caused by climate change is deeply felt by the Secretary General of the UN who after visiting mountain region of Nepal in October 2023, said the following in the Nepali Parliament:

> *What is happening in this country as a result of climate change is an appalling injustice and a searing indictment of the fossil fuel age. I am deeply concerned by those communities in Nepal facing the brutal impacts of the climate crisis. . .* (Bhattarai et al., 2024).[4]

The above being some of the challenges brought about by climate change, Nepal is also undertaking a bit of good work contributing to the mitigation of its effect. First among them is the progress in the generation of renewable energy. It is currently producing over 3000MW of renewable energy (Energy Development Roadmap, 2081*)* in the form of either solar or hydro-electricity. She has even begun to export surplus electricity India and Bangladesh. Second, is the EV boom in Nepal. Nepal had first introduced electric vehicles in 1975, and battery-run-auto rickshaw 1993. Today EVs dominate the auto market in Nepal (Prasain, 2025)[5] comprising around 70% of the net import of vehicles. The generation of surplus electricity has changed Nepali homes resulting in the introduction of induction stove and other utilities. Third, Nepal has made considerable progress in expanding her forest cover which now reaches to around 45 percent of the land mass. Against enormous challenges facing Nepal, these figures create some amount of optimism.

The Constitutional Landscape

Nepal promulgated a new constitution in 2015 introducing inclusive democracy in the country. Now, inclusion is a very important component of the Nepali constitution (The Constitution of Nepal, 2015, Art. 4, Art. 6, Art. 18, Art. 24, Art. 42; Bhattarai, 2022). The constitution also contains a bold framework of enforceable rights including civil and political, economic, social, cultural and environmental rights. The Constitution requires the state to enact necessary laws within three years for the enforcement these rights (The Constitution of Nepal, 2015, Art. 47). The framework of rights very clearly keeps the people and the state in right-duty relation, where the state is required not only to protect and respect the rights but also act as positive mover and capacity builder. When the rights are guaranteed but no law is enacted within the stipulated time, people can file a petition to the Supreme Court, which again is a fundamental right (The

[4] Antonio Guterres, October 31, 2023 cited

[5] The imports of EV skyrocketed by almost 200% in the last two fiscal years. In FY 2023/24, the total imports were 11,701 EVs, with 8,938 (76.4%) from China, while there were 2763 EV imports from other countries.

Constitution of Nepal, 2015, Art. 46)). At another level, the Constitution provides for a more or less independent judiciary both structurally and functionally. The Supreme Court is recognized as the guardian of the constitution, vested with the power of judicial review of the law (The Constitution of Nepal, 2015, Art. 133, 137). It is empowered to give final interpretation to the Constitution (The Constitution of Nepal, 2015, Art. 128(2)). Given that independent and competent system of justice is a promise of the constitution (The Constitution of Nepal, 2015, Preamble), the judiciary is expected to realize this promise by securing justice in its broadest amplification so at to give direction to the constitution.

This being the general framework of rights, on specific aspect of environment, Article 30 of the Constitution guarantees every citizen the right to a clean and healthy environment. Here, the word "healthy" needs to be taken note of. Put simply, a healthy environment is a prerequisite to the enjoyment of human rights. As an unhealthy environment causes environmental harms it contributes to the violation of rights which the constitution takes note of. This being so, the constitution does not stop here. It also creates entitlement for compensation to the victims of "environmental pollution and degradation" (The Constitution of Nepal, 2015, Art. 30(2)). As it is a common knowledge that climate change contributes to "environmental degradation", there is a possibility of the people praying to the court for compensation for climate change induced environmental degradation impacting on the rights relating to food, health, and loss of property due to fire, flood etc. Even though due to varieties of factors influencing the enjoyment of rights, measurement of per-capita climate induced loss may be difficult, in appropriate cases where justice demands compensation, the court may take a commonsense approach and award compensation to the victims of environmental degradation. Given the desperate impact on the poor and the marginalized resulting in their added vulnerability, the Constitution opens up social-justice-net and requires the state to take special legal measures for the "protection, empowerment and development" of such group of people. Justice to such people is based on equity which is a cardinal principle of the constitution. The protective measures thus envisaged may cover the whole life span from conception to the death of the climate victims (The Constitution of Nepal, 2015, Art. 18(3) and Art. 38(5), 40, 42, 43).

This being the situation for enforceable rights, the issue of protection of environment and mitigation of the effect of climate change also needs to be seen in the light of Directive Principles and State Policies (DPSPs) enshrined in Part IV of the Constitution. Though the provisions in this Chapter do not use the term "climate Change", when one looks at various policy stipulations one can very much say that the constitution is informed of the impact of climate change. And therefore, it require the state to pursue the path of ecologically sustainable development taking note of environmental degradation on land, water and forest resources. As for instance, the constitution call for protection of land, farmers and increase of agricultural

productivity through appropriate land use policy; modernization and diversification of agriculture. It also calls for development of balanced and environment friendly sustainable physical infrastructure. The conservation, protection and environmentally sustainable use of natural resources, and equitable sharing of benefits according priority to local people, is another directive of the constitution. It also calls for production and development of renewable energy, its reliable supply for meeting basic needs of the citizens; control of water-borne diseases, management of rivers and development of reliable and sustainable irrigation. Similarly, it requires the state to work for conservation, promotion, and sustainable use of, forests, wildlife, birds, vegetation and bio-diversity; mitigation of risk to environment from industrial development, maintenance of appropriate forest cover for ecological balance; adoption of appropriate measures to abolish or mitigate existing or possible adverse environmental impacts on the nature, environment or biological diversity. Pursuance of the principles of environmentally sustainable development taking note of the principles of polluter pays, of precaution in environmental protection and prior informed consent is a clarion call of the constitution. It also requires the state to make advance warning, preparedness, rescue, relief and rehabilitation in order to mitigate risks from natural disasters (The Constitution of Nepal, 2015, Art. 51 (e) (g)). As mentioned above, these stipulations reveal that the constitution is informed of the challenges and impact of climate change and so require the state to pursue the path of "ecologically sustainable development". This is the promise of the state to its people and obligation consciously taken for the enforcement of rights guaranteed in the constitution.

Even though directive principles are not enforceable by the Courts, one finds the judiciaries in South Asia including Nepal taking common position that the DPSPs are not vacuous jargons; the government is required to give effect to them as they add force and vitality to fundamental rights (Yogi Naraharinath et al. v PM Girija Prasad Koirala and Others, 2053 B.S.)[6]. This highlights the importance of DPSPs in giving amplified and contextual meaning to fundamental rights. The approach is in line with the approach taken by South Asian Courts. For instance, in the famous *Minerva Mills* Case the Indian Supreme Court said: "harmony and balance between fundamental rights and DPSPs is an essential feature of the basic structure of the Constitution" (Minerva Mills ltd v Union of India, 1980). Other courts in South Asia have also made similar observations regarding the constitutional importance of DPSPs (Seneviratne v University Grants Commission, 1979; A. Wahab v Secretary, Ministry of Land and Others, 1996; Masdar Hossain(Md.) and Others v Bangladesh, 1999; Bhattarai, 2012). In a nutshell, while constitutionalism is the bedrock of present constitution, it promotes equality, equity and

[6] (Re-protection of environmental heritage)

fairness, access to justice and enjoyment of rights. The alignment of environmental rights with inclusivity, sustainability, and other fundamental rights facilitates the evolution of **environmental constitutionalism** now forming the foundation of the Nepali constitutional order (Bhattarai et al., 2024).

Law, Justice and Climate Change

What role does law play in securing climate justice?

Here, like the pantheons in legal field I also take view that if law has a purpose it is justice, and only justice. And in the context of environmental challenges, it can be said that if the law has a purpose. it is to impart justice to humans and the nature. As mentioned earlier, even though environment and climate change are science led discourses, law has a significant role to play in securing climate justice, because rights, equity, and fairness in the benefits and burden are in sharp focus here. And, when we talk about justice, it is not divine justice but legal justice. This is more or less explained in *Asghar Leghari* where climate justice in the context of climate change is epitomized as:

> *[A] clarion call for the protection of fundamental rights of the citizens of Pakistan, in particular, the vulnerable and weak segments of the society who are unable to approach this Court* (Asgar Leghari v Federation of Pakistan, 2018, Para 11)*."*
>
> *"Climate Justice links human rights and development to achieve a human-centered approach, safeguarding the rights of the most vulnerable people and sharing the burdens and benefits of climate change and its impacts equitably and fairly. Climate justice is informed by science, responds to science and acknowledges the need for equitable stewardship of the world's resources* (Asgar Leghari v Federation of Pakistan, 2018, Para 21)*"*

I am of the view that if climate justice has a human face- it speaks through the mouth of judges and revolves around considerations such as rights and obligations, fair treatment, participation, health and well-being of human and nature, promotion of equity and mitigation and alleviation of vulnerability and good governance. When I say this, I do understand that many things, of course, depend on how the legal system is premised and framed, and what powers given to the judiciary. But as a student of law, I consider rights as a-priori; something supra-constitutional. Therefore, when I look at the constitution and laws of Nepal, beaconing the pathway towards ecologically sustainable development through right-based framework recognizing the need for a healthy environment, my first instinct tells me to make those values realizable. As seen above, the Lahore High Court in *Asghar Leghari* accorded primacy to humans and took a right based approach.

Secondly, when one talks about the role of law, it needs to be seen in the light of the rule of law and the embodied normative order. The rule of law recognizes the supremacy of the constitution. It emphasizes that every action of the state and non-state actors should have a legal basis and be guided by values of democratic accountability. To illustrate this further, one can take Art. 75 of the Constitution of Nepal, which states, "The executive power of Nepal shall, *pursuant to this Constitution and law*, be vested in the Council of Ministers". The provision essentially means that the executive draws its power from the constitution and laws. So it should respect the constitution and laws including the rights guaranteed. The executive cannot bypass them while exercising power. It is here we see the convergence between the rule of law and the role it plays concerning the challenges posed, among others, by climate change. Now, with horizontal implementation of rights getting popularity in democratic countries, law can be an effective tool also to bind non-state actors as well. Non-state actors (natural and legal persons) are also required to respect rights of the people (Keshar Jung KC and Others v Ministry of Health and Population and others, 2077 B.S.) . In view of this, it is very much possible to define and determine the space and limits of their activities vis-à-vis the right of the people through the regulatory framework created for this purpose.

Thirdly, law plays the role of positive catalyst and becomes useful in creating awareness, building capacity, setting standard, prioritizing activities and facilitating the introduction of science, technology and knowhow, creating forward looking and robust institutions and promoting good governance.

Fourthly, the role of law becomes even more crucial in addressing non-compliance and omission on the part of the government which is so palpable in South Asia.

Finally, as understood in the context of South Asia, the rule of law is a rule of just, fair and reasonable law. And in the context of climate change it is the rule of science informed law. Where it is not so and where there is vacuum, the courts can issue mandamus to enact laws for the protection of climate concerning mountain range or the river system and the river based civilization. The courts have recognized the rights of nature, her right to exist, thrive and reproduce. This has been recognized in Nepal and in other jurisdictions in South Asia (Prakashmani Sharma and Ors v PM and Council of Ministers and Others, 2079 B.S; Lalit Miglani v State of Uttarakhand, 2015; Turang River Case, 2017). On this basis, it can be very confidently said that law has a role to play in securing climate justice.

Can Substantive Conception of Environmental rights make a difference?

This requires us to dig into history of environmental justice. Let me recapitulate the scenario of the 1980s and 1990s when the Indian Supreme Court began extrapolating rights to cover basic

necessities of life. In Francis *Coralie Mullin* (Francis Coralie Mullin v the Administrator, 1981) while giving expansive meaning to the right to life the Court said:

> *"The right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human being. The magnitude and components of this right would depend upon the extent of economic development of the country, but it must, in any view of the matter include the bare necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self."*

Right to life was further extrapolated in *Subash Kumar* in 1991 to include the right to live in a pollution free environment (Subash Kumar v State of Bihar AIR, 1991; MC Mehta v Kamalnath, 2000). [7] In Nepal the SC in the landmark *Godavari Marble Case*, said right to environment is intrinsic to the right to life (Surya Prasad Sharma Dhungel v. Godavari Marble Industry, 2049 B.S). Other courts in South Asia have also followed this line of interpretation[8]. As the time passed by, a host of ESC rights such as the right to food, clothing, shelter, education etc., have been taken as part of the right to life. While giving expansive interpretation of right, the courts also eased *locus standi* rule and opened up access to justice providing chances of filing PIL to the voiceless minions in low visibility areas of society, who were not able to use the court services due to economic, social disabilities or other constraints. These developments by the Courts and other courts have "dismantled the insurmountable wall of procedure and opened the door for issues that had never reached them before (Muralidhar, 2008)."

While saying this one need to be also aware that the right to environment did not get immediate welcome especially in the western world where, to my mind, Hohfeld's matrix of right duty co-relation dominated legal thinking (Gupta, 2022). This is despite the Stockholm Declaration (Stockholm Declaration, 1972) using the right vocabulary, and the Rio Declaration (Rio Declaration, 1992) putting sustainable development at the center. The debate is beautifully

[7] Though the right against poisoning of rivers was discussed by *Rachel Carson* in her book *Silent Spring* in 1962 it took around 30 years to get entry into domestic practice. Where the SC observed: "Right to live is a fundamental right under Art 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art, 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life." In the second case, SCI further said:" Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for "life" would be hazardous to "life" within the meaning of Article 21 of the Constitution".

[8] For instance Sheela Zia (Pakistan), and Moiddin Faraqui (Bangladesh), Desanayake v Gamini Jayavikrama Perrera - Eppewals Phospate mining Case (Sri-Lanka)

captured by Alan Boyle, Michael Anderson and others in the book titled Human Rights Approaches to Environment (Boyle and Anderson, 1994) in the early 1990s. The general tone and tenor of the book, as I recollect now, was linking human rights and environment was difficult and might not even be desirable. The dichotomy has not totally died down as the North-South divide still persists, seen in various submissions/arguments made to the ICJ currently deliberating on state obligation in respect of climate change (IISD Earth Negotiation Bulletin, 2023). But as a law person working in domestic legal environment, I see that the right approach is overwhelmingly present in state practice. Now over 180 countries have recognized environmental rights either in their constitutions or laws or court decisions or through treaties of which they are parties (Boyd, 2013). Besides, a growing acceptance of the right approach at the international level revealed in the UN in 2022 the Right to a Clean, Healthy and Sustainable Environment, and decisions of regional human rights bodies and tribunals (IISD Earth Negotiation Bulletin, 2023)[9] will further reinforce the state practice, leading to the implementation of this right in very many ways in different countries. Therefore, when I am asked whether or not the substantive concept of environment rights makes a difference, my answer is an emphatic yes. Even though the polemics is not free from swings of the courts in different directions in approaching eco-centrism and anthropocentrism, it is submitted that the court must avoid the esoteric discussion on "ism". Instead, it must concentrate on the vulnerability of the people and focus on equity, equality, fairness and justice and help the country to realize its constitutional promise by imparting justice to the people. I have some practical reasons for believing that recognition of the environmental rights makes a difference. My reasons are as follows:

First, substantive right to environment is linked to other substantive rights such as the right to life and dignity, right to food, property, housing, health, education and culture. The recognition of the right to environment helps to enhance protection, respect and fulfillment of those rights through organic interpretation.

[9] Most recently, an advisory opinion of the International Tribunal for the Law of the Sea (ITLOS) confirmed that States have to prevent, reduce, and control marine pollution from GHG emissions and protect and preserve the marine environment from climate change impacts and Ocean acidification. Another advisory opinion is pending at the Inter-American Court of Human Rights on the individual and collective obligations of States to respond to the climate emergency within the framework of international human rights law, specifically under the American Convention on Human Rights and other inter-American treaties.

Second, at the procedural level, recognition of this right reinforces the right to inclusion, and participation in decision making, and help in avoiding externally imposed injustices.

Third, this right should also be seen in the light of government accountability which is more known for omission than protective action, especially in situations where impact is on marginalized sections.

Finally, the right derecognizes the pessimistic attitude of trade-off between economic development and environmental protection. It requires us to stand on the side of reducing destructive carbon footprints on mother earth.

Does the constitution have anything to say about green transition?

To my mind the overall orientation of the Paris Agreement is green transition while keeping note that the transition remains just, fair and equitable. Various expressions used in the Paris Agreement such as principles of equity and CBDRRC, integrity of the ecosystem, special circumstances of countries, vulnerabilities, climate justice indicate towards green transition. Further, the Agreement clearly mentions that States may be affected not only by climate change but also by the impacts of measures taken in response to climate change (The Paris Agreement, 2015, Preamble). If the Agreement is read along with prep-com documents, I do believe that equity, justice, fairness, mitigation of disparate impact to marginalized section, and obligation to protect human rights and the right to participate in decision making while transitioning to carbonless economy would be the core component of green transition.

If one juxtaposes climate justice with the constitutions of South Asia, one will find all the constitutions being recognized as social charters. A combined reading of rights and DPSPs enshrined in these charters enables one to cull out their transformative dimensions. The comparative study also shows that younger the constitutions are, the more is the environmental content in them. This is seen in the constitutions of Afghanistan, Bhutan, Maldives and Nepal. For instance, the Constitution of Afghanistan 2004 obligates the state "to adopt necessary measures to protect and improve forests as well as the living environment" (The Constitution of Afghanistan, 2004). Similarly, the Constitution of Bhutan 2008 requires the states to "preserve, protect and promote cultural heritage of the country" (The Constitution of Kingdom of Bhutan, 2008). Furthermore, it makes a very bold promise and states: "Every Bhutanese is a trustee of the Kingdom's natural resources and environment for the benefit of the present and future generations. The constitution also mentions it to be a fundamental duty of every citizen to contribute to the protection of the natural environment, conservation of the rich biodiversity of Bhutan and prevention of all forms of ecological degradation …"(The Constitution of Kingdom of Bhutan, 2008) Protection, preservation and respect of environment, and assistance to others in times of national calamity are constitutional duties of all the Bhutanese citizens(The

Constitution of Kingdom of Bhutan, 2008). Similarly, the Constitution of the Maldives 2008 calls upon the State to "to protect and preserve the natural environment, biodiversity, resources and beauty of the country for the benefit of present and future generations. It also provides that "the State shall undertake and promote desirable economic and social goals through ecologically balanced sustainable development and shall take measures necessary to foster conservation, prevent pollution, the extinction of any species and ecological degradation from any such goals" (Constitution of the Republic of Maldives, 2008). Further, "A healthy and ecologically balanced environment" is guaranteed as fundamental rights of the citizen in the Maldives (Constitution of the Republic of Maldives, 2008). The provisions and approach of the Nepali Constitution are already outlined above. Put briefly, Nepal's environmental and climate change concerns are more or less explicitly spelt out in the constitution. Therefore, in view of the fact that constitutions have inter-generational dimension, and that they are expected to navigate with present challenges and remain relevant with expanding future, I am inclined to believe that after carefully culling out the provisions of the DPSPs and fundamental rights (along with the treaty obligation of Nepal) one can trace the resonance of the constitution to green transition (The Constitution of Nepal, 2015, Art. 47).

Can the Supreme Court assist this process by providing safeguards of fairness and legitimacy?

The most prominent motivating factor for any judge to act is the situation of injustice. This is more so in situations created by climate change. As climate injustice poses existential threats, the denial of justice amounts to denial of survival rights. This said, much depends on what jurisdiction is given to the judiciary by the constitution or laws. It also depends on the public trust created by the justice system. Trust is one of the prime variables for providing legitimacy to the work of the judiciary. Trust is also a cultural issue, which is based on the education and training of judges and lawyers and the value they portray in judicial behavior. Even though South Asia does possess a very strong court system every judiciary has its own approach to justice. So no two judiciaries are similar. While all the judiciaries are engaged in norm interpretation, a few of them are sometimes engaged in norm creation in the form of directives/ orders they sometimes issue to expedite justice or secure effective justice (Supreme Court of India, 1988). This occurs where there is a legal void and urgency of the matter requires such norm creation. For instance, the Supreme Court in Nepal and India have sometimes engaged in issuing directive orders and guideline in order to protect the right of petitioner/victim till the time executive or the legislature creates relevant legal instruments (Vishaka v State of Rajasthan

AIR, 1997; Bajuddin Minya v OPMCM and others, 2066). [10] One may find such instances in Bangladesh and Pakistan as well. But it is not so in Afghanistan Bhutan or Maldives. In recent times, the courts have begun to address climate justice issues facilitating green transition in different ways such as *Asghar Leghari* asking the government to implement climate change policy and *M K Ranjitsinh* (Great Indian Bustard Case) (MK Ranjitsingh & Ors. v. Union of India & Others, 2024) recognizing that right to life includes the right to a clean environment and the adverse effect of climate change, or *Padam Bahadur Shrestha* (Padam Bahadur Shrestha v. OPMCM.,2076 B.S)[11], *Chakra Bahadur Bohra* (Chakra Bahadur Bohara et al. v. OPMCM., 2023), [12] and *Sailendra Ambedkar* (Sailendra Prasad Ambedkar and others v PM and Council of Ministers, 2080).,[13] and other cases from Nepal taking note of principles such as payment for ecosystem service or *in-dubio-pro-natura*, or condemning acts of devastation terming it to be an ecocide, reveal the possibility of courts facilitating green transition. While most of the time pre-existing norm determines judicial behavior the judiciary, based on emerging dynamics of environmental and climate justice in South Asia, I am inclined to believe that the judiciary, can significantly assist in green transition by reviewing the just and fairness of policies and the processes brought by the State and playing more active role and directing the State where there is a void.

Concluding observations

Climate Justice is global justice advocating fairness to the mother earth and all living beings inhabiting it at present and in the future. It requires one to see justice in its widest amplitude covering all aspects of corrective as well as distributive justice. As mentioned earlier climate change directly affects numerous rights relating to food, health, and loss of property due to fire, flood etc. The protection of these and other rights against adverse effect of climate change is an important component of the right to a safe, secure and healthy environment. Given that the Constitution of Nepal opens up possibilities for compensation resulting from "environmental degradation' the evolution of climate justice will be informed by the right jurisprudence. It is beyond dispute that human survival is so intimately connected with the healthy climate regime denial of climate justice can be essentially construed as a denial of survival rights. From this perspective, climate justice is an aspiration that humanity always strives to achieve for its

[10] Issuing Vishaka Guidelines on sexual harassment at work place; directives for processing the claims of farmers claiming loss of crops by wildlife

[11] asking government to bring out law on climate change

[12] asking government to pay local community in the watershed of the river for the ecosystem service they rendered

[13] Protection of *Churia* hill range- where the court said its destruction amounts to ecocide

wellbeing. It is ingrained in the inter-generational in approach as espoused by our constitution (The Constitution of Nepal, 2015, Art 51 (g) (1)).

As indicated earlier climate change is a science led discourse. Scientific findings have informed the policy making at the international and national level. Of late, scientific findings are taken seriously by courts and tribunals in comparative jurisdictions. There is an opportunity for our court to use scientific tools in collecting evidences, and assessing harms, and determining the amount of compensation and reparation in appropriate cases, and thus further enrich climate justice jurisprudence and evolve 'science informed environmental rule of law'.

The jurisdictional and temporal dimensions in respect of climate justice create challenges for bringing the emitters within the jurisdictional ambit of justice at the domestic level. The accountability gaps witnessed in international climate negotiations especially in areas of climate finance, loss and damage and tardiness in transitioning to carbon neutral economy also create obstacles in securing climate justice at the domestic level. This to an extent vindicates the need for the establishment of international environmental courts. But then, so long as the country remains a party to any international treaty, an honest implementation of the treaty obligations in the domestic environ is a legitimate expectation. (The Constitution of Nepal, 2015, Art 51 (m) (2)).

The Constitution of Nepal is quite informed of the challenges brought about by climate change and therefore focuses on right and relevant policy guidelines for reduction of carbon footprints. The Constitution propagates the idea of a holistic and inter-generational justice while prioritizing fairness, equity and inclusion in decision making and benefit sharing. Now, as ecologically sustainable development has been recognized as the most fundamental principles among the DPSPs bringing within its sweep principles of precaution, prior-informed consent and payment to the polluters, inclusion and participation, the Constitution beacons policy makers towards safeguarding the interest of present generation and the posterity by securing environmental safety for them. This is how the transformative potential of the constitution could be realized.

References

Asgar Leghari v Federation of Pakistan. (2018). https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2018/20180125_2015-W.P.-No.-25501201_judgment.pdf

Bajuddin Minya v OPMCM and others, *Nepal Kanoon Patrika 2066 B.S.*, Decision Number 8169, p. 963.

Bhattarai, A. M. (2012). Access of the poor to justice: The trials and tribulations of ESC rights adjudication in South Asia. *NJALJ*, 1.

Bhattarai, A. M. (2022). Approaching the Constitution of Nepal through possible interpretive strategies. *ILI Law Review*, 266, 269.

Bhattarai, A. M., Sanjel, S., & Kandel, P. (2024). Environmental protection in the Himalaya: The role of the Nepali judiciary in safeguarding human rights and the environment. *Harvard Human Rights Journal*, *37*, 279–283. https://perma.cc/RB77-XUUR

Boyd, D. (2013). *The effectiveness of constitutional environmental rights*. Yale UNITAR Workshop, April 26–27.

Boyle, A. E., & Anderson, M. R. (Eds.). (1994). *Human rights approaches to environment*.

Chakra Bahadur Bohara et al. v OPMCM, 079-WC-0057 (May 7, 2023).

Earth Negotiation Bulletin. (2023). *UNGA Resolution 77/276*. https://enb.iisd.org/international-court-justice-climate

Francis Coralie Mullin v Administrator, (1981) 2 SCR 516.

Friedrich, J., Ge, M., Pickens, A., & Vigna, L. (2023). This interactive chart shows changes in the world's top 10 emitters. *World Resources Institute*. https://www.wri.org/insights/interactive-chart-shows-changes-worlds-top-10-emitters

Government of Nepal. (2015). *The Constitution of Nepal*. Nepal Law Commission, https://lawcommission.gov.np/content/13437/nepal-s-constitution/

Government of Nepal. (2081 B.S.). *Energy Development Roadmap 2081*. https://moewri.gov.np/storage/listies/January2025/urja-bikash-margachitra-2081.pdf

Gupta, K. (2022). *Theories of rights: An overview of Hohfeld's analysis of right*. https://blog.ipleaders.in/theories-of-rights-an-overview-of-hohfelds-analysis-of-rights/

Islamic Republic of Afghanistan. (2004). *The Constitution of Afghanistan of 2004*. http://www.asianlii.org/af/legis/const/2004/1.html

Keshar Jung KC and Others v Ministry of Health and Population and others. (2020). *Nepal Kanoon Patrika 2077 B.S.*, Decision Number 10547, p. 1474.

Lalit Miglani v State of Uttarakhand, *Uttarakhand High Court*, Writ Petition (PIL) No. 140 of 2015.

Masdar Hossain (Md.) and Others v Bangladesh, 2 BLC (1999), 444. Para. 37, Bangladesh

MC Mehta v Kamalnath, (2000) 6 SCC 213.

Minerva Mills Ltd v Union of India, (1980) 2 SCC 59.

Ministry of Forest and Environment. (*2021). National framework on climate change induced loss and damage (L&D)*. p. 48. https://mofe.gov.np/old/downloadfile/National%20framework%20on%20Loss%20and%20Damage%20-%20Approved%20Document-%202021_1653988842.pdf

Ministry of Forests and Environment. (2021). *Vulnerability and risk assessment and identifying adaptation options*, p. 46. https://www.mofe.gov.np/uploads/documents/vulnerability-repnew1630571413 pdf-2940-766-1658827788.pdf

Ministry of Legal Reform, Information and Arts. (2008). *Constitution of the Republic of Maldives*, 23(d). https://storage.googleapis.com/presidency.gov.mv/Documents/ConstitutionOfMaldives.pdf

MK Ranjit Singh & Others. v. Union of India & Others, (2024) INSC, 280

Muralidhar, S. (2008). The expectation and challenge of judicial enforcement of social rights. In M. Langford (Ed.). *Social rights jurisprudence: Emerging trends in international and comparative law,* p. 102–109. Cambridge University Press.

Padam Bahadur Shrestha v OPMCM, 3 *Nepal Kanoon Patrika 2076 B.S.*, Decision Number 10210, p. 465.

Poudel, A. (2023, November 21). *All mountain districts report dengue: More than 50,000 infected this year*. The Kathmandu Post.

https://kathmandupost.com/health/2023/11/21/all-mountain-districts-report-dengue-more-than-50-000-infected-this-year

Prakashmani Sharma and Others v PM and Council of Ministers and Others, o76-WF-0006, decision 2079.02.12.

Prasain, K. (2025, January 25). *Nepal EV imports leave fossil fuel vehicles behind*. The Kathmandu Post. https://kathmandupost.com/money/2025/01/24/ev-imports-outpace-gas-guzzlers-in-nepal

Royal Kingdom of Bhutan. (2008). *The Constitution of the Kingdom of Bhutan*, Arts. 4.1, 5.1, 8. https://www.dlgdm.gov.bt/storage/upload-documents/2021/9/20/Constitution-of-bhutan-2008.pdf

Sailendra Prasad Ambedkar and Ors v PM and Council of Ministers, *Nepal Kanoon Patrika 2080*, Decision No 0069, p. 288.

Seneviratne v University Grants Commission, (1979–1980), 1 SRI.LR 182. Sri Lanka.

Subash Kumar v State of Bihar, AIR SC 420; 1991 (1) SCC 598.

Supreme Court of Bangladesh, Appellate Division, *Turang River Case* 2017, Writ Petition No. 13989.

Supreme Court of India. (1988). *Compilation of guidelines for entertaining letters/petitions received as public interest litigation*. https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/01/2024011510.pdf

Surya Prasad Sharma Dhungel v Godavari Marble Industry, *Nepal Kanoon Patrika 2049 B.S.*, Decision Number 4.

Taylor, M. (2025). *Report on shifting climate boundaries*. https://www.recordnepal.com/shifting-climate-boundaries

United Nations. (1972). *Stockholm Declaration (Principle 1)*. https://www.un.org/en/conferences/environment/stockholm1972

United Nations. (1992). *Rio Declaration (Principle 1)*. https://www.un.org/en/conferences/environment/rio1992

United Nations. (2015). *The Paris Agreement,* (Preamble, Art. 1, 4(1), 7(5), 7(7)). https://unfccc.int/sites/default/files/english_paris_agreement.pdf

Vishaka v State of Rajasthan, 1997 AIR 3011 (SC).

Wahab v Secretary, Ministry of Land and Others, 1 MLR (HC) 338 (1996).

Yogi Naraharinath et al. v PM Girija Prasad Koirala and Others, *Nepal Kanoon Patrika 2053 B.S.* , Decision No 6127, p. 33.

Sambahak: Human Rights Journal (2025), Vol. 25, 18-47

Miscarriage of Justice: An Assessment from Human Rights Perspective

Baliram Kumar Chauhan[1]

Email: chauhanbaliramkumar55@gmail.com

To cite this article:
Chauhan, B. K. (2025). Miscarriage of Justice: An Assessment from Human Rights Perspective. *Sambahak: Human Rights Journal*, *25*(1), 18–47. https://doi.org/10.3126/sambahak.v25i1.83916

Keywords: Miscarriage, Justice, Pre-trial, Trial, Post-trial, Human Rights, Violation

Abstract

Miscarriage of justice is an outcome in a process of justice that is unjust. Justice may be miscarried if there is any serious violation of human rights in any stages of criminal proceedings. Factual innocent and legal innocent people fall into the trap of Miscarriage of justice. The paper aims to explore the situation of miscarriage of justice in pretrial, trial and post-trial stages of criminal proceedings in Nepal. The paper presents the issues related to the miscarriage of justice and sketches how human rights of the parties of the cases are being violated in Nepal. Similarly, this paper has incorporated the existing legal framework to prevent and protect people from miscarriage of justice in Nepal. Ultimately, this paper concludes by stating that the State must enforce the existing legal framework effectively to protect the rights of the people subjected to miscarriage of justice and make other necessary laws for the prevention of miscarriage of justice including effective remedies.

Background

Justice is the ultimate need of every human being. Every person should have equal access to justice when their dignity or rights are infringed. Human dignity and freedom are always at risk if a justice system is not able to ensure equal access to justice with proper procedure and standards, principles and decorum of Justice. The term justice suggests the quality of being just or right or reasonable (Lamichhane, 2019). The stability and peace of society, along with the state of good governance, are rooted in the successful delivery of justice and the positive human

[1] BALLB fifth year student at Kathmandu School of Law

experiences it fosters. Such sentiments among citizens are shaped by a clean, impartial, transparent, and swift judicial system. However, in Nepal, the 'justice system is in cold storage' if not on a ventilator. In other words, justice is currently in a comatose state (Sangroula, 2018) that has led to the miscarriage of justice. The meaning of the term 'miscarriage of justice' is widely debated, with definitions varying significantly based on individual's viewpoints, interpretations, and the specific situations in which the term is applied and being used. "The word 'miscarriage' may have derived from Plato, (whose mother was said to be a midwife) and certainly, one of the most comprehensive definitions, that of Walker suggests that the term refers to a failure to reach the end goal of 'justice' (Poyser and Grieve, 2018). Cambridge online Dictionary defines Miscarriage of Justice as, "a situation in which someone is punished by the law courts for a crime that they have not committed". Similarly, Merriam -Webester Dictionary has defined miscarriage of justice as, "an outcome in a judicial proceeding that is unjust". *Especially,* an error made in a court of law that results in an innocent person being punished or a guilty person being free". The definition of a miscarriage of justice would be a significant failure within the justice system that involves one or more of the following: (a) an unjust accusation or arrest by law enforcement, (b) improper handling by the courts, typically resulting in a wrongful conviction, and (c) an unfair punishment or severe mistreatment while in prison. (Anderson, 1993).

"A miscarriage of justice can be broadly defined as the conviction of an individual in circumstances where the conviction ought not to have occurred" (Birdling, 2008). "Human Rights" means rights related to life, liberty, equality and dignity of a person provided by the Constitution and other prevailing laws and this term also includes the rights contained in the international treaties regarding human rights to which Nepal is a party (The National Human Rights Commission Act, 2012, Section 2f). The Constitution of Nepal (2015, Art 17) states that no person shall be deprived of his or her liberty except by law. The "liberty" here means a freedom against all forms of physical restraints and coercion. This constitutional guarantee ensures a safe guard against illegal encroachment of any person and encroachment of any person in the personal liberty of individual (Sangroula, 2018). According to Dicey,' "Personal liberty' means a personal right not to be subject to imprisonment, arrest or other physical coercion in any manner that does not admit legal justification"(De, 2000). Blackstone's formulation states that "It is better that ten guilty persons escape than that one innocent suffers" (Teka & Devendorf, 2023) which is also an important concept of a justice system. Miscarriage of justice includes many errors of justice such as error in law, procedures and errors in fact (Haule, 2024). Many states of the world like UK, Germany, Italy, Spain, Canada has made legal provision for compensating the victims of miscarriage of justice. A criminal Justice system

comprises of three stages; pre- trial, trail and post- trial stages. Under the criminal justice system, course of justice comprises three stages – police intervention, court process and the penalty measures (Acharya et al., 2021). In context of Nepal there is numerous instances of Miscarriage of Justice in every stage of Criminal Justice System. The persons victimized as the result of miscarriage of justice are the victim of the biggest failures of the state and justice system to ensure proper justice and protect individual liberty and human rights (Chauhan, 2025).” Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power (United Nations General Assembly, 1985), in present welfare state, miscarriage of justice has become one of the most important challenge for ensuring a proper justice system.

Research methodology

In this paper Doctrinal research methodology such as systematic analysis of legal rules, principles, doctrines, case laws, journals, Books, newspaper opinions has been used. Similarly, Non- Doctrinal Research methodology such as real-world impact and operation of laws and [2]identification of gaps between law and practice has been used. Primary and Secondary both sources has been used in this paper.

Objective

The paper aims to explore the situation of miscarriage of justice in pre- trial, trial and post-trial stages of criminal proceedings in state party criminal cases in Nepalese justice system. Further, it examines various issues contributing to miscarriage of justice and highlights how the human rights of the parties involved in the justice process are being violated. Furthermore, the paper analyzes the existing legal framework intended to prevent such injustices and identifies its limitations. Finally, it emphasizes the need for making proper laws and developing appropriate legal reforms to address these challenges more effectively.

Limitation

This paper has focused on miscarriage of Justice in general Criminal cases only. Similarly, this paper has not mentioned the miscarriage of justice in case of Juvenile delinquency. This paper

has discussed about the miscarriage of justice regarding the violation of procedure mentioned in National criminal procedure code, 2074 only.

Defining innocence

Innocence persons are those who has been factually or legally immune from the criminal charge filed against him. There are basically two types of Persons who can fall into trap of miscarriage of Justice. First type of innocence - factual innocence known as actual innocence means that the defendant did not actually commit the alleged offence (Case, 2008). Here, the accused has not participated at any aspect of commission of the crime for which he is prosecuted or convicted. Similarly, factual innocence also includes the situation when an individual has committed more serious crime than they have committed (Birdling, 2008). Factual innocence may fall into trap when there is wrong identification of suspect or offender, wrong and malicious investigation, malicious prosecution. This is also known as wrong man claim. Factual innocence could be claimed when there is substantial evidence against a defendant, but reasonable doubt is created by evidence, new or old, not presented to the jury. In such a case, due process of law would arguably be violated by maintaining a conviction on less than proof beyond a reasonable doubt (Wisotsky, 1997).

The second type of innocence, Legal innocence, are those persons where the prosecution fails to introduce sufficient proof at trial to demonstrate the defendant's guilt beyond a reasonable doubt (Case, 2008). Legal innocence occurs when there is insufficient evidence to convict, procedural errors, incomplete investigation, led to acquittal, failure of prosecution to prove guilt beyond a reasonable doubt. Further, legal innocence could be claimed if defendant does not deny committing the act in question, but claims an affirmative defense like insanity(Wisotsky, 1997). There is an ongoing debate among the scholars that only factual innocence must be granted the compensation.

International Legal provisions

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

This covenant has incorporated the following procedural principles and fairness regarding the criminal cases (International Covenant on Civil and Political Rights, 1966, Art. 9(1)-9(5)):

- Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law as stated in. (International Covenant on Civil and Political Rights, 1966, Article 9(1)).

- Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him (International Covenant on Civil and Political Rights, 1966, Article 9(2)).
- Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement (International Covenant on Civil and Political Rights, 1966, Article 9(3)).
- Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful (International Covenant on Civil and Political Rights, 1966, Article 9(4)).
- Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation (International Covenant on Civil and Political Rights, 1966, Article 9(5)).
- In the determination of any criminal charge against him, everyone shall be entitled to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him(International Covenant on Civil and Political Rights, 1966, Article 14(3a))
- To be tried without undue delay(International Covenant on Civil and Political Rights, 1966, Article 14(3c))
- To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it (International Covenant on Civil and Political Rights, 1966, Article 14(3d));
- To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him (International Covenant on Civil and Political Rights, 1966, Article 14(3e));

- To have the free assistance of an interpreter if he cannot understand or speak the language used in court (International Covenant on Civil and Political Rights, 1966, Article 14(3f));
- Not to be compelled to testify against himself or to confess guilt (International Covenant on Civil and Political Rights, 1966, Article 14(3f)).
- Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law (International Covenant on Civil and Political Rights, 1966, Article 14(6)).
- When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him (International Covenant on Civil and Political Rights, 1966, Article 14(5)).

Nepalese Context

Criminal Proceedings

After the act and commission of the crime, the offender is punished by the court through criminal proceedings. The core objective of the criminal proceedings is to prevent the State from exercising arbitrary discretions encroaching to the liberty of individual (Sangroula, 2018, p.206). Police, investigation officers, Lawyers, government attorney, Judges, jailor are the major actors of criminal justice system in Nepal. Further, institutional structure of Nepal's criminal justice system consists of police organization, scene of crime officer, forensic laboratory, officer of the attorney general, district court, high court, Supreme Court and Prison department. In Nepalese criminal proceedings system, to provide for prompt disposal of small cases by following summary procedures, Summary Procedure Act of2028 can be followed in order to adjudicate. However, Special Court Act 2059 has been made to make timely provision with regard to the constitution, power and procedure of Special Court in order to accomplish the trial and decision of the special types of cases in an expeditious, prompt and effective manner. Except these other cases are investigated, prosecuted and adjudicated by following the procedure set by National Criminal Procedural Code, 2074. Whole criminal proceedings can be divided into three stages; Pre- trial stage, Trial stage and post- Trial stage.

Pre- Trial Stage

Under this stage first step is to filing the First Information Report (FIR), A person who knows that any offence set forth in Schedule-1 has been committed or is being committed or is likely to be committed shall, as soon as possible, make a first information report in writing or give information on such offence, verbally or through electronic means, along with whatever proof or evidence which is in his or her possession or which he or she has seen or known, to the nearby police office in the form referred to in Schedule-5 (The National Criminal Procedure Code 2017, Section 4(1)). The police or investigating authority may arrest any person related to an offence if such person is found or caught in the course of committing the offence (The National Criminal Procedure Code, 2017,, Section 9(1)). Any person who is arrested shall be produced before the adjudicating authority within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to such authority; and any such person shall not be detained in custody except on the order of such authority (The National Criminal Procedure Code 2017, Section 20(3)) . The investigating authority or police employee designated to investigate into any of the offences set forth in Schedule-1 or Schedule-2 shall conduct preliminary investigation immediately after a first information report or information as to the commission of such offence has been registered pursuant to Section 4 within 3 days (The National Criminal Procedure Code 2017, Section 10).

Further, the investigating authority may take deposition from the accused in relation to any offence under Schedule-1 or Schedule-2 in the presence of the government attorney (The National Criminal Procedure Code 2017, Section 16(1)). The investigating authority shall interrogate, as necessary, any person, who is believed, based on a reasonable ground, to have knowledge of any important matter in connection with any offence under Schedule-1 or Schedule-2 (The National Criminal Procedure Code 2017, Section 16(3)). The concerned person shall assist in investigation by giving answer, to the best of his or her knowledge, to any question asked by the investigating authority in connection with any offence being investigated under this Chapter. Provided that no person shall be compelled to give any answer which might be of self-incriminatory nature (The National Criminal Procedure Code, 2017, Section 17).

If, in conducting investigation into any offence under Schedule-1 or Schedule-2, the investigating authority has a reasonable ground to suspect that any document, exhibit, evidence, accused or other person connected with such offence is in any place, the authority may search such person or place and seize such document, exhibit or evidence (The National Criminal Procedure Code, 2017, Section 18 (1)). If information is received that a person is dead due to culpable homicide or accident or suicide or in an unusual situation or in any other suspicious

circumstance, the investigating authority shall immediately go to the place where the corpse is located and examine the corpse (The National Criminal Procedure Code 2017, Section 20 (1)).

If the investigating authority thinks, in view of the nature of any offence, that evidence related to that offence can be obtained if the examination of the blood, semen, hair or any other part of body of the concerned person or arms, thing or object, DNA or any other matter is conducted in order to find out the offender, he or she may cause the examination of such blood, semen, hair or other part of body, arms, thing, object, DNA or any other physical evidence to be conducted by a government medical doctor or recognized laboratory (The National Criminal Procedure Code 2017, Section 21 (1).

If it is necessary to identify any person in connection with any case, a police employee whose rank is at least assistant sub-inspector of police shall cause such identification to be made (The National Criminal Procedure Code 2017, Section 24 (1). After completing an investigation into offences under Schedule-1 or Schedule-2, the investigating authority must prepare a report in the prescribed format, attach relevant documents and evidence, state whether there is sufficient evidence to indict the suspects or reasons for not doing so, and submit the report to the concerned government attorney's office (The National Criminal Procedure Code 2017, Section 31). If, on studying a case-file in the course of making decision to or not to institute a case pursuant to sub-section (3) of Section 31, and in view of the proof and evidence collected, the concerned government attorney considers that there is adequate evidence for instituting the case, the concerned government attorney shall, in relation to a case under Schedule-1 or 2, prepare a chargesheet, in the form referred to in Schedule-20 and shall submit the charge sheet to the concerned court within the time limit (The National Criminal Procedure Code 2017, Section 32).

Miscarriage of justice

Under the pre- trial stages miscarriage of justice has been happened by following actions and in the process and procedure:

Arbitrary Arrest and Detention

The Constitution of Nepal (2015, Art 20(1)) states that no person shall be detained in custody without informing him or her of the ground for his or her arrest. In Nepal, there are numerous instances of illegal arrest and detention by state authorities. Sometimes there are clear ill intentions of these illegal arrest and detention especial in undue influenced politically motivated issues. Another reason is arresting and detaining without obtaining permission prior to the arrest even there are sufficient time and reasonable basis to take prior permission by the court. One of

the instance can be case of Lalbadhur B.C. where court has clearly mentioned the arbitrary arrest and detention of the accused by the state officials by stating that "since it appears that the petitioner has been kept in custody continuously without reason and basis, with a prejudiced intent towards the petitioner, such detention of the petitioner cannot be considered lawful (Suman Kumar B.C. on Behalf of Lalbahadur B.C. v Area Police office, 2079 B.S.)." This is only a sample of illegal arrest and detention.

Nepal's courts have issued numerous orders of Habeaus Corpus against illegal detention of innocence persons by state authorities through abuse of powers. But there is no traditions to investigate or prosecutes these law enforcement officials in Nepal. Even to ask about the ground of these illegal actions. Despite of these illegal arrest and detention again and again by the state authorities that violates the right to life with dignity and personal liberty granted by constitution of Nepal, have not held liable for their illegal act. Further, in Nepal there is no proper law to provide the compensation to these types of victims this is one of serious type of Miscarriage of Justice.

Obstruction in Legal Counselling

Further, The Constitution of Nepal (2015, Art. 20(2)) provides that any person who is arrested shall have the right to consult a legal practitioner of his or her choice from the time of such arrest and to be defended by such legal practitioner and any consultation made by such person with, and advice given by, his or her legal practitioner shall be confidential as fundamental right. Lawyer- client consultation is very fundamental and sensitive discussion in course of every stage of criminal procedure. But NHRC report shows that in most of prison and detention centers there is no separate private space or room for detainees and prisoners to consult with their legal practitioner (Human Rights Situation in Fiscal Year 2080-2081, 2081 B.S.; Human Rights Situation in Fiscal Year 2079-2080, , 2080 B.S).Same situation is in police custody. This is the serious obstruction in legal counselling between Lawyer-client. This act is against the principle of procedural fairness.

Refusal of registering FIR and Delay in Investigation

"It is a fundamental legal duty of the state to investigate every offence and ensure justice in accordance with the law. When an offence occurs but no investigation is conducted, or if an investigation is carried out but proves ineffective or fails to reach a conclusion, these are indicative examples of the failure of the rule of law. Conducting a successful, fair, and lawful investigation and ensuring that justice is ultimately served are core responsibilities of law

enforcement agencies" (Dhwaj Dhami v. District Police Office and others, 2072). A miscarriage of justice occurs when the criminal justice system fails to deliver fair outcomes, leading to the wrongful conviction of innocent people or allowing those who are guilty to avoid punishment (Miscarriage of Justice in India, 2025). Although the law requires that even if a FIR about an offense is made orally, the police office must prepare a written record, read it back, and register it but this is not followed in practice.

Due to undue influence of political and economic power many suspects are not investigated on reasonable time even after registration of FIR. One of the instances is not arresting Aftab Alam until 2076 B.S. even after the order of Supreme Court on 16 Jestha 2069 B.S (Mishra, 2019). Why those state authorities were not charged and prosecuted for their this illegal, malicious and prejudice act and violation of procedural fairness and making the obstruction in the justice process? What compensation was provided to the victim of this illegal, malicious and prejudice act and violation of procedural fairness and making the obstruction in the justice process by the law enforcement officials itself? In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure (United Nations, 1989).

