CHILD MARRIAGE IN NEPAL:

A REVIEW AND ASSESSMENT OF CHILD MARRIAGE LAWS AND COURT DECISIONS

An Analysis of Impact on Boys and Girls

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An Analysis of Impact on Boys and Girls

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EXECUTIVE SUMMARY

Child marriage remains a significant challenge in many parts of the world, including Nepal, despite legal frameworks prohibiting the practice. This poses severe threats to the well-being, rights, and futures of both boys and girls. This review assesses the current state of child marriage in the country, focusing on the impact of existing laws and the response of the judiciary in addressing this harmful tradition.

The desk review of the existing laws, polices, court decisions, and other secondary sources examined the following:

- the impact of child marriage in Nepal through the lens of the four fundamental pillars of the Convention on the Rights of the Child (CRC): the right to survival, the right to protection, the right to development, and the right to participation;
- the key legal issues related to child marriage within the national frameworks, highlighting the gaps, challenges, and inconsistencies in the Nepal legal landscape; and
- the judiciary's perceptions regarding child marriage, the trends within the judiciary, and examine key jurisprudence about child marriage, analysing notable judgments that highlight its commitment to protect the rights of children.

While the existing law aims to protect children from this harmful practice, there are gaps in implementation, especially in differentiating between children who voluntarily engage in marriages and those coerced or forced into them.

The courts, particularly the Supreme Court, have played a significant role in setting precedents regarding child marriage. An analysis of key court decisions at all three levels—the Supreme Court, High Courts, and District Courts—shows varying perceptions on child marriage cases. While some judgments take a firm stance against child marriage, others fail to provide the necessary legal remedies for child victims. These inconsistencies in judicial decision-making have contributed to a lack of coherence in addressing child marriage at the grassroots level.

CHAPTER 1

INTRODUCTION

1.1 Introduction

Forum for Women, Law and Development (FWLD), a non-governmental organization established in 1995, is dedicated to the protection, promotion, and enjoyment of human rights. Using law as an instrument, FWLD aims to eliminate all forms of discrimination and ensure the rights of women, children, minorities, and marginalized communities. FWLD in collaboration with UNICEF, implemented the ''Increasing the Effectiveness of Policy and Legal Measures to Address Issues of Child Protection GBVs, Child Marriage and Civil Registration in Nepal'' initiative. A key objective of this initiative was to review and assess child marriage laws and policies in Nepal, focusing on their impacts on boy and girl.

This comprehensive review of national frameworks related to child protection provides a detailed analysis of anti-child marriage laws and policies in Nepal, alongside critical insights into their effectiveness. The study also examines judicial trends and the perceptions of courts in handling child marriage cases, highlighting implications of these rulings for further legal and policy reforms. The review sheds light on how Nepal's judiciary at all levels has been responding to child marriage and interpreting related laws within the broader social and legal context.

By evaluating the effectiveness of child marriage laws and the role of the judiciary in upholding them, this review aims to clarify how these laws define key aspects of child marriage prevention, how the judicial system responds to this issue, and where gaps remain in protecting both boys and girls from this harmful practice.

Analysing the high prevalence of the child marriage in Nepal, low reporting of the offence and its impact on boy and girls, this study focuses on the following key areas:

1. **Desk review of national and international legal frameworks**

   This aspect of the study involves a comprehensive review of existing national laws, including constitutional provisions and other relevant legislation related to child marriage. It also examines these national laws align with international frameworks, such as conventions and declarations aimed at protecting children's rights.

2. **Impact analysis of laws and policies on boys and girls**

   A thorough impact analysis has been conducted to examine the effects of child marriage on boys, girls, families, and society as a whole. This analysis grounded in the principles of the Convention on the Rights of the Child (CRC), explores the right to survival, protection, development, and participation of children. It also delves into the troubling trend of child marriages leading to statutory rape cases or abduction or hostage taking, investigating the underlying causes and societal impacts of these developments.

3. **Analysis of the Court Judgements**

   The study analysed 45 (most of them pending final decision at the Supreme Court) significant judgments from all three levels of courts, focusing on judicial trends, perceptions, and the implications of these rulings for further legal and policy reforms. These judicial analyses offer insights into how courts view and handle child marriage cases and provide guidance on strengthening protections for

children's rights. While analysing the court ruling, issues such as whether the children involved are treated as offenders or survivors; whether the victim-survivor centric approach is adopted and how the laws and context were interpreted, how the Supreme Court has been able to set a precedent that provides guidance to its subordinate courts to ensure uniformity and consistency of the decisions have been critically examined.

1.2 Methodology and Approaches

A comprehensive desk review was undertaken to systematically examine the gaps in laws and policies related to child marriage, as well as the obstacles hindering the full realization of child rights in Nepal. The review involved an in-depth analysis of both primary and secondary sources, which include national legal instruments, policy frameworks, and international normative standards, along with relevant court rulings and decisions.

Primary sources encompass national legislation, such as the Constitution of Nepal, laws specifically addressing child marriage and protection of the rights of children and policies developed by various government bodies. These were analysed to assess their alignment with international conventions and standards, such as the Convention on the Rights of the Child (CRC), the Sustainable Development Goals (SDGs), and other human rights treaties to which Nepal is a party. Special attention was given to identifying provisions that either inadequately address or entirely overlook child marriage, as well as loopholes that weaken enforcement.

Secondary sources include academic research, earlier studies, reports from international organizations, NGOs, and civil society, providing insights into the effectiveness of current laws and policies and the real-world challenges in their implementation. This was useful to ensure that the review does not duplicate existing research but instead builds upon and complements earlier reform initiatives.

The review also closely examined **judicial decisions** and **case laws** to understand how all levels of court have interpreted and applied child marriage laws, offering insights into judicial attitudes and potential areas for reform. It analysed landmark cases that have shaped the legal landscape on child marriage and assess whether existing legal frameworks provide adequate protection against child marriage.

Furthermore, the desk review also involved the collection and analysis of **relevant data and statistics** from authoritative sources such as government reports, national census, demographic surveys, and reports of various international organizations to ensure the study is grounded in up-to-date and authentic information. This lends credibility to the findings and enhance the study's ability to propose informed recommendations.

The findings from the review are expected to serve as the basis for identifying the gaps in the current national legal framework and the challenges that hinder its effective enforcement. Based on these findings, the review formulated specific **recommendations** aimed at strengthening the legal framework, improving policy measures, and enhancing judicial responses to child marriage in Nepal with the aim to ultimately guide reforms that ensure better protection of children's rights and work towards the elimination of child marriage.

CHAPTER 2

OVERVIEW OF THE SITUATION OF CHILD MARRIAGE IN NEPAL

2.1 Introduction

This chapter provides an introduction to the ''review and assessment of child marriage laws and policies'', examining the complex legal and social landscape surrounding child marriage and its profound impact on both boys and girls. The chapter sets the stage for a comprehensive overview of this assessment by focusing on the key concepts related to child marriage, such as a definition of child marriage, early marriage, forced marriage, and marriageable age. It includes a discussion of the national design to prevent child marriage, protect vulnerable children, and promote gender equality.

2.2 Child Marriage in Nepal

As a fundamental social institution, marriage is based on the principle of free and full consent between the entering partners. In the case of Child, Early, and Forced[1] Marriages where at least one of the parties is a child, the essential consent is neither fully informed nor freely given, and these marriages often lack a legal basis. According to the Convention on the Rights of the Child, a child is defined as ''every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.'' Consequently, ''child marriage'' refers to any formal or informal union or marriage where one or both spouses are under the age of 18, constituting a violation of the child's human rights. This definition, derived from the CRC, is a universally accepted international legal standard and has been ratified by most countries. It obligates governments to ensure that every individual under the age of 18 enjoys the fundamental rights guaranteed by the Convention, irrespective of their background and sex.

Child and early marriage are often linked to the minimum legal age of marriage. In Nepal, individuals under the age of 18 are consistently recognized as a distinct legal category, which is why they are restricted from voting, obtaining a driver's license, entering into legal contracts, or providing consent until they reach the age of 18. The law recognizes the marriage of children under the age of 18 as child marriage. Individuals are only considered adults and capable of making their own decisions at 18; therefore, in many countries, 18 is considered a marriageable age. However, in Nepal, the marriages involving individuals between 18 and 20 years of age are also regarded as ''child marriage,'' though theoretically, they could also be classified as ''early marriage''.[2]

The Convention on the Rights of the Child maintains that the ''marriageable age'' or ''minimum age for marriage'' should be 18 years for both men and women. Despite this, legislation in 147 countries contains exceptions that permit the marriage of children below 18, and even where legislation is in line with international standards, the prohibition of child [early] and forced marriage is difficult to implement owing

1. For the purpose of this study, forced marriage is defined as any marriage occurring when one or both parties are under the age of 20. ''Forced marriage'' is defined as ''any marriage which occurs without the full and free consent of one or both of the parties, and/or where one or both parties are unable to end or leave the marriage, including as a result of duress or intense social or family pressure.''
2. The term ''early marriage'' is frequently used interchangeably with ''child marriage'' but it specifically refers to marriages involving a person who is above 18 but below the legal marriageable age as determined by the law of that country. It can also refer to marriages where both spouses are 18 or older, but other factors indicate that they are not yet ready to consent to marriage.

to several challenges, including cultural attitudes supporting the practice.[3] However, in Nepal, the law establishes the legal age for marriage at 20 years, making any marriage below this age a punishable offense under the law.

The Supreme Court of Nepal has played a vital role in advancing legal reform and in promoting the implementation of key laws and policies against child marriage, and in several cases[4] have underscored that any kind of traditional practice that prevents women from enjoying their rights creates barriers to their development and empowerment, and thereby promotes inequality. The petitioner challenged the inconsistencies in the age of marriage within different pieces of legislation. The Court directed the government to adopt the necessary legal, institutional, and awareness-raising measures and programs against such traditional practices.

Despite this, child marriage persists in society, making it important to note that the issue has been included in the national census for many years. A 2021 census presents an alarming state of child marriage percentage, i.e., 34.4 % of marriages occur within the 18-20 age range, with 35.9% of girls and 32.6% of boys getting married, and 22.3% of the total married population between the ages of 15 and 17.

2.3 Legal Framework - Constitution, Laws and Policies

Globally, child marriage has been identified as an obstacle to the achievement of the Millennium Development Goals (MDGs), and Nepal has included children in the Agenda for Sustainable Development Goals (SDGs) (2016-2030). To address this critical issue, Nepal has committed to eliminating child marriage through constitutional, legal, policy, and programmatic measures.

For the first time, the Constitution of Nepal, 2015, has included child marriage as a violation of child rights. It has also accepted child marriage as a punishable crime.[5] Nepal has adopted legal, policy, and programmatic measures to end child marriage. Recognizing the urgency of this matter, the Government of Nepal (GoN) raised the legal marriage age for both women and men to 20 years in 2017.

Section 173 of the National Criminal Code, 2017 mandates that the legal age for marriage is 20, and any marriage involving individuals under this age is considered early marriage. Such marriages are automatically void, and the law prescribes a penalty of up to three years of imprisonment and a fine of up to 30,000 for those who violate this provision. The current legal system prohibits child marriage and imposes penalties on the children involved, treating them as perpetrators.

According to the Act relating to Children 2018, a child is a person who has not completed 18 years of age. This Act makes it an offense against children to arrange child marriages. All three levels of the government – federal, provincial, and local[6] – have shown a commitment to ending child marriage through the adoption of policy and program measures. Despite efforts to eradicate child marriage, including declaring certain districts as ''child marriage-free,'' these incidents continue to occur. The persistence of child marriages, even in districts that have been declared[7] free of such practices, suggests that the

3. Preventing and eliminating child, early and forced marriage, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/26/22 Para 52.
4. ***Kabita Pandey for Pro Public vs. Office of the Prime Minister and Council of Ministers and others; Rama Panta Kharel and Others v. Ministry of Women, Children and Social Welfare and Others; Sapana Pradhan Malla and Others v. Office of the Prime Minister and Council of Ministers and Others.***
5. Article 39 (5), Constitution of Nepal, 2015.
6. National Strategy to End Child Marriage, 2015; Bagmati Province Child Rights Act, 2076; Fifth National Action Plan for Human Rights (FY 2077/78 – 2081/82); Lumbini Province Act related to Child 2076; Provincial Child Fund (Establishment and Operation) Rule, 2077; (Strategy of Lumbini Province Government to End Child Marriage, (FY 2078/79-2088-89); Koshi Province Rule related to Protection of Children, 2080; Sudhur Paschim Child Act 2077; Gandaki Province Women, Children and Social Welfare Standards 2080, Karnali Province Child Rights Committee Establishment, Operation and Management Procedure, 2080; Child Development Strategy 2079; Gender Equality and Social Inclusion Policy, 2078; Madhesh Province Act related to Child, 2077; Strategy on Gender Equality and Social Inclusion in Health Sector, 2078; Sudhur Paschim Province ***"Sanai Chu Ma Badna Deu, Balbibaha Hoina Padana Deu"*** Aavhyan Kayrabehdi, 2078.
7. Koshi Province committed to declare child marriage free province by 2025, Bagmati Province expressed its commitment to make child marriage free by 2021 and Madhesh Province is committed to reduce child marriage through ''Save the Girl: Educate the Girl'' campaign.

declaration alone may not be sufficient. The cultural, social, and economic factors driving these practices are deeply entrenched and require comprehensive strategies that go beyond legal declarations and include education, community engagement, and economic support.

Ending child marriage has been included as a priority. Nepal has ratified the Convention on the Rights of the Child, 1989, the Convention on the Elimination of All Forms of Discrimination against Women, 1979, the International Covenant on Civil and Political Rights, 1966, the International Covenant on Economic, Social and Cultural Rights, 1966, the Convention against Torture, 1984 and became a State Party committing to the protection of the rights of child, including safeguarding them from harmful practices such as early and forced marriages.

Similarly, SAARC has been showing its commitment to the protection of children's rights through various international conventions and voluntary articles that promote children's rights at the international and regional levels. Following international commitments and obligations, adequate legal arrangements have been made in matters related to child rights. On July 22, 2014, at the high-level summit against child marriage and early marriage, and forced marriage held in Britain, the GoN expressed its commitment to try to end child marriage in Nepal by 2020.

The National Children Policy 2024 also aims to end early marriage. Complementing this, the Act relating to Children 2018 emphasizes the need for a coordinated effort among government agencies, development partners, and community-level stakeholders to combat the social menace of early marriage, with a pledge to end child marriage by 2030. The Sixteenth Plan (2081/82-2085-86) aims to end various types of ill practices, including the prevention of child marriage. The GoN has approved and implemented the National Strategy for Ending Child Marriage, 2015. This strategy has adopted various strategic measures according to the goal of ending child marriage in Nepal by the year 2030. It includes and implements programs against child marriage with priority, empowering unmarried children and adolescents, ensuring quality education for them, conducting campaigns at the local level to end child marriage, laws against child marriage. It is mentioned that strategic measures, such as effective implementation of the policy, will be adopted.

Similarly, intending to raise awareness, the GoN introduced a procedure in 2018 to regulate expenses associated with activities aimed at combating child marriage. According to the procedure, the GoN is required to develop a periodic plan to implement efforts to prevent child marriage inclusively and effectively, with women as the primary participants. The plan should also engage children, adolescents, and men in preventing child marriage, challenge and eliminate prevailing social, cultural, and traditional beliefs and behaviours rooted in traditionalism, capacity-building programs must be conducted for children, adolescents, parents, teachers, religious, political, and community leaders, as well as associations, organizations, and other relevant stakeholders and monitor and evaluate effectiveness of the programmes conducted to eliminate child marriage.

Despite these efforts, Nepal remains ranked 16th globally for child marriage practices and third in South Asia.[8] According to the National Census 2021, 34.4% of girls and boys marry between the ages of 18 and 20.

Child and early marriage are pervasive across various communities, including indigenous ethnic groups, Dalits, Muslims, Madhesis, and other marginalized communities, particularly in the Terai and hilly regions.[9] For instance, some Dalit communities in Madhesh also practice the Gauna system, where a female child is married off as a minor but stays with her family until her menarche or until she is considered adult

8. Nepal Health research council (NHRC) & United Nations Children's Fund (UNICEF) (2024), Behavioural Determinants of Child Marriage and Adolescent Pregnancy in Nepal: A qualitative study. Kathmandu, Nepal, https://www.unicef.org/nepal/media/21156/file/ECM%20-%20Executive%20Summary.pdf
9. Bhattarai, P.C.; Paudel, D.R.; Poudel, T.; Gautam, S.; Paudel, P.K.; Shrestha, M.; Ginting, J.I.; Ghimire, D.R. Prevalence of Early Marriage and Its Underlying Causes in Nepal: A Mixed Methods Study. Soc. Sci. 2022, 11, 177; Forum for Women Law and Development (2019), Bal Bibahan Biriddha ko Adhiakr: Sanchar Swort Samagri, https://fwld.org/wp-content/uploads/2019/11/child-marriage-book-11-11-2019.pdf

enough to start a conjugal life. Child marriage is driven by gender inequality and the belief that women and girls are somehow inferior to men and boys. Additionally, child marriage is also driven by the level of education,[10] poverty,[11] harmful practices and cultural norms,[12] caste system, self-initiated marriage, earthquake, COVID-19, and child trafficking,[13] as well as factors that can be categorised into social, economic, institutional, legal, and political levels. Recent trends show that children involved in "romantic relationships" often elope, leading parents to report these incidents as cases of abduction, hostage-taking, or even rape.[14] These factors collectively influence the socioeconomic status of individuals and families, leading to child marriage. The impact of these drivers varies across state, community, family, and individual levels, heavily depending on the local contexts.

Child marriage has been recognized as an obstacle to achieving the Millennium Development Goals and is now included as a priority issue in the Sustainable Development Goals (2016-2030) agenda, underscoring the global commitment to ending this practice. It is within the first indicator of Goal 5 on gender equality, among the 17 goals of sustainable development, that requires the elimination of all harmful practices, including child, early, and forced marriage. In the Universal Periodic Review of the UN Human Rights Council and several United Nations Treaty Bodies have expressed concern regarding the persistent issue of child marriage in Nepal. These bodies have urged the GoN to enforce its own Supreme Court rulings condemning child marriage and to ensure effective implementation and enforcement of national laws prohibiting the practice. This includes imposing appropriate sanctions and prosecuting individuals involved in facilitating or promoting child marriages.[15]

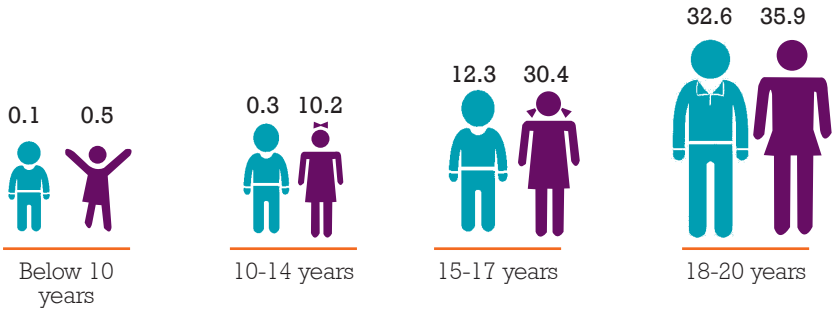
2.4 Prevalence of Child Marriage in the Society

Child marriage remains a significant issue in Nepal. Understanding its current prevalence is essential for analysing its impact on both boys and girls. This section analyses the prevalence of child marriage based on the 2021 census data on child marriage, focusing on its geographical distribution, the differences between urban and rural areas, and variations across different age groups.

According to the National Census of 2021, children make up 33.8 percent of Nepal's total population. Among them, 1.6 percent were married before reaching the legal age of marriage, with 2.6 percent of girls and 0.6 percent of boys affected. Data from the National Statistics Office indicates that a significant number of children, especially girls, are married before the legal age of 20 in Nepal. The data of the married population between ages 10 and 20 provides significant insights into the scale and gendered nature of child marriage in Nepal. The total married population between the age range of below 10 and 20 is 16,022,870, with 7,116,659 males and 8,906,211 females. Females account for a larger portion of the total married population at 55.6%, while males represent 44.4%.

10. According to the National Census 2021, women and men aged 20 – 49 years who were first married before the age of 18, 53% of women and 22% of men had no education, 48% of women and 19% of men had basic education and 4% of women and 3% of men had higher education.
11. According to the National Census 2021, Women between the ages of 20 – 49 from the richest households were less likely to be married before the age of 18 (25% compared to women from the second (44%) and poorest (43%) households.
12. In some communities, family members believe they will go to heaven if they marry off girls before menstruation. There is also a persistent cultural value attached to the preservation of "girls' purity" and shame surrounding sex outside marriage. All of this encourages girls being married off early.
13. 2020 UNICEF-UNFPA reports indicate that the rising number of families living in poverty has pushed families into disguising child trafficking as child marriage to earn money. Families are exchanging their daughters for money or small "gifts" to better their economic situations.
14. UNFPA (2023), Policy Brief: Digital Ecosystem Analysis on Child Marriage in Nepal; Girls Not Bride (2016), 6 facts you need to know about child marriage in Nepal.
15. CRC Committee, Concluding Observations: Nepal, paras. 28, U.N. Doc. CRC/C/OPSC/NPL/CO/1 (2012); Human Rights Committee, Concluding Observations: Nepal, para. 13, U.N. Doc. CCPR/C/NPL/CO/2 (2014); Committee on Economic, Social and Cultural Rights, Concluding Observations on the third periodic report of Nepal, para. 14, U.N. Doc. E/C.12/NPL/CO/3 (2014); see also CRC Committee, Concluding Observations: Pakistan, paras. 28, 29, U.N. Doc. CRC/C/PAK/CO/3-4 (2009); Democratic Republic of Congo, para. 60, U.N. Doc. CRC/C/COD/2 (2009); Chad, para. 13, U.N. Doc. CRC/C/TCD/CO/2 (2009).

Percentage of the Married Population Aged below 10 to 20 Years

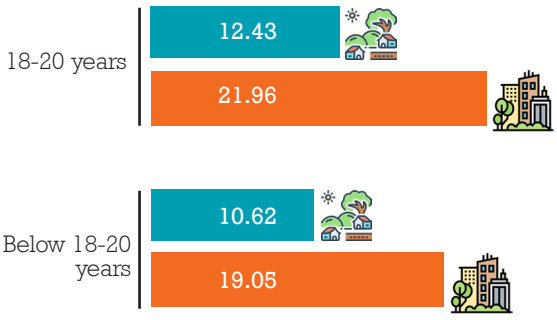


Source: National Census 2021, National Statistics Office

0.3% of the children were married under the age of 10, which includes 0.1% males and 0.5% females. Similarly, 7.0% of the total married population falls between the ages of 10 and 14. Males account for 3.0% of this group, while females represent 10.2%. This suggests that girls in this age group are over three times more likely to be married than boys, reflecting the higher vulnerability of girls to early marriage. Similarly, 22.3% of the total married population is between the ages of 15 and 17. Among this group, 12.3% are males and 30.4% are females. Females are more than twice as likely to be married in this age range than males, highlighting the continuing trend of early marriage among girls. The highest percentage of married individuals falls within the 18-20 age group, accounting for 34.4% of the total. 32.6% of males in this age group are married, compared to 35.9% of females. While the gap between males and females narrows as they approach adulthood, women are still slightly more likely to be married by age 20.

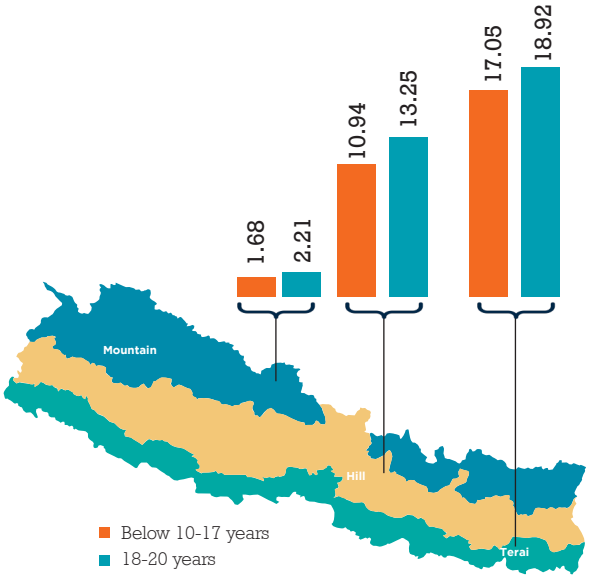
Across all age groups, females are significantly more likely to be married than males, particularly in the younger age brackets (10-17 years). In all age groups, girls are disproportionately affected compared to boys. The data reflects entrenched gender norms where girls face greater pressure to marry early. A notable proportion of marriages occur between the ages of 15-17, with girls being disproportionately affected. Early marriage remains a serious issue, especially for young females. The high percentage of child marriages, particularly among girls under 18, suggests that legal frameworks aimed at preventing early marriage might not be fully enforced or effective.