Similarly, many times Police refuse to register FIR. Due to delay in registration of FIR investigation starts untimely that lads to many destructions of many important evidences. If the concerned police office refuses to register a FIR made or information given, the person making or giving such first information report or information may make a complaint setting out such matter, accompanied by the first information report or information, to the concerned district government attorney office or the police office higher in level than the police office required to register such first information report or information (The National Criminal Procedure Code, 2017, 5(1)). Undue influences of political power, economic power, in case of involvement of own relatives or friends, corruption, cases involving the police officials itself are some causes of not registering FIR in Nepal. One of the notorious instances can be the case of Bijay Mahara, a FIR against the local police Personnel allegedly involved in torture and subsequent death of Bijay Mahara (Ghimire, 2020). This is not only single incident of refusal of FIR by the police office.

Victims and their lawyers have indicated that police frequently refuse to file First Information Reports (FIRs) in sensitive cases involving human rights violations. FIRs that accuse authorities

of torture are particularly unlikely to be registered. Victims and their families often face heavy pressure to avoid pursuing legal action this pressure can be both overt and covert, and may come from various sources such as police officers, politicians, government officials, and even community members who fear possible backlash. In many cases, police dismiss such complaints outright (International Commission of Jurist, 2020). A notable 60% reported fearing for their safety due to anonymous threats. In this sense, survivors are afraid of reprisals and further abuse by police officers if they report torture (Advocay-Forum Nepal, 2020). Out of 152 cases filed with the help of AF, 6.58% torture survivors withdrew their complaints. Police refusal to register FIRs stymies the judicial process at its inception as without a registered FIR, the prosecution of a crime becomes impossible, as the Nepali legal system does not allow for private prosecutions[1](Advocacy Forum-Nepal, Asian Human Rights Commission, The Redress Trust, & World Organization Against Torture, 2015, March 22).

False Charges and wrong investigation

There are multiple instances of false charges on innocence person by the police due to their malicious intent or negligent investigation. There are multiple instances in Nepal where accused has been arrested due to one reason or charges but police or investigative authorities has maliciously charged in other offences by making false investigations report. Similarly, they have been prosecuted maliciously and negligently. Some notable instances are case of Hem Dorje Tamang, Indian citizens Ramesh Sah and Prakash Patel (Pokharel, 2022) , Ruby Khan (Human Rights Watch, 2021) and others. Similarly, in case of Shiva Pujan Mahato Chai V HMG (Shivpujan mahoto Chai v HMG, 2046 B.S.) police arrested wrong person without proper identification and wrongly investigated due to which he was wrongly prosecuted in district court, Madhyamanchal Regional Court and Supreme court although he was innocence. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system (United Nations, 1990). In Nepal there is no effective laws to provide justice to the person victimize by the false charges, wrong investigation and false prosecution.

Delay in Legal Aid

Legal aid refers to the provision of free legal services to individuals who are financially unable to afford a lawyer for representing them in a case or legal proceeding before any court, tribunal, or authority. It is a mechanism established to guarantee that no person is denied access to legal counsel and assistance due to lack of financial resources (Choudhury, 2024). Article 20(10) of

the constitution of Nepal states that any indigent party shall have the right to free legal aid in accordance with law. Legal aid is vital for promoting social equality and upholding justice in all aspects of life. But in Nepal many accused persons are denied of access to defense and a fair trial and they are unaware of legal aid provided by Court, Nepal Bar Association (NBA), Central and District Legal Aid Committees, Civil societies and NGOs or they don't get opportunity to consult with their lawyers on time. The Legal Aid Act (2054 B.S.) and Legal Aid Rules (2055 B.S.) seems inadequate and unrealistic to cover the overall aspect, reality and problem of legal aid in Nepal (Lamichhane, 2019).

Violation of due process in investigation

In State party criminal cases, statements that are supposed to be recorded in the presence of the government attorney at the Office of the Government Attorney are, in some instances, already taken at the police office. Similarly, although statements generally mention, in line with legal principles, that the accused shall not be compelled to testify against themselves, that they have the right to consult and meet with a legal practitioner, the right to fair trial, and the right to free legal aid (Aryal, 2020). These rights have not been effectively implemented in practice. This act is violation of Substantive and procedural due process. Similarly, many investigations are conducted in confession based. The Suspect are compelled to confess the guilt forcefully rather than collecting the proper evidences. In these type of cases accused get acquitted due to absence of independent and objective evidence to support the confession. A research show that "Out of the 97 cases studied, government attorneys were present in 92 cases, which is 93% of the total. In 7 cases, i.e., 7%, government attorneys were found to be absent during the testimony" (Sabaika Lagi Naya, 2071).

Trial Stage

The role of prosecution starts from the filling of charge sheet. In this stage, as officers of the court, prosecutors have professional legal responsibilities to ensure that a suspect receives a fair trial. Prosecutors need to be aware of how all stages of the pre-trial criminal process affect suspects (including arrest detention and investigation), since the actions of police officials determine whether a subsequent trial will be fair (Saul et. al, 2009). The trial stage of criminal proceedings begin after the filing of charge sheet. Further, the whole bail proceedings can be divided into four stages i.e. bail hearing, evidence examination along with witness testimony, final hearing and sentencing hearing. After a charge sheet has been made, the court shall, subject to this Chapter, issue a summons or warrant for arrest, as required, to enforce the appearance of any accused who is not present along with the charge sheet in a case related to an offence set forth in Schedule-1 and Schedule- 2 (The National Criminal Procedure Code 2017,

Section 57(1)). When the accused appears in court, they must be clearly informed of the details of the offence they are charged with, all related facts, the evidence presented by the complainant supporting the charge, and the potential punishment if the charge is proven. Additionally, the court must read the charge sheet to the accused (The National Criminal Procedure Code 2017, Section 121).

If the accused is present then the court must start the bailment proceedings after taking the statement of accused. If, based on the evidence available for the time being, any person accused of the any offence under Schedule-1 or Schedule-2 which is punishable by a sentence of imprisonment for a term exceeding three years, or an offence of attempt to, abetment of, or criminal conspiracy to, or being accomplice to, the offence appears to be guilty of the offence punishable by a sentence of imprisonment for a term exceeding three years or there is any reasonable ground, based on such evidence, to believe that such person is guilty of the offence, the court may remand such person in detention for trial, recording the reason for such detention (The National Criminal Procedure Code 2017, Section 67). Further, the court may take bail /bond, guarantee from the accused except the condition provided in section 67 (The National Criminal Procedure Code 2017, Section 68)). After the bail hearing, each party shall produce their evidences before the court. All of his or her witnesses, documents, exhibits and evidences shall be specified in the complaint by the plaintiff, in the deposition by the accused (The National Criminal Procedure Code 2017, Section 99(1)). If the accused, while giving a deposition, requests additional time to present any document, exhibit, or evidence that cannot be produced right away, the court may grant a new appearance date within a period of up to one month (The National Criminal Procedure Code 2017, Section 99(3a)).

Further, the concerned party shall cause the attendance of any witness of each case filed in the court on the day appointed by the court (The National Criminal Procedure Code 2017, Section 101(1)). The depositions of all witnesses present on the scheduled date for witness examination must be recorded; however, if time does not permit completing all depositions that day, the remaining depositions shall be taken on the next working day of the court (The National Criminal Procedure Code 2017, Section 106(1)). The deposition of a witness shall be taken before the bench of the judge (The National Criminal Procedure Code 2017, Section 108). Unless the court orders otherwise, the plaintiff's evidence shall be presented first, followed by the defendant's evidence, on the scheduled date for evidence examination, in accordance with the law of evidence (The National Criminal Procedure Code 2017, Section 127(1)). Upon completion of examination of evidences, the trial court sets a date for the final hearing. The judge shall make judgment in a case generally within one month after the termination of

examination of evidence in the case (The National Criminal Procedure Code 2017, Section 131(1)). If it is not possible to make judgment within the period one month, information thereof, accompanied by the reason for the same, shall be given to the appeal hearing court(The National Criminal Procedure Code 2017, Section 131(2)). Under the prevailing law there is provision of sperate sentencing hearing after conviction (Dhungel, 2022). The Criminal Offences (Sentencing and Execution) Act(2017) is the governing law regarding sentencing in Nepal.

Miscarriage of Justice

Under the trial stages miscarriage of justice has been happened by following actions, and in the process and procedure:

Wrongful and Malicious Prosecution

It is the primary responsibility of the prosecutor to ensure that individuals are not prosecuted for criminal offenses based on incorrect or flawed investigations. For this reason, the prosecutor is considered as the gatekeeper of the criminal justice system. After receiving the case file along with the investigation report, the relevant government attorney's office shall review the file, assess the evidence gathered during the investigation, and forward it to the Attorney General for a decision on whether or not to proceed with prosecution. However, if the Attorney General has delegated the authority to make this decision to a subordinate officer, the case file shall instead be sent to that designated officer (The National Criminal Procedure Code 2017, Section 31(3)). Black's Law Dictionary defines malicious prosecution as "One begun in malice without probable cause to believe the charges can be sustained. An action for damages brought by person, against whom civil suit or criminal prosecution has been instituted maliciously and without probable cause, after termination of prosecution of such suit in favor of person claiming damages."

Article 20(9) of The Constitution of Nepal states that every person shall have the right to a fair trial by an independent, impartial and competent court or judicial body. Prosecution is done in trial stage and appellate stage. "In criminal offenses, concrete and doubt-free evidence must be collected against an individual before the state can file charges and proceed with a case. If the state charges someone with a criminal offense without evidence and the accused is acquitted as a result, even then, the Attorney General should not appeal the case just to harass the accused (Nepal Government V Magre Kha and others. 2066 B.S)." In Nepal wrong prosecution has been done in both stages. In many cases of wrongful Prosecutions Accused are prosecuted only on the basis of confessional statement oriented prosecution although there are absence of

independent and objective evidences. Few instances can be the case of (Nepal Government V. Magare Khan, 2066 B.S.)[3], (Ramesh Sah V Nepal Government, 2078 B.S.) [4]. In many cases these type of innocence persons have to face imprisonment life due to lack of access to appeal in higher courts because of their economic conditions. Further, out of the 123 cases studied, 12% charge sheet was found to have cited the legal provisions incorrectly.. Similarly, in out of 119 cases studied , 13 % charge sheet were filed with excessive claim. In out of 122 cases studied, in 33% cases were prosecuted without having sufficient evidence (Sabaika Lagi Nayaya, 2071, p.169-172).

Power of Government to decide adjudicating authority of the case

The concept of fair trial states that the adjudicating authority to hear a case must be clearly defined in the law. However, various laws of Nepal, including the National Criminal Procedure Code, 2074 have granted the Government of Nepal the authority to designate the authority who will hear the case. Section 169(2) of the National Procedure Code, 2074 states that If there is a separate provision regarding the authority to hear a case in this Code, or if the Government of Nepal has designated a separate authority to hear any of the cases mentioned in that Code by

[3] In this case Supreme Court has stated that in the present case, the accused Om Prakash and Kausal Kandu (Gupta) appear to have been implicated solely based on statements made before the police. No narcotic substances were found in their possession. There are no eyewitnesses against them. There is no documentary evidence against them. There is no indication of any banking transactions that would suggest involvement in drug trafficking or engagement in the narcotics trade. There is no evidence such as a decoy agent or voice interception against them. Under such circumstances, the law does not grant the government attorney the authority to file charges. Similarly, Court has stated that in the present case, since it has not been established whether a crime was committed by these defendants, filing charges without evidence is not only erroneous but also appears to be a misuse of the prosecutorial power of the State of Nepal.

[4] In this case The Supreme Court has stated that "in the context of the present case, it is seen from the facts of the case that the appellant-defendant Ramesh Sah and the other defendant Prakash Patel were arrested on 2069/1/19 (Bikram Sambat calendar) while attempting to flee after cheating the complainant of that case by claiming they would clean and polish gold jewelry and other items. They were under police custody and being investigated at the time. During the same period, specifically on 2069/1/22, a report was prepared stating that individuals who appeared to be of Indian origin were receiving information about illegal goods being transported in bags for sale and distribution. Based on this, it was claimed that brown sugar (a narcotic drug) was recovered from the defendants, fabricating a false and imaginary seizure report and scenario to support this claim. The case was thus initiated alleging that narcotics were recovered from the defendants.

It appears that the investigating officer, with a premeditated plan, attempted to falsely link the defendants—who had already been arrested at the scene of the fraud—to a serious criminal offense involving heroin trafficking. Based on that flawed investigation, it is evident that a malicious prosecution was initiated against the defendants. Therefore, this bench is seriously concerned that the investigating officer was directly involved in such misconduct and that the concerned government attorney failed to exercise the necessary caution and sensitivity to prevent prosecution in a false case."

publishing a notice in the Nepal Gazette, the initiation of proceedings, conduct of the case, hearing, and settlement of such cases by such authority shall not be hindered. Here, while designating the adjudicating authority there might not be use of fair, impartial and independent mind. That can led to the violation of article 20 (9) of the constitution of Nepal.

No translator at court

Article 20 (8) of The Constitution of Nepal states that every person shall have the right to be informed of any proceedings taken against him or her. 124 Languages are spoken as mother tongue as per National Census 2078 in Nepal. Nepali Language is used as the official language in Nepal's courts. Many populations of Nepal don't understand Nepali language due to which they face many challenges regarding participation in investigation process and court proceedings. But in some courts of Nepal, there is no language translators. This is the violation of article 14 (3)(f) of the ICCPR, 1966.

Not taking deposition before Court

The National Criminal Code (2074, Section 108) states that the deposition of a witness shall be taken before the bench of the judge. But, in some courts , the deposition of witness is taken before the employees of courts in division (*Phat*) of the court. Due to this, there have been obstruction in independent witness testimonies and examination. This is flagrant violation of criminal procedure and goes against the principle of fair trial and natural justice.

Delayed in verdict

In some cases accused has been detained even longer time than the punishment prescribed by law only in investigation cases. There is a popular legal maxim with a deeper meaning "justice delayed is justice denied." In Case of Awadhlal Shah v Kathmandu District Court and others, (2018) Supreme Court of Nepal has stated that:

> "*Justice must not be delayed, for when justice is delayed, the parties to the case are deprived of justice; and even if justice is eventually obtained, it comes only through great expense and hardship. Failure to deliver a decision within a reasonable time is contrary to Article 20(9) of the Constitution, which guarantees a fair and proper hearing. Timely adjudication is also a vital fundamental right linked to the right to life. As the guardian of fundamental rights, the State must always act to prevent undue delays in any case. The consequence of such delays must be regarded as a serious deviation from justice."*

NHRC report shows that complaints have been received that prisoners have had to spend extended periods in custody due to the courts' inability to deliver timely verdicts (Human Rights Situation in Fiscal Year 2079–2080, 2080, p. 53).In Nepal, while waiting for the trial for an enduring long time frame, the personal liberty of the accused is suspended, thus endangering the situation of human right violation (Sangroula, 2018, p.118). As a prima facie factor of the delay in justice, with result of improper and illegal deprivation of the personal liberty is a serious problem of the fair trial in Nepal (Sangroula, 2018, p.118) that has led to the miscarriage of justice. In many cases accused has spent more time in imprisonment than the punishment delivered by the court. For instance, In case of Nepal Government V Changed Name P. Ji. A. 081/082 (ta) and others, defendant was convicted and punished for the imprisonment of 1 year and 3 months but he was held in detention for 3 years and 6 months and 13 days. Further, Victims also deprived from right to justice for long time.

Wrongful conviction

State has right to punish the offender from the order of competent judicial bodies but state cannot punish the innocence person. Wrongful conviction can be occurred from District Court, High Court and even from Supreme Court . Similarly, Wrongful conviction occurs if offender get more punishment unlawfully. In Nepal, there is no systematic study on the cases of wrongful conviction and imprisonment. There is no data or record to indicate the exact figure of conviction and exoneration in our country. All the decision of conviction by lower court that get acquitted by the higher court are Wrongful conviction.

Few instances of wrongful conviction who get acquitted by the decision of Supreme Court of Nepal are case of madan Narayan Shrestha (Madan Narayan v. Office of Prime Minister and Council of Ministers, 2075)[5], Ramesh Sah (Ramesh Sah v. Nepal Government, 2078),

[5] In this writ, the applicant reported that he was a serious victim of wrongful Conviction. On date 2060-07-08, when the applicant was on duty in District Police Office, he was accused on the murder of Rita Lama Moktan. The District Court and Patan High Court convicted the applicant with life imprisonment but Supreme Court made him release on date 2076-01-1 because of which he filed the writ petition claiming to get back the job he was dispatched from and compensate his salary while he was in prison. The Supreme court stated that "When a police personnel, accused in a case of homicide and rape, is acquitted by this court due to the charges not being established, and was suspended and dismissed from service because of the case, they retain the right to automatic reinstatement to their position after being acquitted." Further the court ordered that Since the petitioner has already reached the age of 48, which is the retirement age, they are deemed to have automatically retired; therefore, there is no necessity to reinstate them to their former position. However, they must be provided with the salary, allowances, and other benefits from the date of suspension to the date of retirement.

Shivpujan Mahato Chai (Shivpujan Mahato Chai v. Nepal Government, 2080), Narendranath Yogi, Upendra Regmi, and Yuvraj Gautam (Narendranath Yogi v. Nepal Government, 2080), Dorik Prasad Yadav and Dewanand alias Shivanath Prasad Yadav (Nepal Government v. Devilal Yadav and others, 2080), Ram Pravesh Kumar Loniya Magar (Nepal Government v Ram Pravesh Kumar Loniya Magar, 2076), Shobha Wadi (Nepal Government V Shobha Wadi, 2076)[6], Khul Bahadur Kunwar (Khul Bahadur Kunwar v. Office of PM and Council of Ministers and others, 2042 B.S) [7].If an accused, who was in detention at trial phase or was imprisoned following a conviction by a lower court, is later acquitted by a higher court, then although their right to liberty cannot be fully restored, they must be provided compensation at least for the physical harm or loss they have suffered (Aryal, 2020). This injustices compels the innocent victims to book long and unpredictable court proceedings to prove their innocence to obtain compensation. They need to expend huge money for the fees incurred to hire lawyers for their court proceedings without anything in their hand. Wrongful convictions have profound and often irreversible consequences for individuals and their families, resulting in the loss of livelihoods, fractured relationships, marital dissolution, and long-lasting social stigma that frequently endures even after exoneration. Accordingly, the state bears a responsibility to offer fair and adequate compensation that accounts for the physical, mental, psychological, and reputational harm endured, as a means of facilitating the wrongfully convicted person's rehabilitation and reintegration into society (Chauhan, 2075). Observing these trauma and immense sufferings and additional burdens upon the wrongfully convicted individuals, the state must be responsible to the injustice caused by its agents or entities (Acharya et al., 2021).

Post-Trial Stage

This stage of criminal proceedings includes implementation of judgement and appeal. If the court passes any judgment in any case, the concerned court shall establish a record of the

[6] Supreme Court Stated that "Convicting an accused solely on the ground of their absence in court must be understood as a miscarriage of justice or a gross injustice. Treating the accused's non-appearance in court as conclusive evidence in itself and using it as the sole basis for establishing guilt is illogical, unlawful, and unreasonable."

[7] In this case the applicant was Sargent (hawoldar) of police in Central Police Training center. On 2042-04-15, the applicant and his friend Yagya Bahadur K.C. were convicted by Regional Police Special Court, Patan for stealing two service revolver. Kunwar and his friend Yagya Bahadur were never informed about their accusation and never confessed for the crime. They were sent to Central Jail and Kunwar spent 4 years of imprisonment there. After the release from the Central Jail serving the punishment, the person named Ghanshyam Adhikari (one of the prisoner from central jail) confronted and confessed that he had stolen the two service revolver for what Kunwar was convicted of. Later, through writ procedure, Khul Bahadur Kunwar and Yagya Bahadur K.C, made claim for the expunge of conviction made against them.

sentence, fine or the established claimed amount or compensation pursuant to such judgment (The National Criminal Procedure Code 2017, Section 151(1)). Regardless of which level of court issued the judgment, the District Court where the charge sheet or complaint was registered shall be responsible for enforcing it (The National Criminal Procedure Code 2017, Section 152 (1)).Further, the concerned District Court shall also execute a judgment on a case proceeded and adjudicated originally by the appeal hearing court (The National Criminal Procedure Code 2017, Section 152(2)). A party who is not satisfied with a judgment or final order made by a court may make an appeal within thirty days from the date of knowledge of the judgment (The National Criminal Procedure Code 2017, Section 134(1)). However, if the appealing party submits a petition explaining valid reasons for failing to appeal within the prescribed time, and the appellate court finds the reasons justifiable, it may grant an extension of up to thirty days. A person wishing to make an appeal pursuant to subsection (1) shall file it with the court which hears appeals from the court making judgment(The National Criminal Procedure Code 2017, Section 134(2)).

Miscarriage of justice

One of the major problems of miscarriage of justice in Nepal is the failure to implement court decisions. Out of 152 cases reviewed, compensation was awarded in 30.26% (46 cases), with 95.65% of those judgments issued by district courts and the remaining 4.35% by appellate courts. To date, out of the 46 victims who were awarded compensation only 7 (15.22%) actually received the money (Advocacy Forum-Nepal, 2020). Another problem regarding miscarriage of justice in Nepal is more sentencing than Court order. Few instances are the case of Muhammad Nur Ullah Sheikh and Padammaya Gurung. In case of Muhammad Nur Ullah Sheikh v Kathmandu District Court and others (2078)[8], the convict Ullah Sheikh has to serve 7 years 1 month 16 days, but he served imprisonment of 8 years 5 month 8 days which was more than the prescribed punishment by the court. Another instance can be the case of Padammaya Gurung v. Office of PM and Council of Ministers and others (2071)[9]. In this case, the applicant

[8] In this case Supreme Court of Nepal has stated that calculating two-thirds of the imprisonment sentence imposed on the individual amounts to 6 years and 8 months. Adding 5 months and 16 days for the unpaid fine at a rate of NPR 300 per day, the total imprisonment should not exceed 7 years, 1 month, and 16 days. However, as of today, the petitioner has already served more time than legally stipulated. Therefore, any detention beyond this period must be deemed unlawful.

[9] In this case, Padammaya, the applicant was raped and got pregnant. She killed the baby subsequently after the birth and was convicted on the offense of Homicide and sentenced for 5 years of imprisonment by the Supreme Court of Nepal. The applicant was imprisoned from 2048-09-02 and was expected to get

spent more time on prison for extra 5 years 6 months and 7 days because of negligence of the prison authority. The prisoners might also get victimized, suffering abuse and prison violence whilst incarceration. Here prison authority are the major perpetrator of this negligence they must be punished. In the case of Padammaya Gurung v. Office of PM and Council of Ministers and others (2071) Supreme Court of Nepal has ordered to pay compensation of six lakh three thousand and six hundred. But this is not the reasonable compensation for curtailing the personal liberty of a person illegally.

Existing Legal Frame work to protect from Miscarriage of justice

The Constitution of Nepal

The Constitution of Nepal has guaranteed following rights as fundamental rights:

Right Relating to Justice

Right relating to Justice that has incorporated principles and provisions of procedural fairness (The Constitution of Nepal, 2015, Art. 20).

Right of victim of crime

A victim of crime shall have the right to get information about the investigation and proceedings of a case in which he or she is the victim (The Constitution of Nepal, 2015, Art. 21(1)).

A victim of crime shall have the right to justice including social rehabilitation and compensation in accordance with law (The Constitution of Nepal, 2015, Art. 21(2)).

Right against torture

No person who is arrested or detained shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment (The Constitution of Nepal, 2015, Art. 22(1)). Any act of such act shall be punishable by law, and any person who is the victim of such treatment shall have the right to obtain compensation in accordance with law (The Constitution of Nepal, 2015, Art. 22(2)).

Right against preventive detention

---

released on 2053-09-01. But she spent more time on prison for extra 5 years 6 months and 10 days and got released on 2059-03-11 because of negligence of the prison authority. The prisoners might also get victimized, suffering abuse and prison violence whilst incarceration. The Supreme Court of Nepal has issued directive order in the name of the respondents to promptly enact such a law to safeguard personal liberty of the person.

No person shall be held under preventive detention unless there is a sufficient ground of the existence of an immediate threat to the sovereignty, territorial integrity or public peace and order of Nepal (The Constitution of Nepal, 2015, Art. 23(1)). Information about the situation of a person who is held under preventive detention must be given immediately to his or her family members or relatives (The Constitution of Nepal, 2015, Art. 23(2)). If the authority making preventive detention holds any person under preventive detention contrary to law or in bad faith, the person held under preventive detention shall have the right to obtain compensation in accordance with law (The Constitution of Nepal, 2015, Art. 23(3)).

Police Act, 2012

Section 15 of the police Act, 2012 states about the duties of police employee as follows:

- To obey the orders issued by the competent authority according to the law; and promptly execute and serve warrants issued by such authority
- To prevent crimes, and protect people from unnecessary harassments
- To trace out criminals and cause them to be punished according to the law
- To arrest persons who must be arrested according to the law, and for whose arrest there exist adequate grounds.
- Take prompt and appropriate action if any arrested or detained individual is injured or becomes ill, ensuring they receive proper care while being guarded or transported.

Compensation Relating to Torture Act, 2053 (1996)

This act is expedient to make provisions on compensation for inflicting physical or mental torture upon any person in detention in the course of investigation, inquiry or trial or for any other reason or for giving cruel, inhuman or degrading treatment to such a person. This Act has prohibited the torture by stating that no person in detention in the course of investigation, inquiry or trial or for any other reason shall be subjected to torture (The Compensation Relating to Torture Act, 1996. Section 3(1)). If any employee of Government of Nepal is held to have inflicted torture upon any person, the victim shall be provided with compensation as referred to in this Act (The Compensation Relating to Torture Act, 1996. Section 4). Further, this act deals about the provision regarding filing of complaint, proceedings on complaint and compensation, action against the person involved in the commission of torture, fixation of amount of compensation and execution of the decision.

The Crime Victim Protection Act, 2075 (2018)

Although this act has not explicitly addressed the victims of wrongful convictions and victims of miscarriage of justice but this act has addressed few aspects of miscarriage off justice. This major objective of this act is to make necessary provisions on the protection of the rights and interests of the victims, by making provisions on the protection of the rights and interests of the victims, by making provisions also for compensation to the victims for damage sustained as a result of an offence, and reducing adverse effects caused to the victims of crimes, for getting information related to the investigation and proceedings of the case in which they have been victimized, for getting justice along with social rehabilitation and compensation pursuant to law, while ensuring the right of crime victims to justice conferred by the constitution of Nepal, which remains as an integral part of the process of offender justice.

The National Penal Code, 2017

The National Penal Code (2017) has incorporated several legal provisions to address and prevent miscarriage of justice although these provisions are not sufficient to prevent every aspect of miscarriage of justice. These provisions aim to safeguard individual rights, ensure fair trial procedures, and hold authorities accountable for wrongful acts, thereby reinforcing public trust in the justice system and upholding the rule of law. This Code has incorporated following provisions:

Prohibition of making false complaint

Section 98(1) of this code has Prohibited of making false complaint by stating that no person shall, with intent to injure or annoy any person, make a false claim or accusation or give false information against such person before or to an authority making judicial proceeding. A person who commits, or causes to be committed, the offence of making false complaint shall be liable half the maximum sentence imposable for the offence in respect of which such false accusation has been made. Provided that the provision of this Section shall not apply to any case in which the Government of Nepal is plaintiff (The National Penal Code, Section 98(2)). If this offence has resulted in any kind of harm or loss to a person who is a victim of such offence, compensation for such harm or loss shall be recovered from the offender to the victim (The National Penal Code, Section 98(3)).

Prohibition of making investigation or prosecution maliciously

The National Penal Code (2017, Section 99(1)) states that no authority responsible by law for making investigation or prosecution shall make investigation or prosecution maliciously, with intent to have an innocent person bear liability or to save the real offender. Such

offender shall be liable to a sentence of imprisonment for a term not exceeding six months or a fine not exceeding five thousand rupees or both the sentences (The National Penal Code, Section 99(2)). Where any person suffers any kind of harm or loss from such offence, he or she shall be entitled to get compensation from such offender (The National Penal Code, Section 99(3)).

Section 89: Prohibition of fabricating evidence

Section: 90. Prohibition of making or issuing false certificate

Section 93: Prohibition of concealing evidence of offence

Section 95: Prohibition of harboring offender

Section 96: Obligation to give information of commission of offence to person under a legal duty

Section 100. Prohibition of failure to appear in violation of terms and conditions of guarantee:

Section 102. Prohibition of obstructing apprehension or rescuing from custody:

The National Criminal Procedure Code, 2017

This code has incorporated various procedural principles and provision regarding criminal proceedings in general cases in each stage of criminal cases. This code is expedient to make the procedural law simplified and timely, by amending and consolidating the laws in force relating to procedures on investigation, prosecution, filing, proceeding, hearing and adjudication of criminal cases and other procedures related thereto, and execution of judgments on such cases. Violation of general procedure mentioned in this case cause miscarriage of justice. Section 195 of the National Criminal procedure Code, 2017 states that a public servant who fails to do act or take any action required to be done or taken pursuant to this act within the period, if any, specified by this code shall be liable to departmental action in accordance with law.

Analysis

Miscarriage of justice can occur if there is any serious violation of human rights in any of these stages. In criminal proceedings, a court's final verdict does not necessarily mean it has uncovered the absolute truth regarding the accused person's guilt. Various issues can arise during the trial that may deprive the defendant of fair legal procedures. For instance, a prosecutor might act improperly or negligently, a judge could make mistakes in handling

evidence, or investigators might behave unethically during the investigation. In fact, there are countless potential incidents, both before and during the trial, that could violate the defendant's right to due process. Miscarriage of justice has been happened in almost every legal system of the world. Various countries across the world have made laws regarding compensation and rehabilitation of victim of the miscarriage of Justice.

In context of Nepal, there are numerous cases of miscarriage of justice in every stage of criminal justice system from a long period of time that has violated the personal liberty and human rights laws. Under the pre- trial stage miscarriage of justice has been occurred due to arbitrary arrest and detention by the state authorities, obstructions in legal counselling by not providing separate private space or room for detainees and prisoners to consult with their legal practitioner, delayed investigation and refusal of registering FIR by state authorities, false Charges and wrongful investigation and delay in legal aid. Similarly, there has been the violation of substantive and procedural due process as many investigations are conducted in confession based. The Suspect are compelled to confess the guilt forcefully rather than collecting the proper evidences.

Further, under the trial stage there has been many wrongful and malicious prosecutions as out of the 123 cases examined, 12% of the charge sheets contained incorrect citations of legal provisions. Likewise, among 119 cases analyzed, 13% of the charge sheets included excessive claims. Furthermore, in the review of 122 cases, 33% were prosecuted despite lacking sufficient evidence (Sabaika Lagi Nyaya, 2071). Similarly, there has not been use of fair, impartial and independent to designate the authority who will hear the case by the government of Nepal due to politicization of justice process. This has led to miscarriage of justice in Nepal. Here, the adjudicating authority must be clearly defined and designated by the law. In addition to these, not providing translator by the court, taking deposition of witness before the employees of courts in division (*Phat*) of the court instead of taking before the bench of judge, improper and illegal deprivation of the personal liberty for long time and deprivation of victim's right to justice for long time due to delay in verdicts are other causes and situations of miscarriage of justice in Nepal. Similarly, wrongful convictions is another problem that has led to miscarriage of justice. If an accused person, who was either detaine during the trial or imprisoned following a lower court's conviction, is subsequently acquitted by a higher court, their right to liberty may not be entirely restored. However, they should be compensated, at minimum, for the physical harm or loss they have endured. In context of Nepal, miscarriage of justice has been happened due to failure of state authorities to implement the decisions of the court and serving more imprisonment than the prescribed period of sentencing after conviction by the court.

The existing legal frame work to protect from miscarriage of justice are not sufficient to address every aspect and problems of miscarriage of justice. The most disappointed thing is that the Crime Victim Protection Act (2075) does not recognize these types of victims. Similarly, although many times Supreme Court of Nepal has issued orders to make necessary laws for addressing miscarriage of justice but Nepalese law makers have not taken this matter seriously. In Nepal's legal system Miscarriage of justice has been occurred due to Corruption and improper conducts caused by law enforcement officials, prosecutor, judges, and prison authority. Further other causes include reliance on circumstantial evidence, fabrication of evidence, non-disclosure of evidence, unreliable cell confession resulting from prison informants or voluntary false confession, unreliable confessions resulting from police pressure or vulnerability of suspects. Similarly, unreliable victim and eyewitness identification and testimony, misleading or improper forensic sciences, undue political influences, incomplete investigation are other causes of miscarriage of justice in Nepal.

Conclusion

A justice process includes pre- trial stage, trial stage and post- trial stage. In Nepal miscarriage of justice has happened in each stage of criminal proceedings. Abuse of power can be one of the fundamental causes of miscarriage of Justice. Arbitrary arrest and detention, obstruction in legal counselling, refusal of registering FIR and delay in investigation , false Charges and wrong investigation, delay in legal aid, violation of due process in investigation are miscarriage of justice in pre-trial stages. Further miscarriage of justice in Nepal has been due to wrong and malicious prosecution, power of government to decide adjudicating authority of the case, no facility of translator at court, not taking deposition before court, delay in verdict and wrongful convictions are the causes and situation of miscarriage of justice in trial stage where as non-implementation of judgements and more sentencing than the decision of judicial bodies are major causes of miscarriage of justice in post-trial stage that has violated the human rights in Nepal. There are no sufficient laws to protect from the miscarriage of justice. The State must be implementing the existing legal framework effectively. Similarly, *the* State must make other necessary laws for the prevention of miscarriage of justice, including effective remedies.

References

Acharya, J. K., Regmi, R. & Bista, S. (2021). "Compensation for the Wrongfully Convicted: A Pressing Need for Statutory Arrangements in Nepal." *Kathmandu School of Law Review*, vol. 9 & 10, no. 1, p. 91, 102.

Advocacy Forum-Nepal.(2020).*Torture in Nepal in 2019: The need for legal policies and legal Reform*. Advocacy Forum-Nepal. Kathmandu. p. 43, 45. http://advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf

Advocacy Forum-Nepal, Asian Human Rights Commission, The Redress Trust, & World Organization Against Torture. (2015, March 22). *Submission to the United Nations Universal Periodic Review: 23rd Session of the Working Group on the UPR – Human Rights Council*. p.6. https://upr-info.org/sites/default/files/documents/2015-10/js2_upr23_npl_e_main.pdf

Anderson, T. (1993). Contemporary Comment: 'Miscarriages-What is the problem?. *Current Issues in Criminal Justice,* p. 74. https://classic.austlii.edu.au/au/journals/CICrimJust/1993/18.pdf.

Aryal, R.P. (2020). Principles and Practice of procedural Law. *Lex and Jurix Publication Private Ltd. Bhaktapur*. p. 469

Aryal, R.P. (2020). Principles and Practice of procedural Law. *Lex and Jurix Publication Private Ltd. Bhaktapur*.p. 472

Awadhlal Shah v Kathmandu District Court and others, Writ No. 079-WH- 0218

Birdling, M. (2008). *Miscarriages of justice: a definition* (Doctoral dissertation, Oxford University, UK). https://ora.ox.ac.uk/objects/uuid:f1687060-6638-41fa-83e1-4e310fdbc048/files/mb939ce79cce43ffb681a80f3e29d3e90.

Case, J. G. (2008). How wide should the actual innocence gateway be? An attempt to clarify the miscarriage of justice exception for federal habeas corpus proceedings. *William & Mary Law Review, 50*(2). p.677-678. https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1062&context=wmlr.

Chauhan, B.K. (2025, March 14). *"Compensate Victims of Miscarriage of Justice"*. The Rising Nepal. https://risingnepaldaily.com/news/58609

Choudhury, D. (2024). Concept of Free legal aid-a comparative analysis free legal aid in India, United Kingdon and Australia. . *International Journal of Law and Legal Jurisprudence Studies. ISSN:2348-8212* .Volume *3*(3). P.104

De, D.J. (2000). *Interpretation and Enforcement of Fundamental Rights (First)*. Eastern Law House. P. 610.

Dhwaj Dhami v. District Police Office and others. *Nepal Kanoon Patrika 2072*, D. No. 9367

Dhungel, L. (2022). Procedural Law: Principles, Provision and practices. *Sanrab Publication*. Kathmandu. P. 241

Ghimire, B. (2020, September 7). *In attempts to protect their colleagues, police don't register first information reports against them*. The Kathmandu Post

Haule, N. (2024). "Wrongful Conviction in Tanzania." *International Journal for Multidisciplinary Research*, vol. 6, No. 6, pp. 2–3, https://doi.org/10.36948/ijfmr.2024.v06i06.32027

Human Rights Watch. (2021, October 18). *Nepal: Police allegedly use excessive force on protesters, target activists*. Human Rights Watch. https://www.hrw.org/news/2021/10/18/nepal-police-allegedly-use-excessive-force-protesters-target-activists

International Commission of Jurist.(2020). Human Rights and the Rule of Law in a Federal Nepal: Recommendations from an ICJ High-Level Mission. *International Commission of Jurist*. P.29

Khul Bahadur Kunwar v. Office of PM and Council of Ministers and others, Writ no. 069-WO-1301 (2042 B.S.)

Lamichhane, B.P. (2019). Legal Aid: Existing law, policies and practices in Nepal.. *Journal Of Political Science*. Vol. 19, P. 21. https://doi.org/10.3126/jps.v19i0.26697.

Lamichhane, B.P. (2019). Legal Aid: Existing law, policies and practices in Nepal.. *Journal Of Political Science*. Vol. 34, P. 38. https://doi.org/10.3126/jps.v19i0.26697

Madan Narayan v. Office of PM and Council of Ministers and others, *Nepal Kanoon Patrika* 2075 B.S. Decision No. 10069, vol.8.

Miscarriage of Justice in India. (2025, March 3). *Law Bhoomi*. https://lawbhoomi.com/miscarriage-of-justice-in-india/.

Mishra, S. (2019, October 13). *Nepali Congress MP Mohammad Aftab Alam arrested*. Ratopati. https://www.ratopati.com/story/102957/alam-arrested

Muhammad Nur Ullah Sheikh v Kathmandu District Court and others, *Nepal Kanoon Patrika 2078*, Decision No. 10670

Narendranath Yogi V Nepal Government, *Nepal Kanoon Patrika 2080*. Decision No. 11190

Nepal Government V Devilal Yadav and others, *Nepal Kanoon Patrika 2080*. Decision No. 11164

Nepal Government V Magre Kha and others, *Nepal Kanoon Patrika 2066*. Decision No. 8243

Nepal Government v Ram Pravesh Kumar Loniya Magar, *Nepal Kanoon Patrika* 2076. Decision No. 10197

Nepal Government V Shobha Wadi, *Nepal Kanoon Patrika 2076*, Decision No.10274

National Human Rights Commission of Nepal. (2012). *National Human Rights Commission Act*, Section 2(f). https://www.nhrcnepal.org/uploads/law/National+Human+Rights+Commission+Act_(1).pdf

National Human Right Commission of Nepal. (2080 B.S.) "Human Rights Situation in Fiscal Year 2079–2080". *National Human Right Commission*. p. 53

National Human Right Commission of Nepal. (2081 B.S.) "Human Rights Situation in Fiscal Year 2080–2081". *National Human Right Commission*. p. 13

Nepal Law Commission (2017). *The National Criminal Procedure Code*,. Section 4(1), 5(1), 31, 32(1), 57(1), 108, 121, 127(1), 131(1), 131(2). https://lawcommission.gov.np/content/13458/civil-criminal-procedure-code-2074/

Padammaya Gurung v. Office of PM and Council of Ministers and others, Writ no. 071-WO-0512

Pokharel, G.(2022, April 6). Malicious prosecution: How Nepal police abuse their power at the cost of innocent people's dignity. Onlinekhabar. https://english.onlinekhabar.com/malicious-prosecution-nepal-police.html

Poyser, S., & Grieve, J. D. (2018). Miscarriages of justice: What can we learn?. In In: Griffiths, Andy and Milne. Rebecca, (eds.) *The Psychology of Criminal Investigation* (pp. 5-30). https://ray.yorksj.ac.uk/id/eprint/3105/1/Chapter%201.pdf

Ramesh Sah v Nepal Government, *Nepal Kanoon Patrika 2078*. Decision No. 10762

Sabaika Lagi Nayaya. (2071).The Status and Challenges of Government Cases in Nepal, 2070. *Sabaika Lagi Nayaya*. Kathmandu. p.169-172, 179. https://www.undp.org/sites/g/files/zskgke326/files/migration/np/UNDP_NP_ROLHR_state-cases-in-nepal-status-and-challenges-a-study-report.pdf

Sangroula, y. (2018, July 10). *Miscarriage of justice*. Annapurna. https://annapurnapost.com/story/102598/

Sangroula, Y. (2018). *Criminal Justice system: Comparative Study of the Criminal Justice System of Nepal With Reference to China, Japan, India, U.S.A. and U.K*. Sahayatra Nepal Publication Pvt. Ltd. P. 85, 206, 118.

Saul, B., Kinley, D., Sangroula, Y., & Williams, S. (2009). *Human rights in the criminal justice system in Nepal: Law enforcement training manual (Police and Prosecutors)* (Revised ed.). Kathmandu School of Law. pp. 8-9. https://ksl.edu.np/resource/assets/uploads/resource/b4ae5-nepal_manual_final_mahesh.pdf

Shivpujan mahoto Chai v HMG, *Nepal Kanoon Patrika 2046*, Decision No. 3965

Suman Kumar B.C. on Behalf of Lalbahadur B.C. v Area Police office, Sunsari, *Nepal Kanoon Patrika 2079.* Decision No. 10998

Teka , M., & Devendorf , J. (2023, November 13). "What Is Blackstone's Formulation in Criminal Law?". *Law Info.* https://www.lawinfo.com/resources/criminal-defense/what-is-blackstone-s-formulation-in-criminal.html.

United Nations. (1966). *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 171. https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.

United Nations. (1989). *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, Principle 11. Adopted by Economic and Social Council resolution 1989/65. https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-effective-prevention-and-investigation-extra-legal

United Nations General Assembly. (1985). *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34)*. https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse

United Nations. (1990). *Guidelines on the role of prosecutors adopted by the 8th UN Congress on the prosecution of crime and treatment of offenders, Havana, Cuba, 1990, Article 12.* UN.

Wisotsky, S. (1997). Miscarriages of Justice: Their Causes and Curses. *St. Thomas Law Review*. 9(3). P. 550. https://scholarship.stu.edu/cgi/viewcontent.cgi?article=1608&context=stlr.

Sambahak: Human Rights Journal (2025), Vol. 25, 48-63

Nepal's Consumer Court: Evolving Jurisprudence, Past Lessons and Future Directions

Binda Kumari Thapa[1], Shyam Sundar Shrestha[2]

Email: binda.thapa@ksl.edu.np, shyam.bhutta@gmail.com

To cite this article:
Thapa, B. K., & Shrestha, S. S. (2025). Nepal's Consumer Court: Evolving Jurisprudence, Past Lessons and Future Directions. *Sambahak: Human Rights Journal*, *25*(1), 48–63. https://doi.org/10.3126/sambahak.v25i1.83917

Keywords: Consumer, Court, Fair trade Practice, Protection, Remedy, Rights

Abstract

This paper examines the establishment, structure, and evolving jurisprudence of Nepal's Consumer Court system, inaugurated in 2025 following the Supreme Court's directive and provisions of the Consumer Protection Act, 2075 B.S. The research analyses the court's legal foundation, jurisdictional authority, and operational framework within Nepal's judicial landscape, where it functions on par with District Courts while addressing specialized consumer disputes. The study explores international consumer protection models from India, the United States, South Africa, and China to contextualize Nepal's approach and identify potential directions for improvement. Key case laws from Nepal and abroad are evaluated to understand emerging judicial interpretations of consumer rights. The paper concludes by assessing three critical dimensions of consumer justice: accessibility of legal remedies, protection of vulnerable consumers, and safeguarding economic interests, while emphasizing the importance of ethical business practices and good faith doctrine in commercial transactions. This analysis provides valuable insights into the challenges and opportunities for Nepal's newly established Consumer Court to effectively address consumer grievances and foster fair marketplace practices in an increasingly complex economic environment.

[1] Assistant Professor of Business Law at Kathmandu School of Law

[2] Teaching Assistant at Kathmandu School of Law

Introduction

Consumer Court is the specialized judicial body to achieve the fair, safe, and transparent trading in the market between the consumers and other business individual concerning the commodities and services whereby the Consumer Protection Act, 2075 section 2(d) defines the consumer as a person or an institution that consumes or uses any goods or services. In addition, United Nation Guidelines on Consumer protection (UNGCP) number II (3) defines the term "consumer" generally refers to a natural person, regardless of nationality, acting primarily for personal, family or household purposes, while recognizing that Member States may adopt differing definitions to address specific domestic needs. A consumer requires the protection against the malice producer, manufacturer, wholesaler, retailer and supplier.

Therefore, a consumer Court ensures the appropriate legal remedy in regards to the problem of defective products, unfair trade practices with a violation of consumer rights to use any goods and services having right to choose the qualitative goods and services at the competitive practise (Business 360°, 2020). There lies the meaningful and effective role of the consumer court to consider the cases of complaints from consumers regarding the defective products, misleading advertisements, overcharging, substandard products and so forth having a transactional relationship between a consumer and a business individual. The ultimate goal of consumer court is therefore to assure the fair-trade practise (Nandedkar, 2023).

The Movement for the Consumer rights reached the peak after the Second World War. Then US President John F Kennedy declared four rights i.e. the right to safety, right to be informed, the right to choose and the right to be heard (Khadka, 2017). Whereby the right to safety reads for the right to be protected against products and services that are hazardous to the health of Consumer at large. Right to be informed is essential for protecting consumers from fraudulent, deceitful or grossly misleading information, advertising, labelling or other practises. Similarly, the right to choose means that the consumers have the freedom to select from a range of products and services offered by different providers in the market. Additionally, right to be heard enshrines the consumers to have right to express about their opinions and concerns about the products and services they apply (Kennedy, 2023).These are the basic policy development by various international organizations, including the European Union, the Organisation for Economic Co-operation and Development (OECD) and the United Nations. In context of Nepal, the consumer rights evolved with the political changes in 2046 BS (1990) which took the broader of laws as Consumer Protection Act, 2054 BS (1998) and the regulation in 2055 BS (1999) thereafter. However, many manufacturers do not equip the products within the ambit of Consumer Rights accountability.

In context of Nepal, with the mandate of the Consumer Protection Act, 2075 BS (2018), Government requires to establish a Consumer Court. According to which Nepal established its first consumer court, a specialized court dealing with consumer complaints and grievances upon the order of Supreme Court on 8 Falgun, 2078 BS (20th February 2022). The Forum for Protection of Consumer Rights Nepal took a case to the Court whereby a division bench of justices Bam Kumar Shrestha and Nahakul Subedi issued the order to the Government for the establishment of consumer courts in all provinces for protecting buyers' interest amid repeated cases of unfair market practices (Prasain, 2024). However, the Ministry made a decision to commence with consumer courts in each district gradually after its navigation in Kathmandu. The Consumer Court is set up on the premises of the Department of cottage and Small Scale Industries, Tripureshwor.

The Consumer survey, Department of Supplies Management, 2011 shows that 53.37 percent of Nepali Consumers were dissatisfied with the Government's approach for ensuring the consumer rights. This leads to majority voice to the government for establishment of Consumer courts (Nepal Sansar, 2025). Access and availability of dispute resolution and redress mechanisms with a development of fair, effective, transparent and impartial mechanism through administrative, judicial and alternative dispute resolution are a basic need of consumers, as recognised by the United Nations Guidelines for Consumer Protection. The Guidelines aims to assist the countries to formulate laws, regulation concerning the protection of consumer rights and set the standards for the formulation of related laws with due international cooperation. In accordance to which, it is believed that a Consumer Court facilitates the complex court cases, proceedings making the filing easier with minimal hassles and administrative complexities. Therefore, it is termed as a specialized court which primarily reads for the consumer-related disputes, conflicts and grievances. The consumer court is expected to have a meaningful control of food adulteration, artificial shortages, artificial price-hike and price manipulation, fake products and transaction. For an instance, with specific reference to Section 12, 14, 16,17,20,21 and 50 which can be summarized as it establishes a comprehensive safeguard against unfair business practices and protects consumer rights through several key mechanisms. It controls market manipulation by limiting profits to prescribed rates and banning coordinated efforts to artificially affect supply, demand, or pricing. Sellers and service providers must operate without discrimination on a first-come-first-served basis, display clear price lists, maintain quality standards, provide proper documentation, and honour warranties. The Act mandates transparent pricing through displayed price lists showing factory, wholesale, and retail prices, establishes government authority to create price information centres, and sets standards for reasonable profit margins based on production costs. In addition, consumers can seek compensation within six months for harm

caused by defective goods or services, with claims possible by individuals, consumer associations, or heirs of affected parties.

Methodology

This study applies a doctrinal legal research methodology to review the institutional design, and legal framework of Consumer Courts in Nepal. The research method focuses on the assessment and application of primary legal sources, including statutory provisions such as the Consumer Protection Act, 2075, constitutional mandates (The Constitution of Nepal, 2015, Article 44 and 51(d)(7)), and relevant case references and government documents, such as notices in the Nepal Gazette. In addition, secondary sources such as scholarly articles, media reports (e.g., *My Republica, Food Safety Watchdog*), and statistical data published by the Department of Food Technology and Quality Control have been reviewed and analysed.

The Legal Authority: Consumer Courts on Par with District Courts

The Consumer Court is established with a significant judicial power with jurisdictional authority equivalence to District Court to effectively resolve the consumer disputes and provide timey redressal to the aggrieved. An Appeal from the Consumer Court shall be made to the concerned High Court within thirty days against the decision made by the court (Consumer Protection Act 2075, Section 45).In addition, the Government of Nepal may dissolve the court at any time, however, the cases, complaints or petitions remained pending at the time dissolution after being filed in such court shall be ipso facto transferred to the concerned District Court having a territorial Jurisdiction (Consumer Protection Act, 2075, Section 47).By having this specialized courts on equivalency with district court, the Nepalese legal system acknowledges the importance of consumer protection in the broader judicial landscape.

Dissolution or the Termination of Consumer Court:

The consumer protection Act, (2075, Section 47), Government of Nepal may dissolve the Consumer Court at any time by notifying in the Nepal Gazette. If it gets dissolve, the pending cases at the time shall be transfer to District Court automatically having territorial jurisdiction, ensuring continuity of Justice and avoidance of procedural void.

Purpose and Impact of the Consumer Court

In context of Nepal, the major challenges to ensure the consumer rights is the concerned authority failure to educate the mass consumers about their rights (Khadka, 2017) leading to severe damage to the products and business transaction. Therefore, Nepal lacks consumer rights education which need the redressal for awareness programs strongly in a meaningful manner.

The Consumer Protection Act, 2018 reads for the consumers' rights to safe, fair and quality goods and services. The consumer court try to execute the same spirit in implementation.

Last Fiscal Year 2080/81, the Department of Food Technology and Quality filed approximately about 178 cases in total to the District Administration Office concerning the processed drinking water, sweets and confectionary, food and lentils, oil and ghee, milk and dairy products whereby the Department seized the goods that costs Rs. 11.64 million of amount (The Kathmandu Post, 2023) The department filed a case against Dugar Spices and Food Products, Budiganga, in Morang District Court for producing low-quality spices, and against Bhat-Bhateni Food Products, Kathmandu, in Kathmandu District Court for producing low-quality lentils (Prasain, 2024).The department filed a case against Dabur Nepal, Bara, in Kathmandu District Court for producing adulterated honey and against CG Oil and Derivatives, Birgunj, in Makwanpur District Court for producing low-quality edible oil (Prasain, 2024).

Likewise, a case was lodged against Varun Beverage, Ramgram, in Nawalparasi District Court for adulterated drink. The District Court, Kaski, filed a case against Pokhara Noodles for selling low-quality noodles. CG Foods, Devchuli, was also dragged into Nawalpur District Court for low-quality ready-made noodles (Prasain, 2024).

In these context Consumer Court plays the special role with regards to consumer related disputes, conflicts and grievances as aspired judicial bodies within a fast-track system ensuring the speedy justice. The court will be liable to give its verdict on cases related to compensation, offenses defined by the Consumer Protection Act, and government-specific issues related to consumer protection (My Republica, 2025). Having this obligation fulfilled by the Government of Nepal plays the significant role to foster a consumer-centric environment uprooting the consumer exploitation. The establishment of Consumer court will reduce this burden to the District Court and District Administration body-a quasi-judicial body with a specialized body for hearing with expertise and quality assessment. Therefore, this will ensure the efficient, faceless, paperless and right to compensation to the victims on time with due execution of social justice.

The establishment of Consumer Court gives a meaningful practise of Consumerism. Whereby Consumerism is the social movement that seeks to safeguard and strengthen the rights of the consumers in relation to the producer or supplier of goods and services (Reddy, 2002). Consumerism can be effectively promoted and implemented via right to information, right to protection, and right to redressal of grievances having an objective to protect the consumer rights and interest promoting their welfare. The term "consumerism" refers to the efforts taken by governments, businesses, consumers and their representatives and other organized organizations to safeguard the rights and interests of consumers. It began in the United States of

America as a social movement, then, it propagated across various regions of globe (Bello et al., 2016; Hima, 2016; Donoghue et al., 2015). Therefore, the broader perspectives of consumerism read for the awareness of consumer rights.

Consumerism is therefore the public demand for shaping the marketing practices to make them more informative, more responsive, more scientific, more truthful, and efficient and also for a concern with the quality of life. Hence, it ensures a vital aspect of socially responsible marketing.

Governing Laws: National laws and International Standards

The protection of consumer rights is a constituted national mandate defining the consumer rights to quality products and services as a fundamental right of the people and its protection respectively (The Constitution of Nepal, 2015, Art. 44 and 51(d)(7)).

On 16th April, 1985, the General Assembly in resolution 39/248 first adopted the United Nations Guidelines for Consumer Protection i.e. UNGCP followed by its broader form by the Economic and Social Council on 26th July 1999 with resolution 1999/7 (UNGC,1985). Subsequently, the guidelines are promoted by the United Nations Conference on Trade and Development calling the member states to raise awareness of various means which the businesses, civil society organizations and the member states can use to advance the consumer protection concerning their quality rights in the private and public goods, services and products. The fundamental objective behind this framework was to lead the Governments for explaining and fortifying the consumer protection legislation and policies Acknowledging that consumers should be able to acquire non-hazardous; products and that they should also be able to support fair, egalitarian, and sustainable economic growth as well as the preservation of the environment and social development . This Guideline have the following objectives (UNGCP part I Objectives):

a. To promote sustainable consumption;
b. To advance cooperation internationally, in the area of consumer protection;
c. To promote highly ethical behaviour among those responsible for creating and delivering services and goods to consumers;
d. To aid nations in putting an end to unfair business practices by all organizations at the national and international levels that harm consumers;
e. To promote the formation of autonomous consumer groupings;
f. To enable manufacturing and distribution methods that are in line with consumer demands and preferences;
g. To promote the creation of market circumstances that give customers more choice at a reduced price;

h. To aid nations in establishing or maintaining effective consumer protection for their citizens.

Constitution and composition of Consumer Court (The Consumer Protection Act, 2075 B.S., Section 41-46)

Consumer Protection Act (2075, Section 41) empowers the Government of Nepal to compose a Consumer Court through announcement in Nepal Gazette, as deemed essential. The courts are established to settle all cases related to consumer except the matter mention in section 40(1) of the same act. The Act reads for the tripartite composition of the court that encompasses both the judicial and administrative expertise. The Court comprises of:

I) District Judge – Concerned respective District, designated by the government, serving as the Chairperson
II) Gazetted Second- Class Officer – representative from Nepal Judicial Service, also designated by the government, serving as a member
III) Gazetted Second-Class Officer – From Government of Nepal, designated as Member

In addition, the chairperson and the member's designation must be notified in Nepal Gazette. Furthermore, such appointments require consultation with the judicial council for District Judge and Judicial Service Commission for the judicial Service office, ensuring procedural oversight and institutional legitimacy.

Consumer Protection Act (2075, Section 42) describes the jurisdiction and internal decision-making process of the consumer court. Jurisdiction has to be collectively exercised by all the members as elected according to Section 41 with specific provisions for quorum and procedural conducts:

- Procedural matter may be concocted with presence of a single member.
- Matters involving detention must require at least two members
- In instances of divergent opinion, the chairperson opinion prevails in procedural matter if present. For final decision, the case must be aligned with the chairperson's opinion or if absent then the senior Member decision shall prevail. If the matter cannot be solved then the matter should be sent to concern High Court, whose decision shall be binding.

To preserve the dignity and authority of Consumer Court of the Consumer Protection Act (2075, Section 43) confers power to initiate proceedings for contempt of Court. If found proof, Court may impose a fine not exceeding ten Thousand, Imprisonment up to one year, or may be both. But if the offender asks for apology and court found it satisfactory then court, may excuse or reduce the sentence.

The Consumer Protection Act (2075, Section 44) reads that Consumer Court or the Director General of the Department may compel any person, office or institution to produce relevant documents or necessary evidence for settlement. Non-Compliance may result in fines not exceeding One thousand per instance, unless justified reason is submitted and accepted within given time.

The Consumer Protection Act (2075, Section 45) reads for the Appellate Jurisdiction that aggrieved parties may appeal to concerned High Court within thirty days after the decision of Consumer Court.

As per Consumer Protection Act (2075, Section 46) reads for the execution of decisions. If it is specified in the decision or order that the decision or order is to be executed by any particular agency or official, the same agency or official shall execute the decision or final order made by the court and if it is not specified as such, it shall be executed by the concerned District Court.

State Practise and International Standard

Consumer Court has been subject to distinct approaches by distinct nation reflecting their legal traditions, economic development and social priorities. The varying model demonstrates the different between judicial specialization, accessibility, enforcement powers and remedies available to the consumers. The practises can be enlisted as:

India

In India, there is a commission which is named as National Consumer Disputes Redressal Commission (NCDRC), whereby it is a quasi-judicial body established in 1988 under the provisions of the Consumer Protection Act, 1989. Now it's been replaced by the consumer protection Act, 2019. Its main function is to solve the highest-level consumer dispute redressal body in India, which head quarter is located in New Delhi (NCDRC, 2025).

The system is structured in three tiers as per the Consumer Protection Act, 2019

a) District Consumer Disputes Redressal Forum (DCDRF) (Consumer Protection Act, 2019, Section 28) – This forum deals with the complaints where the values of goods or services and compensation claimed does not exceed the prescribed monetary entrance for district level.
b) State Consumer Dispute Redressal Forum (SCDRF) (Consumer protection Act 2019, Section 42)- In this forum appeals from the District Consumer Disputes Redressal Forum and original complaints within its financial jurisdiction.

c) National Consumer Dispute Redressal Commission (NCDRC) (Consumer protection Act, 2019, Section 42)-This is the supreme body, it adjudicates appeals against State commission decision and complaints exceeding high-value monetary limits.

The above hierarchical model ensures accessible justice, speedy trial and accountability in matter concerning consumer protection.

United States of America (USA)

In America the Federal Trade Commission (FTC) (Cornell Law School. 2025) have a jurisdiction over the Consumer Dispute Resolution. It is a primary federal agency whose main responsibility is to protect consumer rights in America. It addresses the cases of Consumer dispute involving unfair, deceptive, or fraudulent practices in Business. FTC is established under (Federal Trade Commission Act, 1914), codified at 15 U.S. code § 41–58. The main function of the FTC is to investigate consumer complaints, to take enforcement against business violating consumer rights, promotes fair competition and prevents fraud; provide education and resources to consumers.

Also, the FTC doesn't adjudicate individuals dispute, it uses complaints to take collective enforcement actions and refer individuals to alternative dispute resolution mechanisms or other mechanisms.

South Africa

In South Africa for the protection of Consumer right here is the establishment of National Consumer Commission (Consumer Protection Act, 2008, Section 85).It is established as an organ of state within the public administration, but as an institution outside the public service. In law it is a juristic and must exercise the function assigned to it in terms of this act or other law, or by the minister, in:

a) The most cost-efficient and effective manner, and
b) In accordance with the values and principles mentioned in the constitution.

People's Republic of China

In China the Law Protection of the Rights and Interests of Consumers, protects the consumer rights. Here in (People's Republic of China Law on Protection of the Rights and Interests of Consumers, 2013, section 36) talks about the consumer organization which recognizes consumer association and other consumer organizations as legally established social entities to safeguard the lawful rights and interest of consumer. This institution/organization is established to conduct social supervision over goods and services in the market.

Under section 37 of same act it talks about the function of consumer associations, which includes

a) Providing consumers with information and conclusion services
b) Enhancing their awareness and ability to protect their rights
c) Promoting civilized, environmentally friendly consumption practices.

The mentioned association may engage in inspection and supervision of goods and service in cooperation with relevant administrative departments. Such association are authorized to present matters concerning consumer rights to competent authorities. They may accept consumer complaints, mediate dispute and where necessary, appoint qualified experts to assess the quality of goods or service.

Moreover, Section 37 mentions that other lawfully established consumer organization are expected to comply with the applicable laws and regulation in promoting the protection of consumer rights.

Case Laws

I) Raghunandan Maru Vs. Nepal Electricity Authority, Central Office Durbarmarg, Kathmandu, 2076 Consumers should know the price and quantity of the goods they consume at the time of consumption. It would be neither just nor lawful to create additional liabilities and increase charges retroactively for goods already consumed by consumers. Therefore, electricity tariffs determined by the authorized commission cannot be collected with retroactive effect.

II) Corporate Counselling and Legal Research Centre advocate Bharat Kumar Lakai vs. Nepal Government, Kathmandu 2072,

The present era is an era of modern communication, and it is not only time-consuming but also cumbersome for consumers to personally visit relevant offices to submit required information. Consequently, whenever possible, most government, non-government organizations, and institutions have adopted online services, committing to the campaign of creating paperless offices. This process not only enables consumers to obtain services easily, conveniently, and expeditiously without hassle, but it has also been demonstrated to save millions and billions of rupees in paper expenses in many offices where online services are implemented. Even in the respondent's written response, it is mentioned that adhering to old methods would make it difficult to correspond with domestic and foreign companies and institutions. It seems inappropriate in the current context for the petitioners, who are 21st century young legal

professionals, to file this petition seeking to halt such practices when they should instead be encouraging their clients regarding online processes and services.

III) National Insurance Company Ltd. Vs. Hindustan Safety Glass Works Ltd. 1990

In above mention case the insurance company refused to compensate the damage due to heavy rain during the mention time period. The insurance company denied to insured on basis that of policy is national insurance would not be liable for any loss or damage 12 month after the act of loss or damage. The insured filed a complaint to National Commission under provisions of Consumer Protection Act, 1986.

The judgement given by the National Commission is claim made by the insured is actionable. Additionally, the goods were insured at the time of incident and he claim next day. Thus, the commission rejected all the contentions urged by National Insurance and ordered to award an amount of rs. 21, 05,803.89 with interest at 9% per annum.

IV) Manjeet Singh vs. National Insurance Company Ltd., 2010

In his case, appellant had purchased a second-hand truck under a hire purchase agreement. Vehicle was insured by respondent insurance company. One day when the truck was going a passenger asked to stop the truck's driver give him a lift. When driver stopped the truck, the passenger brutally assaulted the driver and fled with the vehicle. A FIR was lodged and the respondent finance company was intimated about the theft. Insurance company rejected the claim on ground breach of term of policy. The complainant approached District Dispute Forum, State Commission and National Commission to compensate him for the loss. All of them rejected the case so at last he approached the Supreme Court.

Judgement from Supreme Court held that there was no fault of appellant. It can be considered as the breach of policy, but not fundamental breach to bring insurance policy to end and terminate the insurance policy. So, the judge directed the respondent insurance company to pay 75% of insured amount along with 9% interest from date of filing the claim. Thus, sum of compensation is Rs. 1,00,000.

Analysis and Conclusion

Availability and Accessibility of legal remedy to consumers

Each of us are consumers in one or another form, directly or indirectly having consistent interaction with the business market. However, the business market in the present socio-economic scenario is more driving the consumer as a victim with unfair and unethical business tactics and practices adopted in the market. This makes the consumer more vulnerable in regards to seek the justice. Thus, the Consumer Court should address these complications with an availability and accessibility of legal remedy with this regard. The Consumer have to inform about their rights, procedures and legal mechanism to redress their grievances. With this context a consumer has to be aware of the legal processes to apply in case they file a complaint. Therefore, consumer court: to be an effective dispute resolution mechanism, this has to ensure the availability and accessibility of legal remedy in juts, fair and reasonable manner.

Protection of vulnerable and disadvantaged consumers

With globalization and development in the international trade and commerce, there has been substantial increase of business and trade, which resulted in a variety of consumer goods and services to meet the consumer needs. At the same time, consumers are often deceived in the quality, quantity and price of goods and services. All those consumers who are supposed to be the heart of all economic and industrial activities have to be protected from the hazardous substance that are harmful to their health and safety. There has to be a consumer education campaign consisting of the environmental, social and economic impacts of their choices concerning produced goods and services. It aware the consumers about the knowledge and skills necessary to understand financial risks and legal assistance with an expertise authority. This will protect the vulnerable and disadvantaged consumers from getting exploitation.

Protection for Economic interest of the consumers

The Consumer Protection Act reads that a consumer shall be entitled to compensation for bodily, mental, financial, physical or other kind of harm and injury occurred as a result of defective production of goods (Consumer Protection Act, 2075, Section 50).In accordance to which the Consumer court has stated that in the case filed by Gautam, claiming that the hospital and its doctors were negligent during his father's treatment, he has demanded 5 crore rupees (50 million rupees) as compensation.(BBC News Nepali, 2025).

It was pointed out by Bello et al. (2020) that consumer will be in a better position to evaluate a business and its goods and services if they have a greater understanding of their rights. Business practise shall be executed in such a way that a consumer obtains the all-possible benefits from their economic resources. This shall ensure the satisfactory production and standard performance with fair business practices avoiding the adverse effect on economic interest of consumers.

Principle of ethical business practise and compliance to doctrine of good faith

The doctrine of good faith and ethical business practise form the foundation of fair consumer transactions in the modern markets with a standard to protect the consumers while creating a sustainable business relationship. The commencement of the Consumer Court will make a business practise alert for ensuring fair and equitable treatment as an integral part of the business culture. This avoids the practises that harm the consumers. The concerned business shall not lead its consumers to an illegal, unethical and deceptive practises like fake advertisement, abusive marketing tactics and non-disclosure or false disclosure of the goods and services.

References

Batra, R., &Ahtola, O. T. (1991). Measuring the hedonic and utilitarian sources of consumer attitudes. *Marketing Letters, 2*, 159-170.

Bello, K. B., Jusoh, A., & Nor, K. M. (2016). Corporate social responsibility and consumer rights awareness: A research agenda. *Indian Journal of Science and Technology, 9*(46), 1-10.

BBC News Nepali. (2025, May 5). *उपभोक्ता अदालतमा चिकित्सक देखि चाँदी बिक्रेता बिरुद्द मुद्दा, हजारौ देखि करोडासम्मको क्षेतिपूर्ति [Cases against doctors to silver sellers in consumer court, compensation from thousands to crores]*. https://www.bbc.com/nepali/articles/cgjlegzx4zdo

Business 360°.(2020), *Understanding and safeguarding consumer rights.* https://www.b360nepal.com/understanding-and-safeguarding-consumer-rights/

Cornell Law School. (n.d.). *15 U.S. Code § 41 - Federal Trade Commission established; membership; vacancies; seal*. https://www.law.cornell.edu/uscode/text/15/41

Corporate Counselling and Legal Research Centre advocate Bharat Kumar Lakai vs. Nepal Government, Kathmandu, *Nepal Kanoon Patrika 2072*, Decision Number 9509.

Dillon, W. R., Madden, T. J., Kirmani, A., & Mukherjee, S. (2001). Understanding what's in a brand rating: A model for assessing brand and attribute effects and their relationship. *Journal of Marketing Research, 38*(4), 415-429.

Donoghue, S., Van Oordt, C., & Strydom, N. (2016). Consumers' subjective and objective consumerism knowledge and subsequent complaint behaviour concerning consumer electronics: A South African perspective. *International Journal of Consumer Studies, 40*(4), 385-399.

Government of India. *(*1914). *Federal Trade Commission Act*, https://www.govinfo.gov/content/pkg/COMPS-388/pdf/COMPS-388.pdf

Government of India. *(*2019). *Consumer Protection Act*. India. https://www.indiacode.nic.in/bitstream/123456789/15256/1/eng201935.pdf

Government of Nepal. *(*2075). *Consumer Protection Act*. Nepal. https://lawcommission.gov.np/content/12167/12167-the-consumer-protection-act-2/

Government of Nepal. (2015). *The Constitution of Nepal*. Nepal Law Commission, https://lawcommission.gov.np/content/13437/nepal-s-constitution/

Hima, K. (2016). Consumer rights awareness: A study among college students of Kannur District. *IRACST–International Journal of Commerce, Business and Management, 5*(6), 2319-2828.

Holbrook, M. B., & Hirschman, E. C. (1982). The experiential aspects of consumption: Consumer fantasies, feelings, and fun. *Journal of Consumer Research, 9*(2), 132-140.

Khadka, K. S. (2017, March 15). *Know your rights.* https://kathmandupost.com/opinion/2017/03/15/know-your-rights

Machleit, K. A., Allen, C. T., & Madden, T. J. (1993). The mature brand and brand interest: An alternative consequence of ad-evoked affect. *Journal of Marketing, 57*(4), 72-82.

Manjeet Singh vs. National Insurance Company Ltd. & Anr, 2010

Millar, M. G., & Tesser, A. (1986). Effects of affective and cognitive focus on the attitude–behavior relation. *Journal of Psychology, 51*(2), 270.

My Republica. (2025). *Nepal is finally getting the first consumer court from March 15.* https://myrepublica.nagariknetwork.com/news/nepal-is-finally-getting-the-first-consumer-court-from-march-15/

Nandedkar, S. (2023). *What is Consumer Court: Types, complaint filing, condition & more*. https://www.satyamedh.com/article/consumer-court

National Consumer Disputes Redressal Commission [NCDRC]. (2025). India. https://ncdrc.nic.in/.

National Insurance Company Ltd. Vs. Hindustan Safety Glass Works Ltd. &Anr**,** 1990

Nepali Sansar. (2025). *Nepal's first consumer court in the offing.* https://www.nepalisansar.com/business/nepals-first-consumer-court-in-the-offing/

Olney, T. J., Holbrook, M. B., & Batra, R. (1991). Consumer responses to advertising: The effects of ad content, emotions, and attitude toward the ad on viewing time. *Journal of Consumer Research*, *17*(4), 440-453.

People's Republic of China. (2013). *People's Republic of China Law on Protection of the Rights and Interests of Consumers*. https://www.chinalawtranslate.com/en/consumer-protection-law/

Prasain, K. (2024, October 30). Nepal's first consumer court to start hearing cases in December. *Himalayan Tribune*. https://www.himalayantribune.com/nepals-first-consumer-court-to-start-hearing-cases-in-december/

Raghunandan Maru Vs. Nepal Electricity Authority, Central Office Durbarmarg, Kathmandu**,** *Nepal Kanoon Patrika 2076***,** Decision Number 10232

Reddy, A. R. (2002). *Consumerism with reference to selected home appliances in Chennai* [Doctoral dissertation], Sri Venkateswara University.

Shukla, Y. (2023). *Consumers attitude towards grievance redressal mechanism under the Consumer Protection Act.* [Doctoral dissertation], Hemwati Nandan Bahuguna Garhwal University, Department of Commerce.

Solomon, M. (2008). *Consumer behavior buying, having, and being* (8th ed.). Pearson Prentice Hall.

Spears, N., & Singh, S. N. (2004). *Measuring attitude toward the brand and purchase intentions. Journal of Current Issues and Research in Advertising, 26*(2), 53-66.

The Kathmandu Post. (2023, August 21). *Food safety watchdog filed 121 cases in fiscal 2022-23.*

The Kathmandu Post. (2024, November 4). *A long time coming.* https://kathmandupost.com/editorial/2024/11/04/a-long-time-coming

United Nations. (n.d.). *United Nations guidelines for consumer protection* of *1985* https://unctad.org/topic/competition-and-consumer-protection/un-guidelines-on-consumer-protection

Verešová, M., & Malá, D. (2016). *Attitude toward school and learning and academic achievement of adolescents. In 7th International Conference on Education and Educational Psychology*. Future Academy.

Voss, K. E., Spangenberg, E. R., & Grohmann, B. (2003). *Measuring the hedonic and utilitarian dimensions of consumer attitude. Journal of Marketing Research, 40*(3), 310-320.

Zhang, J., & Zhang, L. (2020). *Computer simulation research of desk design based on ABC attitude theory. Journal of Physics: Conference Series, 1578*(1), Article 012075. https://iopscience.iop.org/article/10.1088/1742-6596/1578/1/012075/meta

Sambahak: Human Rights Journal (2025), Vol. 25, 64-77

The Morals behind Restraining Rights and Freedoms: A Classical Overview

Bishal Khanal[1]

Email: khanalb@yahoo.com

To cite this article:
Khanal, B. (2025). The Morals behind Restraining Rights and Freedoms: A Classical Overview .*Sambahak: Human Rights Journal*, *25*(1), 64–77. https://doi.org/10.3126/sambahak.v25i1.83918

Keywords: Morals, rights, freedom, restrain, humanity

Abstract

The main purpose of the analysis is to explore the evolutionary trends of the restraint to freedoms by both state and non-state actors. An effort is made whether the restraints were morally sound even during the absence of written law in the history and prehistory. This product is an outcome of historical research mainly based on doctrinal work. In writers view morality has been the principal steward to make fair restraints upon various form of freedoms. In the course different groups of elites imposed excessive restraints upon freedom to fellow human. Much of those restraints were directed to capture the wealth, power and serve the interest of ruling elites. The humanistic approach to rights and freedoms of the native communities sidelined with the reception of rights and freedoms evolved in the foreign soil. The Hindu and Buddhist scriptures witness the fact of suppression either in explicit or implicit form. The methods of spirituality and meditation to purify inner self that would prevent or make self-restraint of rights abuses were outlawed. The restraints are always expected to be fair, reasonable, ethical and moral in the eye of public. Proper scrutiny measures should be put in place to make surveillance upon restriction made against rights and freedoms. The struggles for freedoms are ever going and probably never ending and therefore that rest on the highest echelon of human mind. Its preciousness is not comparable and therefore humankind deserves any power to defend for freedom. The cost of freedom is immeasurable and also of its fair restraints.

[1] Faculty member at Kathmandu University School of Law, Former Secretary of National Human Rights Commission of Nepal

A Retrospect

The early observation indicates that there was hardly any limitation on the will and wish of human beings in primitive era. In view of Rousseau the natural human was an animal whose behavior was purely instinctive, any thought whatever was depraved. He did not have language except crying or yelling. The natural human was neither moral nor vicious (Sabine and Thorson, 1973, p 536). There was absence of rules regulating human activities and therefore human being was free to enjoy every freedom as equal to animals. The rights and freedoms were innate and indefensible (Sabine and Thorson, 1973, p 244, 488)

The right and freedoms were absolute and beyond limits. If restrained existed that was either by the action of nature, feral and enemy. Other constitutes the self-restraints caused by natural gift of individual fear, wills, love, emotions, heart and mind of human kind. The fear was probably the main restraining power that disallowed early human to involve in harmful activities at the instruction of nature. The human in the era of natural knowledge of fear, or in the absence of derivative knowledge, restrained self from hazardous acts like jumping down to cliff, trees and face violent feral etc. The natural bliss of fear, emotions, desire etc. injected in the heart and mind restrained human to move freely as the wind in atmosphere, lights in the sky and water in the seas. On the other hand hunger, desires, love, emotions and urges were unknowingly contributed to flourishing and extending freedoms in the natural era as well. Indeed early people were in the veil of ignorance (Rawls, 2000, p 136-141))

In fact human nature itself does not allow them to enjoying absolute or unrestrained freedoms, even if they are allowed to do freely whatever they want. Ancient Greek writer Aristophane' idea of abolition of marriage by introducing common wife/husband-ship recognized in around 390 BC (later Plato humorously said communism of wives) (Sabine and Thorson, 1973, p 38) deemed unacceptable as doing whatever s/he wants is neither a right nor any freedom. The practice was considered unsound and immoral that hammered upon the rights and freedoms of both men and women. Hence those free activities were not recognized as freedom. Like this most of all restraints upon rights and freedoms that exist today are made by human themselves for the sake of their wellbeing. When early human began to practice civility like living in group, caring kids and seeking safety from enemies as feral, storms, flood etc. they devised the rules and practices to bind themselves.

The advancement of human reason and rational helped develop many common forms of rules (Rawls, 2000, p.142-43). The reasons and rational were emanated by the god for human via the hands of nature. The advancement of reasons helped human setting moral and ethical rules and standards for them. They restrained many of their natural freedoms or immoral freedoms in

human eye, but being enjoyed by the animals (Sabine and Thorson, 1973, p 430, 531)). Indeed, the reason and rational made human being different than other animals.

Human reasons did consider unethical to the freedom to keep in bareness or nakedness. Considering unethical and immoral human began to cover their private parts with grasses, leaves, shoot bark etc. The practice unknowingly restrained their freedom to remain and move in bareness. In order of development human perceived *'freedom of jungle'* such as sexual relation among kin and relatives insensible and immoral. In the quest of morality, ethical, sensible and sound life human themselves restrained certain right and freedoms of early times. That was human who considered fair and reasonable to restrain own rights and freedoms, of course emanated by the nature. Despite it in academic terms reason is considered repulsive as that sets prudence against moral intuition.

John Locke assumes that in order of evolution human being devised the idea to live in group for the sake of safety, security and cooperation. Living in group system advanced the rule of leadership. The people began to choose their leader who would lead them and allocate the common work to group members. The leader advanced uniform rules and practices to manage group members. The group leader would consult the group members before rule formation and setting practices. The rules of practice were developed as per the need. The rules and practices restrained many freedoms which lacked limitations before. Many practice based freedoms that deemed unreasonable, irrational, insulting, undignified, unethical, insensitive, immoral were restrained (Sabine and Thorson, 1973, p 490, 494). As mentioned the practice of free bare life, killing or injuring other human, eating human excrete, sexual relation with kin and others were considered unreasonable and restrained. Apart from them many other freedoms with historical base were later extended with a view to mitigate harms in the society.

Era of Ideologues and further restraints

The growth and stretch of population in different locations changed the social, economic and cultural pattern of human life across. The prominent thinkers and ideologues appeared in the Indian, Chinese, European, Araband Persian soils. Their works contributed a lot to streamline and advance the communities in social, economic, cultural and religious terms. Most of their concern was to make an ideal, fair, peaceful and humanistic society in their respective soils. The scriptures they contributed generally focused to guide for an ideal society based on peace, harmony and humanistic values including freedom.

The Vedas in India call for peace in all the dimensions of universe land, water and the sky. It also laid down rules that no one has right to disregard peace, harmony and humanistic values. The authors and pundits of wisdom interpreted Vedas and advanced other scriptures such as

Upanishads, Smirities, Puranas and immensity of other literatures. Most of those literatures state the need of right and freedoms for human and restraints upon them as well. Most of those scriptures were recognized in the form of law, and general people were obliged to abide by them (Galanter, 1997; DE Weyer, 2011, p 12).

Any person who disregards the rights and freedoms of others would be held liable. Rather the communities were considered responsible for creating guilty people alike rotten fruits. The liabilities were guided by the idea to correcting, improving and making realization of the impact of guilt than imposing harsh punishments to wrong doers. The form of liabilities would include enlighten, expiation, moral sanctions, forgiveness, healing, teaching, warning, truth making, labor, displacement, fine, ordeal and other sanctions of both visible and invisible forms (DE Weyer, 2011, p 12; Sharma, 2010, Chapter I). The idea of punishment is guided by the ideals of "*a liberated soul overcomes the world"*.

A number of Hindu sages and gurus and Buddhist monk are of the opinion that inner peace, freedom of the inner self and inner purification would mitigate the abuse and violation of rights and freedoms. Major causes for the violation and obstruction of freedom under Hindu, Buddhist, Jain and Sikh spiritual sciences is the anger, rage, greed, lust, jealousy, hatred, avenge among others (Radhakrishnan, 1993, Chapter XIV). Those invisible elements endanger the right and freedoms of others which is not acceptable. As they are not visible, no proven fact of violation would be available to make them liable. However ramification of the impact of those invisible ills is not less harmful than the visible and physical ones.

To uphold rights and freedoms the violators, abusers or criminals should be restrained via penal system. Lord Manu son of *Swayambhu* conceptualized four kinds of penalties to those who commits crime or violates the rights and freedom of others. They are *Bakdanda* (warning), *Dhikdanda* (cursing or oral threats, *Arthadanda*(fine, compensation) and *Badhadanda* (bodily/ corporal punishment). Any of them could be imposed based on the gravity of guilt. Additionally the expiation was also common on certain abuses relating to dignity, honor and reverence.

The sages like *Patanjali* and Lord Buddha encouraged mitigating ill intents via yoga and meditation practices for the purification of guilty person (DE Weyer, 2011, 366 Readings from Buddhism, p 23). The yoga, meditation and gen practices help to purify and cleanse their mind or spirituality. The people with purified mind and spirits may not involve in the evil action of violating the rights and freedoms. In their view this process cuts the roots of evil, hence branches and leaves are all automatically cut off for the making a good society. A pure mind or spirituality usually does not indulge in anti-social activities.

The scriptures have restrained freedom against abuse of rights by the regimes as well. The teaching of the Ramayana reveals that the sovereign, army and entire nation deserve the right to defeat another state against the violation of the right and freedom of woman in abduction (Sattar, 2012, p 234-241). Likewise the teaching of the Mahabharata reveals that *Dharma* or the right and freedoms of the people include fighting against the regime to defend the dignity and honor of victimized women and men (Radhakrishnan, (1993), Chapter I, Verses 46-47). It limits the absolute power of sovereign king through uprising and to restore dignity and honor of the nation and its entire population.

The freedom has never been free. The paradox is that enemy of freedom is the freedom itself. 'The brutal force of sea of liberty cannot keep self-respect in the lack of wave, observed in the context of *Draupadi'*s abuse in Mahabharata. No one has the right to insult or make ill observation to the wise man and others. The human including the sovereign is not free to do injustice and destroy the glory of the state. The six enemies of freedom namely anger, greed, vanity, haughtiness and over joy should be restrained either by the individual self, or by making the rules (Rishal, 2011, Chapter VI). To be freed from these is greater of all the freedoms.

Theoretically the boundaries for freedoms are the rules, ethics and morality. The '*fear limits you, your freedom and your vision'* says Lord Krishna in Bhagvadgita (Radhakrishnan, 1993, Chapter I, verses 23-25). In the context of insult of *Draupadi*by *Kauravas*, the common wife of *Pandavas,*he went on to say that "*ill fame is worse than death*". Fighting for dignity and honor therefore is praiseworthy.

The French philosopher Voltaire writes, *those seeking freedom should keep captive of own desires*. *One seeking discipline would find the way to liberty or freedom.* One can ask how there is freedom in the state of captive desires? For Peter Marshall '*freedom is not power of doing what we want but the right to do what we ought*'. The greatest threat to freedom is the absence of criticism. Greatest enemy of freedom is freedom itself.

The undesirable/ anti-social freedoms may be restrained by self with spiritual ways as well, such as yoga and meditation. However, fair legal restraint is an essential component of freedom that helps to make freedom purposeful. The discipline should be made free and freedom must be made disciplined to all. The freedom, in the absence of discipline turns into threat to society. We expect salvage from freedom, not the ravage on economic, social and political life.

Earlier warfare and effects on Rights and Freedoms

The warfare in various parts of the world victimized the people and entire civic life. The disaster of the war of Mahabharata was over. During Confucius era (7th century BC) various Chinese nations were in war and skirmishes. Later Jingoish Khan launched war across and arrived to the

Persian region. Alexander was launching war to the East and arrived to west India. The Moguls invaded India and parts of South Asia. Persians and Russians were also in war. It seems to be the era of war as other minor and major conflicts were across all continents (Khanal, 2018, p. 51-53). The war is the deadly enemy of freedoms. The restriction on the enjoyment of rights and freedoms was common among civilians. This restraint was not by the law but by the situation. Civilian's life fell in chaos and distress. The voice of freedom was closed. Humanity was close to vanish.

The ravage of the WW-I and WW-II cast indelible mark in the head of the mankind across all the continents. The rulers, fighters and all the people realized that peace has no alternatives. Also they become aware that there are no greater values than freedom. Soon after the WW-I therefore the League of Nations was formed giving responsibilities to maintenance of peace. Likewise after the WW-II the United Nations was formed to ensure peace and rights and freedoms across the regions. The framers of the UN charter devised the idea that in the absence of peace there is no freedom, and in the absence of freedom peace may not be meaningful. The Charter therefore was indeed stood upon twin pillars- the peace and the freedom. In the course UN endeavored to take them alongside in its major performance and initiatives (Khanal, 2006, p 37).

The Religious Resurgence

The religious domination on the state administration was common in both East and West. The Indian subcontinent was under the influence of Hinduism and Buddhism. The influence of Buddhist ideals has had great place in India, China, Korea, Japan, Thailand, Cambodia etc. As a non-state actor Buddhists encourage for individual self-restraint of unworthy or harmful freedoms through meditation and Zen practices. That aims at ideal state and that may always be relevant in every situation everywhere.

Europe had already the influence of Christianity and Church was considered above the state. Islam had great influence in the Arab world and Persia. The Muslim invaded India and south East Asian states. The religious domination was relatively better than the environment of warfare. The religious rules were used to streamline different societies. To some extent they were successful. The influence of religious rules remains effective for centuries. Slowly they made the rules stricter and unfriendly to the rights and freedoms. Those rules indeed put forward many limitations on the rights and freedoms of the people.

The religious fanatics of different faiths deemed stricter who hardly pay respect to the rights and freedoms of people. Some fanatics claimed that they were divine representatives so in-charge of the state. The Bishops, Mohammad and Mullah declared themselves the head in the states.

Some Hindu monarchs claimed themselves the incarnation of God. Other Hindu monarch who usually performed their duties having advice of the saints and pundits too were also not really kind and sympathetic in terms of the rights and freedoms of the people.

By the thirteenth century there was a great tussle between the Church and the State. The people and politicians opposed the church and Bishops saying that they have no authority to run the administration of state. The running of administration is the work of the politicians so the Bishop should not interfere upon the affairs of the state. Finally they agreed to make division of power. Now the religious power should be exercised by the Church and the state administration should be run by the elected politician. They agreed the policy of non-interference by the government on religious affairs and non-interference by church on the affairs of the state for that we say the theory of secularism emerged in the West. One of the reasons of this tussle was restraining the civil rights by the Bishops and clergymen.

By the 17th century colonial process began from the West. During 19th century larger part of the world was under colonial administration of various western countries. The colonial administration was similar to authoritarian regimes. Everyone guess about the condition of the rights and liberties in an authoritarian form of administration.

The Muslim invaded India and damaged and destroyed much of Vedic scriptures and Hindu monuments followed by the governance run under Vedic rules. The Vedic scriptures provided good amount of social, economic and cultural rights and freedoms. Their target was to damage and destroy academia and eliminate the treasure of knowledge under Hinduism and Buddhism. The objective of the intervention was. The knowledge is the source of rights and liberties to stop creating, growing and advancing knowledge based on Hindu and Buddhist philosophy. Indeed the rights and liberties would foster in the environment of knowledge and intellectual exercise. Ancient resourceful University of *Nalanda* located near Patna, the capital of Bihar state of India was demolished by invading Muslim forces under the command of Bakhtiyar Khililji an Afghan army officer. The *Takshasila* known as *Taksila, Somapura, Bikramshila* and many other Universities were damaged and demolished with a view to end the source of native knowledge and implant their knowledge reshaping education system. It was like "*jostling on the head'*. Once head is defunct one cannot do any good.

In the next phase England colonized India and began its administration. In the course of time the British Parliament abolished native Indian/Hindu law and introduced the law made by British authorities including English Parliament. People enjoying rights, freedoms and privileges under the native law called law of *Dharmasastra* declared unlawful (Derrett, 1999, p 85-87). The people remained in dilemma because they did not have native rights and freedom and for their

remedies. The main victims were the rights and freedoms as people restrained from age old freedoms.

The British began to introduce English law and offered rights and freedoms evolved in the western base. The remedies on their violation were made available by the courts formed under the influence of English law. They established the Schools, Colleges and Universities based on English curriculum. The remaining schools and colleges for Vedic education after Muslim intervention were either closed or harshly discouraged. The 'Jostling on the head' policy continued but in soft and intelligent way.

Some rights and freedoms were prescribed in law but common people had hardly access to enjoy them. The condition of restraint on the rights and freedoms was more serious than the restraint made by law. The shift upon the obstruction of rights and freedoms created in different way. The colonial territories across the world had similar situation. The intellectually backward territories in Africa, Latin America and rest had to suffer must (Khanal, 2018, p. 223-224). Criminalizing minor guilt or over criminalizing of guilt during colonial era was one of the policies to restrain freedoms.

Consolidating Rights and Freedom

The human civilization never freed from the struggle for rights and freedoms. The restraint on the rights and freedoms during frequent war of the history taught that legal arrangement and protection of rights and freedoms is unavoidable. The contemporary Western scholars began to work in this direction. The philosophers like Locke, Rousseau, Bentham, Mill and others wrote on the importance of rights and freedoms. Rousseau once said that *'man was born free but it has ever been in chain'* (Sabine and Thorson, 1973, p 540). Although Rousseau's social contract theory not only focused to freedom but also to reasonable restraint for a decent conduct of society. In the course legal instruments that include Bill of Rights, Petition of rights, Virginal Declaration and others issued with a view to ensure freedoms to larger number of people.

The Constitution of the US 1787 ensured rights and liberties to selected people. Later they provided rights and freedoms equally to all the citizenry making emancipation from slavery, voting rights to women and colored people etc. The British did the same as the emancipation from slavery and giving voting rights to the women. The French took broader initiative and the French National Assembly passed the Declaration of the Rights and Freedoms of the Citizens in 1789. The Declaration contained list of rights and freedoms available to the people (National Assembly of France, 1789). That becomes a great step forward for other countries across the world. In the course of development entire European world ensured the rights and freedoms to their citizenry.

However the condition of the most of the colonies in Africa, Asia and Latin America was different. People of the territories were not allowed to enjoy rights and freedoms until they acquired independence by the middle of the 20th century. Then they ensured rights and freedoms similar to their colonial master countries. During colonial rule people had to live in the state of oppression where rights and freedoms remained in confinement. Anyway they derived the western nature of rights and freedoms and deemed unable to promote and enlarge native freedoms. The rights and freedoms devised in the west become common to all in the absence of academic and intellectual advancement in the colonial territories.

Repression and Restraining Rights and Freedoms

In post-colonial era various countries were under authoritarian regimes. The countries declared independence but people could not remain free. People were disallowed to enjoy rights and freedoms by making the law. Authoritarianism was one of the greatest restraints of freedom. The countries like Argentina, Chile, Columbia, Venezuela and others in Latin America, Kenya, South Africa, Nigeria, Sudan and many others in Africa; Pakistan, Malaysia, Cambodia, China, North Korea and others in Asia lived long under repressive regimes. The regimes made restraints upon various rights and freedoms.

Constitutional and Legal Imperatives

As mentioned, human being cannot live in the absence of restraint of freedoms. The excessive freedoms on certain issues could be unreasonable, immoral and undesirable. Human do not intend to be publicly free on the issues of privacy, decency and self-interest. Additionally the state, through the law intends to restrain certain rights and freedoms. Those restraints are made for the public welfare, decency, morality and maintaining public order and those restrictions are commonly called as 'reasonable restriction'. Usually those restrictions have been made by the constitutions, the highest human made law of the country.

The constitution makers by the name of general people exercise power to restrain freedoms to ensure public welfare, peace and order etc. In the authoritarian nature administration and guided democracy the constitution makes broader limitation on the rights and freedoms. The constitution and law of those countries mainly limits on the right to free speech and expression, the right to information and voting or free election related rights. At times the 'free speech' would be criminalized.

The democratic constitutions put reasonable restriction on certain freedoms. The US federal constitution, oldest written constitution of the modern world does not contain explicit provisions on reasonable restriction. Nevertheless the State constitutions (of US) and law have made reasonable restriction related provisions. The Constitution of India (1950) allows Parliament to

make law to restrain rights and freedoms on a number of grounds. The grounds include the security of the state, friendly relation with foreign states, public order, decency, morality, contempt of court and defamation, incitement to an offence and sovereignty and integrity of India (Shukla, 1995, p 111-112).

The Constitution of Nepal (1972) allows the Parliament to make 'reasonable restriction' by law on rights and freedoms for different purposes. They include to protect sovereignty and territorial integrity, nationality, independence, harmony among the people, abolish caste based discrimination and untouchability, hatred on labor, defamation, inciting to commit crime, disruption upon public peace and morality. Additionally the state by law can restrict to maintain correlation between federal agencies, public peace/order, prevent spying against the state, treason, violence, rebellion and promote public health and morality. Constitution of the Kingdom of Nepal o(1990) also made reasonable restrictions on similar nature of issues such as sovereignty, territorial integrity, maintaining harmony among people, sedition, defamation, and contempt of court, incitement to offence, public decency, morality, public interest and public health.

The Constitution of Nepal (1962) made number of limitations as a repressive constitution. They include to maintain peace and security of the country; peace and order; friendly relations with foreign countries; harmony and good relations among the people; social discipline and health. Additionally the limits against rights and freedoms could be made for economic interest; welfare and morality; protection of the children and women; prevention of internal conflict and external war; to prevent contempt of court and privilege of the national assembly; prevent to overthrow the constitution and existing law and to make abide by the fundamental duties of the citizens. This constitution compels to abide by the existing law whether they are fair or unfair. The 1962 constitution restrained all activities against the law. The law put much restraint on the right to free speech and expression under the press and publication law. Additionally some minor offences also held crimes against the state.

Restraining Freedoms- Nexus with Penal Law

The basic rights and freedoms are usually restrained by the penal law. This practice is prevalent worldwide. As mentioned the rights and freedoms may be restrained through just, fair and reasonable law. That is the essence of the rule of law and democratic values. The degree of fairness and reasonability of law may differ in diverse societies. However in repressive regimes many minor act and omissions are also criminalized which are supposed to be not criminalized in the prism of fair and reasonable law.

The law usually limits the right and freedoms of people. This practice is very old. In order to regulate the society and to make it better place to live, certain restraints are obviously essential. In Nepali context, in the 15th century the State issued a Code (probably first) entitled *Nyayabikasani* (commonly called *Manab-nyaya-shastra*) in BS 1436 (Lawyer's Club and UNDP, 2065 BS, p, I). The code has broader coverage of law on civil, criminal, social, religious, moral, nuptial, property and caste issues. In implicit terms most of the provisions of the Code make restraints on rights and freedoms. Indeed most of the restriction deemed to be reasonable in the context of the time period of application. Hundreds of laws of the state issued afterward have not really substantive difference on the issue of restraining rights and freedoms.

In the present context some countries have increased the period of detention and penalties in the process of criminal law reform. The rape law reform in India and elsewhere have increased the detention period under summary trial known as fast track system. Indeed that has direct link with the rights and freedoms of the suspect. Likewise in the process of terrorist related law reform, European countries including UK have increased the detention period during interrogation.

In some countries certain offences are considered severe whereas the same offence is not considered equally severe in other countries. The drugs related offences in the Philippines and Singapore are considered too serious whereas they are considered normal offences elsewhere. Recently a number of countries including India and various states in the US have reformed juvenile justice related law. The new law provides that children committing heinous offences are sent to the prisons from juvenile detention centers, once they attend the age of maturity (such as 18 years). This shows that person sentenced and detained as a child would be liable to stay in the juvenile detention center as well as adult prison for the same offence. Here no sentencing from the court of criminal jurisdiction is required to put into prison. The fairness of such law and practices are also in question.