Married Population Aged Below 10 and 20 in Urban and Rural Municipalities



Source: National Census Report 2021

Percentage of Married Population Aged Below 10 and 20 in Ecological Belt



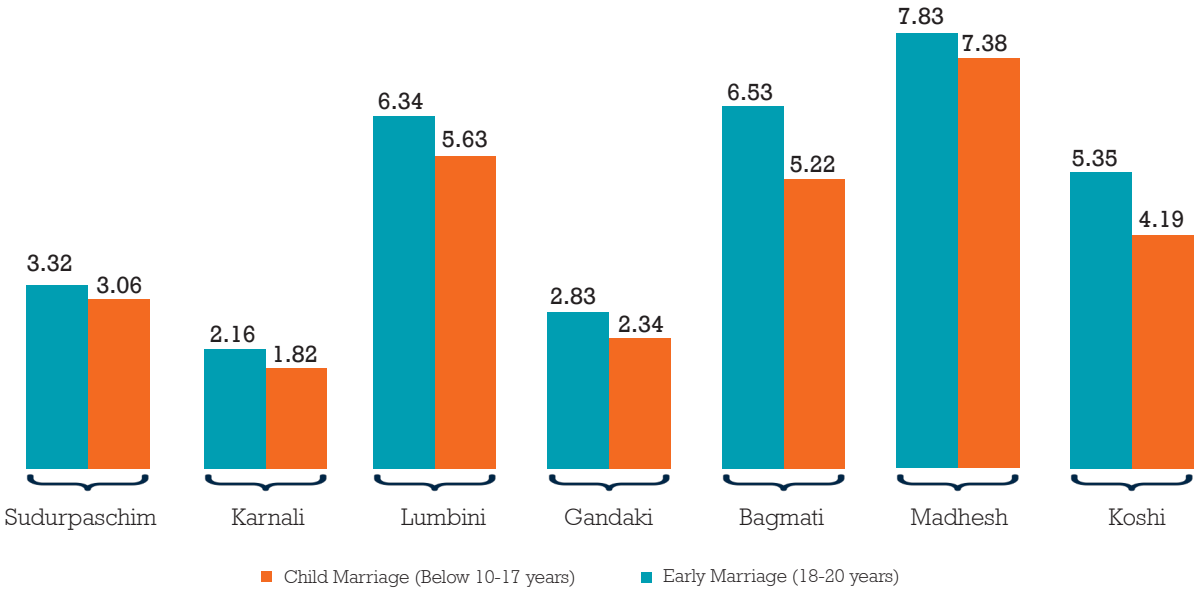
Source: National Census Report 2021

Urban vs. Rural: Early marriages are more common in urban areas compared to rural areas, especially in the younger age group (10-17). The percentage of married individuals (21.96%) exceeds that of rural areas (12.43%). This pattern indicates that even in the older adolescent age group, early marriages are more common in urban regions. The higher rates in urban regions could be due to factors like migration, economic pressures, or different social norms.

Ecological Belt Trends: The Terai region stands out as having the highest rates of early marriage, while the Mountain region shows the lowest. The Terai region has the highest percentage of early marriages in both age groups. For the 18-20 group, 18.92% are married, and for the 10-17 group, 17.05% are married. This region may face unique challenges, such as entrenched cultural norms and socio-economic factors that contribute to higher rates of child and early marriages.

This regional disparity suggests the need for area-specific strategies to address child and early marriages, considering the different social and cultural dynamics in each belt. Overall, these data point to a pressing need for targeted interventions in both urban areas and the Terai region, focusing on addressing the factors driving early marriage practices.

Province-wise Percentage of Marriage Population Below 10 and 20



Source: National Census 2021

The statistics show that child marriage is highest in Terai/Madhesh, with the percentage of 7.38% for child marriages and 7.83% for early marriages (aged 18-20). Lumbini Province displays high rates of child and early marriages, with 6.34% for child marriage and 5.63% for early marriage. This suggests that while early marriage is relatively lower than child marriage, both practices are still quite prevalent. In Bagmati Province occurrence of child and early marriage is relatively balanced, with 6.53% for early marriages and 5.22% for child marriages, indicating that efforts to curb child marriage may have some impact, but early marriages persist.

Gandaki Province has a significantly lower rate of child marriage (2.34%) compared to early marriage (2.83%), indicating some progress in reducing child marriages, though early marriages remain an issue. Similarly, Sudurpaschim and Koshi Provinces display similar patterns, with early marriage slightly more common than child marriage. Koshi shows 5.35% early marriage compared to 4.19% child marriage, while Sudurpaschim shows 3.32% early marriage compared to 3.06% child marriage. Karnali Province presents the lowest rates for both child and early marriages, with 1.82% for child marriage and 2.16% for early marriage. This suggests that Karnali has made relatively better progress in addressing both forms of marriage compared to other provinces.

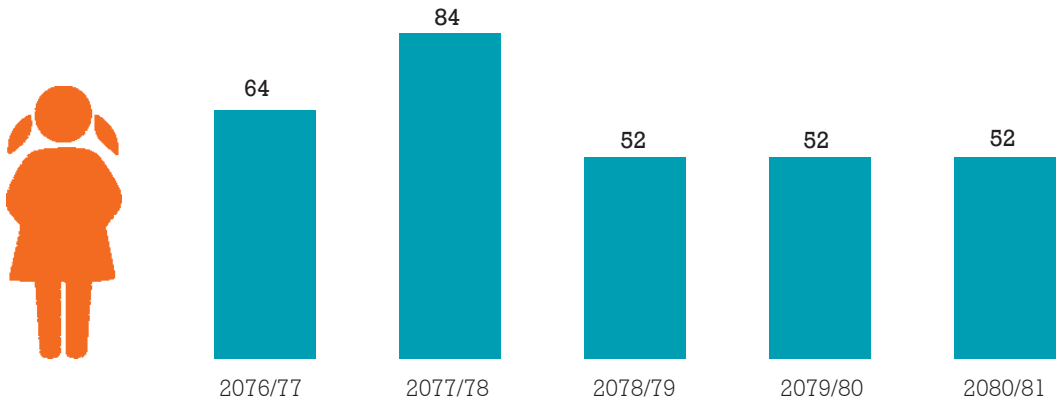
A wide range of factors contribute to the risk of child marriage for girls and boys, including persistent gender inequality and social norms that devalue women and perceive them as belonging to their husband's family. Additionally, the inadequate enforcement of laws prohibiting child marriage and obstacles to accessing legal remedies further exacerbate the issue.[16] The most common reasons for marriage under the age of 18 are social pressure, cultural norms, and the perception that "it is normal—everyone does it."[17] However, it is important to recognize that the trend in child marriage is shifting towards self-initiated, voluntary, or elopement marriage.[18] The misuse of social media, generational differences, and teenage affection have contributed to a rise in self-initiated child marriage, making it increasingly difficult to eradicate child marriage. Unfortunately, due to legal gaps, these couples are often unable to register their marriages and get their child's birth certificate, which can lead to significant issues in cases of separation or divorce later. To effectively address this challenge, it is crucial to leverage legal frameworks and strategies to ensure accountability in ending child marriage. This requires a thorough review of the effectiveness of legal institutions.

2.5 Minimum Reporting of Cases Against the Maximum Incident

Any marriage occurring before the age of 20 is legally defined as "child marriage" and is considered a criminal offense. The law mandates penalties for all forms of child marriage, irrespective of their context or circumstances. Despite the high prevalence of child marriage, as highlighted by the 2021 National Census, the number of cases reported to the judicial institutions is significantly lower than the actual occurrence, raising concerns about underreporting. The Constitution recognizes the right against child marriage as a fundamental right, and the practice is prohibited and punishable by law. Existing laws and policies hold state institutions accountable for preventing child marriage, prosecuting offenders, and ensuring justice for victims with reasonable and adequate compensation. However, despite the legal framework and ongoing awareness efforts, a considerable gap remains between the number of incidents and those officially reported.

The most critical issue is the low reporting of child marriage cases to the police and justice institutions compared to their widespread prevalence. According to the 2021 Census Report, 64% of marriages occurred before the age of 20. Whereas only 304 cases of child marriage have been reported to the

Child Marriage Registered to Nepal Police



Source: Women, Children and Senior Citizens Service Directorate, Nepal Police

16. UNPFA, Ending Impunity for Child Marriage, 2016, https://nepal.unfpa.org/sites/default/files/pub-pdf/Ending%20Impunity%20for%20Child%20marriage%28final%29_25Nov16.pdf
17. Office of the United Nations High Commissioner for Human Rights, Preventing and eliminating child, early and forced marriage, para. 19 U.N. Doc. A/HRC/26/22 (April 2, 2014).
18. WOREC (2020), Research Report Redefining the Early and Child Marriage and Reconsidering its Elimination in Nepal through Absolute Criminalization, https://www.worecnepal.org/uploads/publication/document/2133142066REDEFINING%20THE%20EARLY%20AND%20CHILD%20MARRIAGE.pdf

Nepal Police over the past five years, according to the data from the Women, Children and Senior Citizen Service Directorate. The highest number of reports, 84 cases, was recorded in the fiscal year 2077/2078. In the fiscal year 2080/81 alone, 52 cases were registered. The highest number was reported in Lumbini Province, with 23 instances, followed by Madhesh and Sudurpaschim Provinces with 9 and 7 cases reported respectively. Gandaki Province registered 4 cases while Koshi reported 3 cases, Bagmati and Karnali recorded 2 cases each where the Kathmandu valley recorded 2 cases.

Child marriage may occur in different contexts and under various circumstances. Some cases involve minors marrying by choice before reaching the legal age, while others involve parental consent or forced marriages. Although all forms of child marriage are illegal and punishable, such marriages continue to occur knowingly or unknowingly in society. Typically, these cases go unreported, particularly when they occur with the consent of both parties and their families. Reports are rare unless there is familial disagreement or objection. As a result, despite the widespread occurrence of child marriages in Nepal, reporting remains extremely low. There might be several reasons behind it. Deeply rooted superstitious, religious, social and cultural norms and value, and changed social structure and life style are provoking child marriage in one hand, whereas on the other hand, lack of legal awareness, inadequate and inconsistent legal provisions of the existing laws, lengthy and complicated justice process, lack of victim centric approach and support system, lack of accountability in the state mechanisms and weak implementation of the existing laws are also causing factors behind the low reporting of the child marriage cases.

2.6 Minimum Prosecution in the Justice Process

As highlighted above, child marriage remains widespread in society, with the National Statistic Office reporting that 29.67 % of marriages involve individuals between the ages of 10 and 17. However, only a very small number of these cases make it into the justice system. According to the Nepal Police, only 52 cases of child marriage were reported in fiscal year 2080/81. The Office of the Attorney General holds the discretion to decide whether or not to prosecute criminal cases following police investigations. However, an analysis of the trends reveals that not all child marriage cases investigated by the police are being prosecuted in court. Additionally, even among the cases that do proceed to court, the conviction rate remains alarmingly low. This highlights significant gaps not only in the prosecution process but also in the judicial outcomes related to child marriage cases, raising concerns about accountability and the effectiveness of legal mechanisms in addressing these crimes.

The low prosecution and conviction rates undermine the deterrent effect of the legal framework, allowing offenders to evade accountability and perpetuating the cycle of child marriage. The annual reports from the Office of the Attorney General show a low number of child marriage cases over fiscal years 2077/78, 2078/79, and 2079/80. In 2077/78, 5 cases were registered with the Office of the Attorney General, but none were recorded in the following years. However, the Office of the High Court Attorney saw 77 cases in 2077/78, with an increasing trend in subsequent years—89 cases in both 2078/79 and 2079/80.

According to a report[19] by the Central Child Justice Committee for the fiscal year 2078/79, a total of 84 cases related to children were registered in various district courts, with 94 children accused of involvement in child marriage. Among these cases, 28 were linked to polygamy, 5 were associated with rape, and 1 case involved both polygamy and rape. In the following fiscal year, 2079/80, 100 cases were filed, with 115 children accused of child marriage. Of these accused children, 6 were under 14 years old, 30 were between 14 and 16 years old, and 75 were between 16 and 18 years old. This upward trend suggests that despite legal frameworks and efforts to combat child marriage, the practice persists, potentially even intensifying.