Over Criminalization and Conservatism

Over the years scholars have raised the issue of over criminalization. In view of the US Heritage Foundation "over criminalization is the overuse of criminal law to address every societal problem and punish every mistake. That is unfortunate trend. The criminal law should be used only to redress blameworthy conduct that truly deserves the greatest punishment and moral sanctions." Prof Husak in his book entitled *Over- Criminalization* writes that the required factors to determine the conduct of criminals includes- a. no use of criminal law to prohibit "non-trivial or insignificant harm or evil, b. Criminal offence must target wrongful conduct of defendant c. punishment is justified only when the extent is deserved d. Burden of proof should go to the one creating offence e. to create crime - focus to the interest of the state and f. criminal

law should not be extensive in scope than necessary to achieve its purpose. Concerns are raised that various countries make limitation on the rights and freedoms without applying fair law and procedure. The practice is of course immoral, unethical and illegal as well.

The rights and freedoms are becoming more and more limited as minor act and omissions are being criminalized such as social media communications, photography without permits, limit crossing and others. In the recent times US administration is criticized of being intolerant on the rights of free speech, peaceful protest/assembly etc. against the atrocities in Gaza and elsewhere in Palestine. The students and others participated against those atrocities are expelled from the University and even from the country. The current US administration is much concerned about speaking against Jewish faith. Those restraints on rights and freedoms in the US soil were hardly imagined until recent past.

The usual and unusual efforts directed to limit the rights and freedom asks to reiterate Rousseau's observation that ' *man was born free but it has ever been in chain'*. Simplifying criminal law, minimizing penalties and non-criminalizing minor guilt may help creating enabling environment for rights and freedoms. But the situation indicates that world is on the way of conservatism. A study by Fared Zakaria, a noted international media person shows that people enjoying more freedom in the Arab world and middle-east such as Iran, Iraq, Jordan etc. and few Asian countries deemed conservative in terms of enjoying rights and freedoms.

In France and some European countries the religious and cultural rights of immigrant students/population are less respected than before. It is because they do not comply French values. There are remarks that in terms of culture and religion, present day India is also moving towards conservatism. There are many comments that state is not sympatric on the religious and cultural issues of minority population. All those efforts and incidents would contribute to restrain rights and freedoms of common people.

Conclusion

Along the way, there had been long course of history that stood against restraint upon the rights and freedom. The world was under suppression of human upon fellow human. The formation of state system extended suppression as well. The Hindu and Buddhist scriptures as well witness the fact of suppression either in explicit or implicit form. The early physical and moral restraints are left behind. The methods of spirituality and meditation to purify inner self that would prevent or make self-restrain to rights abuses are outlawed.

Over the ages struggle for freedoms and suppression upon them underwent all along. The restraint upon rights and freedoms made by early human was mistreated in the consequent periods. Rulers deemed brave and worthy for restraining rights and freedoms than flourishing

and expanding them. This initiative was usually guided by the idea of greed, lust, ego and character to demonstrate self on the upper position as a ruler either of village, town, province or the state.

The factors responsible in restraining rights and freedoms increased with the development of society. The restarting powers now are more than the act of nature, enemy and feral prevalent in the pre historic days. The penal law that came to the surface played significant role for the restraint of rights and freedom. The constitutional norms followed by the practice of over criminalization by law extended various chains for restraints. But, there must be moral basis to restrain freedoms though law. Only morally sound law can restrain freedoms in a democracy. Morality is the essence and the law is the tool. Immoral law if restrains freedoms that is unfair, immoral and unlawful.

The societies tired by the foreign imposition of rules began to take out their hands. They began to choose the path of conservatism especially on the issues of religious, moral, cultural and social freedoms. Once democratic administrations began to defend particular faith restarting free speech, peaceful demonstration and sharing, the states deemed guided by the undesirable practices. These all the efforts were responsible to mitigate the precious worth and values of rights and freedoms.

References

Derrett JDM ed. (1999). *An Introduction to Legal Systems*, Universal Law, Delhi

DE Weyer, R.V. (2011). *366 Reading from Buddhism*. Jaiko Publishing, Mumbai.

DE Weyer, R. V., (2011), *366 Reading from Hinduism*, Jaiko Publishing, Mumbai

Galanter, M. (1997), *Law and Society in Modern India*, OUP Delhi.

Government of India. (1950). *The Constitution of India, Art 19. https://www.indiacode.nic.in/bitstream/123456789/19150/1/constitution_of_india.pdf*

Government of Nepal. (1972). *The Constitution of Nepal, 1972, Art 17. https://lawcommission.gov.np/content/13315/constitution-of-the-kingdom-of-nepal--2015/*

Government of Nepal. (1962). *The Constitution of Nepal, 1962, Art 7. https://lawcommission.gov.np/content/13313/government-of-nepal-statutory-laws--2004/*

Government of Nepal. (1990). *The Constitution of Kingdom of Nepal of 1990, Art 12. https://lawcommission.gov.np/content/13317/constitution-of-the-kingdom-of-nepal--2047/*

Khanal, B.(2006). *Human Rights and Development*. Manjusha, Kathmandu.

Khanal, B. (2018). *Legal Reform Via Reception of Law*. Bhrikuti Publication, Kathmandu.

Lawyer's Club and UNDP. (2008). *Nyayabikasini of BS 1436*, Kathmandu.

Yang, L.C. (n.d.). *Individual wills first-the real success behind the Asian tigers*. CAP Online (features), http://jyanet.com/cap/0613fe0.htm

National Assembly of France. (1789). Declaration of Rights of Man-1789. https://avalon.law.yale.edu/18th_century/rightsof.asp

Radhakrishnan, S.(1993). *Bhagavadgita. Harper and Collins.* India, New Delhi.

Rawls, J .(2000). *A Theory of Justice*. Universal Law Publishing, Delhi.

Sabine G.S and Thorson T.L.(1973). *A History of Political Theory* (*4th Edition)*. Dryden Press Illinois.

Sattar, A .(2012). *The Ramayana (Valmiki)*. Penguine Books, Delhi.

Sharma, V (2011), *Panchatantra, trans. Tilak Prasad Luitel*, Bidyarthi Pustak Bhandar, Kathmandu.

Rishal, S. (2011). *Vidur Niti (trans.)*. Gita press, Gorakhpur.

Shukla V.N and Singh M.P. (1995). *Constitution of India (eds.)*. Eastern Book Co., Lucknow.

Sambahak: Human Rights Journal (2025), Vol. 25, 78-93

Bridging the gap between Policy and Practice: A Right-based approach to Education in Nepal

Indrajeet Sahani[1]

Email: Indrajeetsahani207@gmail.com

To cite this article:
Sahani, I. (2025). Bridging the gap between Policy and Practice: A Right-based approach to Education in Nepal. *Sambahak: Human Rights Journal*, *25*(1), 78–93. https://doi.org/10.3126/sambahak.v25i1.83920

Keywords: Right-Based Approach (RBA), Educational inclusion, Education policy, Educational justice, human rights

Abstract

In Nepal, education is legally recognized as a fundamental human right, yet for millions of children, it remains an unrealized promise. The country's rights-based approach (RBA), rooted in the 2015 Constitution and international conventions, envisions education as a catalyst for social justice. However, despite this progressive legal architecture, a profound gap persists between policy and practice. Employing a qualitative narrative review of secondary sources, this paper utilizes the Participation, Accountability, Non-discrimination, Empowerment, and Linkage (PANEL) (and Availability, Accessibility, Acceptability, Adaptability (AAAQ) (frameworks as analytical lenses. The study investigates how the RBA's implementation is crippled by systemic obstacles, including chronic underfunding, entrenched socio-economic and caste-based discrimination, geographic isolation, and weak institutional capacity. These deep-seated barriers perpetuate a system where education, intended as a great equalizer, functions instead as a mechanism of exclusion, particularly for marginalized communities. This analysis argues that bridging this gap is a matter of social justice that transcends mere legal commitments. Fulfilling the right to education in Nepal requires unwavering political will to implement comprehensive reforms—including decentralized governance, robust accountability systems, and the integration of inclusive pedagogies. Ultimately, ensuring education as a fundamental right is an ethical obligation to unlock the full potential of every child in Nepal.

[1] Human Rights Officer at National Human Rights Commission of Nepal and, PhD scholar at Faculty of Education, Tribhuvan University

Introduction

A Rights-Based Approach (RBA) to education is increasingly recognized in Nepal as a key framework for advancing social justice and equity. Central to this approach is the promotion of inclusive education, which is viewed as a fundamental instrument for empowering marginalized communities. Specifically, the RBA aims to address systemic discrimination faced by individuals on the basis of gender, ethnicity, and disability, thereby positioning education as a transformative tool for societal progress.

Education is a potent catalyst for transformation, equipping individuals to participate actively in their communities and fostering a just society. Consequently, the state holds the primary responsibility for establishing an education system that is responsive to the rights of all individuals, especially those who have been historically disadvantaged. As highlighted by UNESCO (2022), fulfilling this duty requires a multifaceted commitment that includes implementing inclusive policies, allocating equitable resources, and reforming curricula, as a single approach is insufficient to dismantle systemic barriers. By adopting such comprehensive strategies, Nepal can work toward eliminating obstacles to quality education, thereby empowering all members of society and driving national progress.

The principle of education as a fundamental human right is established in multiple international legal instruments. This right was first articulated in the Universal Declaration of Human Rights (1948) and subsequently detailed in conventions addressing specific populations, including the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989), and the Convention on the Rights of Persons with Disabilities (2006). This commitment is further reinforced by the 2030 Agenda for Sustainable Development, particularly Goal 4, which calls for inclusive and equitable quality education (Sustainable Development Goals, 2015). As a signatory to these agreements, Nepal has aligned its national legal framework with these international standards. Accordingly, the Constitution of Nepal (2015) codifies education as a fundamental right, creating a state obligation to ensure equitable and inclusive educational access for all citizens.

A Rights-Based Approach (RBA) to education functions as a practical framework for integrating international human rights standards into the development and execution of policy. It shifts the focus from theoretical assertions to actionable plans by clarifying the responsibilities of duty-bearers (e.g., state institutions) and affirming the claims of rights-holders (e.g., citizens). A critical tool for implementing this is the *Participation, Accountability, Non-discrimination, Empowerment, and Linkage* (PANEL) framework, used as human rights standards. This model requires the meaningful involvement of marginalized communities—such as women, indigenous populations, and minorities—to ensure educational reforms are context-sensitive and

equitable. While a single, universally defined RBA does not exist, United Nations agencies have broadly agreed on its core tenets: using human rights as development goals, guiding all programming by these principles, and empowering rights-holders while enhancing the capacity of duty-bearers (Sandkull, 2005).

Nepal's commitment to a rights-based approach to education is demonstrated through a succession of national strategic plans, each building on its predecessor. This began with the School Sector Reform Plan (SSRP, 2009–2016), which was foundational in establishing basic education as a fundamental right and focused heavily on expanding access for all children. Following this, the School Sector Development Plan (SSDP, 2016–2023) aligned the education system with the 2015 Constitution and the Sustainable Development Goals, shifting the focus from mere access towards ensuring quality and equity. The current framework, the School Education Sector Plan (SESP, 2022–2032), continues this trajectory by aiming to improve learning outcomes, integrate digital learning, and fully operationalize the right to education within Nepal's federal structure (Ministry of Education, Science and Technology, 2022).

In Nepal, basic education is recognized as the foundation for lifelong learning, designed to foster essential skills and support the holistic development of children. This principle is enshrined in national policies and legal frameworks that guarantee education as a fundamental right. However, a significant gap persists between these legislative commitments and their effective implementation. The education system faces systemic challenges, including pronounced inequities in access, inadequate infrastructure, underfunded schools, and insufficient teacher training, with these issues being particularly acute in rural and marginalized communities. These barriers effectively obstruct the realization of a truly rights-based educational framework.

The causes of this implementation gap are multifaceted. While decentralization and local governance are identified as crucial for enhancing transparency and efficiency, their potential is often unrealized (Neupane, 2023). The execution of well-intentioned policies is frequently undermined by persistent budgetary constraints, political instability, and a lack of effective collaboration among federal, provincial, and local stakeholders (Viennet & Pont, 2017). Consequently, evaluating the efficacy of policy measures and their practical application is vital to ensuring that quality education becomes a reality across diverse settings.

This analysis, therefore, investigates the alignment of Nepal’s educational initiatives with a Rights-Based Approach (RBA), revealing that while policy foundations are strong, their execution remains deficient. To bridge this divide and realize the potential of education as a fundamental right for all, this article underscores the necessity for three key actions:

implementing robust evaluation systems to monitor outcomes, strengthening stakeholder engagement at all levels, and directing targeted investments toward underserved regions.

Conceptual Framework: A Rights-Based Approach to Education

This study's conceptual framework is grounded in the Rights-Based Approach (RBA) to education, which translates international legal standards into actionable principles. The foundation of this right is established in instruments like the Universal Declaration of Human Rights (United Nations, 1948) and the Convention on the Rights of the Child (United Nations, 1989), which mandate that signatory nations ensure free and compulsory basic education. The RBA operationalizes this mandate through two core, complementary components. First, it defines state obligations using Eide's (2005) tripartite typology: the duty to respect existing access, protect it from infringement by third parties, and fulfill the right by proactively providing educational opportunities. Second, it defines the quality of that education using the AAAQ framework, which requires that it be Available, Accessible, Acceptable (culturally relevant and of high quality), and Adaptable to diverse needs (Sandkull, 2005).

Within this framework, educational stakeholders are positioned as either rights-holders or duty-bearers. Students are the primary rights-holders, entitled to an education that meets the AAAQ criteria. The state is the primary duty-bearer, responsible for respecting, protecting, and fulfilling this right. Other stakeholders, such as parents and teachers, act as crucial facilitators and advocates in this system, supporting the educational process (Viswanath, 2010). The RBA, therefore, provides a comprehensive analytical lens, viewing education not as a service but as a legally binding entitlement that empowers stakeholders and establishes clear lines of accountability for its realization.

Methodology

This study employed a qualitative research design, utilizing a comprehensive document and policy analysis to investigate the application of a rights-based approach (RBA) within Nepal's education system. The research is grounded in an analysis of secondary sources. The data focused on foundational legal and policy instruments in Nepal's education sector, such as the Constitution of Nepal (2015), the Education Act (1971), the Free and Compulsory Education Act (2018) and its Rules (2019), as well as key national education sector plans. To enhance analytical rigor, these documents were triangulated with other secondary sources, including peer-reviewed academic literature, official government reports, and publications by international organizations.

The analytical process was guided by thematic analysis, structured around the core principles of an RBA. Specifically, the PANEL framework was employed as an analytical lens, assessing

policies for their adherence to Participation, Accountability, Non-discrimination, Empowerment, and Linkage to international human rights standards (UNICEF, 2000). Data were coded manually to facilitate a deep, context-sensitive interpretation of the material. This methodological approach enabled an in-depth examination of the alignment and dissonance between legal mandates and implementation realities, the nature of governance gaps, and the degree of inclusivity within Nepal's education system.

The Legal Commitments to Education: A National and International Perspective

The original document provides an excellent overview of Nepal's legal and policy landscape concerning the right to education, drawing on both national and international instruments. To rewrite it with separate citations and references for national and international law, while maintaining an academic tone, we'll organize the text to clearly delineate these sources.

International Legal Frameworks

Nepal's commitment to a rights-based approach to education is firmly anchored in its adherence to a comprehensive suite of international laws. The ratification of foundational treaties, including the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC), provides the legal and moral impetus for domestic policy. These legally binding instruments obligate the state to guarantee education as a right for all. ICESCR, (1966, Art. 13) recognizes the right to education, stipulating that primary education must be compulsory and free, while secondary and higher education should be made progressively accessible. The CRC, particularly in Articles 28 and 29, reinforces these duties, mandating the state to eliminate discrimination in education.

This framework is further specified by conventions targeting the rights of historically marginalized groups. The Convention on the Elimination of All Forms of Discrimination against Women [CEDAW], (1979, Article 10), requires Nepal to ensure women and girls have equal rights with men in the field of education. Furthermore, the Convention on the Rights of Persons with Disabilities [CRPD], 2006, Art. 24, through its landmark Article 24, obligates the state to ensure an inclusive education system at all levels, where persons with disabilities are not excluded and are provided with reasonable accommodation. Together, these instruments form a robust international legal scaffolding that establishes clear standards for Nepal's domestic efforts.

National Legal and Policy Architecture

International principles for the right to education are powerfully enshrined within the Constitution of Nepal, promulgated in 2015. This landmark document was a turning point for

the nation, formally establishing a federal democratic republic and codifying a comprehensive set of fundamental rights (The Constitution of Nepal, 2015). Education is given a place of prominence in Article 31, which unequivocally guarantees that basic education is not only free and compulsory but also ensures that secondary education is provided at no cost to the citizen. This represents a significant expansion of the state's responsibility compared to previous legal frameworks. Furthermore, the Constitution includes specific provisions for citizens with disabilities and those who are economically marginalized to receive education with special support and scholarships (The Constitution of Nepal, 2015).

To operationalize this vision, the government enacted enabling legislation, most notably the (Compulsory and Free Education Act, 2018) .This law provides the legal foundation for safeguarding educational rights and defining the responsibilities of different tiers of government. Policy is driven by multi-year sector-wide plans, the most current being the School Education Sector Plan (SESP, 2022–2032), which succeeded the School Sector Development Plan (SSDP, 2016–2023). The SESP builds on its predecessor, prioritizing equity, inclusion, quality, and participation. It aims to strengthen governance, improve learning outcomes, and dismantle structural barriers for marginalized groups (MOEST, 2022). These plans are complemented by targeted policies like the Inclusive Education Policy (2017) and the National Education Policy (2019).

A cornerstone of the current reform agenda is the localization of education governance, a direct consequence of the 2015 Constitution. The federal structure, comprising federal, provincial, and 753 local governments, was designed to bring decision-making closer to communities. The Local Government Operation Act , (2017) formally operationalized this by devolving significant authority for basic and secondary education to local governments. These responsibilities include school establishment and management, teacher and staff administration, curriculum adaptation, and program monitoring. This decentralization aims to enhance accountability, foster local ownership, and ensure that educational planning is responsive to specific community needs. In theory, this federal model provides a powerful mechanism for realizing the right to education. However, its success is contingent on the capacity of local governments to effectively exercise their newfound powers, a condition that has proven to be a major stumbling block.

The National Human Rights Commission (NHRC) of Nepal, established in 2000 and elevated to a constitutional body in 2007, is tasked with protecting and promoting human rights, including the right to education. Rights-based education focuses on principles like equality, non-discrimination, and social justice within educational frameworks. This response explores the NHRC's contributions to rights-based education in Nepal (The Constitution of Nepal, 2015).

However, challenges persist. Only 15.30% of NHRC recommendations were fully implemented in FY 2079-80, reflecting government inaction. Political interference and inadequate resources hinder effectiveness,

Gaps between Policy and Practice

Despite the strength of this legal and policy architecture, a critical analysis reveals a profound and persistent disconnect between rights-based objectives and their practical implementation. This chasm is rooted in legislative contradictions, governance gaps, and a chronic lack of institutional capacity and financial resources. While Nepal's framework appears to advance an RBA on paper, it is systematically weakened by internal inconsistencies that undermine the very concept of education as a universal public good.

A primary contradiction lies within the (Local Government Operation Act, 2017). While it empowers local authorities to manage public schools, it also permits them to register and oversee private, for-profit institutions. This has entrenched and accelerated the commercialization of education, fostering a two-tiered system where well-resourced private schools cater to the affluent while the public system—the designated guarantor of the right to education—is often left under-resourced. This policy choice directly conflicts with the RBA principles of equity and non-discrimination. Furthermore, the Act Relating to Compulsory and Free Education (2018), while defining the roles of the three tiers of government, is hampered by a lack of clear, enforceable guidelines for ensuring universal access. It fails to establish robust mechanisms for tracking out-of-school children or to specify sanctions for non-compliance, making its implementation inconsistent across local jurisdictions.

The National Education Policy, (2019) further exemplifies these shortcomings. While it reaffirms commitments to the Constitution and the Sustainable Development Goals (SDGs), it offers little clarity on the specific duties and financing mechanisms for local governments. Critically, although the policy vows to increase funding for education, it fails to establish a specific, time-bound target to align with the global benchmark of dedicating at least 20% of the national budget to the sector (MOEST, 2019). This omission undermines the entire financial framework necessary to guarantee the right to education for all.

These systemic weaknesses are reflected in the inconsistent implementation of specific programs. The nationwide midday meal program, for instance, is a flagship initiative designed to increase enrollment and improve student nutrition. However, its implementation highlights the very gaps it seeks to address, with frequent reports of funding delays, inconsistent food quality, and inadequate logistical support at the local level. While the SESP aims to strengthen this program, its success remains contingent on resolving underlying issues of local capacity

and financial accountability (MOEST, 2022). Similarly, other key interventions have faltered. The School Improvement Plans (SIPs), a core component of past sector plans, were intended to be community-driven tools for quality enhancement. However, a study by (Budhathoki, 2023) highlights that many head teachers and Parent-Teacher Association members lack the necessary knowledge for effective implementation, revealing disconnect between central policy design and local-level capacity. This was starkly exposed during the COVID-19 pandemic. While the government issued the Student Learning Facilitation Guideline, 2077 and (MOEST, 2020) to promote distance learning, its effectiveness was severely limited by the digital divide and the varied capacities of local authorities. Moreover, the widespread use of schools as quarantine centers, as noted by (Ghimire, 2020), demonstrated a fundamental disregard for the principle of child-friendly, safe learning environments.

Parallel to its federalization process, Nepal has integrated the SDGs, particularly SDG 4 on quality education, into its national planning frameworks. The government's roadmap, Sustainable Development Goals: Status and Roadmap (2016–2030) (National Planning Commission [NPC], 2017), and the Nepal National Framework for SDG 4 (2020) outline a vision for localizing these global targets. The framework explicitly called for all provincial and local governments to develop their own SDG 4 roadmaps by 2020. However, this initiative has largely faltered. Many local governments remain uninformed and unsupported, lacking the technical capacity and resources to undertake such strategic planning. This institutional gap means that despite the national commitment, the SDG agenda has failed to gain meaningful traction where it matters most—in the communities and schools across the country.

Findings and Discussion

This section presents a critical analysis of the persistent challenges hindering the realization of the right to education in Nepal, utilizing the (Participation, Accountability, Non-discrimination, Empowerment, and Linkage) PANEL framework as an analytical lens. Despite the presence of robust legal and policy frameworks, a discernible chasm exists between Nepal's de jure commitments and the de facto realities experienced by millions of children, particularly those from marginalized communities. This implementation gap is attributed not merely to slow progress but to deep-seated, systemic failures that permeate the core principles of a Rights-Based Approach (RBA).

The principle of participation in Nepal's educational governance structures remains significantly constrained, creating an illusion of inclusion rather than a reality of empowerment. A Rights-Based Approach (RBA) requires the active and meaningful engagement of communities and learners. However, while formal mechanisms are in place, they consistently fail to achieve this goal, undermining the effectiveness of the entire education system.

This failure is most evident in community governance bodies like School Management Committees (SMCs) and Parent-Teacher Associations (PTAs). Although legally empowered, their efficacy is frequently compromised by a lack of necessary resources, adequate training, and genuine devolved authority. This deficiency impedes their capacity to foster meaningful engagement, particularly from marginalized groups (UNESCO, 2018). Consequently, the voices of historically excluded communities—including Madheshi, Dalit, Muslim, and Janajati groups—are often not adequately integrated into educational decision-making processes. This leads to an insufficient consideration of their distinct needs and perspectives in policy formulation and practical implementation (UNICEF Nepal, 2022).

Furthermore, this lack of participation extends directly into the classroom, where pedagogical practices are a critical component of an RBA. Prevailing teaching methods, particularly in rural school settings, remain predominantly teacher-centric and reliant on rote memorization. This instructional methodology, by its very nature, restricts student agency and circumvents the empowerment of learners as active rights-holders in their own educational journeys. As noted by Save the Children (2018), this approach not only stifles critical thinking but also fails to cultivate the confidence and skills students need to claim their rights.

The role of the National Human Rights Commission in coordinating and collaborating with the Ministry of Education and the Curriculum Development Center for human rights-based education is important, but it has been limited by systemic problems. It has also issued press releases at various times to urge and direct the government and relevant stakeholders to be responsible for ensuring the right to education (National Human Rights Commission, 2057-2080 BS). However, due to lack of resources, lack of implementation of laws, and the government's apathy to implement the recommendations of the commission, children from Dalit, Madhesi, disabled and indigenous communities in particular are deprived of their right to education.

Accountability is the bedrock of the RBA, requiring that duty-bearers (primarily the state) be answerable for their obligations and that rights-holders have access to effective remedies for violations. In Nepal’s education sector, the accountability framework is demonstrably weak, hampered by profound deficiencies in legal enforcement, financial transparency, and political will. This creates a system where policies are declared without consequence and rights are violated with impunity.

Legal accountability is undermined by a critical lacuna between legislation and enforcement. Despite robust prohibitions against discrimination and the guarantee of free and compulsory education enshrined in the Constitution (2015) and the Compulsory and Free Education Act (2018). Empirical evidence consistently documents the persistence of discrimination within

schools, notably on the basis of caste and ethnicity, where Dalit children face humiliation and segregation (UNICEF Nepal, 2022). This observation underscores a critical systemic failure to translate legal provisions into actionable safeguards. Without clear grievance redressal mechanisms that are known, trusted, and accessible to marginalized communities, legal guarantees remain purely aspirational.

Financial accountability is equally tenuous. While Nepal's transition to federalism was intended to make public spending more transparent and responsive, the reality has been fraught with challenges. The centralized nature of education funding persists in practice, with the federal government retaining significant control over budget allocation. Resources often flow through opaque channels, with marginalized and remote regions receiving disproportionately less funding per capita compared to more accessible and politically influential areas (Action Aid Nepal, 2019). This inequitable distribution represents a fundamental breach of the state's obligation to use the maximum available resources to fulfill the right to education progressively. Furthermore, the actual disbursement and utilization of allocated funds are frequently hindered by administrative delays, bureaucratic impediments, and corruption (Neupane, 2023). Local governments, newly tasked with managing education, often lack the technical capacity for sound financial planning and reporting, making it difficult to track whether funds designated for specific programs—such as scholarships for girls or resources for children with disabilities—reach their intended beneficiaries.

This accountability deficit is exacerbated by a lack of reliable data. A robust monitoring and evaluation system is essential for holding duty-bearers to account, yet Nepal's Education Management Information System (EMIS) has been criticized for inconsistencies and inaccuracies, particularly in capturing data on out-of-school children and learning outcomes among different demographic groups (World Bank, 2021). Without credible data, it is impossible to assess the impact of policies, identify implementation bottlenecks, or hold officials accountable for performance.

The core RBA principle of non-discrimination faces substantial challenges in Nepal, evidenced by persistent inequalities and exclusionary practices that directly impact the Availability, Accessibility, Acceptability, and Quality (AAAQ) of education. Deep-seated socio-economic and geographic marginalization generate compounded disadvantages, severely restricting educational access for historically marginalized communities such as the Madheshi, Dalit, Muslim, and Janajati groups (UNICEF Nepal, 2022). This exclusion is further exacerbated by systemic issues including poverty, societal stigma, and gender-based violence, with girls and children with disabilities experiencing a particularly disproportionate impact on their ability to access and benefit from education (UNESCO, 2022).

Geographic disparities are equally profound, directly undermining the availability and accessibility dimensions of the AAAQ framework. Nepal's rugged terrain presents significant barriers for children in remote mountainous regions, who contend with a scarcity of qualified teachers and inadequate infrastructure (ADB, 2020). Such conditions constrain both the physical presence of educational institutions and the ease with which children can reach them. Furthermore, the acceptability of education is compromised by the continued documentation of discrimination based on caste and ethnicity within schools, despite explicit legal prohibitions (UNICEF Nepal, 2022). This indicates a systemic failure to cultivate genuinely non-discriminatory and inclusive learning environments that are welcoming and culturally relevant for all children, thus diminishing the acceptability of the educational experience for many. The cumulative effect of these factors also negatively impacts the quality of education provided to these groups.

The empowerment of both students and educators is significantly undermined by pervasive systemic failures in teacher preparation and professional support. While RBA principles advocate for learner-centered, participatory, and respectful pedagogy, these remain largely unrealized in practice. A significant proportion of educators lack the requisite skills to implement inclusive teaching methods that adequately accommodate student diversity (Save the Children, 2018). The prevalence of teacher-centric classrooms and an over-reliance on rote memorization actively restrict student agency and hinder their development as active participants in their learning process, thereby undermining their educational empowerment. Furthermore, the challenges of low teacher morale and high attrition rates critically exacerbate these pedagogical gaps. Inadequate salaries and demanding working conditions, particularly in remote areas, demonstrably exert a negative influence on the quality of education delivered and degrade the overall learning environment (UNESCO, 2022). These factors directly impede the capacity of teachers to foster student empowerment and cultivate a supportive and engaging educational setting.

The final principle of the PANEL framework, Linkage, emphasizes that the right to education is indivisible from and interdependent with all other human rights. It also requires that national laws and policies be explicitly linked to and consistent with international human rights standards. In Nepal, a critical impediment to the RBA is the weak linkage between policy formulation and practical implementation, resulting in fragmented, contradictory, and soloed efforts.

A fundamental dissonance is observed between Nepal's robust legal provisions and the absence of a coherent, cross-sectorial implementation strategy. For example, the right to education cannot be realized in isolation from the right to health, the right to food, or the right to be free

from poverty. A malnourished child cannot learn effectively, and a child from a family trapped in extreme poverty is likely to be engaged in child labor rather than attending school. However, government policies often operate in silos. The Ministry of Education's plans are frequently disconnected from the work of the Ministry of Health and Population or the Ministry of Women, Children and Senior Citizens. This lack of integrated policy-making means that the interconnected nature of socio-economic and geographic marginalization is never holistically addressed. Legal frameworks alone are insufficient to resolve these compounded disadvantages.

Financial policies frequently contradict stated RBA goals. While policies advocate for equity and inclusion, budget allocation practices often reinforce existing inequalities. The centralized nature of education funding, for instance, demonstrably limits responsiveness to the distinct needs of local communities (ADB, 2020), thus highlighting a weak linkage between national policy and localized resource allocation. Similarly, the government's tacit endorsement of a rapidly expanding private education sector creates a two-tiered system that directly undermines the constitutional commitment to equitable public education, creating a contradiction between policy goals and state actions (Bhatta, 2018).

This fragmentation is also evident in the federal structure. The devolution of authority was meant to strengthen linkages between communities and the state, but in many cases, it has led to confusion over roles, responsibilities, and resource flows between the federal, provincial, and local tiers of government (Viennet & Pont, 2017). This was starkly illustrated by the faltering attempt to localize the Sustainable Development Goals. While the Nepal National Framework for SDG 4 (2020) called for local governments to develop their own roadmaps, most lacked the technical and financial support to do so, demonstrating a critical break in the linkage between national ambition and local capacity (NPC, 2017).

Lastly, the absence of a comprehensive overhaul of the systems supporting the teaching workforce reflects a fragmented approach. Policies to improve student learning cannot succeed without a robust linkage to policies that ensure teacher well-being, competitive remuneration, and high-quality professional development. Without this linkage, even the best-intentioned reforms are destined to fail at the classroom level.

Conclusion

This research robustly demonstrates that despite Nepal's progressive constitutional and policy commitments to a rights-based approach (RBA) in education, a significant implementation gap persists. The comprehensive analysis, structured around the PANEL framework (Participation, Accountability, Non-discrimination, Empowerment, and Linkage), effectively identified and

elucidated the systemic barriers hindering the realization of the right to education, particularly for marginalized children.

The study's strength lies in its multi-faceted examination, pinpointing critical issues such as weak legal enforcement, inequitable and centralized resource allocation, profound socio-economic and geographic marginalization, ineffective community participation, and deficiencies in teacher training and pedagogical practices. By coherently integrating the AAAQ (Availability, Accessibility, Acceptability, and Quality) framework, we have underscored how these interconnected failures disproportionately affect vulnerable populations, including Dalit, Madheshi, and children with disabilities, thereby perpetuating cycles of poverty and exclusion.

The findings offer a clear and compelling mandate for action. Moving forward, a strategic and multi-pronged approach is essential. This necessitates strengthening legal and grievance redress mechanisms, decentralizing and increasing transparency in financial allocation, genuinely empowering local governance structures, and fundamentally overhauling teacher education to embed RBA principles and inclusive pedagogies. The NHRC can effectively use its mandate to ensure the rights of Nepali children, paying attention to the Paris Principal, by focusing on studies related to rights-based education, research, and collaboration with educational stakeholders.

This research provides a foundational understanding, emphasizing that bridging the implementation gap is not merely an administrative task but a profound moral imperative requiring unwavering political will, collaborative stakeholder engagement, and sustained global partnerships. Ultimately, ensuring education as a fundamental human right for every child in Nepal hinges on these concerted efforts.

References

Action Aid Nepal. (2019). *Education financing and equity in Nepal*. Kathmandu: ActionAid Nepal.

Asian Development Bank. (2020). *Nepal education sector assessment: Summary report*. https://www.adb.org

Bhatta, P., & Pherali, T. (2017). *Nepal: Patterns of privatisation in education: A case study of low-fee private schools and private chain schools*.

Budhathoki, S. B. (2023). *The Preparation and Implementation of School Improvement Plans (SIPs): Its Implication in Improving Learning Outcomes*. Molung Educational Frontier, 13(01), 230–249. https://doi.org/10.3126/mef.v13i01.56086

Eide, A. (2005). *Economic, social, and cultural rights as human rights. In A. Eide, C. Krause, & A. Rosas (Eds.), Economic, social and cultural rights: A textbook* (2nd ed., pp. 9-40). Martinus Nijhoff Publishers.

Ghimire, B. (2020). *Universities and schools turn into quarantine centers*. The Kathmandu Post. https://kathmandupost.com

Government of Nepal. (2015). *The Constitution of Nepal 2015*. Law Books Management Committee. https://www.lawcommission.gov.np

Government of Nepal. (2018). *Education Act 2075 (2018)*. https://www.lawcommission.gov.np

Ministry of Education, Science and Technology. (2009). *School Sector Reform Plan (2009–2016)*. Government of Nepal.

Ministry of Education, Science and Technology (MoEST). (2016). *School Sector Development Plan, 2016–2023*. Government of Nepal.

Ministry of Education, Science and Technology (MoEST). (2017). *Local Government Operation Act, 2074 (2017)*. Government of Nepal.

Ministry of Education, Science and Technology (MoEST). (2017). *Inclusive Education Policy, 2017*. Government of Nepal.

Ministry of Education, Science and Technology (MoEST). (2018). *Act Relating to Compulsory and Free Education, 2075 (2018)*. Government of Nepal.

Ministry of Education, Science and Technology (MoEST). (2019). *National Education Policy, 2076 (2019)*. Government of Nepal.

Ministry of Education, Science and Technology (MoEST). (2019). *SDG 4: Education 2030 Nepal National Framework*. Government of Nepal.

Ministry of Education, Science and Technology (MoEST). (2020). *Student Learning Facilitation Guideline, 2077*. Government of Nepal.

Ministry of Education, Science and Technology. (2022). *School Education Sector Plan (2022*–2032). Government of Nepal.

National Human Rights Commission (NHRC), *2080 Mahatwapurna Press Bigyapatiharu (2057-2080)*

National Planning Commission (NPC). (2017). *Sustainable Development Goals: Status and roadmap 2016–2030*. Government of Nepal.

Neupane, B. (2023). *The educational planning of local governments: A case study*. Kathmandu University School of Education. https://hdl.handle.net/20.500.14301/471

Sandkull, O. (2005). *Strengthening inclusive education by applying a rights-based approach to education programming*. UNESCO.

Save the Children. (2018). *Situation analysis of teachers in Nepal. Kathmandu: Save the Children.*

Save the Children. (2018). *Every last child: Inclusive education in Nepal*. Save the Children.

UNESCO. (2015). *Education for All 2000–2015: Achievements and challenges.* https://unesdoc.unesco.org

UNESCO. (2022). *Global education monitoring report 2022: Inclusion and education*. https://unesdoc.unesco.org

UNICEF Nepal. (2022). *Situation analysis of children and women in Nepal*. https://www.unicef.org/nepal

United Nations. (1948). *Universal Declaration of Human Rights*. https://www.un.org/en/about-us/universal-declaration-of-human-rights

United Nations. (1979). *Convention on the Elimination of All Forms of Discrimination against Women*. United Nations Treaty Series, 1249, 13.

United Nations. (1989). *Convention on the Rights of the Child*. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

United Nations. (2006). *Convention on the Rights of Persons with Disabilities*. United Nations Treaty Series, 2515, 3.

United Nations. (2015). *Transforming our world: The 2030 Agenda for Sustainable Development*. https://sdgs.un.org/goals/goal4

Viennet, R., & Pont, B. (2017). *Education policy implementation: A literature review and proposed framework*. (OECD Education Working Papers, No. 162). https://doi.org/10.1787/fc467a64-en

Sambahak: Human Rights Journal (2025), Vol. 25, 94-125

Voices at the Margins: Accessing Justice as Women with Disabilities in Nepal

Dr. Neeti Aryal Khanal[1], Jyotika Rimal[2], Suyash Bhattarai[3], Shubham Khanal[4]

Email: nkhanal@oberlin.edu, rimal.jyotika@gmail.com,
bhattarai.suyash777@gmail.com, subham.khanal63@gmail.com,

To cite this article:
Khanal, N. A., Rimal, J., Bhattarai, S., & Khanal, S. (2025). Voices at the Margins: Accessing Justice as Women with Disabilities in Nepal. *Sambahak: Human Rights Journal*, *25*(1), 94–125. https://doi.org/10.3126/sambahak.v25i1.83921

Keywords: Access to justice, margins, persons with disabilities, Justice System

Abstract

Women with disabilities in Nepal face multiple layers of marginalization due to their intersecting identities, particularly gender, caste, geographical location and type of disability. This compounded marginalization not only increases their vulnerability to violence and abuse but also significantly restricts their access to justice. Despite the critical importance of this issue, research on women with disabilities' access to justice remains limited. Existing studies tend to focus separately on disability rights or gender justice rather than examining their intersection. This paper draws on the study conducted in 2025 collaboration with leading organization on disability rights: Access Planet Organization. The study adopted a mixed method approach of survey, case study and key informant interviews focusing on four provinces in Nepal: Gandaki, Koshi, Madhesh, and Karnali. Findings reveal that Nepal's justice system is designed from an ableist perspective, assuming that justice seekers are fully physically and emotionally "capable" individuals who can navigate legal mechanisms independently or with family support.

[1] Assistant Professor of Sociology at Patan Multiple College, Tribhuvan University, Nepal

[2] Development Practitioner and Researcher

[3] Intern in the research project

[4] Intern in the research project

Background and Context

Persons with Disabilities in Nepal comprise (2.2%) of the total population of Nepal. Men with disabilities comprise 2.5% of the entire male population while 2% of the total Female population are women with disabilities (Central Bureau of Statistics, 2021). Studies show that persons with disabilities in Nepal experience various forms of discrimination at home and face barriers to access their basic rights of education, health, and freedom of expression. Approximately 68.2% of people with disabilities have no access to education, 85% have no access to health care facilities, and 77.8% have no employment to earn their living (Paudel et al, 2017).

Girls/women with disabilities in Nepal experience further challenges; being a woman in a country with patriarchal ideologies and practices (Maya Dhungana, 2006). The experience of girls and women with disabilities are shaped by their intersectional identities of caste, class, age, marital status, education, income and geographical location (Kim et al., 2020). Number of studies have established that women with disabilities are more vulnerable to various forms of discrimination and violence in low-income countries like Nepal (Emerson & Llewellyn, 2023). Number of studies focused on Nepal shows that more than half of women with disabilities (57.7%) have experienced violence in their lifetime (Khanal, 2009; Puri et al., 2015). Despite clear evidence that violence on women with disabilities are very high, there is very limited knowledge on whether women with disabilities seek justice, if they do, what is their experience of seeking service through different justice mechanism in Nepal

The study conducted by the National Human Rights Commission of Nepal [NHRC] (2022) is the only available research in the area so far in Nepal. The study found that there has been progress in taking initiatives to make the justice mechanism more physically accessible. However, the study concluded that human resources in police, courts and other judicial bodies have not received orientation regarding special arrangements and support systems for people with disabilities. The study does not explore women with disabilities lived experience of seeking justice and the challenges they face. The current paper aims to fill this gap.

The paper is divided into five sections. The first section discusses the broader and specific objectives of the study followed by aims of the current paper. The second section presents research methodology discussing its methods and its process. Third section discusses the international and national frameworks on access to justice in relation to women with disabilities. The section ends with discussion of current justice mechanism in Nepal. Fourth section discusses ableism and elaborates how it shapes non-disabled person's experience and perception of barriers experienced by persons with disabilities. Fifth section presents three key findings:

knowledge of legal provisions, experience of violence and experience of justice seeking by women with disabilities. The paper ends with a summary of findings and recommendations for inclusive justice mechanisms. The paper is written keeping accessibility needs of readers with visual disabilities. Thus, figures and tables are accompanied by the description.

The paper is written in a way that its electronic version is accessible to readers with visual disabilities. Each figure and table are accompanied by the description.

Objective and Methodology

The paper is based on study conducted in 2025 in four provinces of Nepal: Gandaki, Koshi, Madhesh and Karnali. The broader objective of the study was to explore women with disabilities' experience in accessing justice mechanism. The study was informed by these specific objectives:

1. To understand existing formal and informal mechanisms of justice mechanism in Nepal
2. To explore women with disabilities knowledge on existing justice mechanisms in Nepal
3. To identify challenges and opportunities on women with disability's access to justice in Nepal

The current paper is based on the findings of this study. The paper is informed by the following research questions:

1. What is the level of legal knowledge of women with disabilities?
2. What forms of violence do women with disabilities experience?
3. How do women with disabilities experience process of seeking justice?

The study is informed by core value of right based movement led by persons with disabilities: "Nothing about us, without us". The study actively involved women with disabilities throughout the research process, where they led as enumerators in the field and social mobilizers, each representing a certain district and collecting data for each province. The study project was designed with feedback and inputs from Access Planet Organization to align with advocacy goals to work towards a more inclusive and accessible justice mechanism in Nepal.

The study was undertaken in four provinces of Nepal: Koshi, Gandaki, Madhesh and Karnali. To address the financial and time constraints, the research team conducted a study focusing on one district of each province. The following districts were selected purposely based on the requirement of Access Planet Organization:

Table 1

Research Site

Province	District
Gandaki	Kaski
Koshi	Morang
Madhesh	Rautahat
Karnali	Surkhet

Note: Districts where research was conducted in each province

The study adopted a mixed-method approach combining both quantitative and qualitative methods. The study used mainly three methods: survey (200), key informant interview (19) and case study (19).

Survey

The survey was designed and finalized after several rounds of consultations with the Access Planet Organization. Population and Statistics Research Hub (PSR HUB) was also consulted to ensure survey questions were feasible and aligned with the research objectives. The questions were broadly categorized into socio-demographic information, personal experience of justice violation, knowledge and experience of justice mechanism. The survey was conducted in four provinces of Nepal: Gandaki, Koshi, Madhesh and Karnali. In each province, female enumerator with disability conducted survey face to face with 50 women with different kinds of disabilities. Enumerators collect responses using google forms in their mobile devices. Enumerators were provided with orientation and on-site guidance to conduct the survey.

Case Study

The study team collected 19 different cases of women with disabilities in different processes of seeking justice. We received 3 cases from Karnali, 9 cases from Madhesh, 3 cases from Gandaki and 4 cases from Koshi. The process of identifying the relevant case studies happened through a series of site visits and meetings with concerned stakeholders at One Stop Crisis Management Centers (OCMC), Shelter homes, Women Cell, Local Police Station, Government Lawyer's office of respective district, District court, National Federation of Disabled-Nepal (NFDN)

Offices in respective provinces. Except for documentation in OCMC, the study team had to rely on officers working in police stations and courts to identify the cases, since they were not documented. Abiding by the rule of the law and also research ethics, the study team did not seek information that would identify the survivors.

Key Informant Interviews

The study team conducted 19 Key Informant Interviews with different stakeholders: disability rights advocates, policymakers, government officials, health professionals, human rights activists and advocates.

Data Analysis

Diverse methods of data analysis were done according to the nature of the data. Quantitative data generated from the survey was analyzed via MS-Excel and SPSS. The qualitative data from FGD and case study were coded based on the themes and analyzed.

International and National frameworks on Access to Justice

This section discusses various national and national frameworks that establish persons with disabilities' rights to inclusive and accessible justice mechanism. The UN Convention on the Rights of Persons with Disabilities (CRPD) is the guiding principle to all state parties who have ratified the convention. Nepal ratified both CRPD and its optional Protocol on 27th December 2009 by legislative parliament. Nepal became state party since 7th May 2010 after submission of ratification notes to United Nations.

Article 3 of General Principles of CRPD requires that state parties should ensure that Persons with Disabilities have dignity, individual autonomy and freedom to make their choices. The article also establishes right to non-discrimination and full and effective participation and inclusion in society.

Article 12 and 13 of CRPD brings a paradigm shift in the legal recognition of the autonomy of Persons with Disabilities. Article 12 (equal recognition before the law) has five key provisions. They are as follows:

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

It is important to note that CRPD makes three important points here. First it establishes that Persons with Disabilities have right to enjoy "legal capacity on equal basis with others" in all aspect of life. Second point it makes is that state parties need to take "appropriate measures to provide access" to persons with disabilities. The article also makes state parties responsible to ensure that "appropriate and effective safeguards to prevent abuse" are made in accordance of international human rights law

Similarly, Article 13-Access to justice has two key provisions:

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

CRPD clearly asserts the need to recognize the legal capacity of Persons with Disabilities. Similarly, it argues that in order to ensure effective justice for persons with disabilities, there needs to be provision of "procedural and age-appropriate accommodations" envisioning persons with disabilities as both direct and indirect participants. Another important point CRPD makes is having provisions for training for personnel who work in different sectors associated with the justice mechanism.

Along with CRPD, other international treaties such as International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) establish the following rights of Women and Girl's access to justice. These include:

- Equal recognition before the law and access to justice
- Equality and non-discrimination
- Accessibility
- Effective remedy
- Fair Trial
- Legal assistance
- Effective participation in all legal proceedings through the provision of procedural, age-appropriate, disability related accommodations

In order to ensure effective implementation of CRPD, International Principles and Guidelines on Access to Justice for Persons with Disabilities has been formulated. This guideline is endorsed by the International Commission of Jurists (ICJ), the International Disability Alliance. The guideline identifies 10 universal principles:

Table 2

International Principles and Guidelines on Access to Justice for Persons with Disabilities

Principle 1	All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability.
Principle 2	Facilities and services must be universally accessible to ensure equal access to justice without discrimination of persons with disabilities.
Principle 3	Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations.
Principle 4	Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis.
Principle 5	Persons with disabilities are entitled to all substantive and procedural safeguards recognized in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process.
Principle 6	Persons with disabilities have the right to free or affordable legal assistance.
Principle 7	Persons with disabilities have the right to participate in the administration of justice on an equal basis with others.
Principle 8	Persons with disabilities have the rights to report complaints and initiate legal proceedings concerning human rights
Principle 9	Effective and robust monitoring mechanisms play a critical role in supporting access to justice for persons with disabilities.
Principle 10	All those working in the justice system must be provided with awareness-raising and training programmes addressing the rights of persons with disabilities, in particular in the context of access to justice.