A deeper analysis of the data reveals several troubling aspects. For instance, in 2078/79, 28 cases were linked to polygamy, 5 were associated with rape, and 1 case involved both polygamy and rape, highlighting that child marriage often intersects with other serious offenses like polygamy and sexual violence. This

19. Situation Report about Child Justice in Nepal 2080 (2080), Central Child Justice Committee.

points to a broader context of exploitation and violation of children's rights, indicating that child marriage is not just a standalone issue but is frequently connected to other harmful practices.

In the fiscal year 2079/80, the age distribution of children accused of child marriage shows that the majority (75 out of 115) were between 16 and 18 years old, while 30 were between 14 and 16 years old, and 6 were under 14. This age breakdown underscores the vulnerability of adolescents, particularly those in the 16-18 age range, who are at the highest risk of being involved in child marriage. The presence of children under 14 among the accused is particularly alarming, as it indicates the involvement of very young children in these cases, underscoring a severe violation of children's rights. Six children are currently in child reform homes in different centres in Nepal: two are aged between 14 and 16, three are between 16 and 18, and one is over 18.[20]

Despite the Court's expressed concern[21] about the low level of prosecution and issued directives to the government to make necessary amendments to laws to ensure consistency and uniformity in the ages of marriage of boys and girls, and to implement the laws effectively, child marriage is rampant. There is a low ratio of appeals against the judgment of the district court and similar appeals in the Supreme Court against the judgment of the High Court. The reports of the office of the attorney general and the Supreme Court reveal the low ratio of cases prosecuted in different stages of the justice process.

The data from the Supreme Court's annual reports for the last three years (fiscal years 2077/78, 2078/79, and 2079/80) highlights significant issues with low case registration and settlement. Notably, in both 2077/78 and 2079/80, no cases were resolved, indicating either a procedural bottleneck or inefficiency in addressing cases. In 2078/79, while 146 cases were registered, only 138 were decided, showcasing a relatively high case disposal rate. However, the lack of case decisions in the other fiscal years suggests an ongoing problem with maintaining consistent case resolution rates, contributing to an increasing backlog and a potential strain on the judicial system. This inconsistency points to deeper systemic issues, such as resource constraints, procedural delays, or judicial capacity limitations, which undermine timely justice delivery.

There might be many reasons behind the low ratio of prosecution of child marriage cases in the justice process. Some keys are deeply rooted social norms and values in favour of child marriage, lack of legal awareness and indifference towards legal prohibition, inadequate and inconsistent legal provisions, complicated investigation process, lengthy and complicated judicial process, lack of trust in judicial institutions, lack of support mechanisms such as psycho-socio counselling, victim support, legal aid, etc.

It is also observed that in many cases, the party does not appeal to the higher court when it is convicted of child marriage by a court. The law explicitly provides the age for marriage and prohibits child marriage under any circumstances. When a case is decided by the court convicting of child marriage, in some cases, the party does not appeal to the higher court against such a decision. Generally, but not limited to, child marriage exists in backward societies, where there is a lack of legal awareness, poor economic status, deeply rooted superstitious beliefs, such people are also not aware of legal and judicial procedures, and they also lack support, including legal aid services. In some cases, people do not exercise their appeal rights; rather, they prefer to accept the minimum punishment provided by the law and be mature for marriage after the punishment. Therefore, the flow of cases seems lower as it goes to the higher courts.

The discrepancy between the estimated prevalence of child marriage and the relatively low number of cases reported to the police and settled by the courts highlights a significant concern of underreporting. Factors, including social stigma, fear of reprisal, lack of awareness, and inadequate enforcement of the law, may contribute to this gap. Enhancing community engagement, strengthening legal frameworks, and providing accessible reporting channels are vital steps toward ensuring that all cases of child marriage are reported and that victims receive the necessary support and protection.

20. Id, P. 103
21. *Sapana Pradhan Malla and Others vs. Office of the Prime Minister and Council of Ministers and Others*, 2006.

CHAPTER 3

CHILD MARRIAGE AND VIOLATION OF RIGHTS OF CHILDREN

3.1 Introduction

This chapter examines the impact of child marriage in Nepal through the lens of the four fundamental pillars of the Convention on the Rights of the Child (CRC): the right to survival, the right to protection, the right to development, and the right to participation. The CRC, which Nepal ratified in 1990, is a vital framework aimed at promoting the overall well-being of children. It provides a critical analysis of how child marriage in Nepal violates the CRC, jeopardizing children's survival, denying them protection from harm, restricting their development, and depriving them of meaningful participation in society. It highlights the urgent need for stronger legal protections and effective interventions to safeguard the rights and futures of all children in the country. It underscores the critical role that national policies and community actions must play in addressing and ultimately eliminating child marriage, ensuring that every child in Nepal can fully enjoy their rights as enshrined in the CRC.

3.2 Child Rights Convention and Four Domains

The CRC, which is solely focused on the rights of the child, aims to promote the overall well-being of children and records several rights that encompass four key domains: the right to survival;[22] the right to protection;[23] the right to development;[24] and the right to participation.[25] These rights are grounded in the principle of non-discrimination, and all actions must align with the best interests of children. By placing the child at the centre, these four domains emphasize the fundamental framework of the CRC. A series of concentric circles around the child visually represents different levels of responsibility and action required to promote the Convention.

Although the CRC does not contain any provisions on child marriage specifically, let alone marriage in general. Article 24(3) CRC stipulates that States Parties shall take measures to abolish "traditional practices prejudicial to the health of children" and may, therefore, be the most fitting clause to invoke against early marriage.

3.2.1 The Right to Survival

From the moment children are born, they are entitled to fundamental rights, including the right to life, a registered name, and nationality. They have the right to be cared for and protected by their parents and should not be separated from their families. However, child marriage presents a significant barrier to realizing these rights, particularly regarding birth registration and the legal recognition of children. A

22. Article 6, Convention of the Rights of the Child, 1989.
23. Article 36 of the Convention of the Rights of the Child, 1989 requires States to protect children from all other forms of exploitation that may prejudice any aspect of their welfare.
24. Article 6, Article 17, Article 18, Article 23, Article 24, Article 27, Article 28 and Article 32, Convention of the Rights of the Child, 1989.
25. Article 12 of the Convention of the Rights of the Child, 1989 provides for children's right to express their views freely in all matters affecting them.

recent study[26] has highlighted that child marriage is a major obstacle to birth registration. Under Nepali law, mothers are often prevented from registering their children's births independently, as the process frequently requires the presence or identification of both parents. Additionally, authorities may refuse to recognize children born to underage mothers, complicating the registration process further. As a result, many of these children remain unregistered and unrecognized as legal persons.[27]

The situation is exacerbated by the legal framework that links birth registration to the parents' marriage registration. Since child marriages are illegal in Nepal and cannot be registered, children born from these unions often face difficulties obtaining a birth certificate. The widespread lack of birth registration makes age verification impossible. This issue underscores the importance of developing the capacity of local, provincial, and national governments to collect and store vital statistics records for births and marriages. Moreover, many underage parents do not possess citizenship documents, which complicates birth registration, as citizenship is required for both parents to register a birth.

Misconceptions also contribute to the problem. Some parents mistakenly believe that their child's birth can only be registered if their marriage is legally valid. This misconception prevents them from seeking birth registration, unaware that a child's legal status and right to birth registration are not affected by the validity of their parents' marriage. Consequently, young people who marry are doubly disadvantaged: they cannot register their marriage, and their children are deprived of the right to be recognized by the state.

The intertwined legal and practical barriers to birth registration in Nepal reflect the broader societal challenges associated with child marriage. Ensuring every child's right to survival begins with birth registration, which is crucial for protecting against child marriage and other forms of exploitation. Without accurate birth registration, the ability to enforce laws against child marriage is severely compromised, leaving many children vulnerable to forced or early unions. Ensuring that every child is registered at birth is crucial for their access to fundamental rights, services, and protections. Without birth registration, children are invisible in the eyes of the law, and their rights to health, education, and protection remain unmet. The UN Human Rights Committee has specifically called for increased birth registration in Nepal.[28]

To address these challenges, it is vital to strengthen birth registration processes, enhance community awareness, and improve law enforcement mechanisms to ensure that every child in Nepal is recognized, protected, and allowed to thrive. Robust legal protections, combined with effective monitoring and reporting mechanisms, are essential for safeguarding children's rights and combating child marriage.

In addition to legal challenges, child marriage exposes several health risks, disrupts education, and has profound psychosocial impacts. Child marriage poses severe health risks for young girls and their children, leading to lifelong consequences for both mother and child. Girls are at higher risk of maternal health complications, including early pregnancies,[29] obstructed labour, fistula, and uterine prolapse.[30] Babies born to child brides face higher neonatal mortality rates,[31] malnutrition, and stunted growth. These young mothers also suffer from long-term health consequences such as physical and psychological trauma, limited access to reproductive health services,[32] chronic health problems, and an increased risk

26. Tuladhar, I., Practices, Legal, and Practical Barriers to Birth Registration in Nepal, Asia-Pacific CRVS Research Forum, 3-4 April 2023, Bangkok, Thailand.
27. Legal marriage age in Nepal is 20 and citizenship obtaining age is 16.
28. CCPR, Concluding Observations: Nepal, U.N. Doc. CCPR/C/NPL/CO/2 (2014), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/NPL/CO/2&Lang=En para 21.
29. In Nepal, about 40% of women aged 20–24 was married before the age of 18, according to the Nepal Demographic and Health Survey (NDHS) 2016 and maternal mortality is notably higher among adolescent girls, with those under 20 facing a greater risk of dying during childbirth compared to older women.
30. A study by UNFPA (United Nations Population Fund) found that nearly 600,000 women in Nepal suffer from uterine prolapse, many of whom were married as children.
31. According to the NDHS 2016, neonatal mortality in Nepal is around 21 deaths per 1,000 live births, with rates being higher among young mothers under 20.
32. According to the NDHS 2016, only 69% of women aged 15–49 have received antenatal care from a skilled provider in Nepal, with the rate being lower among adolescents.

of maternal mortality.[33] The CEDAW Committee has raised concerns with the Government regarding the high rates of maternal mortality and morbidity, particularly among rural, poor, and young women. These bodies have highlighted the significant barriers faced by these women and girls in accessing essential reproductive health services. These include maternal healthcare, preventative measures for uterine prolapse, access to contraceptive information and services, as well as safe abortion services.[34]

Child marriage significantly disrupts the education of both girls and boys, forcing many to drop out of school.[35] Social and cultural factors limit educational opportunities for married girls[36] hindering their ability to achieve economic independence. The consequences of early marriage are profound, perpetuating cycles of poverty and inequality that affect not only the girls involved but also their families and communities.

Child marriage in Nepal has significant social and psychological consequences for young girls. Beyond the immediate physical dangers, early marriage affects their mental well-being, social standing, and overall quality of life. It traps girls in a cycle of domestic violence[37] restricts their agency[38] and freedom due to cultural and social norms, which results in lasting psychological trauma.[39]

3.2.2 Right to Protection

Once children are born and survive, they have the fundamental right to be protected from all forms of harm, including domestic violence, abuse, exploitation, and neglect. In Nepal, this right is enshrined in both national laws and international commitments, such as the CRC, to which Nepal is a party. Despite these legal frameworks, many children remain vulnerable to violations of their rights, particularly in the context of child marriage.

Children in Nepal are entitled to protection from all forms of physical violence, psychological intimidation, and emotional abuse, both within and outside their families. However, child marriage often exposes children, especially girls, to significant risks of violence. A 2017 UNICEF study found that 37% of Nepali women aged 20-24 were married before the age of 18, and 10% were married before 15. These child brides are often faced with domestic violence, sexual abuse, and other forms of exploitation due to their vulnerable status and lack of autonomy. According to the Nepal Demographic Health Survey (NDHS) 2016, 26% of ever-married women aged 15-49 have experienced physical violence at least once since the age of 15, and 7% have experienced sexual violence.