In the next section, the paper discusses some examples of the best practices of implementation of these principles within justice mechanisms in different parts of the world. All Australian courts are equipped with ramps, lifts and assistive technologies such as hearing loops and live captioning systems. The court also provides interpreters including for sign language and documents in Braille or easy-read formats. In addition to that, Australia has programs like "vulnerable persons framework" that guide police interactions on persons with disabilities (Australian Human Rights Commission, 2013). Similarly, Canada has formulated the Accessible Canada Act (2019), which stipulates that courts and police services to identify, remove and prevent barriers for persons with disabilities. Similarly, service seekers can participate in court proceedings remotely via accessible digital platforms (Government of Canada, 2024). Similarly, Norway emphasizes universal design and inclusivity in its justice system. Police officers in Norway receive extensive training on handling disability-related cases, including gender-based violence and hate crimes. They also have special units that focus on providing service to vulnerable groups, including persons with disabilities (Norwegian Human Rights Institution, 2019).

Similarly in Nepal, in certain provinces, the government has employed a significant number of persons with disabilities in local government positions, which is a positive development. This inclusive approach is fostering employment opportunities and the empowerment of individuals with disabilities. This is a positive step towards inclusivity. Similarly, Gandaki province has a draft of the province level disability Act policy, which is being readied to be passed from their provincial assembly, showing ownership of a local level towards disability policy. Federalism has created more spaces to localize disability rights initiatives in local level as evident through the excerpt of the key informant interview below:

> *"There are efforts made from the partnership of local government, NGOs and disability rights organizations who are all working together in Koshi Province and have covered a wide range of issues. Examples are Disability Rehabilitation Program (अपाङ्गता पुनर्स्थापना कार्यक्रम). There is also Disability Assistance Room (अपाङ्गता सहायता कक्ष) whose procedure has been designed by provincial govt. The employment for the above-mentioned employees are funded by both local and provincial govt. There are employees (persons with disabilities) employed by the Nepal govt. There is also a disability help desk for those who want information." - Disability rights activist, Koshi Province.*

National Frameworks

Declaration of International Year of Disability (IYDP) in 1981 followed by UN Decade of Disabled Persons (1983-1992) paved the way for recognition of rights of persons with disabilities in Nepal. Nepal drafted Disabled Protection and Welfare Act (DPW) in 1982: the first policy on disability.

Disability Rights Activists have criticized this policy being informed by a welfare-oriented approach rather than rights-based approach. As indicative of its time of formulation, conceptualization of disability in the policy is gender less and gender insensitive. With the reinstitution of democracy in 1991, the disability movement in Nepal grew with active participation of women leaders with disability. This led to growing recognition of differential needs and challenges of women and girls with disabilities within the disability and women's rights movement.

Nepal ratified Convention on the Rights of Persons with Disabilities (CRPD) on 27th December 2009 and followed by optional protocol on 7th May 2010. The convention is a legally binding universal tool that guarantees the states which have ratified the convention are accountable to promote and protect the rights of Persons with disabilities. Gender equality is one of the key principles that CRPD promotes, Article 6 of CRPD establishes the state's obligation to take appropriate measures to ensure the rights of women and girls with disabilities. These measures include legislations, policies, and programs.

Government of Nepal formulated a new policy, "The Act Relating to Rights of Persons with Disabilities" (ARPD) in 2017, after rigorous consultations with Organizations of People with Disabilities (OPDs) and stakeholders concerning rights of persons with disabilities. This policy/act was formulated for application of CRPD and to replace the earlier disability policy based on welfare-oriented approach.

Article 15 of ARPD has specific provisions relating to the right to access to services, facilities and justice". The act mentions:

1. *The persons with disabilities shall have the right to have easy access to other services and facilities that are open or provided for the public, including educational institutes, housing, workplaces, buildings, roads, transportation, and electronic communication services*
2. *The persons with disabilities shall have the right to free legal aid in order to ensure that they have access to justice.*

Considering the intersectional challenges of women with disabilities, Chapter-4 of ARPD entitled "Additional Rights of Women and Children with Disabilities" recognizes the rights of women and girls with disabilities. The act also acknowledges specific needs of women and girls with disabilities such as reproductive rights:

1) The Government of Nepal shall make necessary provisions as prescribed to protect the rights of women and girls with disabilities and to create an environment that is conducive to the maximum use of their knowledge, skill, and potential.

2) The Government of Nepal shall make necessary provisions for the protection of their health and reproductive rights, taking into account, considering the special situation of the women and girls with disabilities.

Justice mechanisms in Nepal remain exclusionary towards women experiencing various forms of gender-based violence. Survivors with disabilities experience further challenges as justice mechanisms are not disability friendly. Review of policies and programs relating to justice mechanisms shows that "access to justice for women with disability" is not prioritized within both policies and programs.

The Government of Nepal has taken a positive step through formulation of the Access to Justice Commission on 25 July 2017. The commission has identified a target group that has challenges to access justice mechanisms. These target groups are identified as follows: children, women, indigenous/ethnic groups, persons with disability, poor and excluded people who are unable to seek justice. To fulfil its aim to make justice mechanisms inclusive and gender friendly, the annual plan of 2023-2024 mentions that the program will be designed and implemented to increase the access of justice to female survivors, marginalized people including persons with disabilities. The commission has formulated "Guideline for Interpreters" on 5th January 2016, but the guideline only includes language interpreters, excluding sign language interpreters, which is crucial to ensure access to justice for the deaf and hard of hearing.

During the study, the research team could access the Second Strategic Plan of Nepali Judiciary (2009-2014) and Fourth Strategic Plan of Nepali Judiciary (2020-2024). In the second plan, the need to make justice mechanisms inclusive for disability was acknowledged as feedback given by right holders' organizations. The fourth plan identifies representation and inclusiveness as one of the nine values. However, the plan does not clarify stakeholders and right holders for whom the judiciary has to become inclusive. This shows that leadership in the judiciary in Nepal are not sensitized about issues and concerns of women with disabilities and their barriers to justice. Similarly, the study team reviewed annual reports of Nepal police, and the report does

not have any mention of persons with disabilities and its move towards making its services more inclusive and disability friendly.

The study also reviewed Gender Equality and Social Inclusion (GESI) strategy for the Judiciary (2021/22-2025/2026). The GESI strategy follows the conventional method of using gender identity as a main reference point. The strategy only uses Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) as its reference point and ignores CRPD altogether as its guiding principle. Further review of the strategy showed that persons with disability only comprised 1% of the total workforce within the judiciary. In strategy 6" create a conducive environment for women and people from target groups to continue their judiciary service", the GESI strategy mentions "disability friendly restrooms" and "disability friendly or obstacle-free workrooms or working environments". These are positive indications of understanding of physical accessibility. However, the GESI strategy does not offer nuanced understanding of intersectional barriers that women with disabilities experience to access justice.

One of the key challenges that Nepal faces in access to justice of persons with disability is lack of a constitutional body to coordinate and monitor rights of persons with disability. Many of the countries who have ratified CRPD have formulated an independent autonomous commission on disability. Nepal currently does not have a commission on persons with disabilities. The newly formed National Inclusion Commission has identified disability as one of the priority areas. However, the commission does not have any representation from the disability community. This violates the spirit of "nothing about us, without us". It is important that the commission have representative members of persons with disability, and more importantly women with disability as a member.

There is provision for the Steering Committee and Coordination Committee in chapter 9 of ARPD Persons with Disability (2017). Section 38 of the chapter mentions that the committee is responsible to coordinate, monitor, and promote the activities related to the rights, facilities, services and protection of persons with disability.

The demand for autonomous commission on disability has been raised by disability rights activists, which has been largely ignored. To ensure that the rights of persons with disability is mainstreamed, the government need to step up to do following: 1) Appoint persons with disability, including at least one woman with disability in National Inclusion Commission, 2) Form National Commission of Persons with Disability Nepal ensuring inclusion of women with disability. In addition to this, women with disabilities need to be included within every commission and constitutional body that has been formed to work on human rights, gender

equality and social inclusion. So far women with disabilities have not been included within any of the key commissions such as National Women's Commission, National Human Rights Commission.

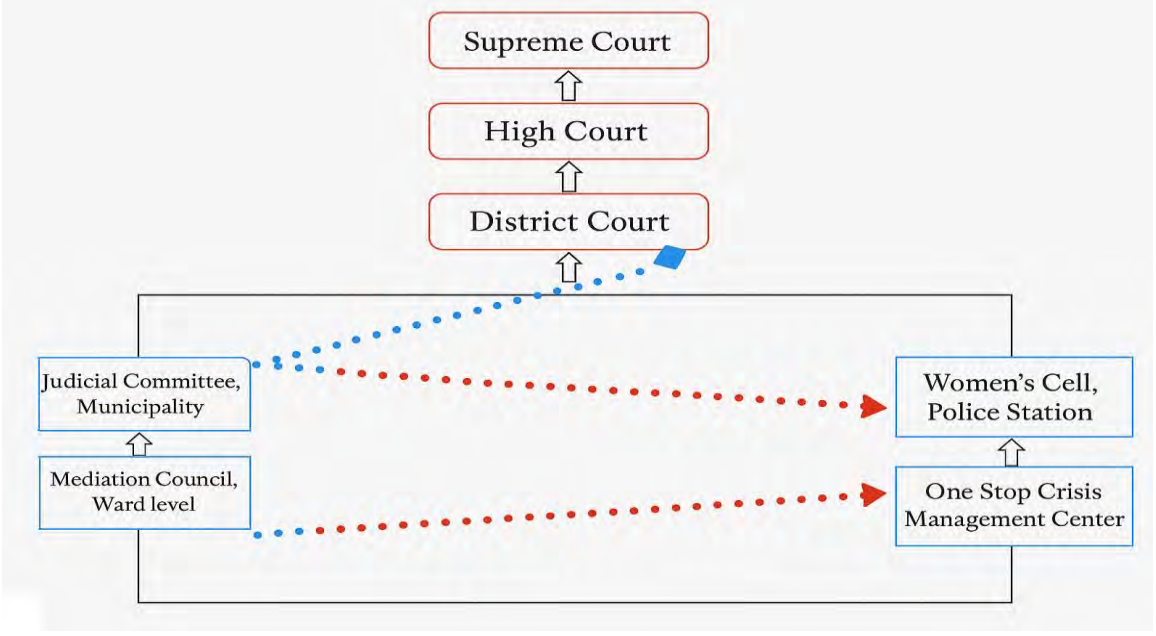
Justice Mechanism in Nepal

Nepal transitioned into a federal democratic republic after the promulgation of its new constitution in 2015. With federalism, the justice system was restructured to align with the country's new political and administrative divisions, distributing powers across three levels of government: federal, provincial, and local. Federal court is represented as supreme court, followed by Appellate court as provincial and district court as local. Based on the focus group discussion and site visits for the case study, the justice system mechanism can be visualized as below.

Federal governance system also conceptualizes informal justice mechanisms through mediation councils in respective wards of rural and urban municipalities. Nepal currently has 753 judicial committees operating at the rural and urban municipalities. These informal justice mechanisms have been created to address the problem of lengthy and expensive judicial processes.

Figure 1

Justice Mechanism of Nepal (based on the study)



Note: The image is a flowchart showing formal and informal pathways to justice in Nepal. At the top center is the Supreme Court, followed by the High Court and District Court in a vertical hierarchy. Below the District Court, the chart branches into two directions. On the left are Judicial Committee, Municipality and Mediation Council, Ward Level. On the right are Women's Cell, Police Station and One Stop Crisis Management Center. A blue dotted arrow flows from the local bodies on the left to the District Court, showing the path to the formal justice system. Red dotted arrows point from the left-side bodies to the right-side services, indicating referral for protection or emergency support. The chart illustrates how community-level mechanisms interact with both legal institutions and crisis response services.

The figure above is visualized by the study team based on the qualitative study. The dotted yellow lines refer to the informal network between the institutions. During our study visit, we found that some judicial committee of the municipality helped connect the survivors to the women's cell in the police station and OCMC. In some cases, district courts also refer to the decisions made by the judicial committees in areas where there is better coordination between the justice mechanisms.

Understanding Ableism and Barriers

The paper argues that justice mechanism in Nepal is designed from ableist perspective build on assumptions that justice seekers are fully physically and emotionally "capable" individuals who can navigate legal mechanisms independently or with family support. The paper discusses the perspective of ableism to elaborate how people in decision making positions are unaware about the intersectional barriers that women with disabilities experience in their everyday lives.

Fiona Kumari Campbell, a leading scholar in disability rights, defines ableism as "a network of beliefs, processes, and practices that construct a particular type of self and body—the 'corporeal standard'—projected as perfect and typical of the species, and therefore essential and fully human" (Campbell, 2012, p. 2013). Ableism molds people's perceptions to view individuals with disabilities as inherently "less than" those without disabilities, warranting differential treatment. This includes perpetuating harmful stereotypes, misconceptions, and generalizations about persons with disabilities. Ableism also encompasses the practice of "othering," relegating individuals with disabilities to the status of "different" and "other" (Mike-Meyer, 2016). Cambell (2012) identifies four core tenets of ableism:

Normalcy and Naturality: Ableism dictates what is deemed normal and natural in society, often marginalizing persons with disabilities and characterizing their bodies as abnormal and objects of pity.

Idealized Citizenship: Persons with disabilities are viewed as burdens on societal systems, contributing little to the economy or society—a reflection of charity-based welfare models.

Self-autonomy and Independence: Ableism glorifies independence, shaped by capitalist and patriarchal ideologies, disregarding the interdependent nature of human society where mutual support is vital.

Forced Segregation: Those deemed outside the norm are segregated and excluded from mainstream society, evident historically in practices like institutionalization and segregation in educational and residential settings.

These ableist perspectives are commonly held by non-disabled individuals, influencing their daily realities (Chaturvedi, 2020), including policymakers and people working in justice mechanism who do not have experience of disability. Thus, we argue that justice mechanism in Nepal is built in through ableist perspective, which makes people working in justice mechanism unaware about intersectional barriers that women with disabilities experience.

Intersectional Barriers

The United Nations Conventions on the Rights of Persons with Disabilities [CRPD], (2006, preamble) recognizes the connection between disability and barriers in the following way:

"Disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others"

The CRPD brings a historical shift on how disability has been understood worldwide, limiting it to physical and medical aspects of disability. This definition clearly points out that the marginalization and vulnerability that persons with disabilities experience has little to do with their physical and medical condition. Rather, the major cause of marginalization of persons with disability are the barriers they face.

This points to the need for conceptual clarity on how barriers are defined and conceptualized. The World Health Organization [WHO] (2011) describes barriers as being more than just physical obstacles.

"Barriers are factors in a person's environment that, through their absence or presence, limit functioning and create disability."

A barrier can also be understood as an obstacle or anything that prevents a person with a disability from fully participating in all aspects of society because of their disability.

Barriers can be both visible and invisible. Visible barriers are easily seen and recognized. Invisible barriers such as social stigma, discrimination and stereotypes cannot always be seen directly, but they are felt deeply by the persons with disabilities who experience it. Thus, in this report we combine both forms of barriers. Earlier, barriers were broadly categorized into two areas: physical and attitudinal. Decades of research on persons with disabilities have now expanded these barriers into several categories. Scholars have identified six barriers: attitudinal, communication, physical, policy, programmatic, and social.

Synthesizing the literature review and the experiences of barriers of women with disability, the research report focuses on four key barriers: Social, Physical, Communication and Institution and Policy. The definition of these barriers are also explored in the table below.

Table 3

Definition of barriers

Type of Barrier	Definition
Institutional & Policy Barrier	Institutional and policy barriers occur due to a lack of awareness or enforcement of existing laws and regulations to protect the rights of persons with disabilities. Additionally, this also includes programmatic barriers that limit the effective delivery of a public or private program for persons with disabilities.
Social Barrier	Social barriers are related to the conditions in which people are born, grow, live, learn, work and age – or social determinants of health – that can contribute to decreased functioning among people with disabilities. This also includes stigma, prejudice and stereotypes about persons with disabilities that impede their full participation in all aspects of society.
Physical Barrier	Physical barriers are structural obstacles in natural or manmade environments that prevent or block mobility (moving around in the environment) or access.
Communication Barrier	Communication barriers are difficulties experienced by persons with disabilities that limit their capacity to receive or send information, and to communicate with people.

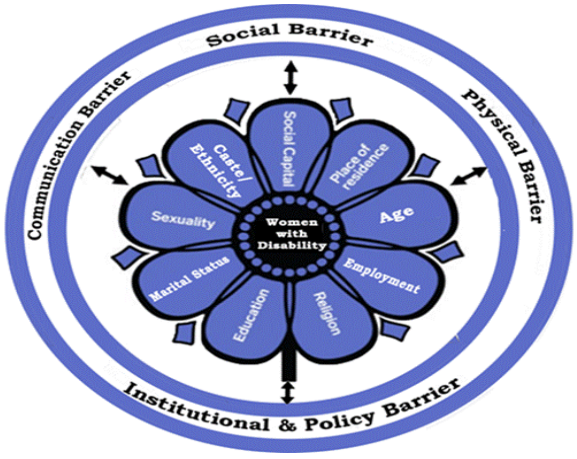
Note: The table presents these barriers separately for conceptual categorization and clarity of understanding. However, none of these barriers work in isolation. These barriers are deeply interconnected and are shaped by intersectional identities of women with disabilities.

In Nepal, the justice system faces several barriers that impede fair and efficient access to justice for its citizens. These obstacles range from structural and systemic issues to socio-economic and cultural factors. Some of the key barriers include complex and slow judicial process, limited

access to legal services, corruption and political interference and ineffective legal aid systems. These challenges become further complex for women with disabilities who experience intersectional barriers that are shaped by their intersectional identities of being women with disability.

Figure 2:

Intersectional Barriers experienced by Women with Disability



Note: The figure above explains the four different types of barriers (social barrier, physical barrier, communication barrier and institutional and policy barrier) faced by women with disabilities. The figure also integrates an intersectional approach within these barriers by including caste/ethnicity, sexuality, marital status, education, religion, employment, age, place of residence and social capital.

Existing data and statistics related to women with disability in Nepal is very rare and scarce, often resulting in inconsistency and contradictions (Poudyal et al. 2018). The present study aims to bring experience of access to justice for women with disabilities in four different provinces (Gandaki, Karnali, Koshi, Madhesh) in Nepal. The main objective of this research is to fill the research gap on women with disabilities by focusing on justice violation and justice mechanisms.

The next section of the paper discusses the findings of the study. The paper presents three key findings: legal knowledge of women with disabilities, experience of violence and experience of justice mechanism.

Legal Knowledge of Women with Disabilities

This section presents legal knowledge of women with disabilities in two areas: knowledge of legal provisions and knowledge of service providers of justice.

The research participants from all four provinces were asked about their knowledge on all the international and national legal frameworks that guarantee rights of women and persons with disabilities. The stated provisions, presented on abbreviated forms were as follows: (Convention on the Rights of Persons with Disabilities (CRPD), Act Relating to the Rights of Persons with Disabilities (ARPD), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Table 4:

Knowledge on all the international and national legal frameworks

Province	CRPD	CEDAW	ARPD	None of the above
Gandaki	37	25	34	14
Karnali	35	18	22	9
Koshi	15	2	18	26
Madesh	11	2	2	39

When asked about the knowledge of justice and legal provisions among research participants, the table shows that most of them are aware of CRPD (Gandaki:37, Karnali: 35, Koshi: 15 and Madhesh: 11). Regarding CEDAW, the numbers are as given (Gandaki: 25, Karnali: 18, Koshi: 2, Madhesh: 2). On knowledge about ARPD, the numbers are as given (Gandaki: 34, Karnali: 22, Koshi: 18, Madhesh: 2). For those participants who are not aware about any of the legal provisions, the numbers are as follows: (Gandaki: 14, Karnali: 9, Koshi: 26, Madhesh: 39)

While comparing the above given table, it is clear that participants from Madhesh are not very aware about the legal provisions. In comparison, participants from Gandaki province are much more aware. Our research has shown similar data, since it has been clear that access to justice in Madhesh province is much more difficult for women with disabilities than other provinces.

This disparity is most visible in Madhesh province, where the majority of participants reported a complete lack of awareness. These findings clearly show issues of regional inequality in legal

literacy and justice mechanism information among women in Madhesh province. In contrast, Gandaki province shows higher levels of awareness on legal provisions among women with disabilities, showcasing better outreach and advocacy mechanisms. Broader issues of marginalization in Madhesh province shows significant lack of awareness regarding justice mechanisms and reflects the need of intervention through better awareness programs and inclusive initiatives to help understand their legal rights better.

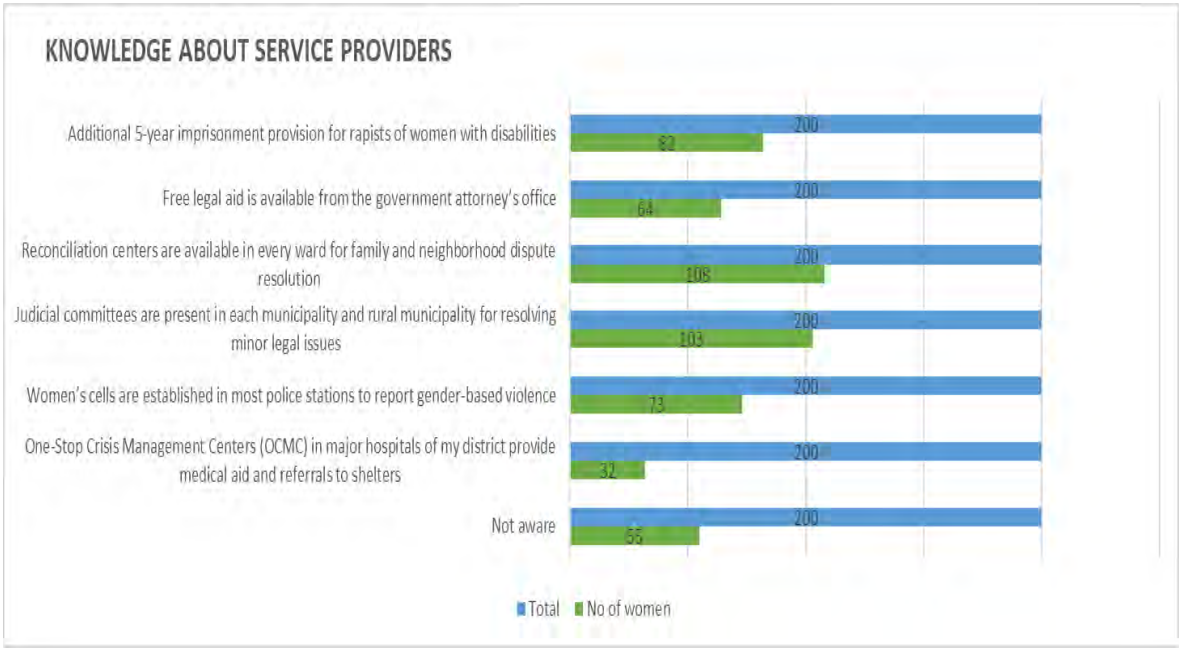
> *"Women with disabilities face multiple marginalization. When they get married, many will not register their marriage and will have increased dowry expectations for marrying a woman with disability. In some cases, these women are accused of being a witch after they get married. The overall justice mechanism is not inclusive and the mindset among lawmakers is also negative when it comes to women with disabilities" - Shelter Home Counselor, Janakpur*

Knowledge of Service Providers

We asked the research participants if they are aware about different services within the justice mechanism in Nepal.

Figure 3:

Knowledge about service providers



Note: We asked if the participants are aware of the knowledge about the services (related to justice mechanism) provided at their provinces and asked them to let us know all provisions they are aware about. As this was a multiple-choice question for the total number of research participants (n=200), out of the total participants (462), 82 are aware about the Additional 5-year imprisonment provision for rapists of women with disabilities. 64 are aware about Free legal aid that is available from the government attorney's office. 108 participants know that Reconciliation centers are available in every ward for family and neighborhood dispute resolution. 103 participants know that Judicial committees are present in each municipality and rural municipality for resolving minor legal issues. 73 survey participants know that Women's cells are established in most police stations to report gender-based violence. Only 32 participants are aware that One-Stop Crisis Management Centers (OCMC) in major hospitals provide medical aid and referrals to shelters and 55 of them are not aware about any of the legal provisions.

These findings suggest a significant gap in knowledge of available justice mechanism services, mainly those designed to support women from vulnerable and marginalized groups. Shockingly, limited knowledge about a critical service as OCMC shows the need for better outreach and government initiatives to further promote it. Out of 200 participants, 55 participants not being aware of any of the available legal provisions show that there is an urgent need to develop initiatives to help women with disabilities learn about access to justice and protective mechanisms that are available to them.

Experience of Violence

The participants were asked if they have faced violence from family, community, workplace and in public spaces. Majority of the participants (79%) reported experiencing violence in their lifetime in comparison to 21% who reported not facing any form of violence till date.

The table below presents the incidence of violence in relation to the province that women with disabilities live in. Participants in Koshi province (47) reported experiencing highest level of violence followed by Karnali (45), Gandaki (34) and Madhesh (32).

Table 5:

Incidence of violence

Violence Ever Faced			
	No	**Yes**	**Total**
Gandaki	16	34	50
Karnali	5	45	50
Koshi	3	47	50
Madhesh	18	32	50
	42	**158**	**200**

Case Study: Prolonged Multiple Sexual Abuse (Gandaki Province)

Nisha (Pseudonym) is a 15-year-old girl from Janajati community. She was born with low vision. She was the youngest child in a family with five children. Both of her parents worked as laborers to make ends meet. They also drank alcohol regularly. Her parents sent Nisha to work in a hotel nearby. They, however, did not check on her welfare lost in their own work and alcohol consumption. The hotel where she worked sold heavy alcohol and meat. The customers started sexually abusing her. For a period of more than a year, she was regularly sexually abused by several people who frequented the hotel as customers. Community leaders sensing something was not going right, reported about this to a well-known shelter home run by Kopila Nepal. The shelter home rescued her. She had severe infection on her vagina due to prolonged multiple sexual abuse. She also showed signs of sex addiction. She would frequently masturbate or ask staff at shelter homes to touch her private parts. She is receiving regular physical and psychological care in a shelter home which is helping her recovery. However, the legal team at the shelter home is in a dilemma on how to report and file the case. The justice system requires

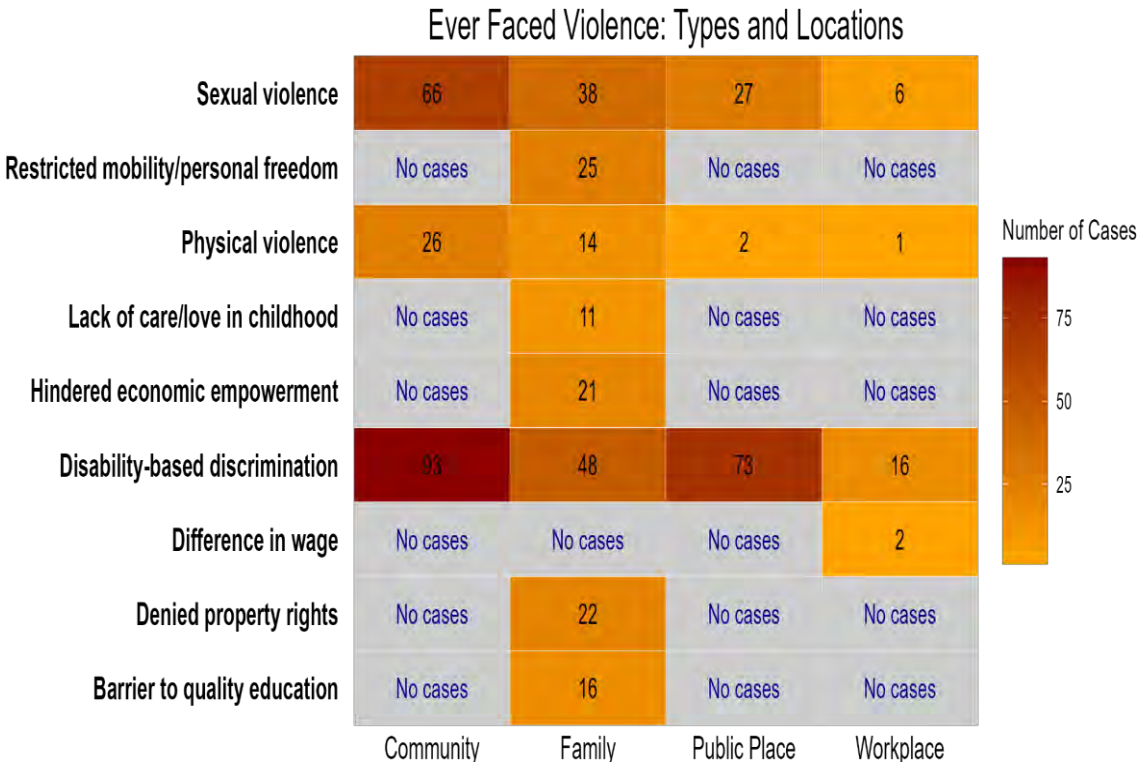
the identification of the perpetrator to file the case. Being a minor with low vision, she does not have the memory and visual recollection of who violated her.

The case study presented above shows that young girls with disabilities belonging to marginalized and poor families are at high risk of sexual abuse. The nature of the case as discussed above also shows how justice system procedures that places the "burden of proof" on survivors can create complication for disabled survivors of sexual abuse. In this case, a minor girl with low vision's quest for justice has been impeded due to the system's requirement of identification of the abusers.

The heatmap presented below shows the nature of violence in faced in four different domains: family, community, workplace and public spaces.

Table 6:

Violence Heatmap



The table shows that the "disability-based discrimination" was the most experienced form of violence in community (93), public space (73) followed by family (48) and workplace (16).

Majority of the participants (77%) were unemployed. That explains the reason for low reporting of various forms of violence in the workplace.

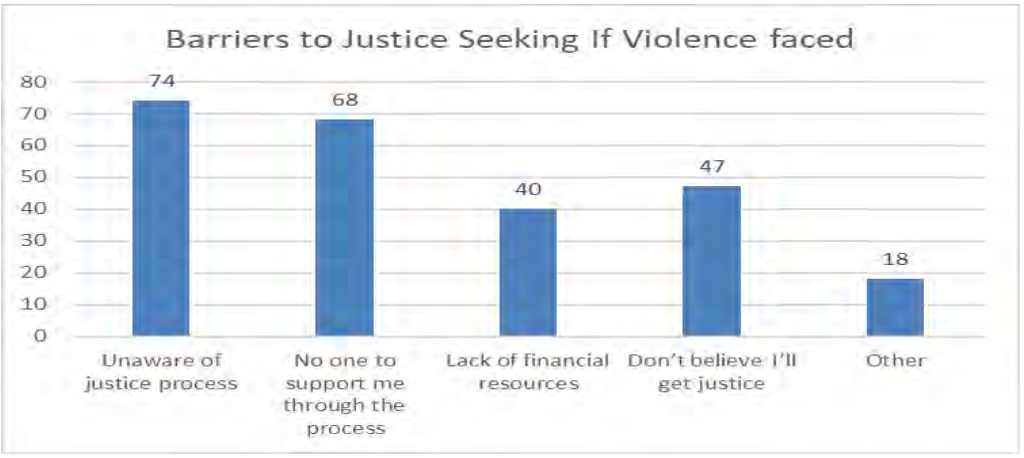
The data shows women with disabilities are most vulnerable to sexual violence within community (66), followed by family (38), public space (27) and workplace (6). It is also alarming to see that the highest number of various forms of violence happened within family (195) followed by community (185). This shows that women with disabilities are most vulnerable within their own family, an institution which is associated with love and care. This also creates more complex challenges in seeking justice due to shame and stigma associated with the experience of violence within the family.

Experience of Justice Mechanism

The survey asked those who reported experience of violence (158), if they had sought any process of seeking justice. More than half (64%) reported that they did not seek any process of justice. justice. We asked multiple choice questions to those who did not seek services. Among 174 responses collected, the majority (74) reported that they were not aware of the justice process followed by their challenge of not having anyone to support them through the process (68). Similarly, lack of financial resources (40) and lack of belief in justice system (47) were the reasons for participants not seeking justice despite having experience of violence.

Figure 4:

Barriers to justice if violence faced



Among those who sought the process (36%), majority of participants reported having gone to police station (93.4%), followed by going to ward-level mediation center (3.3%) and OCMC and Judicial Committee (1.6%).

Among the ones who went through process of justice mechanism, majority (58%) reported having positive experience.

Table 7:

Process of justice mechanism

Experience of the service used	**Frequency**	**Percent**
Negative	24	42
Positive	33	58
Total	**57**	**100**

Note: When asked about their experience while using justice mechanism services, out of 57 participants, 58% (33 participants) said they have positive experience and 42% (24 participants) said they have negative experience.

However, the women with disabilities lived experience of seeking justice is in contrast with the reported positive experience as reported in survey. The case study presented below shows how women with disabilities face multiple challenges and many intersectional barriers that hinder their access to justice.

Case Study: Survivor turned hostile (Karnali Province)

Sunita (Pseudonym) is a 27-year-old woman with physical disability born in remote district Dailekh. With support of her family members, she pursued her higher education in pharmacy. She had been successful in obtaining a licence to run a pharmacy. Considering the reservation for persons with disabilities as government officials, Sunita started to prepare for the civil service examination. She moved to the center of Karnali province: Birendranagar. In order to meet the cost of living in the city, she ran a small pharmacy with investment from her friends and family. A young man came into contact with her through facebook. She showed interest in her and professed his love towards her. He also started talking about marrying and having a future together. As a disabled woman in society, which views marriage prospects of women with disabilities next to non-existent, Sunita fell into his trap. The man not only sexually abused her but also started extorting money from her to fund his own living expenses. He was also coincidentally preparing for the civil service examination. He got selected for the government

job and was transferred to Rukum, a different district. He started ignoring her and stopped his contact all together. Sunita reached out to disability rights organizations and women rights organizations who helped her to register the case. The case was filed at the district police station. She also had her physical examination, which was delayed. The case moved on further to the court. Sunita faced pressure from the perpetrator and family to drop the case. She also felt societal stigma and judgement towards her. In the court, she said that "everything that happened between her and the man was based on her consent". This resulted in the case being dismissed.

The case presented above shows that even though women with disabilities seek formal justice process, the shame and stigma associated with their disability and gender makes the Participants who said they had negative experiences shared that they have been discriminated against because of their disability.

Participants who reported positive experience were asked to elaborate on the nature of the experience. More than half of participants (54%) reported that they had experience of accessible and disability friendly infrastructure. Similarly, others reported that staff were friendly and helpful (13.1%), disability-specific accommodation was provided (11.5%) and staff addressed their disability-related needs (9.8%).

Case Study: Discrimination within Justice Mechanism (Madhesh Province)

Srijana (Pseudonym) is a 20-year-old woman with intellectual disability. She belongs to the Majhi (fisherman) community, a marginalized indigenous group in Nepal. Her family was very poor. Her parents and family members showed signs of mental health issues. Social workers while visiting the field, came to know about her history of being sexually abused by the man in the neighborhood. She was four weeks pregnant. Social worker brought her to the safe house. She had a miscarriage within 12 days of arrival in a safe house. Social workers shared the challenge of filing the case. The safe house took her to OCMC to get her physical examination. The forensic examination had lost its significance due to its delay of several months after incidence of rape. Safe house directed her case to the police station. The Police officers were dismissive of registering her case. They told the social workers "She is disabled, she cannot speak well enough to give testimony for filing of the case. However, social workers were able to support her to receive disability identity card. This has enabled her to receive disability allowance given by the government. However, the survivor was returned to the community by the safe house due to the limited capacity of the house. She is now back in the same community where her perpetrator lives. She is very vulnerable to abuse in future.

The case discussed above shows how people working within justice mechanism can create further complication and vulnerability for disabled survivors and family. First, the delay in identifying the abuse caused forensic examination to lose its significance to establish the incidence of rape. Second, based on experience of survivor, police officers refused to register the case, citing "she cannot speak to give her own testimony". This shows that how justice mechanism in Nepal designed from ableist perspective insists on for women with disabilities to fit in and abide to it's procedure. This is a violence of Article 12 and 13 of CRPD, which requires that justice mechanism make "procedural accommodation. Due to lack of space and also skilled manpower within safe house, the survivor was returned to the community, making her more vulnerable

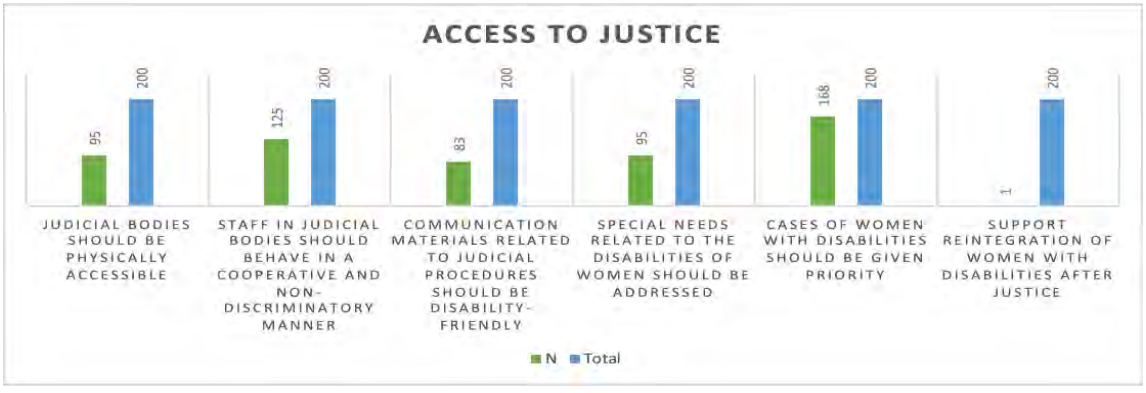
Recommendations for Inclusive Justice Mechanism

The survey participants were asked to choose different enabling conditions that would help in access to justice mechanisms for women with disabilities. We provided multiple choices and asked them to choose all that they think is important.

In the **chart below** among the total participants (200) responses received, 95 participants have shared that Judicial bodies should be physically accessible. 125 participants have shared that Staff in judicial bodies should behave in a cooperative and non-discriminatory manner. 83 participants have shared that Communication materials related to judicial procedures should be disability friendly. 95 participants believe that Special needs related to the disabilities of women should be addressed. 168 participants have shared that Cases of women with disabilities should be given priority and 1 participant shared that there should be Support to reintegration of women with disabilities after justice.

Figure 5:

Access to justice



The case study presented below shows how removal of communication barriers can bring a big difference to people with speech and hearing disabilities.

> *"There is a need to disseminate the reports by development partners to various government entities with findings related to women with disabilities. Every province needs to work together to continue this kind of program. There is a need to develop strategies and planning that are focused on women with disabilities in order to understand their needs and cater accordingly. Additionally, this will also help in awareness raising." - Government Employee, Koshi Province*

Case Study: Removal of Communication Barrier (Koshi Province)

Tara (pseudonym) is an 18-year-old Janajati woman with speech and hearing disability. Her parents had made arrangements for her education and care in an education institution for persons with disability. Her parents came to know that she has experienced sexual abuse. She was also 12 weeks pregnant by that time. Tara's parents registered the case in the police station. The police station directed Tara to local OCMC for her physical examination. The OCMC had hired the sign language interpreter. The interpreter was able to take the history of abuse and Tara was able to identify that it was her teacher who abused her. This was followed by DNA tests of Tara's aborted Fetus and perpetrators. The case is currently ongoing. The staff at OCMC are positive that the outcome of Tara's case will be positive.

Summary of Findings

The section below presents brief summary of key findings in three key areas that paper covered.

Legal Knowledge of Women with Disabilities

- There is regional disparities in legal knowledge of women with disabilities. Women with disabilities in Gandaki province show significantly higher awareness of legal provisions (CRPD, CEDAW, ARPD) than those in Madhesh, where 39 out of 50 participants were unaware of any provisions.
- More than a quarter of participants (27.5%) did not have any knowledge of any of the services of justice mechanism
- Only 32 out of 200 participants knew about One-Stop Crisis Management Centers (OCMC), a first service that provides integrated services for survivors of violence.
- Majority of participants knew about ward level reconciliation centers (108) followed by Judicial committee (103) in municipalities.

Experience of Violence

- More than one third of women with disabilities (79%) reported experiencing violence in their lifetime.
- The highest incidence of violence was reported in Koshi Province (47/50) followed by Karnali Province (45/50).
- Disability-based discrimination was the most frequent form of violence experienced by women with disabilities in community (93), public space (73) followed by family (48) and workplace (16).
- Violence within family recorded the highest number of incidents (195) ranging from sexual violence, restricted mobility/personal freedom, hindered economic empowerment, lack of love and care among others. Incidences of violence within community (185)
- Women with disabilities are most vulnerable to sexual violence within sexual violence within community (66), followed by family (38), public space (27) and workplace (6).

Experience of justice mechanism

- 64% of survivors did not seek justice after experiencing violence. The major reason behind not seeking justice was lack of knowledge, followed by not having anyone to support. Similarly, lack of belief in justice system and lack of financial resources were other reasons that prevented women with disabilities to seek justice despite experiencing violence.
- Majority of participants who sought justice went to the police station (93.4%). Only 1.3% went to OCMC, an integrated service and first responding service for survivors.
- The survey showed that, majority of participants (58%) who sought justice process had positive experience. However, lived experience of women with disabilities based on case study showed that women with disabilities experience discrimination and prejudice during the process of seeking justice.

Conclusion

This paper was based on the mixed-method study conducted in four provinces of Nepal: Koshi, Gandaki, Madhesh and Karnali. This study reveals the deeply entrenched structural, social, and systemic barriers that impede women with disabilities in Nepal from accessing justice. Despite constitutional guarantees and international commitments such as the CRPD and CEDAW, women with disabilities remain one of the most marginalized groups within the justice system.

The justice mechanisms continue to operate from an ableist perspective, often failing to accommodate or even recognize the intersectional identities and lived experiences of disabled women. The paper showed that justice mechanism in Nepal like elsewhere is built through ableist perspective. The result of this is that people in decision making positions within justice mechanism are unaware about the intersectional barriers that women with disabilities experience while accessing justice.

The findings show that women with disabilities have very limited knowledge about legal provisions and available services within justice mechanisms. Majority of the women with disabilities who experience violence do not seek any process of seeking justice. The reason behind this is due to lack of knowledge, lack of a person to support and financial resources. Another major reason is also lack of faith in justice mechanism.

Federal governance has expanded the possibility of localizing disability rights initiatives in all spheres, including justice mechanism. There are positive practices such as accessible infrastructure or disability-sensitive personnel in some areas. However, these issues remain more the exception rather than the norm. Case studies shows that women with disabilities lived experience of navigating justice mechanism is full of challenges. Women survivors with disability are not being supported well. Instead, they are often retraumatized, disbelieved, or forced to abandon the due process of justice before completion due to stigma, procedural inaccessibility, or lack of sustained institutional support.

This calls for systematic transformation of justice mechanism in Nepal, a departure from ableist perspective. The justice mechanism in Nepal needs to be reimagined and restructured from the standpoint of lived experience of persons with disabilities and women with disabilities.

Recommendations

- Improve legal literacy and awareness programs for women with disabilities, particularly in regions like Madhesh province.
- Strengthen outreach and advocacy mechanisms to promote justice mechanism services.
- Address systemic barriers and negative mindsets among lawmakers and service providers to create a more inclusive justice system through capacity building and providing them with real life examples.
- Implement initiatives to support women with disabilities in reporting violence and accessing justice.

References

Australian Human Rights Commission. (2013, December 16). *Access to justice for people with disability in the justice system*. https://humanrights.gov.au/our-work/disability-rights/publications/access-justice-people-disability-justice-system

Campbell. (2012). Stalking ableism: Using disability to expose 'abled' narcissism. In D. Goodley, B. Hughes & L. Davis (Eds.) *Disability and social theory: New developments and directions* (pp. 212-230). Palgrave

Central Bureau of Statistics. (2021). *National population and housing census 2021*. https://censusnepal.cbs.gov.np/Home/Index/EN

Centers for Disease Control and Prevention. (2019, September 4). *Disability and health: Disability barriers*. https://www.cdc.gov/ncbddd/disabilityandhealth/disability-barriers.html

Committee on the Elimination of Discrimination against Women. (2015). *General recommendation No. 33 on women's access to justice* (CEDAW/C/GC/33). United Nations. https://digitallibrary.un.org/record/806498

Chaturvedi, S. (2020). Ableism-A Critical Analysis. *Social Action*, 70 (October-December 2020)

Emerson, E., & Llewellyn, G. (2023). Exposure of women with and without disabilities to violence and discrimination: evidence from cross-sectional national surveys in 29 middle-and low-income countries. *Journal of interpersonal violence*, *38*(11-12), 7215-7241.

Government of Canada. (2024, October 25). *2024 annual progress report – Accessibility plan for the Department of Justice of Canada*. https://www.justice.gc.ca/eng/trans/ap-pa/rep2024-rap2024/index.html

Government of Nepal. (2017). *The Act Relating to Rights of Persons with Disabilities (ARPD).* https://lpr.adb.org/sites/default/files/resource/%5Bnid%5D/nepal-the-act-relating-to-rights-of-persons-with-disabilities-2074-2017-english.pdf.

Kim, E. J., Skinner, T., & Parish, S. L. (2020). A study on intersectional discrimination in employment against disabled women in the UK. *Disability & Society*, *35*(5), 715-737.

Khanal, N. A. (2009). A Study on Status of Social Inclusion, Livelihood and Violence Against Disabled Women of Nepal. *Submitted to Action Aid Nepal, Lazimpat, Kathmandu, Nepal. Accessed October*, *20*, 2022.

Maya Dhungana, B. (2006). The lives of disabled women in Nepal: vulnerability without support. *Disability & Society*, *21*(2), 133-146.

Mik-Meyer, N. (2016). Disability and 'care': Managers, employees and colleagues with impairments negotiating the social order of disability. *Work, Employment and Society, 30*(6), 984–999. https://doi.org/10.1177/0950017015617681

National Federation of the Disabled, Nepal. (2023). *Disability data from Nepal census 2022*. https://nfdn.org.np/news/disability-data/

National Human Rights Commission. (2022). *Study on identifying barriers to accessing justice for persons with disabilities*. https://nhrcnepal.org/nhrc_new/doc/newsletter/NHRC_Report_Disability_Justice_2022.pdf

Norwegian Human Rights Institution. (2019, May 7). *Access to justice for persons with disabilities*. https://www.nhri.no/en/recommendations/access-to-justice-disabilities/

Paudel, S., Bhandari, P., & Bhandari, D. B. (2017). Disability: A case screening program approach. *Journal of Biosciences and Medicines, 5*, 10–21. https://doi.org/10.4236/jbm.2017.511002 \

Poudyal, N., Banskota, M., & Khadka, D. (2018). *Disability in Nepal: Taking stock and forging a way forward*. https://www.undp.org/sites/g/files/zskgke326/files/migration/np/Disability-in-Nepal-Report.pdf

Puri, M., Misra, G., & Hawkes, S. (2015). Hidden voices: prevalence and risk factors for violence against women with disabilities in Nepal. *BMC public health*, *15*, 1-11.

United Nations. (2006). *Convention on the Rights of Persons with Disabilities*. https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html

World Health Organization. (2011). *World report on disability 2011*. https://www.who.int/publications/i/item/9789241564182

Sambahak: Human Rights Journal (2025), Vol. 25, 126-145

The Limits of Human Rights Oversight: Evaluating National Human Rights Commission (NHRC) Jurisdiction in Nepal

Dr. Newal Chaudhary[1]

Email: nc2067@gmail.com

To cite this article:

Chaudhary, N. (2025). The Limits of Human Rights Oversight: Evaluating National Human Rights Commission (NHRC) Jurisdiction in Nepal. *Sambahak: Human Rights Journal*, *25*(1), 126–145. https://doi.org/10.3126/sambahak.v25i1.83924

Keywords:

Constitutional Jurisdiction, Human Rights, Transitional Justice, Implementation Gap, Extraterritorial Jurisdiction

Abstract

This article undertakes a comprehensive examination of the jurisdiction of Human Rights Commissions of Nepal, with a particular focus on the National Human Rights Commission (NHRC) as established under the Constitution of Nepal 2015. The research explores the evolving legal framework governing human rights protection in Nepal, tracing its development from the Human Rights Commission Act of 1997 through constitutional changes and post-conflict transitional justice mechanisms. Through doctrinal analysis of constitutional provisions, legislative frameworks, case law, and comparative jurisdictional models, this study critically evaluates the scope, limitations, and effectiveness of the Commission's mandate. Particular attention is given to jurisdictional challenges including territorial and subject-matter limitations, overlap with other constitutional commissions, implementation gaps between legal authority and practical enforcement, and the interplay between national jurisdiction and international human rights obligations. The findings reveal a complex institutional architecture with progressive formal powers but significant operational constraints. This article argues that while Nepal has established an advanced constitutional foundation for human rights protection, jurisdictional ambiguities, resource limitations, and political interference continue to impede the Commission's effectiveness. Recommendations include legislative clarification of overlapping mandates, enhanced enforcement mechanisms, greater institutional independence, and the harmonization of domestic jurisdiction with international obligations to strengthen Nepal's human rights protection framework.

[1] Assistant Dean, Faculty of Law, Tribhuvan University

Introduction

The establishment and operation of national human rights institutions represent a critical component of the institutional architecture for rights protection in modern democracies. In Nepal, the National Human Rights Commission (NHRC)—constitutionally established under the 2015 Constitution—operates within a complex legal and political landscape shaped by democratic transitions, post-conflict reconciliation, and the growing influence of international human rights law. Over time, Nepal has also created several specialized constitutional bodies with human rights-related mandates (such as the Women, Dalit, and Indigenous Nationalities Commissions), which are distinct from but occasionally overlapping with the NHRC. While Nepal's Constitution provides for multiple constitutional bodies with human rights-related mandates—such as the National Women Commission, National Dalit Commission, and National Inclusion Commission—it is important to distinguish these from the National Human Rights Commission (NHRC). The NHRC serves as Nepal's designated National Human Rights Institution (NHRI) under the Paris Principles and is directly mandated to oversee the promotion, protection, and monitoring of human rights in a comprehensive sense. The other thematic commissions focus on the rights and welfare of specific groups and communities, and although they operate within the broader human rights architecture, they are not considered NHRI-equivalent bodies. This article, therefore, treats the NHRC as the central rights-monitoring body and refers to other commissions as specialized or auxiliary constitutional entities with sectoral mandates.

This article investigates the extent to which the NHRC's formal jurisdiction aligns with its operational capacity. It critically examines how legal ambiguities, jurisdictional overlaps, and political constraints affect the NHRC's effectiveness in protecting human rights. The analysis also explores the NHRC's interaction with specialized commissions, the judiciary, and international human rights obligations. The central research questions guiding this article are:

(1) To what extent does the NHRC's formal jurisdiction align with its practical enforcement capacity?

(2) How do constitutional overlaps, political interference, and operational limitations affect the Commission's effectiveness?

(3) What institutional reforms are necessary to enhance its jurisdictional clarity and independence?

Research Methodology:

This research employs a doctrinal methodology to examine the jurisdiction of Human Rights Commissions in Nepal. The doctrinal approach, fundamental to legal scholarship, involves

systematic analysis of legal texts and authoritative interpretations to determine the current state of the law and identify conceptual frameworks that govern legal principles and practices.

Historical Development of Human Rights Commissions in Nepal:

The evolution of Human Rights Commissions in Nepal reflects the country's complex political trajectory and gradual institutionalization of rights protection mechanisms. Understanding this historical development provides essential context for analyzing current jurisdictional frameworks and challenges. The establishment of these commissions represents not merely administrative reform but a fundamental reconfiguration of state-citizen relationships and accountability mechanisms in post-authoritarian and post-conflict Nepal. The National Human Rights Commission, an independent constitutional authority, is responsible for the preservation and promotion of human rights in Nepal. The concept of an independent human rights body in Nepal first gained traction during the democratic opening following the People's Movement of 1990, which ended the Panchayat system and established a constitutional monarchy with multiparty democracy. This political transition created space for civil society advocacy around institutional human rights protection, influenced by international developments including the 1993 Paris Principles on National Human Rights Institutions. However, concrete legislative action came only in 1997 with the enactment of the Human Rights Commission Act. The 1997 Act established the National Human Rights Commission (NHRC) as a statutory body with a mandate to promote and protect human rights. This initial legislative foundation granted the Commission powers of investigation, monitoring, and recommendation, though its statutory status limited its independence and authority. The Commission's jurisdiction under this framework was primarily reactive rather than proactive, focusing on individual complaints rather than systematic violations. Additionally, its enforcement capability was severely constrained, with recommendations frequently ignored by government authorities. The Commission's development faced significant challenges during the Maoist insurgency (1996-2006),[2]when human rights violations escalated dramatically. The conflict period severely tested the nascent institution's capacity and highlighted jurisdictional limitations in addressing state and non-state violations during armed conflict. Nevertheless, this period also demonstrated the crucial necessity of independent human rights monitoring, as the Commission documented abuses and maintained pressure for accountability despite operational constraints.

[2] During the Maoist insurgency in Nepal from 1996 to 2006, the development of the Commission faced significant challenges due to widespread human rights violations and the breakdown of law and order. The conflict was marked by serious abuses committed by both the Maoist insurgents and government security forces, which severely undermined the functioning and effectiveness of any justice or human rights institutions.

Comparison of NHRC Mandates: Legal Milestones (1997–2015):

Table 1:

Comparison of NHRC Mandates: Legal Milestones (1997–2015)

Legal Instrument	Key Mandate	Strengths
Human Rights Commission Act, 1997	– Established NHRC as a statutory body – Mandate: receive complaints, investigate, recommend	• First national institution for human rights oversight • Reactive complaints mechanism
Interim Constitution, 2007	– Elevated NHRC to constitutional status – Added suo moto inquiry powers	• Guaranteed institutional independence • Broader inquiry authority
NHRC Act, 2012 (2068 BS)	– Operationalized constitutional status – Introduced CMRS, summons powers, witness protection	• Detailed procedural framework • Recognized international treaties as part of mandate
Constitution of Nepal, 2015	– Entrenched NHRC under Arts 248–249 – Defined broad powers: investigate, recommend, publish names	• Full constitutional autonomy • Expanded to federal structure • Explicit treaty-monitoring role

A transformative moment came with the Comprehensive Peace Agreement of 2006[3] and subsequent Interim Constitution of 2007, which elevated the NHRC to constitutional status. Article 131 of the Interim Constitution significantly expanded the Commission's jurisdiction,

[3] The Comprehensive Peace Accord (CPA) of 2006 was signed on November 21, 2006, between the Government of Nepal and the Communist Party of Nepal (Maoist Centre), officially ending the decade-long Nepalese Civil War that began in 1996.

granting it authority to conduct inquiries and investigations upon petition or *sua sponte*[4]into human rights abuses, negligence in preventing violations, and recommend departmental actions against violators. This constitutional foundation substantially strengthened the Commission's formal independence and authority, reflecting recognition of its importance in post-conflict transition. The post-conflict transitional period highlighted complex jurisdictional questions regarding the relationship between the Commission and other transitional justice mechanisms, particularly the Truth and Reconciliation Commission (TRC)[5] and Commission of Investigation on Enforced Disappeared Persons (CIEDP)[6] established under the Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act 2014)[7]. These mechanisms created parallel investigative structures for conflict-era violations, raising questions about jurisdictional boundaries and coordination that continue to affect human rights protection in Nepal. *The coexistence of the NHRC with transitional justice bodies such as the TRC and CIEDP has created significant coordination challenges. While both TRC and CIEDP are tasked with investigating conflict-era human rights abuses, the NHRC also received numerous complaints related to the same period. The absence of a formal coordination mechanism or legal clarity on the division of responsibilities has led to parallel investigations, duplicative findings, and in some cases, complainants being referred back and forth between bodies. This has undermined victim confidence and slowed the accountability process. Clarifying the NHRC's supplementary or residual role in cases where transitional justice bodies are inactive or delayed is essential for coherent human rights redress*. The Constitution of Nepal 2015 represents the most recent and comprehensive framework governing human rights commissions. It not only maintained the NHRC's constitutional status but expanded the institutional architecture by establishing additional thematic commissions focused on women, Dalits, indigenous peoples, Madhesis, Tharus, and Muslims. This proliferation of commissions reflects recognition of differentiated protection needs among marginalized communities but also creates potential jurisdictional overlaps and coordination challenges. The Constitution of Nepal (2015, Art 249), defines

[4] Suo moto – In its own motion

[5] The Truth and Reconciliation Commission (TRC) of Nepal was established on February 10, 2015, as part of the peace process following the end of the Maoist insurgency and the signing of the Comprehensive Peace Accord (CPA) in 2006

[6] The Commission of Investigation on Enforced Disappeared Persons (CIEDP) in Nepal was established on February 10, 2015, as an independent and impartial body tasked with investigating cases of enforced disappearances that occurred during the armed conflict between the Government of Nepal and the Maoist insurgents from February 13, 1996, to November 26, 2006

[7] The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2014 is a key piece of legislation in Nepal that established two transitional justice bodies: the Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CIEDP). The Act was enacted to address gross human rights violations, including enforced disappearances, committed during the armed conflict between 1996 and 2006.

NHRC jurisdiction, with broad authority to "respect, protect and promote human rights and ensure effective enforcement thereof." The constitutional mandate includes powers to conduct inquiries and investigations, recommend departmental actions against violators, recommend compensation for victims, and publish names of human rights violators. These provisions represent the most extensive formal jurisdiction in the Commission's history, though implementation remains problematic.

Constitutional and Legislative Framework:

The jurisdiction of Human Rights Commissions in Nepal derives primarily from constitutional provisions and implementing legislation that define their mandate, powers, composition, and operational procedures. The Constitution of Nepal (2015) provides the foundational framework, with subsequent legislation and regulations elaborating specific jurisdictional parameters. This section analyzes these interlocking legal instruments to establish the formal scope and limitations of commission jurisdiction. According to the NHRC's Annual Report (FY 2021–22), 414 recommendations were issued during the year, including six policy-level suggestions. However, the report clearly notes that "the implementation status of the recommendations made by the NHRCN to the Government of Nepal is not encouraging," indicating a persistent lack of enforcement despite constitutional guarantees (National Human Rights Commission of Nepal, 2022).

Constitutional Provisions:

The Constitution--++666 of Nepal (2015) significantly expanded the institutional architecture for human rights protection by establishing multiple commissions with constitutionally defined mandates. The Constitution of Nepal, (2015 Part 25) addresses National Human Rights Commission (Articles 248-249), while Articles 252-256 establish thematic commissions including the National Women Commission, National Dalit Commission, National Inclusion Commission, Indigenous Nationalities Commission, Madhesi Commission, Tharu Commission, and Muslim Commission.

NHRC is an independent and autonomous constitutional body comprising a Chairperson and four other members appointed for six-year terms (The Constitution of Nepal, 2015, Art. 248). Constitutional status provides critical protection against arbitrary dissolution or modification of the Commission's structure, requiring constitutional amendment rather than ordinary legislation to alter its fundamental character. This represents a significant jurisdictional safeguard compared to the Commission's earlier statutory status.

Article 249 defines the NHRC's duties, functions, and powers, establishing its core jurisdiction. The constitutional mandate encompasses comprehensive responsibilities including:

1. Conducting independent and autonomous inquiries and investigations into human rights violations or abetment thereof, negligence in prevention of violations, or carelessness in fulfilling this duty (The Constitution of Nepal, 2015, Art. 249 (2)(a));
2. Recommending departmental action against public officials who fail to fulfill their duty of preventing violations (The Constitution of Nepal, 2015, Art. 249 (2)(b));
3. Recommending filing of court cases against persons responsible for violations(The Constitution of Nepal, 2015, Art. 249 (2)(c));
4. Promoting human rights education and awareness(The Constitution of Nepal, 2015, Art. 249 (2)(d));
5. Reviewing laws related to human rights and recommending reforms(The Constitution of Nepal, 2015, Art. 249 (2)(f));
6. Monitoring implementation of international human rights treaties to which Nepal is a party(The Constitution of Nepal, 2015, Art. 249 (2)(g));
7. Publishing names of human rights violators who have not implemented its recommendations (The Constitution of Nepal, 2015, Art. 249 (2) (h)).

This constitutional jurisdiction grants the NHRC broad investigative authority but primarily recommendatory powers regarding enforcement—a crucial limitation that affects its practical effectiveness. The Constitution requires that government bodies "extend cooperation" in the Commission's work and implement its recommendations, but lacks specific enforcement mechanisms beyond reputational sanctions through public naming of non-compliant entities. For the thematic commissions, the Constitution establishes differentiated mandates focused on specific marginalized communities. These commissions have investigative and recommendatory powers within their thematic domains, creating potential jurisdictional overlap with the NHRC regarding rights violations affecting their constituent communities. The Constitution does not explicitly delineate coordination mechanisms between these commissions, leaving significant ambiguity regarding jurisdictional boundaries.

Legislative Framework

The National Human Rights Commission Act (2012, Preamble, Section 4, 17, 18), as subsequently amended, operationalizes the constitutional mandate by establishing detailed procedures, jurisdictional parameters, and implementation mechanisms. This legislation substantially influences how constitutional jurisdiction translates into practical authority (The National Human Rights Commission Act, 2012, Section 4(1)(a–g). The Act elaborates investigation procedures, complaint mechanisms, powers of summoning witnesses and

documents, protection measures for complainants and witnesses, and procedures for issuing recommendations (The National Human Rights Commission Act, 2012, Section 4(1)(a–g), Section 10-13). Section 4 reiterates and expands the Commission's investigative jurisdiction, authorizing it to conduct inquiries with powers equivalent to a court in summoning witnesses, ordering document production, and gathering evidence (The National Human Rights Commission Act, 2012, Section 4(1)(a–b).

Regarding territorial jurisdiction, Section 6 establishes the Commission's authority throughout Nepal's territory, with provision for establishing regional and local offices (The National Human Rights Commission Act, 2012, Section 6—a provision that has gained increased significance under the federal structure established by the 2015 Constitution. The Act also addresses temporal jurisdiction, authorizing investigations into both ongoing and past violations with no explicit time limitation, though practical constraints affect investigation of historical abuses (The National Human Rights Commission Act, 2012, Section 13.

Jurisdictional limitations appear in several provisions. Section 13 establishes a six-month limitation period for filing complaints after alleged violations, though the Commission retains discretion to investigate older cases under certain circumstances. Section 11 restricts jurisdiction over matters pending before courts, aligning with constitutional separation of powers but potentially limiting intervention in ongoing judicial processes where rights violations may occur.

The relationship between the NHRC and other human rights commissions is addressed in Section 20, which requires consultation and coordination but does not clearly delineate jurisdictional boundaries or establish hierarchy among commissions. This legislative gap contributes to practical confusion and potential jurisdictional conflicts.

Scope of Jurisdiction of the National Human Rights Commission

The jurisdiction of Nepal's National Human Rights Commission encompasses multiple dimensions including subject-matter jurisdiction, territorial reach, temporal limitations, personal jurisdiction over perpetrators and victims, and remedial authority. This multidimensional jurisdiction defines the Commission's operational space and shapes its effectiveness as a rights protection mechanism. Given its limited institutional capacity, the NHRC has prioritized civil and political rights (e.g., custodial deaths, election monitoring, illegal detention), often at the expense of more systemic socioeconomic rights issues. In FY 2021–22, the NHRC conducted 221 monitoring activities, with extensive coverage of electoral events and detention conditions, but comparatively less targeted inquiry into healthcare access, land disputes, or education inequalities (National Human Rights Commission of Nepal, 2022). The NHRC's subject-matter jurisdiction extends to all internationally recognized human rights as referenced in Article

249(1) of the Constitution, which mandates the Commission to "respect, protect and promote human rights and ensure effective enforcement thereof." This broad formulation avoids restricting jurisdiction to specific rights categories or generations, enabling comprehensive coverage across civil, political, economic, social, and cultural rights domains. The Constitution thus adopts an integrated approach to human rights protection, reflecting international trends toward rights indivisibility. This expansive subject-matter jurisdiction is further elaborated in the NHRC Act, which defines "human rights" as "rights relating to life, liberty, equality and dignity of individual provided by Constitution and other prevailing laws and the rights established as human rights under international treaties relating to human rights to which Nepal is a party." This definition incorporates both domestic constitutional rights and international human rights obligations, creating a dual foundation for Commission jurisdiction. An important jurisdictional question concerns the relationship between the NHRC's general human rights mandate and the specialized jurisdiction of thematic commissions established under Articles 252-256. While these commissions have domain-specific mandates—focusing on women, Dalits, indigenous peoples, and other marginalized communities—their jurisdictional relationship with the NHRC remains incompletely defined. The constitutional framework suggests concurrent rather than exclusive jurisdiction, allowing both general and specialized commissions to address rights violations affecting marginalized communities, though coordination mechanisms remain underdeveloped. Personal jurisdiction encompasses authority over both perpetrators and victims of human rights violations. Regarding alleged perpetrators, the NHRC's jurisdiction extends to both state and non-state actors, though with differentiated powers. For state actors, the Commission can directly recommend departmental action or prosecution, while jurisdiction over private entities operates primarily through recommending government intervention to address private violations. This differentiated approach reflects the traditional conceptualization of human rights as primarily regulating state conduct, though it arguably creates jurisdictional gaps regarding corporate human rights abuses, community practices violating individual rights, and other non-state violations. The Commission has occasionally addressed private sector violations through recommending regulatory action by government authorities, but this indirect approach limits effectiveness against powerful non-state actors. Due to resource constraints, the NHRC tends to prioritize violations of civil and political rights such as torture, extrajudicial killings, and arbitrary detention. One illustrative example of the NHRC's action can be found in its 2020 investigation into the custodial death of Dilip Mahato (Republica, 2020), a young environmental activist who was allegedly murdered for protesting illegal sand mining. The NHRC conducted an on-site investigation, documented witness testimonies, and recommended departmental action against security personnel and local officials for negligence in protecting Mahato's rights. Despite public outcry and clear findings, the implementation of NHRC's recommendations remained partial and delayed. This case

reflects both the Commission's proactive investigative function and the recurring challenge of weak enforcement in politically sensitive matters. In contrast, systemic violations of economic and social rights, including access to education and healthcare, often receive less attention, reflecting both strategic prioritization and donor influence.

The Collective Impact of Human Rights Conventions on NHRC Jurisdiction:

Nepal's ratification of a wide array of international human rights conventions collectively establishes a broad and encompassing jurisdiction for the National Human Rights Commission (NHRC). Each convention, focusing on specific categories of rights or vulnerable groups, contributes to the overall mandate of the NHRC to protect and promote human rights within Nepal. These conventions act as an internationally recognized framework that defines the scope of human rights that the NHRC is empowered to safeguard. For instance, conventions like the International Covenant on Civil and Political Rights [ICCPR], (1966) and the International Covenant on Economic, Social and Cultural Rights [ICESCR], 1966 lay the foundational principles for a wide spectrum of rights, including the right to life, liberty, security of person, freedom of expression, right to work, right to education, and the right to an adequate standard of living. When issues arise concerning violations of these fundamental rights, the NHRC's jurisdiction to investigate, mediate, and recommend remedies is directly supported by Nepal's obligations under these overarching covenants. Similarly, specific conventions targeting vulnerable groups or particular forms of violations further delineate the NHRC's responsibilities. The Convention on the Rights of the Child (CRC) mandates the protection of children's rights, giving the NHRC a clear mandate to address issues like child labor, child marriage, and the rights of children in conflict with the law. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) obligates Nepal to eliminate discrimination against women, thus empowering the NHRC to address issues of gender-based violence, discrimination in employment, and unequal access to opportunities. The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) provides the basis for the NHRC to address issues of racial discrimination and promote equality. As we discussed earlier, the Convention against Torture [CAT], (1984) specifically grants the NHRC jurisdiction over cases of torture and ill-treatment. Furthermore, conventions related to the rights of persons with disabilities, migrant workers, and other specific groups all contribute to the NHRC's comprehensive mandate.

When any issue arises alleging a violation of a human right protected under these ratified conventions, the NHRC's role is to act as a guardian of these rights within the national context. *Its jurisdiction allows it to:*

- **Receive and investigate complaints**: Individuals or groups alleging human rights violations, as defined by these conventions, can lodge complaints with the NHRC.
- **Conduct inquiries and fact-finding:** The NHRC has the authority to conduct independent inquiries to ascertain the facts of alleged violations, often drawing upon the standards set by the relevant international conventions.
    - **Mediate and conciliate**: In many cases, the NHRC can facilitate dialogue and mediation between the affected parties to find amicable solutions that respect human rights principles enshrined in the conventions.
    - **Recommend action to government authorities:** Based on its investigations, the NHRC can recommend specific actions to government agencies, including policy changes, legal reforms, and disciplinary or prosecutorial measures, to ensure compliance with Nepal's international human rights obligations.
    - **Monitor and report:** The NHRC plays a crucial role in monitoring the human rights situation in Nepal and reporting on the implementation of international human rights conventions to both national and international bodies.

  In essence, Nepal's commitment to a wide range of international human rights conventions provides the NHRC with a broad and robust jurisdictional foundation. These conventions define the internationally recognized human rights standards that the NHRC is mandated to protect and promote within Nepal. When human rights issues arise, the NHRC acts as a crucial link between Nepal's international obligations and the realization of these rights at the national level, utilizing the principles and provisions of these conventions to guide its actions and recommendations.

Jurisdictional Challenges and Limitations:

Despite extensive formal jurisdiction established in constitutional and legislative frameworks, Human Rights Commissions in Nepal face numerous challenges that limit effective jurisdictional exercise. These constraints arise from legal ambiguities, institutional factors, political context, and resource limitations that collectively impede translation of formal mandate into practical authority.

a. Jurisdictional Overlap and Institutional Fragmentation

A significant challenge emerges from Nepal's complex institutional architecture for rights protection, which creates jurisdictional overlaps without clear coordination mechanisms. The proliferation of specialized commissions under the 2015 Constitution—including Women, Dalit, Indigenous Nationalities, Madhesi, Tharu, and Muslim Commissions—establishes multiple bodies with overlapping mandates regarding rights violations affecting particular communities.

When violations target women from indigenous communities or Dalits, for example, jurisdictional boundaries between commissions remain unclear. This institutional fragmentation potentially undermines cohesive rights protection by dispersing resources, creating forum-shopping opportunities, and generating inconsistent approaches to similar violations. While Section 20 of the NHRC Act requires consultation and coordination among commissions, it does not establish clear hierarchical relationships or jurisdictional priority rules. The overlapping jurisdiction between the NHRC and specialized bodies can enable forum shopping, where complainants approach whichever body they perceive as more favorable. For instance, in cases involving caste-based violence against women, both the National Dalit Commission and Women's Commission may receive complaints, sometimes leading to conflicting recommendations or fragmented follow-up.

b. Resource Constraints and Operational Capacity

Effective jurisdictional exercise requires adequate resources and operational capacity, areas where Nepal's human rights commissions face severe constraints. Despite constitutional status and formal independence, commissions receive limited budgetary allocations that restrict staffing, infrastructure development, investigative activities, and outreach programs. These resource limitations inevitably narrow the practical scope of jurisdiction by forcing prioritization among potential investigation areas and geographic coverage. The NHRC's physical presence remains concentrated in urban centers, with provincial offices inadequately resourced to cover remote regions. This creates accessibility barriers for rural populations and impedes timely investigation of violations in peripheral locations. Similarly, specialized expertise for investigating complex violations—including forensic capabilities, technological surveillance expertise, and specialized knowledge regarding vulnerable populations—remains underdeveloped due to resource constraints. These operational limitations particularly affect the Commission's capacity to exercise preventive jurisdiction through monitoring systemic conditions and intervening before violations occur. Resource constraints inevitably prioritize reactive response to reported violations over proactive monitoring and prevention efforts, narrowing practical jurisdictional exercise despite comprehensive formal authority.

c. Political Interference and Institutional Independence

Effective jurisdictional exercise requires genuine independence from political interference—a condition imperfectly realized in Nepal's context. While the 2015 Constitution establishes formal independence for human rights commissions, practical autonomy faces continuing challenges from political actors seeking to influence commission operations or limit effectiveness regarding politically sensitive violations. Appointment processes represent a key vulnerability despite constitutional safeguards. Commissioners are appointed on

recommendation of the Constitutional Council—a body dominated by political leadership—creating potential for political considerations to influence selection. This appointment mechanism potentially compromises institutional independence when investigating violations implicating political authorities or security forces under political control. Political interference also manifests through budgetary control, with resource allocations determined by government authorities potentially implicated in violations under commission investigation. This creates implicit pressure through resource dependency, potentially influencing commission willingness to pursue sensitive investigations or publish findings implicating powerful political actors.

d. National Implementation of International Standards

Nepal has ratified numerous international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR)[8], International Covenant on Economic, Social and Cultural Rights (ICESCR)[9], Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[10], Convention Against Torture (CAT)[11], Convention on the Rights of the Child (CRC)[12], and Convention on the Rights of Persons with Disabilities (CRPD)[13]. This monitoring mandate creates a crucial intermediary role for the Commission between international obligations and domestic implementation. The Commission's definition of "human rights" under Section 2(f) of the NHRC Act incorporates "rights established as human rights under international treaties relating to human rights to which Nepal is a party," explicitly extending jurisdiction to treaty-based rights even when not fully domesticated through national legislation. This approach aligns with Section 9 of the Nepal Treaty Act, which establishes that ratified treaties have force equivalent to national law. The Commission has utilized this jurisdiction to assess legislative compliance with treaty obligations, evaluate policy implementation against international standards, and recommend reforms addressing identified gaps. This function provides crucial domestic oversight of international commitments that might otherwise lack effective implementation mechanisms. However, the Commission's recommendatory powers limit enforcement capability regarding treaty compliance, creating potential implementation gaps between international obligations and domestic practice.

[8] Nepal ratified the International Covenant on Civil and Political Rights (ICCPR) on May 14, 1991

[9] Nepal ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on August 14, 1991.

[10] Nepal ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on April 22, 1991.

[11] Nepal ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on June 13, 1991.

[12] Nepal ratified the Convention on the Rights of the Child (CRC) on September 14, 1990.

[13] Nepal ratified the Convention on the Rights of Persons with Disabilities (CRPD) on May 3, 2010.

e. Paris Principles Compliance

The Paris Principles on National Human Rights Institutions (1993), adopted by UN General Assembly Resolution 48/134 (1993),[14] establish international standards for independent human rights institutions including requirements regarding mandate, composition, resources, and operational independence. These principles significantly influence expectations regarding appropriate jurisdiction for national institutions like Nepal's NHRC. Nepal's constitutional and legislative framework largely aligns with Paris Principles requirements regarding formal jurisdiction, granting the Commission broad authority to promote and protect human rights through investigation, monitoring, education, and recommendation functions. The Constitution establishes institutional independence, diverse membership requirements, and formal authority to address all human rights within national territory—key requirements under international standards. The financial autonomy of the NHRCN is yet to be ensured in accordance with the Paris Principles." — NHRC Annual Report FY 2021/22 (National Human Rights Commission of Nepal, 2022)

The *Global Alliance of National Human Rights Institutions* (GANHRI[15]), which assesses compliance with Paris Principles, has accredited Nepal's NHRC with "A" status, recognizing substantial alignment with international standards. However, periodic reviews have identified jurisdictional concerns including implementation gaps and resource limitations that affect operational effectiveness. This international recognition coupled with identified shortcomings reflects the mixed reality of the Commission's jurisdictional exercise—formally adequate but operationally constrained.

Constitutional Recognition of International Standards:

The 2015 Constitution incorporates international human rights principles throughout its provisions, which establishes state policy "to implement international treaties, agreements to which Nepal is a party (The Constitution of Nepal, 2015, Art, 51 (b)(3))." This constitutional

[14] The Paris Principles, adopted by the UN General Assembly in Resolution 48/134 (1993), establish the minimum standards for National Human Rights Institutions (NHRIs) to be credible and effective. They emphasize key pillars such as independence, pluralism, and effectiveness. The Principles require NHRIs to have a broad mandate to promote and protect all human rights, independence from government, adequate powers and resources, and the ability to cooperate with state and civil society actors as well as international bodies. They also outline responsibilities including advising governments, monitoring human rights, educating the public, and engaging internationally. Compliance with the Paris Principles is essential for NHRI accreditation and participation in UN human rights mechanisms.

[15] The Global Alliance of National Human Rights Institutions (GANHRI) is an international network that promotes and strengthens National Human Rights Institutions (NHRIs) worldwide to ensure their compliance with the Paris Principles, which set the minimum standards for independence, pluralism, broad mandate, adequate resources, and effectiveness in human rights protection and promotion

recognition creates a framework for interpreting commission jurisdiction in alignment with international standards rather than solely through domestic legal traditions. The Commission has utilized this constitutional internationalism to expand effective jurisdiction beyond explicitly domesticated rights, addressing emerging human rights concerns including environmental justice, business impacts on human rights, and digital rights. This approach demonstrates how international standards can productively expand commission jurisdiction to address evolving rights concepts and protection needs.

Extraterritorial Jurisdiction and Diplomatic Engagement:

International human rights law increasingly acknowledges extraterritorial obligations, impacting the Commission's jurisdiction over Nepalese citizens abroad and foreign entities in Nepal. The Commission has cautiously approached these extraterritorial issues, mainly concerning abuses faced by Nepalese migrant workers. Challenges include limited investigative capacity, diplomatic sensitivities, and enforcement difficulties. The Commission addresses these via diplomatic engagement, coordination with destination countries, and advocating for bilateral agreements. While theoretical jurisdiction exists over foreign entities operating domestically, practical investigation and enforcement are challenging. The Commission is now addressing business and human rights, aligning with international principles like the UN Guiding Principles, though jurisdictional limits are still evolving. The relationship between domestic commission jurisdiction and international obligations is both reinforcing and constraining. International standards bolster the Commission's authority through global norms and institutional models, but also expose gaps in implementing rights protection. This dynamic will likely evolve as Nepal integrates international standards into its domestic practices and adapts global models to its national and federal context. NHRC Nepal has engaged in regional collaboration through joint events with the Human Rights Commission of Malaysia, particularly concerning migrant worker protections. Furthermore, it has maintained dialogue with India's NHRC on border-area human rights issues, although these engagements lack formalized monitoring structures (National Human Rights Commission of Nepal, 2022).

Enhancing the Effectiveness of Human Rights Commissions in Nepal:

Addressing jurisdictional challenges facing Nepal's human rights commissions requires multidimensional reform encompassing constitutional clarification, legislative refinement, institutional strengthening, and operational enhancement. Drawing from analysis of existing frameworks and comparative models, this section proposes reform pathways that could strengthen commission effectiveness while maintaining constitutional coherence and respecting Nepal's distinctive context.

a. Legislative Clarification of Jurisdictional Boundaries

A primary enhancement priority involves legislative clarification of jurisdictional relationships between multiple human rights institutions established under the 2015 Constitution. While constitutional provisions establish these commissions with overlapping mandates, implementing legislation could delineate clearer operational boundaries and coordination mechanisms without requiring constitutional amendment. Comprehensive legislation addressing inter-commission relationships could establish several jurisdictional clarifications: primary jurisdiction rules determining which commission holds initial responsibility for particular violation categories; referral mechanisms facilitating case transfer between commissions based on specialized expertise; joint investigation protocols for violations involving multiple commission mandates; and information-sharing requirements ensuring cohesive response across institutional boundaries. Such legislation would maintain constitutional plurality while reducing fragmentation effects.

b. Enhanced Implementation Mechanisms

Addressing the implementation gap between investigation and remedy requires enhanced enforcement mechanisms that respect constitutional separation of powers while strengthening practical jurisdiction. Several mechanisms could enhance implementation without requiring fundamental constitutional restructuring:

First, legislation could establish consequences for non-implementation beyond current naming provisions, including budget implications for non-compliant agencies, mandatory parliamentary review of implementation patterns, and requirements for written explanation of non-implementation subject to judicial review for reasonableness. These mechanisms would maintain the recommendatory nature of commission authority while creating stronger incentives for implementation. *For instance, India's NHRC has the power to directly approach the Supreme Court or High Courts in cases of serious human rights violations under Section 18(b) of the Protection of Human Rights Act, 1993. This judicial access mechanism has enabled the Indian NHRC to escalate non-implemented recommendations into enforceable court orders. Similarly, South Africa's Human Rights Commission can conduct public hearings and issue subpoenas, giving it quasi-judicial authority. These comparative models offer potential pathways for enhancing the enforcement capacity of Nepal's NHRC through statutory reform without undermining constitutional separation of powers.*

Second, strategic litigation authority could enable commissions to petition courts directly when recommendations face non-implementation, creating judicial enforcement pathway for particularly significant violations. This approach, successfully implemented in comparative systems including India and South Africa, would maintain separation between investigation and enforcement while providing recourse when political resistance blocks implementation.

Third, mandatory periodic parliamentary review of implementation patterns could enhance accountability through legislative oversight. Regular reporting requirements coupled with dedicated parliamentary committee review would create political costs for systematic non-implementation while engaging legislative authority in rights protection. This approach has proven effective in comparative systems including Australia and Canada for enhancing implementation without direct enforcement authority.

c. Institutional Independence Strengthening

Enhancing effective jurisdiction requires strengthening institutional independence protections against political interference that constrains operational authority despite formal constitutional status. Several mechanisms could enhance independence without constitutional amendment:

First, legislative refinement of appointment processes could establish more transparent and pluralistic selection procedures while respecting constitutional appointment authority. Enhanced requirements for public hearings, civil society consultation, transparent criteria application, and diversity requirements would strengthen commissioner selection independence while maintaining constitutional appointment structures.

Second, financial independence protections could establish dedicated funding mechanisms less vulnerable to political manipulation, including fixed budget percentages, multi-year allocations, or independent endowment structures. These mechanisms, successfully implemented in comparative systems including South Africa and Australia, would enhance operational independence through resource security without requiring constitutional restructuring.

Conclusion:

The examination of human rights commissions in Nepal, particularly the National Human Rights Commission (NHRC) established under the 2015 Constitution, reveals a complex institutional landscape. While the NHRC possesses progressive formal powers, it encounters significant operational constraints. Nepal's journey from a statutory body to constitutional entrenchment reflects its democratic evolution, with human rights institutions gaining increasing formal authority through constitutional recognition and mandate expansion. The 2015 Constitution, in particular, represents the most advanced formal framework to date, establishing multiple commissions with comprehensive investigative jurisdiction and recommendatory powers across diverse rights domains. A key finding is the jurisdictional complexity introduced by the proliferation of specialized commissions under the 2015 Constitution. While this reflects a laudable recognition of the differentiated protection needs among marginalized communities, it has created challenges due to inadequate coordination mechanisms. This institutional fragmentation potentially undermines cohesive protection by dispersing resources, creating

overlapping mandates, and leading to coordination gaps. Similarly, Nepal's federal restructuring has added another layer of jurisdictional complexity regarding the relationships between national commissions and subnational authorities. Despite concurrent protection responsibilities, coordination mechanisms in this area remain underdeveloped. In conclusion, while Nepal has established a strong constitutional foundation for human rights protection, the effectiveness of the NHRC's jurisdiction is significantly impeded by practical limitations. To bridge the gap between formal powers and actual impact, addressing these challenges through improved coordination, enhanced enforcement mechanisms, and strengthened institutional independence remains crucial for realizing comprehensive human rights protection in Nepal.

References

Giri, S. K. (2022). Role of the National Human Rights Commission for the Protection of Human Rights in Nepal. *Dristikon: A Multidisciplinary Journal,* 12(1), 144–159. https://doi.org/10.3126/dristikon.v12i1.46134

Government of Nepal. (2015). *Constitution of Nepal 2015 Art. 248–249*. https://ag.gov.np/files/Constitution-of-Nepal_2072_Eng_www.moljpa.gov_.npDate-72_11_16.pdf

Government of Nepal. (2014). *Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act*.

Government of Nepal. (2007). *Interim Constitution of Nepal, Comprehensive Peace Agreement of 2006*, p. 87. https://constitutionnet.org/sites/default/files/interim_constitution_of_nepal_2007_as_amended_by_first_second_and_third_amendments.pdf

National Human Rights Commission of Nepal. (2012). *National Human Rights Commission Act.* https://www.nhrcnepal.org/uploads/law/National+Human+Rights+Commission+Act_(1).pdf

National Human Rights Commission of Nepal. (2022, December). *Annual report summary for website final (FY 2021–22).* National Human Rights Commission of Nepal. https://www.nhrcnepal.org/uploads/publication/Annual_Report_Summary_For_Website_Final.pdf

Republica. (2020, January 12). *NHRC seeks fair probe into the killing of environmental conservationist in Dhanusa***.** MyRepublica - The New York Times Partner. https://myrepublica.nagariknetwork.com/index.php/news/nhrc-seeks-fair-probe-into-the-killing-of-environment-conservationist-in-dhanusa

United Nations. (1993). *Paris Principles (UN General Assembly Resolution 48/134)*. https://ganhri.org/paris-principles/

United Nations. (1966). *International Covenant on Civil and Political Rights (ICCPR).* https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

United Nations. (1966). *International Covenant on Economic, Social and Cultural Rights (ICESCR).* https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

United Nations. (1984). *Convention against Torture and other cruel, inhuman or degrading treatment or punishment (CAT).* https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading

Sambahak: Human Rights Journal (2025), Vol. 25, 146-157

The Role and Significance of the National Human Rights Commission (NHRC) Nepal in upholding Human Rights

Ram Krishna Yadav[1]

Email: ramkrishna.yadavballb@gmail.com

To cite this article:

Yadav, R. K. (2025). The Role and Significance of the National Human Rights Commission (NHRC) Nepal in upholding Human Rights. *Sambahak: Human Rights Journal*, *25*(1), 146–157. https://doi.org/10.3126/sambahak.v25i1.83925

***Keywords**:* Human rights protection, justice and equality, accountability, Civil liberties

Abstract

The National Human Rights Commission (NHRC) Nepal is a constitutionally established institution dedicated to the protection and promotion of human rights. This article critically examines the comprehensive role of the NHRC Nepal by analyzing its legal mandate, institutional structure, and operational mechanisms. The commission plays a pivotal role in monitoring government actions, investigating human rights violations, raising public awareness, and recommending policy and legal reforms to promote justice, equality, and dignity for all citizens. As a guardian of civil, political, economic, social, and cultural rights, the NHRC Nepal engages in educational outreach, collaborates with civil society, and offers consultative advice to government agencies. These efforts aim to bridge the gap between constitutional guarantees and ground realities. However, despite its achievements, the Commission faces several institutional challenges—including limited financial and human resources, delays in investigation, and the non-binding nature of its recommendations—which undermine its effectiveness. This article underscores the urgent need for structural and operational reforms to enhance the NHRC Nepal's autonomy, enforcement capacity, and outreach. Furthermore, by aligning its work with international human rights frameworks and participating in global networks such as the Asia Pacific Forum and United Nations Human Rights Council reviews, the NHRC Nepal contributes to the global dialogue on human rights protection. Addressing these gaps will not only improve its domestic performance but also strengthen its legitimacy and impact on the international front.

[1] BALLB fourth Year Student at Chakraborty Habi Academy of Law

Introduction

Human rights form the bedrock of democratic societies, ensuring that every individual enjoys fundamental freedoms and equal opportunities regardless of their identity, background, or status. They serve as the foundation for a just society where the dignity of every person is recognized and protected, promoting social cohesion and mutual respect. To safeguard these inalienable rights, nations establish dedicated institutions tasked with monitoring, protecting, and promoting human rights. Such institutions play a crucial role in holding governments accountable, addressing structural inequalities, and advocating for the rights of marginalized and vulnerable groups. In Nepal, the National Human Rights Commission (NHRC) stands as a central institution in this effort. It functions both as a watchdog and an advocate, bridging the gap between legal guarantees and lived realities by ensuring that human rights principles are not only codified in law but are also implemented in practice. Established as a statutory body under the Human Rights Commission Act, 2053 (1997 AD), the NHRC Nepal was later granted constitutional status by the Interim Constitution of Nepal, 2063 (2007 AD)—a recognition further upheld in Article 248 of the Constitution of Nepal, 2072 (2015 AD). This transition reflects Nepal's evolving commitment to aligning national human rights mechanisms with international norms. Grounded in international frameworks such as the Universal Declaration of Human Rights [UDHR], 1948), and other binding treaties, the NHRC Nepal embodies the nation's pledge to uphold dignity, justice, and equality for all. These global standards provide both the moral and legal foundation for its operations. This article offers an in-depth analysis of the NHRC Nepal's role, structure, and significance in addressing rights violations and fostering a culture of respect for human dignity. The NHRC Nepal plays a pivotal role in monitoring rights abuses, ensuring accountability, and advocating for policy reforms. Its work spans across investigating individual complaints, monitoring institutional practices, and conducting public awareness and education campaigns on human rights issues. As a constitutionally empowered body, it acts as a vital intermediary between citizens and the state, working to ensure justice is delivered fairly and impartially. (Khadka & Adhikari, 2017).

With a broad mandate that encompasses civil, political, economic, social, and cultural rights, the NHRC Nepal addresses a diverse range of issues—from abuse in detention (custodial violence) and ethnic or gender-based discrimination, to systemic socio-economic challenges like lack of access to education, healthcare, or employment opportunities. In doing so, it does not merely react to individual violations but also tackles the underlying causes of inequality and marginalization, such as weak legal enforcement, socio-economic disparities, lack of institutional transparency, and inadequate policy implementation. The NHRC Nepal's work reflects an ongoing national and global struggle to transform human rights from aspirational

ideals into real, enforceable protections that elevate the dignity and quality of life for all citizens. (Khadka & Adhikari, 2017).

The Mandate and Structure of NHRC Nepal

The NHRC Nepal's mandate is multifaceted, reflecting the complexity of human rights challenges in a rapidly changing world. It functions as a watchdog over government actions, examining policies, laws, and administrative decisions to ensure their alignment with human rights principles. The commission investigates cases of human rights violations, either on its own initiative or based on complaints from individuals or groups. According to Section 4(1) (b) of the National Human Rights Commission Act (National Human Rights Commission Act, 2012), the NHRC Nepal may investigate cases that are sub-judice (under court consideration), but only with the permission of the court. However, it does not have the authority to intervene in ongoing court proceedings, and any claim to the contrary misrepresents both the NHRC's legal limits and internationally accepted human rights principles. The commission also recommends compensation for victims and proposes reforms in laws and policies to prevent future violations.

Structured as a constitutional body (Constitution of Nepal, 2015, Art. 248), the NHRC Nepal is composed of a chairperson—typically a retired Chief Justice or Supreme Court judge—and members with expertise in law, human rights, and public administration. This multidisciplinary composition ensures a balanced and informed approach to addressing human rights issues. The NHRC operates through its central office in Kathmandu and provincial offices established under Section 26 of the Act, enhancing its reach and accessibility. It also collaborates with civil society organizations and draws support from specialized investigative teams to fulfill its functions effectively. The commission is tasked with inspecting prisons, public institutions, and other sites to monitor compliance with human rights standards and issuing recommendations for reform. It plays a vital role in reviewing the implementation of human rights-related laws, advising the government, and raising public awareness through education and advocacy initiatives. Notably, the NHRC provides guidance on integrating human rights into school and university curricula, thus promoting a culture of rights and responsibilities among future generations. Despite its broad mandate, the NHRC Nepal faces substantial challenges. The non-binding nature of its recommendations, as emphasized in Section 17 of the Act, means that its effectiveness is contingent on cooperation from government agencies. This often leads to delays and weak enforcement. Furthermore, financial and human resource constraints significantly hinder the commission's capacity to investigate complaints thoroughly and carry out its broader responsibilities. To strengthen its role, structural reforms and enhanced legal powers are urgently needed, including granting its recommendations binding authority, ensuring sufficient funding, and improving institutional independence.

Functions and Responsibilities

The National Human Rights Commission (NHRC) Nepal undertakes a diverse and essential range of activities aimed at promoting and protecting human rights across the country. A central function of the NHRC Nepal is the investigation of human rights violations, as outlined in Section 4 of the National Human Rights Commission Act (National Human Rights Commission Act, 2012). These investigations address a broad spectrum of issues, including allegations of police misconduct, custodial deaths, discrimination, and denial of basic rights such as education, healthcare, and employment. Beyond its investigative mandate, the NHRC Nepal plays a pivotal role in public education and human rights advocacy. (Giri, 2022) Through workshops, seminars, and training programs, the commission raises awareness among citizens, law enforcement personnel, public officials, and marginalized communities. This educational outreach is critical in fostering a culture of accountability, civic empowerment, and rights-consciousness across Nepalese society.

In its advisory capacity, the NHRC Nepal provides the government with expert recommendations on policy reforms and legislative initiatives to strengthen the national human rights framework. Under Section 6 of the Act, it is empowered to suggest new laws or propose amendments to existing statutes to ensure compliance with international human rights standards. The commission also supports the integration of human rights education into school and university curricula, thereby embedding respect for fundamental rights into the fabric of Nepalese education.

Another significant function of the NHRC Nepal is monitoring and reporting on the state of human rights in the country. The commission regularly publishes annual and thematic reports, which identify key trends, highlight systemic violations, and provide data-driven insights to inform both public policy and civic action. These reports serve as valuable tools for national advocacy and international review processes. The NHRC Nepal is also mandated to recommend interim relief or financial compensation for victims of rights violations, in accordance with Section 9 and Section 16 of the Act. This mechanism reflects the commission's commitment to providing both immediate support and long-term justice for affected individuals. (Bhattarai, & Shrestha, 2019)

To strengthen its impact, the NHRC Nepal actively collaborates with civil society organizations, regional human rights mechanisms, and international institutions. These partnerships enhance the commission's capacity to adopt best practices, share expertise, and address transnational human rights challenges. Despite these efforts, the NHRC Nepal continues to face critical constraints—particularly in terms of budget limitations, human resource shortages, and the non-binding nature of its recommendations. These obstacles limit the commission's operational

efficiency and underscore the pressing need for institutional reform, stronger enforcement powers, and sustained governmental support.

Challenges and Criticism

Despite its commendable efforts and achievements in protecting and promoting human rights, the National Human Rights Commission (NHRC) Nepal faces several challenges that hinder its ability to operate effectively. These challenges stem from structural, operational, and external factors that collectively limit its potential to address the full spectrum of human rights violations.

a. Limited Financial and Human Resources

One of the most persistent challenges faced by the NHRC Nepal is the insufficiency of financial and human resources. As the custodian of human rights in a populous and diverse nation, the commission is inundated with thousands of cases annually, ranging from civil and political rights violations to issues of social justice. However, its limited budget and inadequate workforce make it difficult to process these cases in a timely and comprehensive manner. This resource constraint not only slows down the resolution process but also hampers the commission's ability to conduct independent investigations, organize awareness campaigns, and implement robust monitoring mechanisms.

b. Bureaucratic Inefficiencies and Delays

The NHRC Nepal's operational framework is often criticized for being bogged down by bureaucratic inefficiencies. Delays in investigations are a frequent issue, with many cases taking years to reach a conclusion. These delays can discourage victims from seeking justice and undermine public confidence in the commission's effectiveness. Moreover, the NHRC Nepal's recommendations are non-binding, which means that the implementation of its findings is dependent on the discretion of government authorities. This lack of enforcement power significantly weakens its ability to bring about meaningful change and hold violators accountable.

c. Independence and Impartiality Concerns

The NHRC Nepal's reliance on government appointments has raised questions about its independence and impartiality. Critics argue that the selection process for key positions within the commission often lacks transparency and may be influenced by political considerations. This dependence on the government can lead to perceptions of bias and reluctance to address sensitive issues that might conflict with the interests of the state. Ensuring a more autonomous

and transparent appointment process is essential to bolster the commission's credibility and effectiveness. The parliamentary hearing before appointment is a compulsory process. .

d. Underrepresentation of Economic, Social, and Cultural Rights

While the NHRC Nepal has made significant strides in addressing civil and political rights, it has been criticized for its inadequate focus on economic, social, and cultural rights. Issues such as poverty, unemployment, inadequate housing, and limited access to education and healthcare are critical aspects of human rights that often remain underrepresented in the commission's agenda. These issues disproportionately affect marginalized and vulnerable populations, who are often left without effective recourse. The imbalance between civil-political and socio-economic rights underscores the need for a more holistic approach to human rights protection.

e. External Pressures and Challenges:

The NHRC Nepal operates in a complex socio-political environment where external pressures can impede its functioning. Resistance from government agencies, lack of cooperation from law enforcement authorities, and societal indifference towards human rights issues further complicate its work. In some cases, powerful entities implicated in human rights violations may exert undue influence to delay or dilute investigations.

f. Public Awareness and Outreach:

Another critical challenge is the lack of widespread public awareness about the NHRC Nepal's role and functions. Many individuals, particularly in rural and remote areas, remain unaware of their rights and the mechanisms available to address violations. This lack of awareness limits the commission's reach and effectiveness in addressing human rights issues across diverse demographics.