The right to protection also includes safeguarding children from hazardous labor or tasks that impede educational opportunities. Child marriage often disrupts education, pushing children, particularly girls, into domestic labor or agricultural work. The Nepal Labor Force Survey (2018) revealed that approximately

33. In 2019, the maternal mortality ratio was estimated at 186 per 100,000 live births, with a significant number of these deaths occurring among adolescent mothers who lack access to adequate healthcare.
34. CEDAW Committee, Concluding Observations: Nepal, U.N. Doc. CEDAW/C/NPL/CO/4-5 (2011), available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/450/52/PDF/N1145052.pdf?OpenElement.
35. According to the Nepal Demographic and Health Survey (NDHS) 2016, approximately 40% of women aged 20–24 were married before the age of 18. Data from UNICEF indicates that child marriage is one of the main reasons for school dropouts among girls in Nepal, with an estimated 16% of girls aged 15–19 currently married or in a union. Data from the Ministry of Education's "Flash Report 2018" shows that the dropout rate for girls in grades 9–10 is 12%, compared to 8% for boys.
36. A report by Human Rights Watch highlighted that married girls are often denied entry or face stigmatization in schools, further discouraging them from continuing their education.; According to a report by the Center for Research on Environment Health and Population Activities (CREHPA), only 4% of married girls in Nepal go on to complete higher education, compared to 24% of their unmarried peers.
37. According to a report by Human Rights Watch, girls who marry before the age of 18 are more likely to experience domestic violence, including physical, emotional, and sexual abuse, than those who marry later. Data from the Nepal Demographic and Health Survey (NDHS) 2016 found that 26% of women aged 15-49 reported having experienced physical violence since the age of 15, with younger brides facing a higher risk.
38. A study by the Centre for Reproductive Rights found that young brides in Nepal have limited access to education, healthcare, and economic opportunities, and they are frequently excluded from decisions that affect their lives, such as those related to family planning, education, or employment.
39. According to a study by the World Health Organization (WHO), child marriage is associated with a 30% higher risk of developing mental health issues compared to those who marry later.

1.1 million children (aged 5-17) are engaged in child labor in Nepal, with many of these children married or at risk of early marriage. This exposes them to dangerous working conditions, further limiting their prospects for education and development.

Child marriage is closely linked to trafficking, smuggling, kidnapping, and sexual abuse in Nepal. According to the National Human Rights Commission (NHRC) of Nepal, approximately 43,000 people, mostly women and children, are trafficked from Nepal every year. Child brides, particularly those from impoverished and marginalized communities, are particularly vulnerable to traffickers who exploit their precarious situations, often under the guise of arranged marriages.

Psychologically, child marriage constitutes a form of violence that restricts children's freedom, stunts their growth, and exposes them to severe trauma. The Nepal Health Research Council (NHRC) reports that early marriage can lead to serious mental health challenges, including depression, anxiety, and trauma, particularly among girls forced into early sexual activity and motherhood. UN mechanisms such as Universal Periodic Review and the treaty bodies including Human Rights Committee and the CEDAW Committee have urged the Government to ensure effective prevention, investigation, prosecution, and remedies for violence against women, including marital rape. They have also emphasized the need for penalties for such crimes to be proportionate to their severity, under human rights law.[40] The lack of agency, compounded by isolation from peers and limited access to education, exacerbates their psychological distress.

3.2.3 The Right to Development

The right to development is a fundamental right for every child, encompassing access to education, healthcare, and opportunities for personal growth. However, child marriage significantly impedes the realization of this right in Nepal. Child marriage, a prevalent issue in Nepal, obstructs children, particularly girls, from accessing essential services and opportunities crucial for their development.

Nepal's 2015 Constitution guarantees the right to development, but this right is frequently compromised by societal practices like child marriage. Although the National Strategy to End Child Marriage in Nepal aims to eliminate child marriage by 2030, progress remains slow due to inadequate resources, lack of awareness, and insufficient implementation of laws. Despite laws prohibiting child marriage, enforcement remains weak in Nepal, particularly in remote and marginalized communities. The practice is often sustained by deeply rooted cultural and social norms affecting various facets of child development.

Early Childhood Development (ECD) services lay the foundation for a child's cognitive, emotional, and physical growth. However, the degree of prevalence of child marriage affects young mothers' ability to access these services for their children. Married girls, who often become young mothers, are less likely to engage in ECD programs due to limited mobility, societal stigma, and the lack of support systems. In Nepal, only 66.5% of children are enrolled in early childhood education programs, and the participation rate is even lower among children born to teenage mothers. This deprivation has long-term consequences on children's overall development, impacting their learning outcomes and social integration.

Children with disabilities face additional challenges in realizing their right to development, and child marriage compounds these challenges. According to the National Statistics Office, children with disabilities in Nepal have significantly lower school attendance rates, with only 30% attending school regularly. For those affected by child marriage, the situation worsens, as the resources and attention required for children with special needs are often not prioritized within families struggling with poverty and social stigma. As a result, these children are denied opportunities to realize their potential, which is a direct violation of their right to development.

40. CCPR, Concluding Observations: Nepal, U.N. Doc. CCPR/C/NPL/CO/2 (2014), para 13 available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/NPL/CO/2&Lang=En; CEDAW Committee, Concluding Observations: Nepal, U.N. Doc. CEDAW/C/NPL/CO/4-5 (2011), available at http://daccess-dds- ny.un.org/doc/UNDOC/GEN/N11/450/52/PDF/N1145052.pdf?OpenElement. para 19; Report of the Working Group on the Universal Periodic Review, https://documents.un.org/doc/undoc/gen/g21/074/68/pdf/g2107468.pdf.

The right to development also includes the opportunity to gain specialized skills and knowledge that can help a child secure a better future. Child marriage truncates this opportunity, as girls are expected to fulfill adult responsibilities from a young age, leaving little room for personal growth and skill development. A study by the Population Council indicates that 84% of married adolescent girls in Nepal have no access to vocational training or skill development programs. This lack of opportunity hinders their ability to pursue a career, achieve economic independence, or contribute meaningfully to society.

3.2.4 The Right to Participation

Children are integral members of society, possessing the full right to freely express their thoughts, views, and opinions, especially in matters that directly affect them. Their voices must be considered seriously, in line with their age and maturity, as outlined in the CRC. However, child marriage remains a significant barrier to realizing these rights, limiting children's ability to participate meaningfully in society.

Child marriage severely undermines children's participation in decision-making processes that concern their own lives and broader societal issues. In Nepal, a country where approximately 37% of girls are married before the age of 18 (UNICEF, 2017), these young girls often lose their agency and the opportunity to voice their concerns. Married girls are frequently pulled out of school, limiting their access to education and information, which in turn diminishes their ability to express informed opinions and engage with their communities.

The Nepal Multiple Indicator Cluster Survey (MICS) 2019 indicates that only 8.7% of women aged 15-19 have secondary or higher education, highlighting how early marriage contributes to low levels of education among young girls. When girls are removed from school, they lose a critical platform for participation and engagement, resulting in a diminished capacity to express themselves and contribute to societal development. Additionally, married girls are often excluded from community decision-making processes due to traditional gender norms that view them as subordinate and dependent on their husbands or in-laws.

Child marriage not only affects girls but also boys, albeit to a lesser extent. While the prevalence of child marriage is higher among girls, boys, too, can be married off at a young age, restricting their development and participation. The legal age of marriage in Nepal is 20 for both boys and girls, yet many communities continue to practice child marriage due to poverty, social norms, and limited awareness about its negative impacts. This societal acceptance of child marriage creates an environment where children, regardless of gender, are not encouraged to voice their opinions or participate actively in societal matters.

Moreover, child marriage leads to a range of psychological impacts that hinder children's participation. Married children, especially girls, often experience social isolation, low self-esteem, and limited mobility due to traditional expectations and domestic responsibilities. The Nepal Demographic Health Survey (NDHS) 2016 reveals that 16% of married women aged 15-49 reported feelings of low autonomy and participation in decision-making within their households, which is likely to be even more pronounced among those married as children.

The participation of children in society is vital as they are a driving force for positive change. Nepal has made some progress in this area, as evidenced by initiatives such as child clubs, which provide a platform for children to express their views and participate in community activities. However, the reach of these initiatives remains limited, particularly for married children. For instance, only 39% of children in Nepal have heard about child clubs, and even fewer participate regularly, according to the National Child Participation Report (2020).

3.3 Conclusion

This chapter highlights the profound and far-reaching impacts of child marriage in Nepal through the lens of the four fundamental pillars of the Convention on the Rights of the Child (CRC): survival, protection, development, and participation. It demonstrates how child marriage jeopardizes the survival and health of young girls and their children, exposes them to heightened risks of violence and exploitation, restricts their development by impeding access to education and health services, and denies them the opportunity to participate meaningfully in decisions that affect their lives.

While the CRC, which Nepal ratified in 1990, provides a strong framework for the protection of children's rights, gaps in legal enforcement, societal norms, and deeply rooted misconceptions continue to allow child marriage to persist. This underscores the urgent need for a multifaceted approach to addressing child marriage—one that includes stronger legal protections, public awareness campaigns, and policy reforms aimed at breaking down barriers to education, healthcare, and birth registration.

Incorporating survivor-centric interventions is critical to ensure that the voices and needs of children affected by early marriage are heard and prioritized. A comprehensive strategy involving government institutions, civil society, and communities must be employed to eliminate the practice and guarantee that every child in Nepal can fully enjoy their rights under the CRC. Only through concerted efforts can Nepal hope to protect the rights of its children, empowering them to lead healthier, more fulfilling lives and to contribute meaningfully to society.

CHAPTER 4

LEGAL ISSUES RELATING TO CHILD MARRIAGE

4.1 Introduction

This chapter examines the key legal issues related to child marriage within the national frameworks, highlighting the gaps, challenges, and inconsistencies in the Nepal legal landscape. The chapter critically analyses the effectiveness of the legal frameworks in preventing child marriage and safeguarding the rights of affected children. The chapter aims to provide a comprehensive understanding of the legal issues surrounding child marriage in Nepal and identify areas where further legal reform and implementation are necessary.

4.2 Marriageable age

The marriageable age refers to the legally defined minimum age at which individuals are allowed to marry, as stipulated by the laws of various jurisdictions. While most countries set this age at 18, it can vary depending on a country's legal framework, cultural norms, and socio-economic conditions. Factors influencing the determination of the marriageable age include socio-economic conditions, cultural traditions, reproductive health concerns, and the protection of children's rights. The CRC[41] recognizes this flexibility, allowing countries to set their marriageable age under their legal system and societal needs. Although the CRC defines a child as anyone under the age of 18, it grants countries discretion to set a different age if national laws dictate otherwise. This ensures that while the CRC upholds child rights, it also respects national sovereignty in legal matters such as marriageable age.

In the context of Nepal, an analysis of the marriageable age reveals a legal framework shaped by both international conventions, such as the CRC, and national laws, including the Constitution of Nepal and the Criminal Code. The Constitution provides strong protections for children as a fundamental right. Article 39(5) of the Constitution explicitly prohibits child marriage and exploitation of children, Article 39(6) guarantees protection against exploitation, and Article 39(10) ensures compensation for child victims of exploitation or child marriage. These provisions highlight Nepal's commitment to combating child marriage and protecting children's rights. However, there is a difference between the age of children and the marriageable age as it is determined differently by the national laws.

Despite these constitutional safeguards, Nepal's laws distinguish between the age at which a person is legally considered a "child" and the age at which they are permitted to marry. The Act Relating to Children 2018 defines a child as anyone under 18, consistent with the CRC. The Supreme Court of Nepal has repeatedly noted the poor enforcement of child marriage laws and ordered the Government to address this issue, specifically in *Sapana Pradhan Malla and Others vs. Government of Nepal* (2006)[42].

41. The CRC recognizes the importance of cultural, social, and legal contexts within different countries and allows some flexibility in determining the appropriate marriageable age. However, it emphasizes that any such legislation should be enacted with the primary aim of safeguarding children's best interests and ensuring their protection.
42. Sapana Pradhan & Others vs. Office of the Prime Minister & Council of Ministers & Others, decision no. 7659, N.K.P. 2063, Vol. 3 at 289 (2006).

Rama Panta Kharel and Others vs. Government of Nepal (2007)[43], and *Kavita Pandey vs. Government of Nepal* (2012)[44].

The Act relating to Children classifies child marriage as an offense, imposing penalties on those who facilitate or conduct such marriages. Chapter 8, Section 66.[45] The Act outlines offenses against children and includes relevant legal provisions. This Act places significant emphasis on children's rights, guidance, and restorative justice. Any form of violence or abuse, including the arrangement of child marriages, must be reported to the authorities, with protections in place for the informant's identity.