Key Provisions of the National Human Rights Commission Act and the Need for Amendments

The National Human Rights Commission Act (2012), is a critical piece of legislation in Nepal designed to institutionalize the protection, promotion, and enforcement of human rights, the Act establishes the National Human Rights Commission (NHRC) Nepal as an independent and autonomous constitutional body, tasked with ensuring the respect, promotion, and effective implementation of human rights as provided under the Constitution, existing laws, and international treaties to which Nepal is a party. The Act, under Section 4, outlines the NHRC Nepal's extensive functions, duties, and powers, enabling it to act as a watchdog and a proactive force in human rights protection. These powers include conducting inspections and monitoring prisons, government agencies, public institutions, and private entities to identify and address

violations. Section 4(1)(b) allows the NHRC Nepal to investigate sub judice cases involving human rights violations with the court's permission, while Section 4(1)(c) enables it to monitor the implementation of existing laws related to human rights and recommend improvements to the government for effective execution. The NHRC Nepal is also mandated to review the state of human rights in the country and issue public reports under Section 4(1)(f), alongside providing human rights-related consultations to the government, as outlined in Section 6. The Act provides a mechanism for victims or their representatives to file complaints about human rights violations under Section 10, and it obligates the NHRC Nepal to initiate preliminary proceedings without delay, as per Section 11. In urgent situations, Section 9 grants the Commission the authority to order immediate relief or rescue for victims, ensuring that those in vulnerable situations are promptly protected. Furthermore, Section 16 empowers the NHRC Nepal to recommend compensation of up to NPR 300,000 to victims, with the amount being recoverable from the violator. Section 7 establishes provisions for publicly naming human rights violators who fail to comply with the Commission's recommendations or orders, thus creating a form of accountability and social pressure. (Durbach, & Nowak, 2009) Additionally, the NHRC Nepal can propose legislative reforms and recommend the ratification of international human rights treaties under Section 6(4), ensuring that Nepal remains aligned with global standards. Section 17 details the procedures for implementing the NHRC Nepal's recommendations, although it relies heavily on the cooperation of other government agencies, which is a notable limitation. Despite the comprehensive framework laid out by the Act, significant challenges hinder its effective implementation. One major issue is the non-binding nature of the NHRC Nepal's recommendations and decisions, as highlighted in Section 17. This reliance on the goodwill of government bodies to act on its recommendations undermines the NHRC's authority and effectiveness. Additionally, resource constraints—both financial and human—have limited the NHRC Nepal's ability to conduct thorough investigations, maintain its regional offices, and address the volume of complaints received. Delays in resolving complaints within the six-month timeframe stipulated in Section 15 have further eroded public trust in the Commission's efficiency and effectiveness. There is also a lack of public awareness about the NHRC Nepal's role and functions, particularly in remote and marginalized communities, which limits the accessibility of the Commission's services. Furthermore, the Act's provisions for accountability, such as naming violators under Section 7, lack enforcement mechanisms beyond reputational damage, reducing their deterrent effect. (Yadav & Kafle, 2020).

To address these shortcomings, targeted amendments to the Act are essential. First, the NHRC Nepal should be granted binding powers to enforce its decisions, ensuring that its recommendations are not merely advisory but carry legal weight. Section 17 should be revised to mandate government agencies to implement NHRC Nepal decisions within a specified

timeframe, with penalties for non-compliance. Resource allocation must be significantly enhanced to enable the NHRC Nepal to expand its investigative capacity, establish additional regional offices as allowed under Section 26, and implement modern technologies for case management and public engagement. Public awareness campaigns are also critical to educating citizens about the NHRC Nepal's mandate and encouraging greater participation in the complaint mechanism outlined in Section 10. Coordination with other human rights bodies and agencies, as envisioned in Section 18, should be strengthened through clear protocols to avoid overlapping mandates and inefficiencies. The Act should also include detailed provisions under Section 7 and Section 16 for enforcing accountability, such as freezing the assets or imposing financial penalties on violators who fail to comply with NHRC Nepal orders. Furthermore, regular capacity-building programs for NHRC Nepal staff and stakeholders, along with provisions for fast-tracking urgent cases under Section 9, would enhance the Commission's ability to deliver timely and effective justice. National Human Rights Commission Act, 2068, provides a solid legal foundation for human rights protection in Nepal, its full potential remains unrealized due to structural and operational limitations. Addressing these through targeted amendments would empower the NHRC Nepal to act decisively, enhance public trust, and strengthen Nepal's commitment to upholding the fundamental rights and freedoms of its citizens granting the NHRC binding powers, increasing resources, ensuring accountability, and fostering public engagement, the Act can evolve into a more effective instrument for human rights protection in the country (Sharma & Joshi, 2021).

The Way Forward

To enhance its effectiveness and ensure its continued relevance in addressing the dynamic challenges of human rights protection, the National Human Rights Commission (NHRC) Nepal must undertake structural and operational reforms. These changes should aim to strengthen the commission's autonomy, broaden its focus, and deepen its engagement with stakeholders at all levels.

1. Ensuring Financial Autonomy

Financial independence is critical for the NHRC Nepal to operate without undue influence and expand its capacity. Currently, the commission's reliance on limited government funding hampers its ability to address the vast spectrum of human rights issues effectively. Granting the NHRC Nepal control over its financial resources, along with increased budgetary allocations, would enable it to invest in infrastructure, technology, and human resources to better address its mandate.

2. Increasing Staffing Levels and Expertise

A well-equipped and adequately staffed NHRC Nepal is essential for handling the increasing number and complexity of human rights violations. The commission must recruit more investigators, legal experts, and subject-matter specialists to expedite case handling and broaden its expertise in emerging areas such as digital rights and climate justice. Training programs should also be enhanced to keep the workforce updated on global best practices and evolving human rights standards.(Poudel & Ghimire 2021).

3. Empowering the NHRC Nepal with Binding Authority

One of the most significant limitations of the NHRC Nepal is the non-binding nature of its recommendations. To ensure accountability and compliance, the commission should be vested with binding authority to enforce its decisions. This reform would enhance the commission's credibility and ensure that its findings and directives lead to concrete action and justice for victims.

4. Expanding Focus to Emerging Challenges

Human rights challenges are evolving in response to rapid technological, environmental, and social changes. The NHRC Nepal must expand its agenda to address pressing issues such as:

- Digital Privacy and Rights: As the digital landscape grows, concerns around surveillance, data breaches, and online harassment are becoming critical human rights issues.
- Climate Justice: The impact of climate change on vulnerable populations necessitates a focus on environmental rights and sustainable development.
- Rights of Vulnerable Groups: Migrants, refugees, LGBTQ+ individuals, and other marginalized communities require targeted attention to address their unique challenges and vulnerabilities.

Embracing these emerging areas, the NHRC Nepal can remain relevant in addressing the multifaceted nature of human rights violations.

5. Strengthening Collaboration

Collaboration with international human rights organizations, regional bodies, and civil society groups can significantly bolster the NHRC Nepal's capacity. Partnerships can facilitate knowledge-sharing, resource mobilization, and coordinated action on transnational issues. For instance, aligning with global frameworks like the United Nations' Sustainable Development Goals (SDGs) can help the NHRC Nepal incorporate a broader perspective into its operations. (Singh & Chaudhary, 2020)

6. Promoting Public Engagement and Participation

Public involvement is integral to fostering a culture of respect for human rights. The NHRC Nepal should prioritize community participation in its initiatives, including consultations, awareness campaigns, and feedback mechanisms. Engaging grassroots organizations and local communities can help identify and address human rights issues more effectively. Additionally, leveraging digital platforms can increase outreach and ensure that the commission's services are accessible to all segments of society.

Conclusion

The National Human Rights Commission (NHRC) Nepal stands as a cornerstone institution in upholding the fundamental rights and freedoms of individuals. It embodies a nation's commitment to justice, equality, and human dignity, ensuring that the principles enshrined in human rights charters are not relegated to lofty ideals but are instead woven into the everyday lives of its citizens. The NHRC Nepal's work is a testament to the enduring belief that every individual deserves respect, protection, and the opportunity to thrive in a fair and just society. In a world characterized by rapid social, political, and economic changes, the NHRC Nepal's role in safeguarding human rights is more critical than ever. Its efforts provide a vital mechanism for addressing grievances, preventing abuses, and holding violators accountable addressing a wide array of issues—ranging from civil liberties and gender equality to the protection of marginalized communities—the NHRC Nepal not only protects individuals but also strengthens the democratic fabric of the nation. While the NHRC Nepal has made significant strides**,** its journey has not been without obstacles. Challenges such as resource constraints, bureaucratic inefficiencies, and the lack of enforcement power threaten to dilute its impact. Furthermore, the changing nature of human rights violations in a globalized and digitalized world demands that the commission evolve to address emerging issues effectively. These hurdles highlight the importance of continuous reform and adaptation to ensure that the NHRC Nepal remains a robust and effective institution. The NHRC Nepal's success depends not only on its internal reforms but also on the active participation of all stakeholders. Government support in the form of financial autonomy and legal empowerment is crucial. At the same time, collaboration with civil society organizations, academic institutions, and international human rights bodies can provide the NHRC Nepal with additional resources, expertise, and networks to amplify its reach and impact. Public engagement is equally vital. A well-informed and empowered citizenry can play a pivotal role in holding institutions accountable and advocating for the protection of rights. The NHRC Nepal must prioritize outreach and education to ensure that its mandate is understood and accessible to all segments of society, especially those most vulnerable to human rights violations. Looking ahead, the NHRC Nepal has the opportunity to

redefine its role in the face of complex global challenges such as climate change, digital privacy concerns, and mass displacement due to conflict and economic inequalities expanding its focus and embracing innovation, the commission can address these emerging issues while maintaining its core mission of safeguarding fundamental rights. Ultimately, the NHRC Nepal's continued efforts, supported by meaningful reforms and robust public participation, can help pave the way for a society that truly embodies the principles of justice, equality, and human dignity. Its work is not merely about resolving individual cases but about shaping a national ethos where human rights are universally respected and protected. In an era marked by unprecedented challenges and opportunities, the NHRC Nepal's role is not just relevant—it is indispensable standing as a guardian of rights and a beacon of hope, the commission can ensure that the ideals of human rights become lived realities for all, fostering a more equitable, inclusive, and just world for generations to come.

References

Bhattarai, S., & Shrestha, P. (2019). The role of NHRIs in promoting human rights: Case studies from South Asia. *Asian Journal of Comparative Law*, *14*(1), 75-100.

Durbach, A., & Nowak, M. (2009). The role of national human rights institutions in peace processes: Lessons from Nepal and beyond. *International Journal of Transitional Justice*, *3*(2), 200-219.

Giri, S. K. (2022). Role of the National Human Rights Commission for the Protection of Human Rights in Nepal. Dristikon: A Multidisciplinary Journal, *12*(1), 144–159. https://doi.org/10.3126/dristikon.v12i1.46134

Government of Nepal. (2015). *The Constitution of Nepal of 2015,* Nepal. https://lawcommission.gov.np/content/13437/nepal-s-constitution/

Khadka, S., & Adhikari, R. (2017). Assessing the effectiveness of the NHRC's recommendations on human rights issues in Nepal: A qualitative study. *Nepal Law Review, 8*(1), 45-67.

National Human Rights Commission of Nepal. (2012). *National Human Rights Commission Act of 2012.* https://www.nhrcnepal.org/uploads/law/National+Human+Rights+Commission+Act_(1).pdf

Poudel, B., & Ghimire, R. (2021). Assessing public perceptions of the NHRC's effectiveness in protecting human rights in Nepal: A survey-based study. *Journal of Asian Public Policy, 14*(3), 321-336.

Sharma, M., & Joshi, D. (2021). NHRC's role in addressing gender-based violence in Nepal: Challenges and prospects. *Journal of Gender Studies, 30*(4), 456-472.

Singh, R., & Chaudhary, S. (2020). The impact of international norms on the functioning of NHRCs: Lessons from Nepal and India. *International Journal of Human Rights, 24*(5), 649-670.

United Nations. (1948). *Universal Declaration of Human Rights (UDHR).* https://www.un.org/en/about-us/universal-declaration-of-human-rights

Yadav, R., & Kafle, K. (2020). The role of NHRC in transitional justice processes in Nepal: An assessment of its impact on victims' rights. *Transitional Justice Review*, 6(3), 123-142.

Sambahak: Human Rights Journal (2025), Vol. 25, 158-177

Human Rights of Burn Survivors in Nepal

Smriti Pantha[1]

Email: panthasmriti@gmail.com

To cite this article:
Pantha, S. (2025). Human Rights of Burn Survivors in Nepal. *Sambahak: Human Rights Journal*, *25*(1), 158–177.
https://doi.org/10.3126/sambahak.v25i1.83926

***Keywords**:* Burn, Human Rights, Public Health, Dignity, Equality, Rehabilitation

Abstract

Burn is a preventable public health issue yet it continues to cause significant harm to the population, particularly among the most vulnerable. Burn survivors go through physiological changes such as skin tightening, scarring, skin pigmentation, disfigurements, and amputations in case of limb necrotic burn. Additionally, the survivors face psychological adversities including pain, anxiety, depression, post-traumatic stress disorder, disturbance in bodily ideals, alienation and financial pressure due to prolonged hospitalization. While burn injuries are viewed as a public health issue, this study investigates from a human rights perspective. This paper examines the human rights situation of burn survivors in Nepal through an analysis of the existing legal, health, and social practices. The paper aims to highlight the fundamental rights of burn survivors which includes the right to health, life, dignity, non-discrimination, equality, adequate standards of living, and access to redress and rehabilitation. The findings highlight the need to shift the national response from solely medical treatment towards a rights-based, survivor-centric approach that ensures holistic burn care management. Without such measures, burn survivors remain at the intersection of physical pain, mental trauma, institutional neglect, social exclusion, and denied legal protection.

[1] Advocate; Legal Officer, Burn Violence Survivor

Introduction

Burn injuries are a critical public health and human rights issue in Nepal. According to the fact sheet published by the World Health Organization (WHO, 2023) burns accounts for an estimated 180,000 deaths annually with the majority of burns occurring in low-and middle-income countries. Almost two thirds occur in the African and South-East Asia Regions. The fact sheet also reports that burns are the second most common injury in rural Nepal, accounting for 5% of disabilities.

A burn is an injury to the skin or other organic tissue primarily caused by heat, radiation, radioactivity, electricity, friction or contact with chemicals. Spronk et al. (2018) found that an injury of this kind results in significant morbidity, disabilities, disfigurements, prolonged hospitalization, multiple reconstructive surgical procedures, extensive long-term management for patients and impairment of emotional well-being, overall affecting their quality of life.

The cause of burn injuries varies. Burn can be either intentional (assault or self-harm) or unintentional (accidental) sustained through immersion in hot liquids, contact with hot objects, flame with additional accelerants like petrol or kerosene or chemicals acid or hazardous substances, and contact with open wires. Atwell et al. (2020) reported that intentional burn injuries are more severe than unintentional burn injuries, with a high mortality rate, higher post-burn mental health, and morbidity. Vetrichevvel et al., (2018) identified that the incidence of young women who have been the victim of intentional burn injuries in low- and middle-income countries is six times higher (63%-79%) than in higher income countries, where it represents only 1-10% of burn-related admissions to hospital.

Burn injuries are complex, both medically and socially. Beyond the risk of morbidity, mortality and long-term disability burn limits ability to work, reduces capacity to take care of their families and participate fully in the society. These health-related consequences of burns are often accompanied with additional socio-economic burdens for burn victims and their families. Additionally, it adds substantial cost to the healthcare system due to intensive medical care and rehabilitation. Amidst the struggle for comprehensive burn treatment, burn patients encounter challenges in accessing the rights and protections guaranteed under national and international law.

This research is guided by the premise that burns are not only a public health concern but also a matter of justice and equity. Recognizing the stark disconnect between survivors' lived realities and the institutional response, this study aims to advocate for a holistic reform of Nepal's burn care system which is needed for policy reform and institutional accountability.

Methodology

This study adopts a doctrinal research approach where the author has examined constitutional provisions, national legislation and international legal instruments and judicial decisions pertaining to burn injuries and the rights of burn survivors. Additionally, scholarly articles, academic journals, and reports published by national and international organizations have been reviewed to contextualize and support the legal analysis.

Contributing Factors to Burn

The burden of burn falls to the vulnerable population which includes children, women, people living in poverty, informal workers and industrial laborers. These vulnerable populations are more susceptible to burn injuries due to various social, economic, environmental and behavioral factors.

Social Factor

The social and cultural practices hold women responsible for cooking making them vulnerable to kitchen accidents relating to use of kerosene, open fire, gas and flammability of garments. Social, cultural, religious practices, patriarchal attitudes, structural inequalities, rigid gender norms and stereotypes discriminate against women. As a result, women are put through domestic violence, marital rape, dowry-related violence, child marriage, female infanticide, witchcraft accusations, tradition healing through religious practitioners, and harmful practices like dowry and chhaupadi. Through these harmful practices, women sustain burn injuries and attacks. Burn violence is one such manifestation of gender-based violence. The factsheet from Women's Rehabilitation Center [WOREC] (2024) provides an overview of gender-based violence (GBV) in Nepal during July 2023 to June 2024 wherein a total of 1,393 cases of GBV were recorded, with domestic violence being the most common with 911 cases. Violence disproportionately targets women. Some news excerpts of burn violence are mentioned below:

A woman from Janakpur in the Dhanusha district of Madhesh has been injured allegedly after her family members put her on fire over a dowry disputes. (Onlinekhabar, 2023)

Raj Kumari Sah was set on fire by her brother-in-law while preparing a meal on Friday." (The Kathmandu Post, 2022)

"Sunita, who was reportedly beaten and burnt with a hot iron by her doctor husband Sachitananda Yadav was taken to Kathmandu for treatment a few days ago. She breathed her last on March 29 while undergoing treatment at Tribhuvan University Teaching Hospital." (Republica, 2018)

Apart from women, children are also considered to be vulnerable to burn. A study at Kanti Children's Hospital in Kathmandu reported that 61% of burn victims were children, with 83% of pediatric burn patients being under the age of five, primarily due to scalds from hot liquids, flame burns and contact with heated objects (Thapa, Chapagain, & Kayastha, 2021). Their innate curiosity to explore and experiment the surroundings, and their physical and physiological immaturity to perceive danger places them at risk of burn injuries.

Economic Factor

Socio-economic development of different countries affects every aspect of life including the health of the individuals. Among others, Mistry et al. (2010) identified socioeconomic deprivation as important determinants of injury. Burns are more common in populations with lower socioeconomic status. With limited access to education, income and occupation the exposure to risk factors, inequities of health care, health hazards and injuries heightens. Inability to afford burn-preventive infrastructure or safety education adds to their vulnerability. The burden of burn injury is one that falls predominantly on the worlds poor (Logan, 2025). Kiran Nakarmi of the Nepal Cleft and Burn Centre at Kirtipur Hospital, states this as a burn paradox where the treatment is expensive but majority of victims are poor.

Despite the increasing number of burns in rural Nepal, its treatment isn't available at nearby health centers depriving them of immediate care. The patients are carried great distances mostly to Kathmandu. Treatments cost them what little they own as it is expensive and involves multiple surgeries and prolonged hospital stay. Poudel, A. (2024) reported that despite government pledges to provide free treatment for impoverished burn victims, implementation has been inconsistent, leading many patients to bear the financial burden themselves.

Environmental Factor

When temperature plunges, the number of burn incidents spike. During cold weather, especially in Terai where thick fogs stay for weeks, people gather around bonfires to keep themselves warm. This practice poses a significant fire risk to women, elderly people and children, as they stay very close to fire. The Kathmandu Post (2024) reported that allotted 24 beds in Nepal Cleft and Burn Centre in Kirtipur were filled and had to convert other general wards to burn units and added additional beds due to a massive influx of burn victims during winter season.Wildfire in the dry season and other fire-related incidents is yet another concern for Nepal. In the dry season plants and vegetation lose moisture increasing flammability and ignition. Acts of human negligence such as smoking near vegetation, discarding cigarettes into dry vegetation, arson, and burning dry vegetation to clear farmland sparks uncontrollable fire. The Nepal Disaster report of Ministry of Home Affairs (2024) recorded a total of 593 deaths from fire comprising

348 females, 244 males, and 1 unknown and the financial loss has been worth more than NPR. 23.60 billion during 19,593 fire-related incidents. Additionally, the National Disaster Risk Reduction and Management Authority [NDRRMA] (2025) data shows that 25 people have died and 125 injured since the start of 2025 in fire-related incidents, including one in the forest fire. The given data indicates that women are vulnerable in the event of fire and the overall economic impacts are felt most by the most vulnerable and marginalized communities living adjacent to forest areas with limited resources and livelihood options.

Occupational Safety Factor

Lack of proper safety measures in industrial settings further increase the incidence of burns. In such instances, informal sector workers and industrial laborers are the most vulnerable. Workers exposed to hazardous environments, open flames, hot substances, corrosive substances, and molten metals without protective gear, fire safety measures and drills are at high risk of burn. Likewise, cooks and kitchen staffs working with high-pressure gas stoves at restaurant and food stall businesses are at risk of hot oil, boiling water, gas leaks, and flames. A recent gas explosion reported by The Kathmandu Post (2025) covered the Shandar Momo incident where four of the 11 injured lost their lives. The incident shows that fire safety is practiced as an exception and not as a norm. Fire safety equipment like fire extinguishers, emergency exits, fire hose and burn first aid kits are proven useful to minimize the loss and damage in case of fire.

Disaster Risk Reduction and Management Act of 2074 requires public enterprises and business establishments to equip themselves with devices, equipment, materials, and make emergency exit to avoid the occurrence of a disaster in their buildings, industries, offices or business premises. Some other responsibilities include providing Basic orientation training to their own employees and workers on disaster management, keeping standby position of resources and materials to be used for disaster management. While employers have compromised occupational safety protocols, the workers are at risk of burn incidents.

Infrastructural Factors

Inadequate infrastructure contributes to the incidence and severity of burn injuries in Nepal. The health services in the rural part of Nepal are insufficiently equipped to handle immediate burn care. Most burn hospitals are in urban areas but even they lack trained personnel, or facilities for skin grafting and reconstructive surgery, forcing patients to travel long distances. Inaccessible quality health services delay emergency treatment and risk complications, disability, or death.

A retrospective observational study of (Thapa et al., 2021) studied routinely collected data of children up to 14 years admitted to the Burns Ward at Kanti Children's Hospital from July 2016 to July 2019 and noted that 50.6% (474 patients) reached hospital within 24 hours of the burn

injury while 39.2% reached hospital after 24 hours but within one week of injury, and 8.9% arrived at hospital more than one week after the burn injury. Among other reasons, unavailability or inaccessibility of burn related health services nearby caused delayed arrival.

Derelict electric poles and low-hanging live wires, some hanging less than six feet above ground are the contributing factors for burn incidence. Unmanaged, unmonitored and unattended electric wires, practice of tapping into an electrical power line before the electricity meter causes electrocution and electrical burns. Electrical burns are a growing concern especially in Madesh Province. Sah (2024) reported a total of 449 deaths from electric shock in Madhesh Province over the past five years. The Nepal Electricity Authority (NEA)provides compensation if negligence is proven, which is often difficult for victims due to weak legal and investigative mechanisms.

Another significant factor is the limited equipment for fire management. This doesn't primarily cause burn but with limited resources fire damage can't be minimized promptly. Local governments across Nepal face challenges in ensuring adequate fire safety equipment within their jurisdictions. Local units still lack fire engines or functional fire engines due to budgetary constraints, high maintenance costs, and logistical barriers. As a result, the local governments, the primary point of contact in case of a burn emergency, have limited capacity to respond effectively to fire-related emergencies. The existing fire-engines are equipped with tools capable of reaching only up to the 10^{th} floor, posing a technical limitation for the management of fire in taller structures present in urban areas.

Challenges of Burn Survivors

While some people lose their lives in fire others survive. Survivorship is a challenge to every burn survivor. Their journey doesn't stop after returning to their society, it begins from there. There are difficult dimensions and challenges embedded in the rehabilitation of burn survivors. Some challenges are due to the nature of injury while some are due to the problem of inequality, systematic discrimination, institutional failure and social injustice.

Physical and Mental Challenges

A burn incident that unfolded in split seconds leaves a lifelong pain. Burn survivors have to go through excruciating pain included by the abrupt incident, prolonged treatment and surgery and even after post burn. Garcia & Kunjavara (2021) described the pain of burn patients as horrible, unbearable, unexplainable, daunting and something they could never imagine encountering in their lives. After the treatment the survivor may acquire physical disability and post-burn scar. After sustaining a second- or third-degree burn, burn contractures develop limiting joint

movement, deformity and functional impairment. Regular activities that they performed before burn will be a herculean task for them.

Surviving a severe burn is not only a physically difficult experience, but mentally challenging too. Survivors have to go through an unseen battle against mental and emotional adversities. Lodha et al. (2020) highlighted how post-traumatic stress and depression rates are significant globally, affecting 5.6% and 4.4% of the population, respectively, following a traumatic event. Survivors revisit the incident, face financial distress and struggle to accept their scars and engage publicly. The lack of psychological rehabilitation facilities leaves burn survivors and their families to navigate the mental health aftermath on their own. Failure to take active efforts in ensuring their physical and mental well-being including social rehabilitation and compensation amounts to a denial of their fundamental rights.

Discrimination and Stereotypes

The society we live in imposes beauty standards that don't accept any scar, judge women based on appearance, perceives burn survivors unworthy of admiration and extends pity instead of support. As society fails to provide an inclusive environment for burn survivors, they are marginalized and forced to live lives of social exclusion. Particularly women, children, poor, and people with disabilities are at the receiving end of social stigma that prevent them from achieving fulfilling lives. Acts of blaming survivors for their injury, assuming negligence and concealing cases of domestic or dowry-related violence further denies survivors a respectful reintegration process. Hameed & Bhattacharya (2022) described that discrimination makes it highly difficult to find gainful employment and survivors often end up feeling as though they have no meaning in life.

Such acts of discrimination against survivors challenge the fundamental principle of Universal Declaration of Human Rights (UDHR) that guarantees all individuals an equal treatment in dignity and rights (United Nations, 1948, Art. 1). Additionally, pushing survivors to isolation and humiliation through discriminatory practices contradicts the universal right to be protected from torture or cruel, inhuman or degrading treatment or punishment (United Nations, 1948, Art. 5). Additionally, it contravenes the right to equality where no discrimination is ensured in the applications of general laws on grounds of physical condition, condition of health or other similar grounds (The Constitution of Nepal, 2015, Art. 18).

The Constitution of Nepal 2015 affirms that every human is entitled for a dignified life regardless of their caste, color, religion, physical appearance, health status, gender, or background. Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Thus, instead of adding to survivors' woes, the onus lies on all stakeholders to challenge discriminatory social norms, turn rejection to acceptance and extend support for their empowerment and autonomy without compromising their dignity. A holistic reintegration comprising physical rehabilitation, psychological wellbeing and social and economic support is crucial to bring them to the mainstream of the society.

Legal and Institutional Hurdles on Issue of Burn

Discriminatory Laws

Whether a person is burned by acid or other substance, the trauma, pain, and treatment are universally the same. The right to live and to receive equal treatment to all individuals without discrimination is a fundamental human right. While the substance of the attack may vary, the focus should be on the damage caused and the suffering endured, rather than on discriminating based on the means of harm. Unfortunately, the current laws in Nepal fail to acknowledge this critical fact by just focusing on acid attack burns and excluding other means reflecting the failure to guarantee dignity, respect, and equality that every individual deserves, regardless of the nature of their injuries.

In 2079 B.S. amendment of National Criminal [Code] Act (2017), Section 192A), prohibiting hurt through use of acid. This amendment adopted stringent punishment for perpetrators of acid attack including a maximum of 20 years of imprisonment and fine up to NPR 10,00,000. On the other hand, Section 193 addresses disfigurement through flammable and poisonous substances imposing a maximum punishment of only 5 to 8 years of imprisonment and a fine ranging from NPR 1,00,000 to 50,000. Law failed to understand that the intent of the perpetrator is to damage someone physically and the punishment should depend upon the percentage of burn incurred and not on the chemical composition of the substances. Despite the similarity in the nature of crime, damage incurred, treatment procedures and experiences of acid attack and burn violence survivors, the existing laws fall short to ensure justice and equitable treatment ensured under the right of victims of crime.

Demoralizing Laws

National Penal [Code] Act (2017, Section 192A subsection (2) and (3) and Section 193) are provisions pertaining to acid attack and burn/flame attack respectively. These provisions state the term *kurup,* which translates to “ugly”. Individuals who have suffered such traumatic injuries already struggle in accepting and embracing their new physical appearance. The use of such derogatory language in legal contexts perpetuates harmful stereotypes, further stigmatizing burn survivors. Such provisions are deeply demoralizing and fundamentally contradict the right to live with dignity and the right to equality as enshrined in the Constitution of Nepal.

Shift in Methods of Burn Violence

In a writ petition of Advocate Sashi Basnet vs. Government of Nepal, Office of the Prime Minister and Council of Ministers (2017) the Supreme Court issued a mandamus ordering to ensure free emergency treatment for victims of acid attacks and to introduce regulatory measures concerning the production, transportation, and distribution of acid. After 5 years of the order, the Acid and Other Substances Hazardous Chemical Substance (Regulation) Ordinance 2078 (2022) introduced regulatory measures such as licensing from the District Administration Office for sale and distribution of acid and other corrosive materials and maintaining records of such buyers. Additionally, it amended the Evidence Act 2031(1994) to widen the definition of what can be considered evidence and incorporate to presume intent of murder or harm if a person throws acid and other flammable substances. Later, Acid and Other Substances Hazardous Chemical Substance (Regulation) Act 2079 (2022) was passed echoing the similar provisions. Due to stringent laws, the Annual Factsheet Report on Gender Based Violence reports only one case of acid attack (Nepal Police, 2024).

While this reflects the effectiveness of legal deterrents against acid violence, it has led the perpetrators to shift the method of assault, resorting to alternative substances such as hot oil, hot water, kerosene and other hot objects and substances that are readily available and difficult to regulate. In cases of this shift to domestic substances is likely to be concealed as accidents, encouraging misclassification of incidents, reinforcing impunity, promoting abusive domestic environments and increasing risk to women and other vulnerable groups. The preamble of Convention on Elimination of Discrimination Against Women [CEDAW] 1979 states that discrimination against women violates the principles of equality of rights and respect for human dignity. Since Nepal has ratified the CEDAW treaty in 1991 loopholes in legislation entailing humiliation and violence must be amended to uphold the inherent right of women to live life with dignity and free from violence whether in public sphere or within homes.

Policies Excluding a Comprehensive Recovery

Policy measures have been adopted endorsing the treatment of acid attacks and burn survivors. The Ministry of Health and Population has issued The Procedures for Treatment of Acid-attack Victims 2021 ensuring free treatment for acid attack survivors in designated four hospitals within Kathmandu Valley, those are Tribhuvan University Teaching Hospital, Bir Hospital, Patan Hospital and Kirtipur Hospital. The approach allows the victim to access essential health services. However, it is still inaccessible for survivors in rural areas as the services are limited to four hospitals of Kathmandu.

Likewise, the Procedure for Expansion of Intensive Treatment Services for Burns (2024) addresses the necessity to operate intensive care services for burns in at least one federal/provincial hospital in each province. The procedure aims to provide emergency and immediate treatment, ICU treatment management and reconstructive surgeries of burn injuries. However, free treatment service is limited to indigent burn victims contingent upon receiving recommendation. Designated hospitals under this procedure include B.P. Koirala Institute of Health Sciences Dharan, Narayani Hospital in Birgunj, Bir Hospital in Kathmandu, Pokhara Institute of Health Sciences, Bheri Hospital in Nepalgunj, Surkhet Provincial Hospital, Seti Provincial Hospital in Dhangadhi, Kirtipur Hospital in Kirtipur where Bir Hospital and Kirtipur Burn Hospital are located as central hospitals. However, not all of these hospitals are equipped with burn infrastructure and trained resources, limiting their delivery of quality burn care facilities to burn survivors. In addition to that, the both procedures still miss out on long-term physical rehabilitation, psychological counseling, and social reintegration which are crucial parts of a comprehensive recovery of burn survivors.

Unregulated Cosmetic Procedures

Scar is a reminder of a painful journey and reconciling to the present self is always difficult. A survivor will look into the mirror and never see themselves as they did before. This ongoing battle with their self- esteem and societal beauty standards can leave survivors feeling vulnerable, often leading them to seek cosmetic surgery as a solution. However, in Nepal, apart from plastic surgeries, many cosmetic surgeries and non-surgical aesthetic treatments are unregulated, lacking proper oversight and accountability. Without robust laws and ethical frameworks, there is no assurance that the treatments provided are safe, effective, or performed by qualified professionals, leaving them with a potential of significant risk.

Lack of Fire Safety Practices and Protocols

In recent months, Nepal has witnessed incidents that highlight the serious shortcomings in fire safety in public spaces. The Kathmandu Post (2025) reports that in February 6, 2025 a gas cylinder exploded in Shandar Momo, Kamalpokhari where 11 male workers working in the same shop were injured, out of which, two individuals passed away. Similarly, a grand celebration of Pokhara Visit Year 2025 turned into a terrifying event when a hydrogen- filled balloon explosion left the Deputy Prime Minister and Pokhara Metropolitan City Mayor injured. These incidents underscore a critical failure to ensure proper safety protocols, and negligence in adhering to fire safety and emergency preparedness measures. Business owners or service providers are driven by cost-cutting measures and government agencies prioritize revenue collection over safety standards, contributing to heightened risk of fire and safety hazards. As a result, roadside eateries, restaurants, party palaces, and public event spaces continue to operate

without adequate safety provisions, leaving workers and the general public vulnerable to potential hazards of fire.

Updated Burn Data

Despite the severity and frequency of such injuries, accurate and up-to-date national data remains unavailable. The Nepalese government in the year 2008 estimated that there were 2100 deaths due to burn related injuries in Nepal. However, in the Annual Report of 2018/19 of the Ministry of Health and Population (2019) 55,090 burn patients visited different health centers of Nepal. Data after the following year aren't available which highlights the failure on part of the Department of Health Services' Health Management Information System (HMIS) to maintain a national burn registry. Without comprehensive data, it is difficult to draw a clear picture of the number of burn patients in Nepal. This data gap significantly hampers efforts to monitor trends, develop evidence-based planning and implement effective prevention strategies.

Health Rights of Burn Survivors in Nepal

The guarantees and articulation of human rights to health care are acknowledged in several human rights laws and instruments. The United Nations Committee on Economic, Social and Cultural Rights (2000), General Comment No. 14 elaborated that health is both a human right in itself and an essential means for the realization of others human rights. Article 25 of the Universal Declaration of Human Rights (UDHR) 1948 addresses health as part of the right to an adequate standard of living. Similarly, the right to health was recognized as a human right in Article 12 of the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) which mentions that the state parties to the covenant recognize the right of everyone to the enjoyment of the highest attainable physical and mental health. Similarly, Office of the United Nations High Commissioner for Human Rights and World Health Organization (2008) emphasize the following key aspects of right to health:

- The right to health is an inclusive right of safe drinking water and adequate sanitation, safe food, adequate nutrition and housing, healthy working and environmental conditions, health-related education and information, and gender equality.
- Health services, goods and facilities must be provided to all without any discrimination.
- All services, goods and facilities must be available, accessible, acceptable and of good quality.

Adding on to the international developments, the Declaration of Alma-Ata (1978) expresses the need for urgent action by all governments, all health and development workers, and the world community to protect and promote the health of all the people of the world. Article VII (2) of the Alma-Ata Declaration affirms the crucial role of primary health care and addresses the main health problems in the community, providing promotive, preventive, curative and rehabilitative services accordingly. Likewise, the Article V of the same document stresses that access to primary health care is the key to attaining a level of health that will permit all individuals to lead a socially and economically productive life. Despite the international guarantee the issue is on how the right to health is implemented and enforced in the municipal legal system.

Nepal became a member of the United Nations in the year 1955 and has committed to upholding human rights as outlined in the UDHR. Similarly in the year 1991 Nepal ratified the ICESCR treaty obliging the state to respect, protect and fulfill the economic, social and cultural rights addressed in the treaty. With the intention to safeguard the health of the people, Article 35 of the Constitution of Nepal guarantees the right to health as a fundamental right. The rights relating to health includes the following:

- Every citizen shall have the right to free basic health services from the State, and no one shall be deprived of emergency health services.
- Every person shall have the right to get information about his or her medical treatment.
- Every citizen shall have equal access to health services.
- Every citizen shall have the right of access to clean drinking water and sanitation

Responsibilities under right to health are divided between the federal, provincial, and local governments. Article 51(h) (5) and (6) of the Constitution of Nepal 2015 also includes provisions to enhance investment necessary in the public health sector by the State in order to make the citizens healthy and to ensure easy, convenient and equal access to quality health services.

The Public Health Service Act, 2075 (2018) was enacted for implementing the right to get free basic health service and emergency health service guaranteed by the Constitution of Nepal and establishing access of the citizens to health service by making it regular, effective, qualitative and easily available.

Based on the Constitution, the policies and programs of the Government of Nepal, and the international commitments made by Nepal at different times the National Health Policy 2019 has been formulated to develop and expand health systems for all citizens in the federal

structure based on social justice and good governance and ensure access to and utilization of quality health services. The objective is to create opportunities for all citizens to use their constitutional rights to health, strengthen the social health protection system, promote multi-sectoral partnership and collaboration, encourage community involvement and transform service-oriented the health sector.

The Supreme Court of Nepal in the case of Advocate Madhav Basnet v Council of Ministers (2018) the concern of failure of health institutions and private hospitals to fulfill minimum legal standards for health services and infrastructure. Similarly, in the case of Adv. Dal Bahadur Dhami v Prime Ministers (16 November 2017) ruled that the State has to monitor and regulate different institutions providing health services in order to implement the fundamental right to health. The health institutions should be well equipped with necessary infrastructure for such important services relating to health. Similarly in the case of Advocate Dal Bahadur Dhami v Prime Minister in the case of violation of right to health of children the court described the constitutional right to health as a basic right and affirmed that certain health related obligations were those of immediate effect as "minimum core obligations". While implementing the core obligation the State has to take necessary measures to ensure these rights immediately wherein the economic condition and the availability of resources of the State becomes irrelevant.

The Ministry of Health and Population endorsed the procedures for treatment of Acid-Attack Victims 2021 where it has enlisted dedicated hospitals such as Tribhuvan University Teaching Hospital Kathmandu, Bir Hospital, Patan Hospital, and Kirtipur Hospital for life-long free treatment and bi-annual medicine every six months for all acid attack survivor in Nepal. Despite the procedure, in recent times acid survivors have been charged for the post-burn treatment and medicine. In an effort to address broader burn-related issues, the Ministry of Health has introduced the Procedure for Expansion of Intensive Treatment Services for Burns 2024 aiming to provide free treatment to indigent burn victims contingent upon receiving recommendation. For which the Ministry of Health in 2024 allocated 10 million (1 crore) to ten designated hospitals. Given the expensive treatment and multiple surgeries in case of burn, the allocated amount fell short. As a result of this inadequate funding, survivors are forced to pay hefty amounts.

Despite these constitutional provisions and policy-level protections, the lived experiences of burn survivors in Nepal reveal a disconnect between legal promises and on-ground realities. Burn injuries require first aid and immediate treatment, which is untreated in primary health centers of Nepal due to the lack of trained personnel, equipment, and infrastructure. Patients from rural areas are forced to travel long distances to access hospitals, often resulting in delayed treatment, complications, and in some cases, preventable deaths. Inadequate health financing

and insurance coverage are other challenges in ensuring access to quality health care. These challenges directly contravene Nepal's international and constitutional obligations to ensure accessible and quality healthcare for all. Nepal cannot justify the lack of resources for the failure to respect its obligations. Likewise, under the ICESCR, Nepal must provide for healthcare facilities, goods and services of sufficient quality that are available, accessible, and acceptable to all persons under its jurisdiction, irrespective of citizenship or immigration status and wherever they may reside.

Apart from immediate treatment, burn survivors in Nepal struggle for post-burn rehabilitation, psychological counselling and social integration, which are crucial components for recovery. Integration of these components is important for the access to the highest attainable standard of physical and mental well-being, as recognized in international human rights instruments. Thus, to ensure rights relating to health Nepal must ensure availability, accessibility, acceptability of holistic health services.

Moreover, structural determinants such as unsafe living conditions, lack of occupational safety, limited public awareness, and domestic violence heighten burn risks, particularly among marginalized populations including women, children, informal workers, and people in poverty. Hence, to ensure survivors' right to health, it is imperative for Nepal to strive equally for the right to adequate nutrition and housing, healthy working and environmental conditions, health-related education and information, and gender equality.

Conclusion

Burn extends beyond the physical wound and cuts open the deeper issue of poverty, systematic inequality, weak institutions, poor infrastructure and social injustice. The issue of burn ties both public health and human rights. Burn survivors in Nepal not only endure excruciating physical pain and mental adversities, but also face institutional neglect, social exclusion, and systemic injustice due to the existing discriminatory social practices, inadequate access to health services, and insufficient legal protections. These survivors deserve the right to equality, dignity, health and justice. With the strengthening of primary burn care management, non-discriminatory legal provisions, and attitudinal change Nepal can significantly assist burn survivors to live a just and dignified life. Alongside reducing the number of burn patients, it is essential to provide support and create a conducive environment for survivors to rebuild their lives.

Recommendations

Burn incidence can be reduced through preventive strategies. Edelman (2008) pointed out that The United States witnessed a decline in burn incidence after attributing it to prevention strategies, such as safe sleepwear, proper use of smoke alarms, and more stringent building codes. Proven interventions such as smoke detectors, regulation of hot water heater temperature and flame-retardant children's sleepwear, has reduced mortality rates from burns. Thus, the government of Nepal must adopt similar preventive strategies.

Burn accidents take place due to failure to prevent them. An active awareness program on prevention and immediate after burn care must be initiated with collaboration with local government, schools and civil society organizations to inform people of the safety precautions and measures to avoid getting burned.

Human rights to health are outlined under international and regional human rights. Nepal has the duty to respect, protect, fulfill and even remedy the right to health. There remains work on legal fonts in order to fully guarantee the right to health because there exists a difference in punishment and treatment of acid attack and burn violence survivors. Understanding the similarity of the issue, it is crucial to enact a comprehensive legislation incorporating the same provisions for acid attack, burn violence and other fire related violence to ensure equal protection and non- discrimination. A uniform framework for prosecution, separate fast-track court, free medical care, compensation, and rehabilitation must be devised.

The right to health must be upheld by ensuring that survivors receive appropriate medical treatment, with guaranteed access to essential healthcare services, medicines, and health-related resources. Likewise comprehensive training for healthcare workers, active participation of private hospitals, and the provision of accessible, high-quality medical care for all affected individuals is required.

Mental health assessment and review should be consistently integrated in burn care. Psychological visits are necessary from early hospitalization until clinic follow ups to review the psychological status of the survivors especially when they return to society.

The crucial role of primary health services can't be neglected in burn care management. These primary health service providers and front-line health workers must be trained in primary burn care management. This in a way will equip them to respond to the specific needs of survivors, document the details and assist survivors to seek both treatment and justice.

To address the issue of forest fires and wildfire monitoring system technologies must be used to track hazard zones, vulnerable areas, accessibility, affected settlements, mitigation options and future predictions to support disaster preparedness. Beyond fire engines the government should prioritize fire safety measures and explore alternative strategies such as community-based fire response systems, mandatory fire safety audits in buildings, the installation of fire alarms and extinguishers in both residential and commercial premises.

The local government is the closest authority and can respond promptly to disasters. The Local Disaster Management Committee should take several proactive steps to enhance disaster preparedness and response. Adequate and dedicated funds are required for the maintenance of fire engines and fire safety equipment to ensure sustainability and operational readiness.

Realizing the absence of a national burn registry in Nepal it is recommended to develop a centralized digital platform to record burn cases reported across government and private hospitals. The data must be standardized as it helps in navigating the effectiveness of intervention programs, ensuring accountability, improving survivor care, and shaping equitable public health responses.

It is recommended to the National Electricity Authority for an immediate nationwide safety audit of electric poles, transmission lines, and transformers, prioritizing high-density urban areas and known accident zones.

References

Advocate Dal Bahadur Dhami v Prime Ministers, Writ No. 070-WO-0577, *Nepal Kanoon Patrika, Supreme Court of Nepal*, (16 November 2017)

Advocate Madhav Basnet v Council of Ministers, Writ No. 069-W0-0202, *Nepal Kanoon Patrika, Supreme Court of Nepal*, Decision No. 10298. 2018.

Advocate Sashi Basnet vs. Government of Nepal, Office of the Prime Minister and Council of Ministers, 073-WO-0181. *Nepal Kanoon Patrika, Supreme Court of Nepal.* August 10, 2017

Atwell, K., Bartley, C., Cairns, B., & Charles, A. (2020). The epidemiologic characteristics and outcomes following intentional burn injury at a regional burn center. *Burns, 46*(2), 441–446.

Edelman, L. (2008). Social and economic factors associated with the risk of burn injury. *Burns: Journal of the International Society for Burn Injuries, 34*(7), 958–965. https://doi.org/10.1016/j.burns.2007.11.005

Garcia, M. J. S., & Kunjavara, J. (2021). Experiences and perspectives of the burn survivors: Input for protocol development. *Journal of Nursing and Practice, 4*(2), 329. https://doi.org/10.36959/545/401

Government of Nepal. (2015). *Constitution of Nepal of 2015*. https://www.constitutionnet.org/sites/default/files/2017-07/Constitution-of-Nepal-2015.pdf

Government of Nepal. (2017). *National Penal (Code) Act*. https://lawcommission.gov.np/content/13454/criminal-code-2074/

Hameed, S., & Bhattacharya, B. (2022). Scarred for life: Thoughts on legal perspectives of acid attacks in selected countries with a focus on India. *Journal of International Women's Studies, 23*(1), 131–139. https://vc.bridgew.edu/jiws/vol23/iss1/12

Jha, A. K. (2022, February 7). *27-year-old woman burnt to death in Saptari*. The Kathmandu Post. https://kathmandupost.com/province-no-2/2022/02/07/27-year-old-woman-burnt-to-death-in-saptari

Khadilkar, N., De Sousa, A., & Jain, M. (2017). Burn-related factors affecting anxiety, depression and self-esteem in burn patients. *Annals of Burns and Fire Disasters, 30*(1), 30–34.

Logan, M. (2025, May 10). *A burning problem that needs solutions*. Nepali Times. https://nepalitimes.com/here-now/a-burning-problem-that-needs-solutions

Lodha, P., Shah, B., Karia, S., & De Sousa, A. (2020). Post-traumatic stress disorder (PTSD) following burn injuries: A comprehensive clinical review. *Annals of Burns and Fire Disasters, 33*(4), 276–287. https://pubmed.ncbi.nlm.nih.gov/33708016/

Ministry of Health and Population, Department of Health Services, Government of Nepal. (2019). *Annual report: Fiscal year 2074/75.* https://dohs.gov.np/wp-content/uploads/2019/07/DoHS-Annual-Report-FY2074-75-date-22-Ashad-2076-for-web-1.pdf

Ministry of Home Affairs. (2024). *Nepal disaster report, 2024: Focus on reconstruction and resilience*. Government of Nepal.

Mistry, R. M., Pasisi, L., Chong, S., Stewart, J., & Wong She, R. B. (2010). Socioeconomic deprivation and burns. *Burns, 36*(3), 403–408. https://doi.org/10.1016/j.burns.2009.05.008

National Disaster Risk Reduction and Management Authority. (2025). *Nepal disaster report, 2024.* BIPAD Portal. https://bipad.gov.np/np/1541

Nepal Police. (2024). *Annual infographics: Fiscal year 2080–81* [Infographic report]. Nepal Police. https://www.nepalpolice.gov.np/media/filer_public/1e/7c/1e7ccd75-4f92-4937-a15a-5dd7c2d4061d/fy_2080-81_annual_infographics_-_ne.pdf

Office of the United Nations High Commissioner for Human Rights & World Health Organization. (2008, June). *Fact sheet No. 31: The right to health*. UN. https://www.refworld.org/reference/themreport/ohchr/2008/en/58915

Onlinekhabar. (2023, December 13). *Janakpur: Woman is injured as family burns her alive over dowry dispute*. Onlinekhabar. https://english.onlinekhabar.com/janakpur-burned-alive-dowry-dispute.html

Poudel, A. (2024, December 30). *Burn victims forced to foot costly medical bills despite 'free care' pledge.* The Kathmandu Post. https://kathmandupost.com/health/2024/12/30/burn-victims-forced-to-foot-costly-medical-bills-despite-free-care-pledge

Post Report. (2024, January 29). *As mercury dips, burn cases rise significantly.* The Kathmandu Post. https://kathmandupost.com/health/2024/01/29/as-mercury-dips-burn-cases-rise-significantly

Post Report. (2025, February 17). *Gas explosion exposes lack of safety measures in Kathmandu's restaurants*. The Kathmandu Post. https://kathmandupost.com/valley/2025/02/17/gas-explosion-exposes-lack-of-safety-measures-in-kathmandu-s-restaurants

Sah, K. K. (2024, July 2). *Deaths caused by electric shock unchecked in Madhesh*. The Kathmandu Post. https://kathmandupost.com/national/2024/07/02/deaths-caused-by-electric-shock-unchecked-in-madhesh

Smolle, C., Cambiaso-Daniel, J., & Forbes, A. A. (2017). Recent trends in burn epidemiology worldwide: A systematic review. *Burns, 43*(2), 249–257. https://doi.org/10.1016/j.burns.2016.08.013

Spronk, I., Legemate, C. M., Oen, I. M. M. H., van Loey, N. E. E., Polinder, S., & van Baar, M. E. (2018). Health-related quality of life in adults after burn injuries: A systematic review. *PLOS ONE, 13*(5), e0197507. https://doi.org/10.1371/journal.pone.019750

Thapa, B., Chapagain, R. H., & Kayastha, A. (2021). Epidemiology, clinical pattern and management outcome of pediatric burn injuries in Nepal. *Journal of Nepal Paediatric Society, 41*(3), 387–394. https://doi.org/10.3126/jnps.v41i3.30828

Tripathi, R. (2018, October 22). *A sad story of a wife killed by husband for dowry*. My Republica. https://www.myrepublica.nagariknetwork.com/news/a-sad-story-of-a-wife-killed-by-husband-for-dowry

Tripathee, S., & Basnet, S. J. (2017). Epidemiology of burn injuries in Nepal: A systematic review. *Burns & Trauma, 5*, Article 10. https://doi.org/10.1186/s41038-017-0075-y

United Nations Human Rights Office of High Commissioner. (1966). *International Covenant on Economic, Social and Cultural Rights.* https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

United Nations Human Rights Office of High Commissioner. (1979). *Convention on Elimination of Discrimination Against Women[CEDAW]*. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women

United Nations. (1948). *Universal Declaration of Human Rights*. https://www.un.org/en/about-us/universal-declaration-of-human-rights

United Nations Committee on Economic, Social and Cultural Rights. (2000, August 11). *General Comment No. 14: The right to the highest attainable standard of health (Art. 12 of the Covenant)* (E/C.12/2000/4). https://www.refworld.org/docid/4538838d0.html

Women's Rehabilitation Centre (WOREC). (2024). *Annual factsheet on gender-based violence against women and girls: Fiscal year 2080/81 (July 2023–June 2024).* https://www.worecnepal.org/uploads/publication/document/1008881434Factsheet_Anbeshi_compressed%20(1).pdf

World Health Organization. (2023, October 13). *Burns* [Fact Sheet]. World Health Organization. https://www.who.int/news-room/fact-sheets/detail/burns

World Health Organizations. (1978). *Declaration of Alma Ata. https://www.who.int/publications/i/item/declaration-of-alma-ata*

Vetrichevvel, T. P., Randall, S. M., Wood, F. M., Rea, S., Boyd, J. H., & Duke, J. M. (2018). A population-based comparison study of the mental health of patients with intentional and unintentional burns. *Burns & Trauma, 6*, Article 31. https://doi.org/10.1186/s41038-018-0133-0

Sambahak: Human Rights Journal (2025), Vol. 25, 178-197

Questioning the Sanctity of 'Inclusiveness' of Constitution in Making Process: Reading Dissents and Demands in Nepal

Dr. Vijaya Prasad Jayshwal[1]

Email: vijay.jayshwal@nlc.tu.edu.np

To cite this article:

Jayshwal, V. P. (2025).Questioning the Sanctity of 'Inclusiveness' of Constitution in Making Process: Reading Dissents and Demands in Nepal. *Sambahak: Human Rights Journal*, *25*(1), 178–197. https://doi.org/10.3126/sambahak.v25i1.83927

Keywords:
Constitution, Inclusiveness, Dissents, Demands, Constitution-making process, Violation

Abstract

The term "inclusion" is mystically undefined in any articulation of the Constitution of Nepal. This leads to two key assumptions: first, the concept of inclusion must be understood and practiced in alignment with its purpose; and second, it encompasses a broader scope and meaning. The constitution-making process is generally assumed to have incorporated the basic requirements of inclusion, as prescribed in constitutional law literature. Inclusion must be studied through the lens of exclusion, and it should be defined and acknowledged in light of historical grievances, supported by evidence and records of state neglect. This research follows the doctrinal method and is based on primary sources of authority. Nepal's constitution-making process has been often leading to the extreme proposition that exclusion can only be addressed through constitutional means and that inclusion is the ultimate remedy for all grievances. It is crucial to consider dissent in the constitution-making process when addressing public demands, as seen in Nepal. This paper is based on three central propositions for analyzing narratives of inclusiveness in the constitution-making process: first, whether the Nepalese constitution is inclusive in nature or character; second, to what extent inclusiveness has been addressed in the constitution; and third, what the perceptions of lawmakers and constitutional experts are regarding its inclusivity.

[1] Assistant Professor of Law, Nepal Law Campus, Tribhuvan University

Background

The constitution is considered a living document and is always accorded a higher status so that other laws and rules derive their legitimacy from it. This is not just a ritualistic expression in constitutional law—it has significant implications, particularly regarding the fundamental issues of inclusion and exclusion, which are widely discussed across disciplines. A key concern is: why is it so important to consider inclusiveness in the constitution-making process?

There may be multiple answers to this, but the rationale often lies in the need to incorporate the substantive values of inclusiveness as reflected in global literature, particularly in the process of translating ideal constitutional principles into the lived experiences of people (Kabeer, 2005). The idea of an ideal inclusive constitution also demands broader reflection, especially from scholars assessing the quality of inclusion and exclusion as core elements of deliberative constitution-making around the world (Sheppard, 2012).

The language of constitutionalism is often non-uniform and context-specific when it comes to defining "inclusiveness" in constitution-making processes (CMPs). Nonetheless, inclusiveness is widely recognized as a foundational norm ("*grundnorm*") that shapes the entire constitutional outcome (Eyzaguirre, 2021). The term "inclusiveness" has been interpreted and perceived in multiple ways in the constitutional literature. Some records describe CMPs as procedurally inclusive—focused more on process-driven outcomes that meet the minimal conditions of democratic constitutionalism. Others critique CMPs for failing to ensure real inclusion in the broader framework of transformative constitutionalism (Pathak, 2021). The several authors have linked inclusive CMPs with several outcomes such as increased legitimacy (Ghai, 2006) of the charter produced (Tushnet, 2018); greater constitutional endurance (Elkins et al., 2008); increased levels of democracy (Eisenstadt 2019); charters with more progressive rights provisions and enhanced rights protection (Samuels, 2006), and institutions that aim to protect minorities from majority rule (Blount et al., 2012). The two levels of inclusiveness: procedural and effective are seen in most of the literature relating to inclusiveness in constitution making process.

The formation of first CA was itself historic in Nepal with hope and aspirations which eroded long family based legacies and principally created democratic state. Nepal has also observed the inclusive principles amidst commitment shown both in international human rights law (IHRL) as well as national principles while taking part in constitution making process.

Most literature distinguishes between two levels of inclusiveness: procedural and effective, both of which are relevant to Nepal's experience in constitutional development.

Human Rights and Inclusion: Inseparable Correlation

Exclusion, marginalization, domination, denial, suppression, and discrimination have never been causes for celebration within the discourse of human rights literature. Wherever there is denial and neglect, the need for inclusion, participation, acceptance, and recognition arises—often voiced as demands from large sections of the population historically treated as subjects rather than citizens.

The relationship between human rights and inclusion is clearly correlatable. Their connection is tested based on the extent to which legal instruments address the major issues of inclusion during any law-making process. Human rights literature and practice suggest that inclusion should be considered fundamental to all aspects of social life, especially in matters where the state interacts with the public interest.

While models of inclusion may vary and are open to discussion, denial of inclusion is never legitimized in rights-based frameworks. Human rights obligations generally fall into three core responsibilities for the state: to respect, to protect, and to fulfill rights. These responsibilities are echoed in domestic legislation as well, which may explain why the Government of Nepal has enacted various laws and rules to promote good governance and fulfill legal obligations in alignment with international human rights standards (Lamichhane, 2021).

International human rights law strongly reflects the principle of inclusion. Core human rights treaties contain specific provisions on inclusion. For example, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) emphasizes inclusion as essential to women's empowerment and development (Union, 2003). Similarly, the principle of equal participation under the United Nations Convention on the Rights of the Child (UNCRC) highlights the importance of inclusion from a child rights perspective. Many other international instruments reflect similar commitments (Lundy et al., 2013). Although the language used may vary depending on the treaties' purpose, the essence remains the same when implemented by member states (Brolmann, 2005).

The Government of Nepal has committed, through various legislative measures, to ensuring inclusion across public governance sectors. Historically, state practices were marked by systemic exclusion, but this has now been challenged through mandatory legal provisions. Inclusion is becoming a critical tool for maximizing the values of democratic participation and justice.

Constitutional principles of inclusion in Nepal have transformed many lives and empowered historically marginalized communities. Although progress has been made, the process is not yet

complete. Legal mandates have required the participation of women, marginalized groups, and excluded communities—ensuring equitable access and benefits under law. All tiers of government, not just the federal level, are responsible for implementing inclusion mandates.

This topic also formed part of discussions during the constitution-making process. Multiple committees of Nepal's first Constituent Assembly (CA) discussed the forms and depth of inclusion required in governance. These discussions aimed to ensure that historic injustices could be repaired through meaningful participation and recognition in state mechanisms.

The inclusiveness of Nepal's CMP was also evaluated through both procedural aspects and substantive impacts. These readings, grounded in dissent and historical grievances, were essential in establishing a more inclusive constitutional framework.

Measuring Procedural Inclusiveness

Procedural inclusiveness is primarily evaluated during the deliberation phase and the ratification phase of the constitution-making process. These phases are central in the literature that maps the elements and practices of inclusion in constitution-making processes (CMPs). The framework used here draws upon models established by Widner (2005).

Deliberation Scale	Descriptions	Nepal's Fact
(1) Top-down models	Only high-ranking government and political officials take part in the deliberation of the text of the constitution.	Not applicable
(2) Legislature model	The task of deliberating on the content of a new constitution is given to the ordinary elected legislature.	Applicable
(3) Mixed constituent assembly model	An assembly is summoned for the task of deliberating over the content of a new constitution, but it is also in charge of legislative duties or other government functions.	Applicable
(4) Pure constituent	A special assembly is summoned with the sole or primary task of deliberating over a new	Not applicable

assembly model	constitution's content and is dissolved afterwards.	

The deliberation phase in Nepal's CMP was designed to invite participation in discussions on various constitutional articles and issues (Maboudi, 2020). Given that constitutional provisions have long-term, intergenerational impacts, inclusive deliberation is crucial (Watts, 2017). Meaningful participation by all stakeholders across society is considered a best practice in many jurisdictions, and multiple models have been adopted globally to ensure such participation (Hassenforder, 2015).

Inclusion during the deliberation phase serves two purposes: it enables diverse stakeholders to contribute and even voice dissent, fostering a sense of ownership over the constitutional text. It also enhances the likelihood of effective enforcement and long-term sustainability of constitutional principles (Morris, 2012).

When participation is lacking at the deliberation stage, the legitimacy and lifespan of the constitution may be undermined (Bovenkerk, 2015). In Nepal, concerns have been raised that the CMP did not adequately ensure inclusive participation. Many argue that expected groups and communities were not given sufficient space, time, or voice during deliberations (Dahal, 2017). This perception was evident in the contrasting public responses to the promulgation of the constitution on Ashoj 3—celebrated as a "Pride Day" by some, and observed as a "Black Day" by others.

Inclusion, if not properly addressed, can have multidimensional impacts, weakening the enforcement of constitutionalism, the rule of law, democracy, and long-term political stability.

Nepal's constitution does secure the broader essence of procedural inclusion as an integral part of the CMP (Bhandari, 2012). However, procedural inclusion is not merely a technical process; it requires active, meaningful participation at every step of the process (Constituent Assembly Secretariat, 2015). Inclusion must go beyond legal language and be effectively communicated and implemented (Wright, 2010). The international framework identifies five ratification models for CMPs (Widner, 2005):

Ratification Scale	Description	Nepal's Fact
(1) Approved	Cases in which the right to ratify the	Non-applicable

through a top-down process	constitution is reserved to certain government and political officials, with neither popular participation nor representation whatsoever.	
(2) Approved by congress	The congress approves the new constitution.	Non-applicable
(3) Approved by a mixed constituent assembly	A constituent assembly, which was summoned with the task of ratifying a new constitution but also took care of other legislative duties or government functions, approves the new constitution	***Applicable, The CA of Nepal was with dual responsibilities like ratifying constitution as well as legislative functions of the government.***
(4) Approved by a pure constituent assembly	A constituent assembly, which had the sole or main task of ratifying the charter, approves the new constitution.	Applicable
(5) Approved through a popular referendum	In this case, it is the people who can directly express their will to ratify a new constitution, regardless of who deliberated over the content and drafted the constitution.	Non-applicable

The ratification stage also tests the inclusiveness of CMPs. Global practices categorize CMPs into six types based on procedural inclusiveness:

1. Non-inclusive process (Non-inclusive processes are those that lack any type of popular participation or representation in the constitution-making processes)
2. Hybrid process (Hybrid processes are those that combine inclusive constitution-making phases -either at the deliberative or ratification stage- with non-inclusive ones (for example, when the executive decides on the content of the constitution and then, submits its approval to a public referendum)
3. Low inclusiveness (Processes with low inclusiveness occur when the ordinary legislature is given both the task of deliberating over the content of the new charter and its ratification)

4. Moderate inclusiveness (Moderate inclusiveness processes are those in which the deliberative body is a mixed constituent assembly and that same body also has the responsibility of ratifying the constitution)
5. Moderately-High inclusiveness (Processes with moderately-high inclusiveness happen either when a pure constituent assembly has the task of deliberating over the content of a new charter or that same assembly ratifies)
6. Highly inclusiveness (High inclusiveness processes are those in which deliberation is entrusted to a body that has been elected for the sole or main task of producing a new constitution -namely, a pure constituent assembly- and the responsibility of ratifying the charter is given to citizens through a referendum)

Globally, CMPs strive for inclusion in both deliberation and ratification. The central goals of inclusiveness include proportional representation, addressing marginalization, and promoting public ownership of the constitution. A more inclusive process is expected to yield a more legitimate and sustainable constitution.

Nepal's CMPs, particularly through its first and second constituent assemblies, reflect aspects of these six inclusiveness models. These must be critically assessed to determine whether Nepal's constitution-making process was truly inclusive in both form and substance (Slavu, 2012).

Measuring Effective Inclusiveness

Effective inclusiveness goes beyond the traditional procedural forms outlined in constitutional and rule of law literature (Sheppard, 2012). It assesses not just whether the correct steps were followed in the constitution-making process (CMP), but also the tangible impacts of that process—particularly for historically excluded groups. In other words, it measures both outcomes and the transformative potential of inclusion.

Effective inclusiveness involves evaluating not only technical compliance but also how deeply the process and outcomes reflect democratic and participatory ideals. It includes an assessment of how inclusion has shaped the resulting constitutional values, institutions, and access to state power. In principle, effective inclusiveness is grounded in: democratic conditions (including participatory, deliberative, and liberal democratic norms), procedural inclusiveness (during both deliberation and ratification phases), and electoral democracy conditions (ensuring the representation of marginalized voices in decision-making bodies).

Thus, effective inclusiveness is a function of both democratic integrity and procedural legitimacy. It reflects how inclusive the entire CMP was—not just in process, but in consequence.

A highly effective CMP not only checks the boxes of legal formality but also addresses long-standing grievances of marginalized populations. It ensures that previously excluded communities have both a voice in shaping constitutional provisions and access to the rights and protections that follow. In this sense, effective inclusion is inherently transformative.

The remainder of this section—and indeed this paper—examines whether Nepal's CMP satisfied these conditions and achieved effective inclusion in both process and outcome.

Methodology

This research is grounded in doctrinal methodology and relies primarily on authoritative sources commonly used in legal scholarship. The principal doctrines applied in this paper reflect both international and domestic principles relevant to constitution-making processes. The sources used are predominantly primary legal materials, including: constitutional texts, statutory provisions, case law, legal doctrines and state records.

In addition, secondary sources—such as constitutional law textbooks, legal commentaries, academic journal articles, and comparative studies—are employed to support analysis and interpretation.

This paper engages in a critical analysis of the entire constitution-making process (CMP) of Nepal, examining how inclusion has been articulated and addressed in the legal framework. The study closely examines all 35 chapters of the Constitution of Nepal to assess: the explicit references to inclusion, inclusiveness, or inclusive principles. Moreover, the paper also considers international models and practices to gauge the relative reflection of inclusion in Nepal's CMP. These comparative insights help to determine whether Nepal's approach aligns with global standards of inclusive constitutionalism. This research is qualitative in nature and seeks to interpret legal texts and processes through the lens of participatory democracy and social justice.

Mapping Inclusion in the Constitution of Nepal

The history of Nepal—a Himalayan nation known for its natural beauty and diverse cultures—is deeply marked by repression, socio-political exclusion, economic disparity, regional inequality, and widespread poverty (Geiser, 2005). How can a country so naturally rich struggle for decades to build a society rooted in cohesion, equality, equity, rule of law, and inclusive development, free from marginalization and exclusion (Oommen, 2010).

The historical patterns of exclusion became apparent when the first draft of the Interim Constitution strongly reflected inclusion as a non-negotiable issue among major political parties (Nepal, 2017). A nation striving for sustainable progress cannot afford to let exclusion define its political identity. The semiotic and symbolic value of inclusion has increasingly become a guiding principle in state policies, often serving as a warning signal when the government deviates from it.

Inclusion fosters community cohesion and contributes to national unity. It must be understood as a dynamic aspiration—a core narrative that must be embedded in the constitution-making process of Nepal (Ghai, 2011).

Assessing Constitutional Inclusiveness

The constitutional inclusiveness is measured in various terms and ways so that how far constitution is inclusive or non-inclusive is mapped on basis of response of term inclusion in every aspects of the constitution-making process (Maboudi, 2020). Constitutional inclusiveness can be assessed through explicit and implicit references to inclusion in various parts of the constitution. Nepal's constitution has been praised for its progressive features, particularly in how it deals with historical exclusion (Guragain, 2024). The discourse of inclusion is always framed in contrast to past exclusion—especially systemic marginalization, inequality, and discrimination (Kabeer, 2000).

The following chart summarizes how and where inclusion is reflected across different parts of the Constitution of Nepal:

S.N.	PART	REFLECTION	REMARKS

1.	Preamble	……resolving to build an egalitarian society founded on the ***proportional inclusive*** and participatory principles in order to ensure economic equality, prosperity and social justice……	The proportional inclusiveness need to be addressed.
2.	Preliminary	…….sovereign, secular, ***inclusive***, democratic, socialism-oriented, federal democratic republican state…….	
3.	Citizenship	******	No mention
4.	Fundamental Rights and Duties	Women shall have the right to participate in all bodies of the State on the basis of the principle of ***proportional inclusion***. (art.38(4))…. on the basis of ***positive discrimination***(art.38 (5)	The proportional inclusion and inclusive principle in this chapter are developed based on universal assumptions of fundamental rights and duties.
		…….The Dalit shall have the right to participate in all bodies of the State on the basis of the principle of ***proportional inclusion*** (art.40 (1)	

		……..Khas Arya shall have the right to participate in the State bodies on the basis of ***inclusive principle*** (art.42(1)	
5.	Directive Principles, Policies and Obligations of the State	….gender equality, proportional inclusion, participation and social justice (art.50(1)… incorporating the principle of proportional participation in the system of governance….. Policies relating to social justice and ***inclusion***….(art.50 (j)…	The issues of inclusion has to be one of major yardstick for the government in their every consideration and plans and policies.
6.	Structure of State and Distribution of State Power	… egalitarian society based on pluralism and equality, ***inclusive representation*** and identity (art.56 (6)....	The inclusive representation are not only substantial rather require meaningful reflection in the process of testing heads in every structure of the state.
7.	President and Vice-President	*******	No mention

8.	Federal Executive	.. The President shall, on recommendation of the Prime Minister, constitute the Council of Ministers comprising a maximum of twenty five Ministers including the Prime Minister, in accordance with the ***inclusive principle***, from amongst the members of the Federal Parliament. (art.76 (9)	The composition of the state authorities based on inclusive principles so that true democratic values can sustain.
Sep-32	Legislature, financial procedures, judiciary, Attorney General, State executive, legislature, local executive, legislature, governments inter relationship, CIA, Auditor General, PSC, Election, political parties, emergency powers, Commission, NHRC, and other commissions, etc.		No mention

33	Miscellaneous	Art. (283). Appointments to be made in accordance with inclusive principle: Appointments to offices of Constitutional Organs and Bodies shall be made in accordance with the ***inclusive principle.***	The word inclusive principles is not defined anywhere in constitutional article. The inclusive principle has multiple meanings and generally its significance are drawn in association with the larger subject matters. This chapter has also not defined proportional inclusive principle and how these principle is different than the inclusive principles in same chapter.
		285. Constitution of government service……(2) Positions in the Federal civil service as well as all Federal government services shall be filled through competitive examinations, on the basis of open and ***proportional inclusive principle.***	
34-36	Transitional Provisions, definitions and interpretation, short title, commencement and repeal,		No mention

Key Observations

The Constitution of Nepal uses terms such as proportional inclusive, inclusive, proportional inclusion, positive discrimination, inclusive principles, and inclusive representation at least eight times in core provisions. However, none of these terms are formally defined in the constitution. Their meanings and scope are ambiguous and context-dependent.

Whether the existing language is sufficient to fully address historical grievances remains an open question. These terms need clearer construction and interpretation to ensure effective implementation. The broader aim of inclusion in the constitutional context is to benefit historically excluded groups and those denied equal access to rights and resources. Yet the use of multiple overlapping terms without operational clarity risks rendering "inclusion" conceptually vague and politically manipulable (Mangerud, 2014).

Different jurisdictions approach inclusion through varying normative frameworks. In Nepal, exclusion has historically meant more than denial of participation—it includes deep-rooted inequalities based on caste, culture, geography, gender, and religion (Bishwakarma, 2018). Thus, the CMP must address exclusion on these deeper levels to truly fulfill its inclusive mandate.

If the constitution-making process is comprehensively inclusive, it can be seen as a response to historical dissent and denial. In this case, the constitution itself becomes a remedial tool—one that breaks from exclusionary legacies and lays the foundation for long-term democratic values (Campus, 2014).

Measuring Deliberative and Effective Inclusion in Nepal's CMPs

Roughly 15–20 years ago, scholarly debates around deliberative theory and constitutionalism began to shift toward the practical application of deliberative processes in constitutional design (Ackerman, 1991). Constitutions are often viewed as standing in tension with democratic norms, and deliberative democratic ideals are no exception (Dryzek, 2002). While constitutions structure the relationship between the people and the state, they rarely capture the full complexity of political, social, and economic forces—including discourse, power networks, administrative cultures, and global influences.

Scholars such as Landwehr (2015) emphasize the importance of a "craft" approach to constitutionalism—one that allows democratic deliberation not just over outcomes, but over the

rules and values that shape those outcomes. This process is referred to as "meta-deliberation" (Parkinson, 2018).

In the context of Nepal, effective inclusion must be evaluated from the very beginning of the constitution-making process and observed at each stage of deliberation within the Constituent Assembly (CA). Since Nepal adopted the CA model, it was expected to embody both procedural fairness and substantive inclusiveness.

The effectiveness of inclusion in the CMP is influenced by several factors, such as: political dynamics and party negotiation, historical patterns of marginalization, national interest and reconciliation, the institutional design of the CA, public access to participatory channels, and constituent Assembly as a response to historical exclusion.

The establishment of Nepal's Constituent Assembly was one of the most significant political achievements in the post-insurgency era. It was conceived not merely as a legislative body but as a remedial instrument to draft a constitution through popular participation and to respond to deep-rooted social and historical exclusions.

To that end, the CA embraced multiple participatory mechanisms aligned with global principles of inclusion and justice. In November 2008, the CA finalized the Rules of Procedure, 2065 (2008), which laid out its dual mandate: constitution-making and legislative governance. These rules called for the creation of a Constitutional Committee, ten thematic committees addressing substantive constitutional concerns (e.g., inclusion, federalism, minority rights), and three procedural committees to manage participatory processes.

In March 2009, CA members visited every electoral constituency in Nepal to gather citizens' views. This form of outreach was celebrated as a model of deliberative democracy, not just regionally but in global literature on participatory constitution-making (Breen, 2018).

Inclusive Representation in CA Committees

Committee members were selected based on party representation in the CA. However, additional emphasis was placed on ensuring representation from women, indigenous communities, dalits and other marginalized groups, backward regions and religious minorities (e.g, Muslims).

This was a response to long-standing demands and grievances voiced by communities who had historically been excluded. The formation of caucuses based on identity groups during the CMP (in both CA-I and CA-II) further illustrates the level of dissent and the urgency of their demands.

Several civil society actors and international organizations were also engaged in facilitating these voices—another positive indication of inclusive practice (Gluck, 2015). Participation in these committees empowered marginalized communities to shape not just the substance of the constitution, but also the structure of democratic governance.

Roles and Responsibilities of Committees

The Constitutional Committee—consisting of 61 members—held the overarching responsibility of compiling the final draft of the constitution. Meanwhile, ten thematic committees were tasked with drafting specific sections which were: Committee on Fundamental Rights and Directive Principles, Committee on the Protection of the Rights of Minorities and Marginalized Communities, Committee on the Restructuring of the Nation and Distribution of National Power, Committee on the Form of the Legislative Body, Committee on the Administrative Form of the State, Committee on the Judicial System, Committee on the Structure of Constitutional Bodies, Committee on Natural Resources and Fiscal Distribution, Committee on Cultural and Social Commitments, Committee for the Preservation of National Interest

Each thematic committee submitted preliminary drafts and concept notes, which were forwarded to the Constitutional Committee. This structure enabled layered deliberation, combining technical expertise with representative inclusion (Khanal, 2018).

Public Participation and Ownership

Public participation was not limited to consultation; it was institutionalized. Three procedural committees were tasked with ensuring citizen feedback: Committee on Citizens, Committee on the Collection and Coordination of Public Opinion, and Committee on Capacity-Building and Source Management.

This framework created a feedback loop between drafters and the public, promoting both legitimacy and ownership through participatory process promoting constitutional legitimacy, encouraging government accountability, enhancing citizen engagement, and building a sense of community and belonging (Fung, 2015).

When implemented well, participatory CMPs leave citizens feeling that the constitution is "theirs"—a foundational aspect of lasting constitutional success.

Nepal’s constitution-making process demonstrated substantial effort toward deliberative and effective inclusion. The presence of diverse committees, outreach programs, public feedback loops, and minority participation mechanisms reflected a genuine commitment to inclusion.

While debates remain about the degree of effectiveness, the process undoubtedly attempted to repair historical injustices and institutionalize inclusiveness as a constitutional value.

Conclusion

The narrative of inclusion in the constitution-making process is crucial for addressing historical dissents and demands—especially those that have long remained unacknowledged due to entrenched ruling mentalities and exclusionary governance models. Nepal's constitutional journey has attempted to respond to these grievances by incorporating inclusive language and participatory procedures in both the drafting and ratification phases.

The Constitution of Nepal uses various terms—such as inclusive, inclusiveness, proportional inclusion, positive discrimination, and inclusive principles—across multiple provisions. These references are evident in key areas such as: appointments to constitutional bodies, civil service recruitment, representation in state institutions, fundamental rights of marginalized groups, and directive principles guiding state policy.

These inclusivity measures are not mere symbolic gestures; they represent meaningful steps toward repairing historical injustices and redefining the state's relationship with its diverse population.

The constitution-making process itself also reflects a reasonable level of inclusiveness, particularly through: broad-based participatory mechanisms, diverse and representative committee structures, institutional efforts to gather and incorporate public feedback, and deliberative engagement with historically marginalized communities.

Interviews and assessments by constitutional experts suggest that substantive inclusion has been achieved to a fair extent. However, it is equally acknowledged that the process was not perfect. Some demands remain unaddressed, and not all dissenting voices were fully accommodated.

Nevertheless, the government of Nepal has demonstrated a positive commitment to upholding the principles of inclusion. Over time, it is hoped that residual grievances will be addressed through ongoing legal and policy reforms guided by constitutional values.

In summary, the notion of inclusion, both as a process and as a principle, is firmly embedded in Nepal's constitutional architecture. While the journey is still ongoing, the foundation laid by the constitution offers a robust framework for promoting justice, equity, and participatory democracy in the years to come.

References

Bhandari, S. (2012). Constitution making and the failure of constituent assembly: The case of Nepal. *Ritsumeikan Annual Review of International Studies*, 11, 1-40.

Bishwakarma, M. B. (2018). *Political transformations in Nepal: Dalit inequality and justice* (Doctoral dissertation).

Blount, J., Elkins, Z., & Ginsburg, T. (2012). *Does the process of constitution-making matter? . 31*. Cambridge: Cambridge University Press.

Bovenkerk, B. (2015). *Public deliberation and the inclusion of future generations*. *Jurisprudence*, 6(3), 496-515.

Breen, M. G. (2018). Nepal, federalism and participatory constitution-making: deliberative democracy and divided societies. *Asian Journal of Political Science, 26*(3), 410-430.

Brolmann, C. (2005). Law-making treaties: form and function in international law. *Nordic J. Int'l L., 74*, 383.

Constituent Assembly Secretariat. (2015). *Constitution of Nepal 2015*. Kathmandu: Constituent Assembly Secretariat, 19, 505.

Dahal, G. (2017). Constitution of nepal and political development: Adaption and challenges of implication. *Janapriya Journal of Interdisciplinary Studies, 6*, 148-159.

Dryzek, J. S. (2002). *Deliberative democracy and beyond: Liberals, critics, contestations*. OUP Oxford.

Eisenstadt, T. A., & Maboudi, T. (2019). Being there is half the battle: Group inclusion, constitution-writing, and democracy. *Comparative Political Studies, 52*(13-14), 2135-2170.

Elkins, Z., Ginsburg, T., & Blount, J. (2008). The citizen as founder: public participation in constitutional approval. *Temp. L. Rev., 81*, 361.

Eyzaguirre, C., & Charlin, V. (2021). A century of constitution-making in Latin America: an inclusiveness-based comparative analysis (1917-2016). *Latin American Law Review, (06)*, 1-24.

Fung, A. (2015). Putting the public back into governance: The challenges of citizen participation and its future. *Public administration review, 75*(4), 513-522.

Geiser, A. (2005). *Social exclusion and conflict transformation in Nepal: Women, Dalit and Ethnic groups FAST country risk profile Nepal*.

Ghai, Y. (2011). Ethnic identity, participation and social justice: A constitution for new Nepal?. *International Journal on Minority and Group Rights, 18*(3), 309-334.

Gluck, J., & Brandt, M. (2015). *Participatory and Inclusive Constitution Making*, United States Institute of Peace.

Guragain, G. P. (2024). Progress of Diversity and Inclusion in Nepal. *Damak Campus Journal, 13*(1), 1-14.

Hassenforder, E., Smajgl, A., & Ward, J. (2015). Towards understanding participatory processes: Framework, application and results. *Journal of environmental management, 157*, 84-95.

Kabeer, N. (2000). Social exclusion, poverty and discrimination towards an analytical framework. *IDS bulletin, 31*(4), 83-97.

Kabeer, N. (2005). *Introduction: The search for inclusive citizenship: Meanings and expressions in an interconnected world*.

Khanal, K. (2018). Participatory Constitution-Making in Nepal (2008–2015). *Studies in Nepali History and Society, 23*(1), 59-102.

Lamichhane, B. P. (2021). Good governance in Nepal: Legal provisions and judicial praxis. *Journal of Political Science, 21*, 19-30.

Landwehr, C. (2015). Democratic meta-deliberation: *Towards reflective institutional design. Political Studies, 63*(1_suppl), 38-54.

Lundy, L., Kilkelly, U., & Byrne, B. (2013). Incorporation of the United Nations Convention on the Rights of the Child in law: A comparative review. *The International Journal of Children's Rights, 21*(3), 442-463

Maboudi, T. (2020). Participation, inclusion, and the democratic content of constitutions. *Studies in Comparative International Development, 55*(1), 48-76.

Mangerud, I. (2014). *The Politics of Inclusion and Exclusion in Democratizing Nepal* (Master's thesis).

Morris, K. S. (2012). The Case for Local Constitutional Enforcement. *Harv. CR-CLL Rev.*, *47*, 1.

Oommen, T. K. (2010). Evolving inclusive societies through constitutions: The case of Nepal. *Contributions to Nepalese Studies, 37*(1), 1-16.

Parkinson, J. (2018). Ideas of constitutions and deliberative democracy and how they interact. *The Cambridge handbook of deliberative constitutionalism*, 246-255.

Pathak, A. (2021). Transformative Constitutionalism: A Pragmatic Approach to Social Inclusiveness. *Indian JL & Legal Research, 3*, 1.

Samuels, K. (2006). Constitution building processes and democratization: A discussion of twelve case studies. *Geneva: IDEA*..

Sheppard, C. (2012). Inclusion, Voice, and Process-Based Constitutionalism. *Osgoode Hall LJ, 50*, 547.

Slavu, C. (2012). The 2008 constituent assembly election: social inclusion for peace. *Nepal in Transition: From People's War to Fragile Peace.* New York: Cambridge UP, 232-254.

Tushnet, M. (2018). *Advanced introduction to comparative constitutional law*. Edward Elgar Publishing

Union, I. P., & United Nations (2003). *The Convention on the Elimination of All Forms of Discrimination against Women and Its Optional Protocol*. UN.

Watts, J. (2017). Multi-or intergenerational learning? Exploring some meanings. *Journal of Intergenerational Relationships, 15*(1), 39-51.

Widner, J. (2005). Constitution writing and conflict resolution. *The Round Table, 94*(381), 503-518.

Wright, D. (2010). Structuring stakeholder e-inclusion needs. *Journal of Information, Communication and Ethics in Society, 8*(2), 178-205.

मानव अधिकारचिन्तक तथा लेखक समूहमा अहिलेसम्म आवद्ध

संवाहकका लेखकहरू

अङ्क-१

१. राजुप्रसाद चापागाई (+अङ्क ४)
२. विष्णुप्रसाद तिमिल्सेना (+अङ्क ५, १२ २१)
३. विनोदकुमार वि.क. (+अङ्क ४)
४. डा. शङ्करकुमार श्रेष्ठ
५. ओमप्रकाश अर्याल (+अङ्क ७)
६. डा. हरिहर वस्ती (+अङ्क १२)
७. डा. रंजीतभक्त प्रधानाङ्ग
८. डा. श्रीप्रकाश उप्रेती (+अङ्क ७)
९. डा. लोकनाथ भुषाल
१०. विशाल खनाल (+अङ्क १३, २०)
११. माधव रेग्मी (+अङ्क ३)
१२. पुष्पा पोखरेल (+अङ्क ४)
१३. जायश्वर चापागाई
१४. मोहना अन्सारी

अङ्क-२

१५. ललितबहादुर बस्नेत (+अङ्क १९)
१६. तेजमान श्रेष्ठ (+अङ्क ६)
१७. माधवकुमार बस्नेत
१८. सूर्यबहादुर देउजा (+अङ्क १३)
१९. महेश शर्मा पौडेल (+अङ्क ३, ५, ८, १२, १३, १५, १७)
२०. डा. गोविन्द सुवेदी
२१. टेकनारायण कुंवर (+अङ्क ५, २२)
२२. सलिना काफ्ले (+अङ्क ६)
२३. उदयन रेग्मी
२४. डा. चन्द्रकान्त ज्ञवाली (+अङ्क ४)
२५. सोम लुइंटेल (+अङ्क ७, १४)
२६. लोकेन्द्र पनेरु (+अङ्क ८)

अङ्क-३

२७. मोहन बन्जाडे (+अङ्क २२)
२८. संजीवराज रेग्मी (+ अङ्क ८)
२९. गोविन्द शर्मा वन्दी
३०. कृष्णजीवी घिमिरे (+अङ्क ७, १२, १८)
३१. श्रीराम अधिकारी
३२. डा. टीकाराम पोखरेल (+अङ्क ११, १६)
३३. डा. अश्वस्थामा खरेल (+अङ्क ६, १२, १५)
३४. शोभाकर बुढाथोकी (+अङ्क ११)
३५. रेवतीराज त्रिपाठी (+अङ्क ९)
३६. नवराज थपलिया
३७. करुणा पराजुली
३८. रामकान्त तिवारी (+अङ्क ६)

अङ्क ४

३९. सुदर्शन रेग्मी
४०. मनिष प्रसाइ (+अङ्क १४)
४१. कैलाशकुमार सिवाकोटी (+अङ्क ८, १७, २०)
४२. डा. महेन्द्रजंग शाह
४३. शारदा तिमिल्सेना
४४. शिवप्रसाद पौडेल

४५. नीतु पोखरेल (+अङ्क १५)
४६. सोम निरौला

अङ्क ५

४७. राष्ट्रिय जेष्ठ नागरिक महासङ्घ
४८. लिलबहादुर थापा
४९. भक्त विश्वकर्मा
५०. ऋषिकेश वाग्ले (+अङ्क ९)
५१. डा. हरिवंश त्रिपाठी (+अङ्क १२)

अङ्क ६

५२. डा. नारायणप्रसाद घिमिरे
५३. कोषराज न्यौपाने
५४. वीरबहादुर बुढा मगर
५५. श्यामबाबु काफ्ले (+अङ्क ७, १३, १६)
५६. बुद्धिनारायण श्रेष्ठ
५७. घनश्याम खड्का (+अङ्क ११)
५८. सूर्यप्रसाद पराजुली (+अङ्क ९)

अङ्क ७

५९. वेद भट्टराई (+अङ्क १३, १४)

अङ्क ८

६०. प्रा.डा. श्रीरामप्रसाद उपाध्याय
६१. नवराज सापकोटा (+अङ्क ११, १३,

अङ्क ९

६२. वसन्त अधिकारी
६३. इन्दु तुलाधर
६४. शिवप्रसाद पौडेल
६५. टेक ताम्राकार (+अङ्क १२, १९)

अङ्क १०

६६. जेष्ठ नागरिक विशेषाङ्क २०७५ (रा.मा.अ.आ)

अङ्क ११

६७. बलराम राउत
६८. केशवप्रसाद चौलागाईं
६९. अर्जुन विश्वकर्मा

अङ्क १२

७०. मीना गुरुङ
७१. प्रेमबहादुर थापा

अङ्क १३

७२. विदुशी अधिकारी
७३. श्यामकुमार भट्टराई
७४. इन्दिरा दाहाल

अङ्क १४ (आप्रवासी कामदार विशेषाङ्क)

७५. दिनेश रेग्मी
७६. होम कार्की
७७. रामेश्वर नेपाल
७८. शरु जोशी
७९. मन्जु गरुङ
८०. नेहा चौधरी
८१. अनुराग देवकोटा
८२. आरती श्रेष्ठ

अङ्क १५

८३. यज्ञप्रसाद अधिकारी (+अङ्क १८)
८४. रविन्द्र आचार्य
८५. केदार कोइराला
८६. कल्पना नेपाल आचार्य
८७. Akhila Kolisetty
८८. अनिशकुमार पौडेल
८९. दिनेशप्रसाद जोशी रतला

अङ्क १६

९०. केशवप्रसाद बास्तोला
९१. बासुदेव बजगाईं (+अङ्क १८)
९२. डा. टिकाराम पोखरेल
९३. डा. दिव्य दवाडी
९४. रघुनाथ अधिकारी (निलमशेखर) (+अङ्क २१)
९५. राजेश झा अहिराज
९६. महेन्द्र विष्ट
९७. डा. लेखनाथ पौडेल
९८. डा. हेमन्तराज दाहाल

अङ्क १७

९९. किरण बराम
१००. समिक्षा पौडेल
१०१. अच्युतमणि न्यौपाने

अङ्क १८

१०२. डा. कृष्णचन्द्र शर्मा
१०३. विजयप्रसाद मिश्र
१०४. डा. श्रीजनाकुमारी भण्डारी
१०५. मोहन काफ्ले
१०६. दिपेन्द्रबहादुर सिंह
१०७. राजेन्द्रबहादुर सिंह
१०८. डा. वीरेन्द्रराज पोखरेल
१०९. अक्षेया दुवाडी

अङ्क-१९ (विपद् र मानव अधिकार विशेषाङ्क)

११०. डा. समीरकुमार अधिकारी
१११. रोशनकुमार झा (+अङ्क २१)
११२. डा. घनश्याम गुरुङ
११३. आरती खड्गी
११४. डा. धरमराज उप्रेती
११५. टीकेश्वरी जोशी
११६. डा. सुवोध ढकाल
११७. दिनेशप्रसाद घिमिरे

अङ्क २०

११८. डा. गिरिधारी शर्मा पौडेल
११९. रवीन्द्र भट्टराई
१२०. अजयशंकर झा "रूपेशæ (+अङ्क २२)
१२१. डा. खुशीप्रसाद थारु
१२२. कर्णबहादुर थापा
१२३. विजयप्रसाद जयसबाल
१२४. सविनबहादुर जूवा

अङ्क २१

१२५. प्रेममाज सिलवाल
१२६. चन्द्रकुमार राई
१२७. भोला भट्टराई
१२८. दुर्गा पोखरेल

अङ्क २२

१२९. नुद्धनारायण साहनी केवट
१३०. कुमारी महरा
१३१. Dr. Newal Chaudhary
१३२. Dipesh Kumar Ghimire, PhD
१३३. Bipana Chapgain

अङ्क २३

१३४. रोशनकुमार झा
१३५. इन्द्रजीत सहनी
१३६. Dr. Newal Chaudhary
१३७. Man Bahadur Karki
१३८. Pampha Devi Mainali

१३९. Mandira Shrestha
१४०. Daya Ram Pathak
१४१. Runa Maharjan
१४२. Bipana Chapgain
१४३. Sunu Rijal
१४४. Sujit Kumar Bhujel
१४५. Hritik Yadav

अङ्क २४

१४६. चन्द्रकुमार राई
१४७. डा. टिकाराम पोखरेल
१४८. दिपेन्द्र बहादुर सिंह
१४९. Barsha Kumari Jha
१५०. Bipana Chapagain
१५१. Surendra Rajaura
१५२. Hritik Yadav
१५३. Rohan Yadav
१५४. Dibya Das Tharu
१५५. Bivek Chaudhary

लेखकहरूको परिचय

Dr Ananda Mohan Bhattarai

1. MA(Eng., Pol.SC) LLM, JSD
2. Justice (Retd.) Supreme Court of Nepal
3. Currently, Visiting Professor, Kathmandu University
4. Email: anandamohan77@gmail.com
5. Contact: 9841555888

Baliram Kumar Chauhan

1. BALLB Fifth year Student
2. Kathmandu school of Law
3. Criminal Law, Human Right and Justice
4. Contact number: 9762420049
5. Email: chauhanbaliramkumar55@gamil.com

Binda Kumari Thapa

1. Master's in Business Law
2. Assistant professor, Kathmandu School of Law
3. Email: binda.thapa@ksl.edu.np
4. Contact: 9742456030

Shyam Sundar Shrestha

1. Bachelor's in criminal law
2. Teaching Assistant at Kathmandu School of Law.
3. Email: shyam.bhutta@gmail.com
4. Contact: 9840002935

Bishal Khanal

1. Master Degrees in Law, Political Science and Public Administration
2. Faculty Member at Kathmandu University School of Law
3. Former Secretary of the National Human Rights Commission of Nepal
4. Email: khanalb@yahoo.com
5. Contact: 98510462480

Indrajeet Sahani

1. Masters Degree (Mathematic, Sociology, Political Science and Public Administration), PhD Scholar
2. Human Rights Officer, National Human Rights Commission Nepal
3. Child Rights and Human Rights
4. Email: indrajeetsahani207@gmail.com
5. Contact: 9845092956

Dr. Neeti Aryal Khanal

1. PhD in Sociology
2. Assistant Professor, Tribhuvan University
3. Feminist Research, Gender and Sexuality, Curriculum Innovation
4. Email : mail2neeti@gmail.com
5. Contact : + 977 9861789807

Jyotika Rimal

1. MA in Sociology
2. Development Practitioner and Qualitative Researcher
3. Women's Health, GEDSI
4. Email : rimal.jyotika@gmail.com
5. Contact : + 977 9841201838

Shubham Khanal

1. A level Graduate
2. Budhanilkantha School
3. Email: shubham.khanal63@gmail.com
4. Contact: +977 9841305049

Suyash Bhattarai

1. A Level Graduate
2. Budhanilkantha School
3. Email : bhattarai.suyash777@gmail.com
4. Contact : + 977 9841201838

Dr. Newal Chaudhary

1. Degree in Commerce Law. Ph.D.
2. Assistant Dean, Faculty of Law, TU
3. Commercial and Environmental Law
4. Email: nc2067@gmail.com
5. Contact: 9851155811

Ramkrishna Yadav

1. BALLB Fourth year running
2. Chakraborty Habi Academy of Law
3. Criminal law
4. Email: ramkrishna.yadavballb@gmail.com
5. Contact: 9805082302

Smriti Pantha

1. BBM.LLB , Kathmandu University School of Law
2. Legal Officer, Burn Violence Survivor
3. Advocate
4. Email: panthasmriti@gmail.com
5. Contact: +977-9843359666

Dr. Vijay Prasad Jayshwal

1. PhD from South West University of Political Science, China
2. Assistant Professor of Law, TU, Nepal Law Campus,
3. Investment Law, Criminal Law, Human Rights Law
4. Email: vijay.jayshwal@nlc.tu.edu.np (o) or vijayjayshwal1991@gmail.com (p)
5. Contact: +977-9860675231

आयोगका कार्यालयहरू

केन्द्रीय कार्यालय – १

प्रदेश कार्यालय – ७

प्रदेश शाखा कार्यालय – ३