However, the legal age for marriage in Nepal is set higher than the age of majority. According to Section 173 of the National Criminal Code, the legal marriageable age is 20 years. This means while a person ceases to be considered a child at 18, they cannot legally marry until they reach 20. Marriages conducted before this age are considered void ab initio (from the outset), and individuals involved in such marriages may face penalties, including imprisonment for up to three years and fines up to thirty thousand rupees.

4.3 Gaps between the age of a child and marriageable age

The gap between the legal definitions of a ''child'' and the ''marriageable age'' in Nepal's laws presents significant legal and societal complexities. Upon examining the relevant provisions of the Constitution and existing laws, it becomes evident that a disparity exists between the age at which a person is considered a child (under 18 years old) and the legal marriageable age (20 years old). This discrepancy raises confusion, particularly regarding individuals aged 18 and 19, who may no longer be classified as children but are yet to be eligible to marry under the law.

The Constitution and laws define a ''child'' as any person below 18 years of age. However, the legal marriageable age is set at 20, creating a distinct separation between the two concepts: a person ceases to be a child upon turning 18 but must still wait until 20 to marry. This legal distinction has led to practical challenges, particularly when individuals aged 18 and 19 enter to marriage. The existing legal provisions, while clear in prohibiting marriage before the age of 20, require more effective communication and understanding to bridge the gap between societal perceptions and legal standards. The confusion surrounding the legal status of 18-year-olds, who are no longer classified as children but still cannot legally marry, must be addressed through awareness campaigns, clearer legal explanations, and potentially even legal reform. In 2007, in Rama Panta Kharel and Others vs. Ministry of Women, Children and Social Welfare and Others, where the inconsistency between the legal age of marriage and age for voiding the marriage was challenged, the Supreme Court upheld its findings from 2006 and issued directives to the government to amend inconsistencies in legal provisions relating to child marriage and eliminate child marriage through effective enforcement of the law.

A key legal ambiguity arises when considering whether marriage at the age of 19 constitutes child marriage. While a 19-year-old is not legally considered a child, they have not yet reached the legal marriageable age of 20, as stipulated by law. This creates a grey area that has confused and also issues for debate for both the public and the judicial system regarding the legality of such marriages.

To address this ambiguity, there is a need for greater clarity and harmonization in legal provisions. While the law prohibits marriage before the age of 20, the distinction between the age of majority (18) and the marriageable age (20) often leads to misunderstandings. Section 171 of the Criminal Code further clarifies the legal framework by explicitly prohibiting marriage without the consent of both parties. Moreover, the law specifies that consent given by anyone below the marriageable age (20 years) is not

43. Rama Panta Kharel & Others vs. Government of Nepal, Writ no. WS-128/2063 B.S. (2007).
44. Kavita Pandey vs. Office of the Prime Minister & Council of Ministers & Others, decision no. 8901, N.K.P. 2069, Vol. 10 at 1534 (2012).
45. According to Section 66 (2)(n), arranging or facilitating the marriage of minors is considered an offense against children.

legally valid. Therefore, even if a 19-year-old consents to marriage, that consent is not recognized under the law, making the marriage void. This provision helps clarify that any marriage before the age of 20, even if entered into voluntarily, cannot be legally upheld.

The gap between the legal age of adulthood and the marriageable age reflects deeper societal challenges. In many communities, individuals may be considered ready for marriage earlier than 20, influenced by cultural norms, economic pressures, or family expectations. This often results in early marriages, particularly in rural or marginalized areas, even though such marriages are void under the law. While the legal framework is designed to prevent child marriage, it does not always align with societal practices, leading to the persistence of early marriages despite legal prohibitions.

4.4 Consent in Marriage

Consent is a fundamental requirement in the institution of marriage, with the law stipulating that both parties entering into a marriage must provide free and informed consent. Without such consent, a marriage is considered forced and can be declared void. Section 171 of the National Criminal Code emphasizes that no one shall marry or be married without the free consent. If this principle is violated, the law not only declares such a marriage void but also imposes penalties, including imprisonment for up to two years and a fine of up to twenty thousand rupees. The law further clarifies that consent given by individuals who have not attained the legal marriageable age, set at 20 years in Nepal, is not considered valid consent.

In addition to criminal penalties, Section 72 of the National Civil Code also declares any marriage without the genuine consent of both parties as automatically void. This reinforces the legal requirement that free and informed consent is a core condition for a valid marriage under Nepali law. In traditional Nepalese society, marriage often involves the consent of the individual getting married as well as parental consent. However, the law mandates that the primary consent must come from the individual getting married, and it is valid only if they have reached the marriageable age of 20. While parental consent may hold cultural significance, it cannot override the legal requirement of the individual's consent once they reach the appropriate age. Any consent provided before the legal marriageable age is invalid, making the marriage void.

Global instruments like the UDHR, CEDAW, and the CRC all affirm the right to marry based on the free and full consent of both parties. These frameworks emphasize that consent must be voluntary and informed, affirming the individual's autonomy and agency in marriage decisions. Joint recommendations by the CRC and CEDAW explicitly define child marriage as a form of forced marriage. This is because one or both parties in child marriages are not considered capable of giving full, free, and informed consent[46] due to their age and legal status as minors.

Nepal's legal framework, combined with international human rights standards, aims to protect individuals from forced or coerced marriages. The requirement for valid consent ensures that marriage is entered into voluntarily and that both parties fully understand the implications of their decision. Marriages that fail to meet these standards are deemed void, and those responsible for violating these provisions face legal consequences.

However, in practice, societal norms—particularly regarding parental involvement in marriage—can pose challenges to enforcing these legal standards. Therefore, there is a need for increased public awareness and education to ensure that individuals and families understand that only the free and informed consent of those getting married, once they have reached the legal age, constitutes valid consent under the law.

46. United Nations, Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices. New York (NY), 2014, CEDAW/C/GC/31/CRC/C/ GC/18., para.20.

4.5 Child marriage reporting as statutory rape

One of the most significant legal repercussions of child marriage is its potential classification as rape, which has led to a trend of diverting cases to the realm of rape law. Section 219 of the National Criminal Code prohibits sexual intercourse with any woman without her consent, and more importantly, considers any sexual intercourse with a girl under 18 years of age as rape, regardless of whether the girl consents to the marriage or the sexual act. This is based on the premise that individuals under 18 are legally unable to give valid consent for sexual relations or marriage. Penalties for rape vary depending on the circumstances, ranging from seven years to life imprisonment. This legal framework is designed to protect minors from exploitation and abuse, ensuring that child marriages involving sexual relations are met with severe legal consequences.

Despite the existence of legal mechanisms for reporting child marriages, the actual reporting rate remains low. This underreporting is largely attributed to families being involved in arranging these marriages. Parents may view child marriage as socially acceptable or beneficial, leading them to refrain from reporting it. Additionally, families may fear that reporting a child marriage they facilitated could result in legal and social repercussions, prompting them to remain silent despite knowing the legal prohibitions.

In many cases, child marriages are reported only when family members or others oppose the marriage, such as when parents disapprove of the match due to caste, economic status, or other factors. In such instances, the marriage is often reported as rape, especially if the girl is under 18, leveraging the more serious nature of a rape charge to annul the marriage or punish the boy. This dynamic has resulted in an increasing trend in reporting child marriages as rape, rather than simply as violations of marriage laws.

While Nepal's legal framework provides sufficient grounds for reporting child marriages, the overlap with rape law introduces complexities. Although child marriage is a punishable offense, rape carries significantly harsher penalties, which may encourage families or other stakeholders to pursue rape charges in child marriage cases. This shift raises several concerns.

First, while child marriage is undeniably harmful, categorizing it as rape adds layers of legal and social consequences, particularly for the boy involved. The severe penalties for rape, such as long-term imprisonment, can have lasting effects on both the boy and the girl in the marriage. For instance, even if both parties consented to the marriage (albeit underage), the boy may face harsh punishments, leading to social ostracization, economic hardship, or psychological trauma.

Second, the conflation of child marriage with rape underscores the need for legal reform. The increasing trend of reporting child marriages as rape cases highlights a gap in the legal system where existing laws, though intended to protect minors, may lead to unintended consequences. A more nuanced approach may be needed to distinguish between child marriages driven by cultural practices and those involving actual exploitation or abuse.

4.6 Child Marriage is also prosecuted as other offences

The prosecution of child marriage, especially when combined with offenses like abduction, polygamy, or rape, presents a complex challenge with far-reaching consequences for the children involved. From a survivor-centric perspective, the legal process must address these additional charges while ensuring that the rights and well-being of the children are not jeopardized. Child marriage is often accompanied by other forms of exploitation or coercion, and without careful legal consideration, children can be unfairly marginalized or criminalized rather than supported as victims.

Between January 2017 and September 2024, the Supreme Court of Nepal registered 1,673 cases[47] relating to rape, with 30 directly linked to child marriage. Many of these cases also associated with offenses such

47. Information collected from the IT section of the Supreme Court.

as rape, polygamy, abduction, and hostage-taking, reflecting the intersection of various forms of violence and abuse with child marriage. These cases, often initiated at the district court level, were largely upheld by higher courts, indicating the judiciary's commitment to addressing such violations.[48] However, the complex legal landscape around these cases also underscores the difficulties in balancing justice for the victims with the potential for criminalizing children.

When considering cases of child marriage resulting from romantic relationships, the legal process presents challenges for both boys and girls. The law is designed to protect girls from exploitation, but criminalizing the relationship often results in unintended consequences. For instance, when the boy is prosecuted for crimes such as abduction or rape, the girl may experience guilt, shame, and trauma, especially if she had willingly entered the relationship. This legal approach can inadvertently undermine the girl's agency and exacerbate her emotional and psychological struggles. Societal stigmatization following such cases may further marginalize the girl and perpetuate her victimization.

For boys involved in these relationships, the consequences can be severe, with charges like abduction or rape leading to imprisonment and other legal penalties. Though intended to protect minors, these charges may disproportionately punish the boy, especially if both parties were consensual. The boy's prospects, education, and social standing may be severely impacted, leading to social alienation and long-term difficulties in reintegrating into society.

Nepali law, particularly Section 219 of the National Criminal Code, criminalizes sexual intercourse with a girl under 18, regardless of consent. While this provision aligns with global mandates to protect minors from sexual exploitation, it raises concerns when viewed through a survivor-centric lens. When child marriage intersects with other offenses, the legal system may shift its focus from the girl's well-being to punishing the boy, leaving both children without the necessary support systems to recover from the situation.

A more nuanced approach is necessary to address child marriage and its associated offenses. Instead of relying solely on criminal prosecution, restorative justice measures could help address the root causes of child marriage, such as lack of education, poverty, and harmful social norms. The legal framework should prioritize the well-being and prospects of both the girl and the boy, ensuring that justice serves not only to punish but also to support recovery and rehabilitation.

Current trends in prosecuting child marriage, particularly when linked to offenses like abduction or rape, have significant and long-lasting effects on the lives of children. While the law aims to protect minors from harm, a survivor-centric approach emphasizes the need for flexibility in legal responses. The legal framework must evolve to not only punish offenders but also support the holistic well-being of all children involved, including those who may be perpetrators under the law but victims in the broader context.

Section 27 of the Act relating to Children, 2018 allows for case diversion in the best interest of the child, but this provision is limited to cases where the sentence does not exceed three years of imprisonment. Amending this section to allow diversion in all cases, regardless of potential sentences, would promote a more child-centered and restorative approach to justice. This would ensure that children involved in child marriage and related offenses receive support rather than punitive measures.

Although Section 36(2) of the Act relating to Children provides the option of placement in a child correction home instead of imprisonment, this provision still fails to account for key factors such as the child's age, mental health, and circumstances surrounding the crime. The law should be amended to eliminate imprisonment as an option entirely, with placement in a correctional home for up to one year as the sole corrective measure. Furthermore, cases involving children should be prioritized to ensure continuous hearings and minimize delays in the justice process. By adopting these reforms, Nepal can better protect children and ensure that the legal system supports their rehabilitation rather than contributing to further victimization.

48. See Annex 1.

In response to this legal complexity, the Office of the Attorney General issued a directive in September 2024 emphasizing that the GoN must prioritize protecting and rehabilitating children over criminalizing them. The directive clarifies that additional charges arising from circumstances linked to child marriage should not be pursued if they were not intended to cause further harm. Instead, the focus should remain on the child marriage offense itself, to avoid unnecessary criminalization of minors.

4.7 Ambiguity in provision relating to punishment

Child marriage is a prohibited and punishable offence. Section 173 of the National Criminal Code prohibits child marriage, and if anyone commits such an offence, they shall be punished up to three years of imprisonment and a fine of up to thirty thousand rupees. The Code under Section 45 also provides for the punishment of the children, where it provides punishment to the children following his/her age at the time of the offence. Moreover, Section 45(5) of the code says, ''punishment with imprisonment should not be given to the children under 16, unless the offence is serious or committed repeatedly. The code also defines ''serious offence'' as having more than three years of imprisonment. These provisions should also be taken into consideration while punishing child marriage. It does not mean to say that child marriage should be immune from the punishment, but those legal provisions which the legislature intends to provide, given the best interest of the children, should also be taken into consideration based on the seriousness of the crime, their age, and circumstance when the offence was committed.

Section 36 of the Act relating to Children, 2018 also provides a similar provision. It further provides that ''the juvenile court, while declaring punishment to the children in any offence, the court shall also consider the age, sex, maturity, nature of the offence, and circumstances of the offence committed and may postpone the punishment with or without condition or may make any appropriate decision as punishment.[49] However, this provision has been rarely exercised, whereas it should be seriously taken into consideration while convicting and punishing children in child marriage. In a child marriage, polygamy and rape cases,[50] the high court punished the victim girl with 1 year imprisonment for polygamy and 1 month for child marriage. However, considering the age of the victim, the court postponed the said punishment as per Section 36 of the Act.

The punishment given for the criminal offence might have a severe impact on the overall life of the children. Therefore, the law should be interpreted and exercised in such a way that broadly safeguards the rights of the children rather than treating them as offenders.

4.8 Lack of effective compensation

The Constitution explicitly prohibits child marriage and declares it a punishable offense, and in cases where a child is the victim of such a crime, the victim has the right to seek compensation from the perpetrator, according to legal provisions.[51] Further, for the first time in Nepal's history, the Constitution introduced a right for victims of crime, which says ''a victim of crime shall have the right to justice, including social rehabilitation and compensation in accordance with law.''[52]

Despite the constitutional mandate, legal frameworks often categorize children involved in child marriages as offenders rather than victims. This has significant consequences. For instance, children, especially girls,

49. Section 36 (5), Act relating to Children, 2018.
50. GON vs. Bogatan 70 (L), 078-CR-0734.
51. Article 39 (5) and (10), Constitution of Nepal.
52. Article 21 (2), Id.

may face legal action or societal stigma, further victimizing them instead of offering protection or justice.

The misclassification of children as offenders hampers their access to compensation and justice. Legal mechanisms meant to support victims are underutilized, especially when the system does not fully recognize them as survivors. Although the Constitution mandates compensation, the inconsistent application of laws means that many child marriage survivors are left without adequate reparations. The absence of clear guidelines or the failure of judicial systems to recognize children as victims prevents proper compensation in most cases.

4.9 Lack of survivor perspective

Child marriage is universally recognized as a harmful social practice that severely impacts the physical, emotional, and psychological well-being of children. Both the Constitution of Nepal and the legal framework explicitly prohibit child marriage and define it as a punishable offense. The National Criminal Code of Nepal, particularly Section 173, addresses child marriage as a crime, whether it is initiated by the minors themselves or facilitated by others. The law intends to deter this practice and safeguard children from its negative consequences.

However, the current legal framework lacks a nuanced understanding of the context surrounding child marriages. While child marriage is illegal, it often occurs within complex socio-cultural settings where young people, particularly girls, may be coerced or influenced by family members, social pressure, or economic conditions, making consent questionable. Yet, the law tends to categorize any minor involved in such a marriage as an "offender," without considering whether they were victims of circumstances beyond their control.

This legal approach overlooks critical aspects of consent and vulnerability. In many cases, minors may have little or no agency in the decision to marry, and treating them as offenders disregards the fact that they, too, are victims of child marriage. By framing them as offenders, the law not only punishes the child but also fails to provide necessary support, protection, or rehabilitation, further victimizing those it seeks to protect.

The primary issue with the existing legal framework is that it lacks a "survivor perspective." This perspective recognizes children involved in child marriages as victims or survivors rather than offenders, which shifts the focus from punishment to protection and rehabilitation. The legal treatment of children as offenders ignores the complex realities of child marriage and the fact that many children, especially girls, are forced into marriage by their families or community under duress or without informed consent.

4.10 Lack of victim-centric approach

The right to justice is a fundamental principle enshrined in human rights frameworks globally, and every individual, especially those whose rights have been violated, must have access to legal remedies. Justice, in its true essence, is not merely the enforcement of laws but a tangible, positive experience for those who seek it. It involves creating a sense of fairness and relief for the victim, ensuring that they feel heard, supported, and restored through the judicial process. This approach, known as victim-centric justice, places the needs and experiences of the victim at the forefront of the justice system, ensuring that their rights and well-being are prioritized.

In the context of child marriage, the law plays a crucial role in defining and regulating marriageable age. According to Nepal's legal framework, any marriage that takes place before the legally defined age is declared void. Section 72 of the National Civil Code reinforces this by stating that any marriage conducted without the consent of the individual is void ab initio, or null from the outset. The law is explicit in its condemnation of non-consensual marriages, including child marriages orchestrated by family members. If the person involved in such a marriage does not agree with it, they have the right to have the marriage nullified.

However, while the law effectively addresses the illegality of such marriages, it overlooks the need for post-marriage support for children who have been forced into such unions and fails to consider the consequences and long-term impact on the children involved. Many children who are forced into marriages suffer from various forms of victimization, including emotional, psychological, and economic harm. Unfortunately, the legal system does not adequately recognize these children as victims nor provide them with sufficient support to recover from the adverse effects of child marriage. There is no specific provision in the law that mandates rehabilitation or recovery programs for children who have been married off illegally. The absence of such a framework leaves victims without any structured support to rebuild their lives after their marriage is declared void.

Child marriage often results in multiple layers of harm, including coercion, denial of agency, and exposure to abuse or neglect. However, these children are not recognized as victims within the justice system, limiting their access to compensation, counselling, or protective measures. To address these shortcomings, a victim-centric approach must be integrated into the legal system concerning child marriage. The focus should be on ensuring that children who are coerced into marriage are treated not as passive subjects but as survivors who deserve support and protection.

In a survivor-centered approach, the emphasis would be on safeguarding the rights of these children, ensuring access to education, healthcare, and psychosocial support, and empowering them to escape the harmful consequences of child marriage. Such an approach would not only address the legal aspect but also consider the broader social, economic, and cultural factors that contribute to child marriage. It would advocate for laws that offer protective measures, such as child-friendly justice systems, shelters, and rehabilitation programs that enable children to reclaim their futures.

4.11 Conclusion

The marriageable age in Nepal reflects a complex interplay between international conventions, national laws, and socio-cultural practices. While the Constitution of Nepal and the National Criminal Code set strong legal protections against child marriage, including severe penalties and nullification of marriages conducted before the age of 20, challenges remain in aligning societal practices with these legal frameworks. The gap between the legal age of adulthood (18) and the marriageable age (20) creates confusion and raises practical concerns, particularly for individuals in the 18-19 age range. Moreover, the interplay between marriage laws and rape laws highlights the complexities of legal enforcement, as cases of child marriage are sometimes prosecuted under more severe charges, such as statutory rape. The practice of reporting child marriages as rape must be scrutinized, as it may have long-term impacts on both boys and girls involved. Legal reform should aim to clarify the differences between child marriage and rape, ensuring that both offenses are addressed in a manner that promotes justice, protection, and social change.

To address these issues, legal reform should aim to harmonize the definitions of adulthood and marriageable age, ensuring clarity and reducing ambiguities. Public awareness campaigns and stronger enforcement mechanisms are necessary to bridge the gap between legal standards and societal norms, particularly in rural and marginalized communities where child marriage remains prevalent. Additionally, a more nuanced, survivor-centric approach is needed to address the root causes of child marriage and support the well-being of both children involved in such cases. Legal provisions such as the diversion of cases under Section 27 and alternative measures to imprisonment under Section 36 (2) of the Act Relating to Children, 2018, should be expanded to prioritize restorative justice and the best interests of the child, allowing for more flexible responses in cases involving minors.

CHAPTER 5

JUDICIAL RESPONSE TO CHILD MARRIAGE

5.1 Introduction

The judiciary's role in Nepal extends beyond general justice; it has been pivotal in safeguarding the rights of marginalized groups, including children. Over the years, the Supreme Court of Nepal has delivered landmark judgments that have contributed significantly to the protection of children's rights. This chapter explores the judiciary's perceptions regarding child marriage, the trends within the judiciary, and examines key jurisprudence about child marriage, analysing notable judgments that highlight its commitment to protecting children's rights. In analysing the judicial response, court decisions from all three levels of the judiciary have been reviewed to understand the trends and perceptions regarding child marriage, as well as cases where child marriage is linked to other offenses.

5.2 Judicial perception and trend on child marriage

Despite clear legislative intentions to eradicate child marriage, as evidenced by constitutional and legal prohibitions, child marriage remains widespread. Even more concerning is the significant disparity between the number of incidents and the very limited number of cases that make way through the justice system. This gap highlights a crucial challenge in effectively addressing child marriage through legal means.

The judiciary is considered as guardian of the people, which protects the rights of the people in any circumstance. The Constitution envisions the judiciary as one of the important institutions to safeguard the rights of its people. The judiciary has played a very crucial role in justice delivery in several child marriage cases. Generally, the judiciary exercises the power relating to justice by the Constitution, law, and recognized principles of justice. Moreover, the judiciary also interprets the provisions of the Constitution and law as necessary in the course of delivering justice. Because the judiciary is also a reflection of society, and should interpret the law as per the social context and momentum. The role of the judiciary is also crucial in providing strategic guidance for necessary legal and policy reformation.

Therefore, this study has also given some consideration to judicial perception of child marriage. Based on some court judgments, this has also analysed the judicial trends and perspectives on justice delivery in child marriage cases, its effectiveness in protecting the rights of children, proactiveness in setting jurisprudence and issuing directives for legal reformations. Some judgments have been presented below with some analysis of the judgment concerning child marriage, its impact, and the judicial response to address it.

5.2.1 Under aged marriage shall be deemed child marriage as well as committing rape

The Supreme Court, in a case[53] revealed that while the age of the victim girl is below 16, consent for sexual intercourse cannot be inferred simply because of such an unlawful marriage. A marriage involving minors

53. SC, Laxmi Maya vs. Government of Nepal, Decision date 2071/10/19, Case No. 067-CR-1288.

is not recognized as legal, and therefore, any sexual intercourse within such a marriage is considered unlawful and constitutes rape.

5.2.2 Court declares child marriage illegal but safeguards the rights of the child

In a case[54] heard by the Dailekh District Court, a remarkable progressive judgment was made regarding Sarita Adhikari, a resident of Badalamji-4, Dailekh, who was married to Nandaram Jaisi at the age of 13 and later divorced. Even after the court granted her divorce at 17, a legal question remained: Was she ever legally married? Given that both the marriage and divorce occurred before she reached the legal age for marriage, the court ruled that such a marriage could not be considered valid under the law.

The court not only invalidated the marriage but also took proactive steps to protect the rights of the girl child. After being abandoned by her parents, she was deprived of parental care and protection. In its ruling, the court emphasized that the law should be interpreted in the best interest of children, ordering her parents to provide her with the necessary care and protection. Additionally, the court upheld her property rights, as the child marriage had no legal standing.

5.2.3 Child marriage leading to suicide: Court holds in abetment to suicide case

Child marriages are universally prohibited and punishable under the law, though the legal marriageable age could vary. This is because the State bears the responsibility to protect the rights of the child. Laws and policies to eradicate child marriage are crafted with the child's best interests in mind, recognizing that children are not fully equipped to make decisions regarding their own lives. When such laws are violated, children may face numerous challenges, including violence, sexual exploitation, reproductive health issues, obstacles in their personal and professional development, and, in extreme cases, the situation may tragically lead to suicide.

In a case[55] a girl fell in love with Bimal Shrestha, and they married despite her being underage. However, within months of marriage, Bimal began to subject her to physical and emotional abuse, which intensified over time. Unable to bear the relentless assault and degrading treatment, the girl committed suicide. Her family filed a case against Bimal, charging him with both child marriage and abetment to suicide. The Rupandehi District Court found him guilty of child marriage, sentencing him to six months of imprisonment and a fine of NPR 5,000. However, the Court did not convict him of instigating the suicide.

Dissatisfied with the decision, the public prosecutor appealed the case to the High Court, Tulsipur, Butwal Bench. The High Court, after carefully considering all the circumstances leading to the suicide, overturned the lower court's ruling and convicted Bimal for abetment to suicide, sentencing him to two years of imprisonment, a fine of NPR 20,000, and compensation of NPR two lakhs to be provided to the victim's family.

While delivering judgment, the High Court emphasized the need for courts to evaluate not only the nature of the crime and its circumstances but also the broader social impact of the offense. The court underscored that justice must balance the rights of the accused with the rights of the victim and society as a whole. The court determined that the girl's suicide was a direct result of persistent physical assault, degrading behaviour, and mental torture inflicted by Bimal, making him responsible for instigating her death.

The High Court also highlighted the importance of applying the National Criminal Code's provisions regarding abetment to suicide in such cases. The court warned that failure to do so would not only be an injustice to the victim but would also undermine public confidence in the legal system and potentially encourage similar behaviour in society.

54. Dailekh District Court, Sarita Adhikari vs. Rajaram Adhikari, Case No. 77-068-00277, Decision date – 2071-5-10, Decision No. 14.
55. GON vs. Bimal Shrestha et al., Case No. 080-CS-0413, Judgment of the Rupandehi District Court.

This case illustrates how child marriage can trap individuals in cycles of violence, emotional and physical abuse, and even suicide. Due to their immaturity, children may be less able to resist such violence or seek legal remedies. In cases of love marriages without parental consent, the lack of family support can further isolate the victim, leaving them even more vulnerable to abuse and without the means to escape or seek help.[56]

5.2.4 Diverting the child marriage case into the establishment of a relationship

The legal provisions on child marriage determine the minimum age for marriage, with any marriage involving individuals below that age considered voidable. Despite this, some cases reveal that individuals manipulate legal procedures to bypass the laws' prohibitions on child marriage. In a case, the *Government of Nepal vs. Santosh Kumar Yadav*[57], where a 15-year-old girl entered a love marriage with a boy. To legitimize their union, she falsely claimed to be 20 years old and sought formal recognition of their marriage from the Siraha District Court.

In this case, the couple married by their own choice, but the girl files a legal case to formalize their relationship by increasing her age. This was an attempt to circumvent the legal restrictions on child marriage by exploiting loopholes in the law. The reason behind this is to protect the child from child marriage and validate their marriage.

While this approach may have provided them with immediate legal recognition of their relationship, it also forced them into a complex and unnecessary legal process. Additionally, while such tactics might help them in the short term, they can lead to a range of other issues, such as health risks, disruption of education, and limitations on personal and professional development. Child marriage laws intend to safeguard children's rights and protect their best interests, including preventing the negative consequences associated with early marriage. By engaging in such practices to evade the law, individuals may undermine the legal framework designed to protect them and may inadvertently create new challenges in their lives.

5.2.5 Liberal interpretation of child marriage

The judiciary plays a pivotal role in safeguarding the rights of individuals, even in cases where legal provisions may appear ambiguous. One of the primary functions of the judiciary is to interpret the law, often liberally, to ensure justice and protect rights. In a particular case[58] the Supreme Court referenced a judgment of the Supreme Court of India, where the Indian court liberally interpreted the age of marriage to protect both the rights of the child and to distinguish between rape from consensual sexual intercourse within a child marriage.

In the referenced Indian judgement[59], the Court rules, ''A girl who was on the verge of attaining majority, voluntarily left her father's house, arranged to meet the accused at a certain place and went to the sub-registrar's office, where the accused and the girl registered an agreement to marry, there was no evidence whatever the accused had taken her out of the lawful guardianship out of her parents, there was no active part played by the accused to persuade her to leave the house. It was held that no offence under this section was made out.'' This judgement provides important judicial direction, suggesting that it would be unjust to convict some of rape in cases of child marriage solely based on age, particularly when the marriage was consensual between the parties involved.

This interpretation highlights the court's role in balancing the strict letter of the law with the real-life circumstances of the individuals involved, ensuring that legal outcomes are fair and reflective of the context in which the marriage took place.

56. The Government of Nepal vs. Bimal Shrestha et al. Case No. 080-CS-0413, Judgment of the High Court Tulsipur, Butwal Bench, Decision No. 11, Decision Date: - 2081/04/15.
57. GON vs. Santosh Kumar Yadav, Case No. 075-CR-2638.
58. GON vs. Santosh Kumar Yadav, Case No. 075-CR-2638.
59. S. Veradarajan vs. State of Madras, A.I.R. 1965, SC (952) 2 CrCj 33.

5.2.6 Acceptance of sexual intercourse between underage

Considering various circumstances, the judiciary has shown a degree of leniency in acknowledging consensual sexual intercourse among underage individuals, while still recognizing the serious implications of child marriage. Courts tend to be stringent in convicting cases of child marriage when it is established that the marriage occurred while the individuals were underage. However, they often regard sexual intercourse within a married couple as a natural occurrence, even in the context of child marriage. In this view, consensual sexual relationship between minors is not necessarily interpreted as statutory rape. With the rising incidence of child marriages prosecuted alongside other offenses—such as rape, abduction, and hostage-taking—the judiciary has begun to adopt a more nuanced interpretation of sexual relations among underage married individuals, interpreting them as distinct from statutory rape.

In a notable case,[60] the Supreme Court referred to a study by Kaya Van Roost,[61] which highlighted that ''in some states can legally marry at a younger age than they can legally consent to sex. Some states explicitly exempt sex between married person from their statutory rape laws, as in Louisiana State of United States. The states included in the analysis, 33 states and District of Columbia explicitly exempt sex between married person from prosecution under some or all their statutory rape laws.'' Such exemptions exist for married couples under certain circumstances, suggesting a legal recognition of the complexities surrounding child marriage and sexual relations at a young age.

Furthermore, in various countries, including the United States, laws such as the ''Romeo and Juliet'' laws have been established to provide close-in-age exemptions for consensual sexual relations among minors, thereby acknowledging the realities of adolescent relationships.[62] This trend underscores a growing recognition of the need to balance legal frameworks with the social contexts of child marriage and the rights of minors involved.

5.2.7 Child marriage also turned into marital rape

In a case,[63] the Makawanpur District Court convicted Krishna BK for both child marriage and rape, imposing the corresponding punishments. However, the Patan High Court, Hetauda Bench, partially upheld the decision of the district court, convicting him for the child marriage and marital rape, as their marital status was established in another case. In this case, the Supreme Court also concurred with the decision of the High Court.

In its verdict, the Supreme Court emphasized that rape is a grave offence with serious physical, mental, and family consequences for the victim/survivor. Therefore, the accused cannot be granted immunity for such an offence. However, the Court also noted that the legislature intends to treat marital rape differently, prescribing distinct punishments due to the nature of the marital relationship. This legislative intent must be considered when sentencing.

The Court clarified that if sexual intercourse occurs with an underage girl after marriage, even with her consent, such consent is not legally valid and is considered rape. Nevertheless, the punishment should reflect that it is marital rape, as specified by the law, rather than being treated as conventional rape. The court interpreted marital rape as sexual assault within a marriage and held that it must be punished under the law, regardless of the wife's age.

60. GON vs. Santosh Kumar Yadav, Case No. 075-CR-2638.
61. See page 20 of the judgement, Id.
62. Padam Prasad Pandey ''Comparative analysis on law relating to rape'' Office of the Attorney General, Kathmandu, Nepal, Page 51
63. GoN vs. Krishna BK, Case No. Case No. 074-CR-0577.

The broader legislative and constitutional goal is to eliminate child marriage from society. However, the occurrence of child marriage and the resulting sexual intercourse within such marriages is increasingly being classified as marital rape, leading to significant, multifaceted impacts on the lives of children of such child marriages.

5.2.8 Legal ambiguity regarding sexual intercourse among minors

In a case[64] before the Kathmandu District Court, the accused was convicted of rape under Section 219 (2) of the National Criminal Code, which stipulated that sexual intercourse with any woman below 18 years, even with her consent, is considered rape. The case involved a love marriage between an underage boy and girl, both minors, who were living together and had consensual sexual relations. However, the girl's parents filed a rape case against the boy.

Upon appeal, the High Court reviewed the case and identified legal ambiguities, provided some reasoning, and ultimately acquitted the accused. The court argued that the legislature had not sufficiently clarified whether consensual sexual intercourse between two minors should be considered rape. Given that the couple had a child as a result of their consensual relationship, and their relationship remained stable before and after the sexual activity, the court reasoned that it should not be interpreted as rape.

The High Court emphasized that the principle of equality before the law must be applied fairly to all, including minors. The ruling referenced laws from other countries, such as India's Protection of Children from Sexual Offences Act (POCSO) 2012, to suggest that there is a need for separate legal provisions addressing affirmative defences for minors. The court suggested that such defences would better protect children and ensure juvenile justice, taking into account the current social context.

5.2.9 Sexual intercourse in child marriage shall not be construed as rape

In a landmark case,[65] the Supreme Court has established a new jurisprudence that ''sexual intercourse within a child marriage should not be construed as statutory rape''. According to the law, individuals must be at least 20 years old to be legally married, and marriages involving underage individuals are considered void and punishable. Despite this legal framework, child marriage remains prevalent in the society, and under the current laws, any sexual activity with a minor – even with consent – is considered statutory rape. This has led to many children involved in child marriages being convicted of serious crimes like rape and imprisoned.

However, the Supreme Court in the case has set a new precedent and interpreted the sexual intercourse in child marriage in a liberal dimension. The court stated that ''though age is an important aspect to determine rape and also to distinguish between statutory rape and child marriage, other factors such as Mens Rea and Actus Reus are also fundamental and measuring rod to determine whether any sexual intercourse is rape or not.'' The court explained that in case of statutory rape, the intention of the accused is primarily to commit sexual exploitation. By contrast, sexual intercourse within child marriage is often driven by social value, physical needs, and feelings between the husband and wife, lacking any criminal intent.

The court emphasized the fundamental differences between statutory rape and child marriage, noting that age alone should not be the determining factor for statutory rape in such cases. This precedent is significant for child protection, as it acknowledges the complexities of child marriage and helps prevent children from being unfairly convicted of serious crimes like rape. The judgment will likely serve as a guiding principle for similar cases in the future, mitigating the long-term negative consequences for children involved in child marriages.

64. GoN vs. Balaju 100, Case No. 080-CS-0413.
65. GoN vs Santosh Kumar Yadav, Case No. 075-CR-2638.

5.2.10 The right to criminal justice of the accused is as important as of right to remedy of the victim

Justice relies on a fair trial conducted by an independent, competent, and impartial judicial system, which is a fundamental principle of the criminal justice system. The Supreme Court in a case,[66] reaffirmed this principle, stating that the right to criminal justice for the accused is equally important as the right to a remedy of the victim. This was emphasized in the case of Abhimanyu Ahir Yadav, who married a girl he fell in love with. However, due to her parents; disapproval of the marriage, they filed a rape case against Abhimanyu, and the girl, under family pressure, gave a statement supporting the charge. Abhimanyu was convicted of rape by the District Court, a decision upheld by the High Court. However, the Supreme Court overturned this conviction and acquitted the accused.

The Supreme Court, in its ruling, explained that while rape is a serious sexual offence that violates a woman's chastity, sexual dignity, and right to live with dignity, victim's statement alone is not enough to prove the offence. The Court emphasized that such statements must be corroborated by other evidence to ensure justice. The Court acknowledged that human dignity and social prestige are important for both the victim and the accused, and thus, a balanced approach must be adopted to ensure fairness to both the victim as well as the accused in criminal trials.

This judgment is particularly significant in the context of child marriages, where parents who disapprove of their child's marriage often file rape cases against the boy involved. Many children are imprisoned or sent to correctional homes not because they committed a crime, but because of the prevalent child marriage laws. This Supreme Court ruling sets an important precedent, establishing that the victim's statement alone is not sufficient to convict someone of rape. It may discourage the misuse of rape laws in cases of child marriage and guide subordinate courts in adjudicating such cases with fairness and consideration for the broader context.

5.3 Analysis of Judicial Trend based on selected cases

Analysis of 45 child marriage-related cases from District Courts awaiting final decision at the Supreme Court reveals a lack of judicial uniformity and consistency, with judges using discretion based on context rather than adhering to a unified approach. This inconsistency undermines efforts to curb child marriage, highlighting the need for a stronger, more coherent judicial response. Key analyses are presented below:

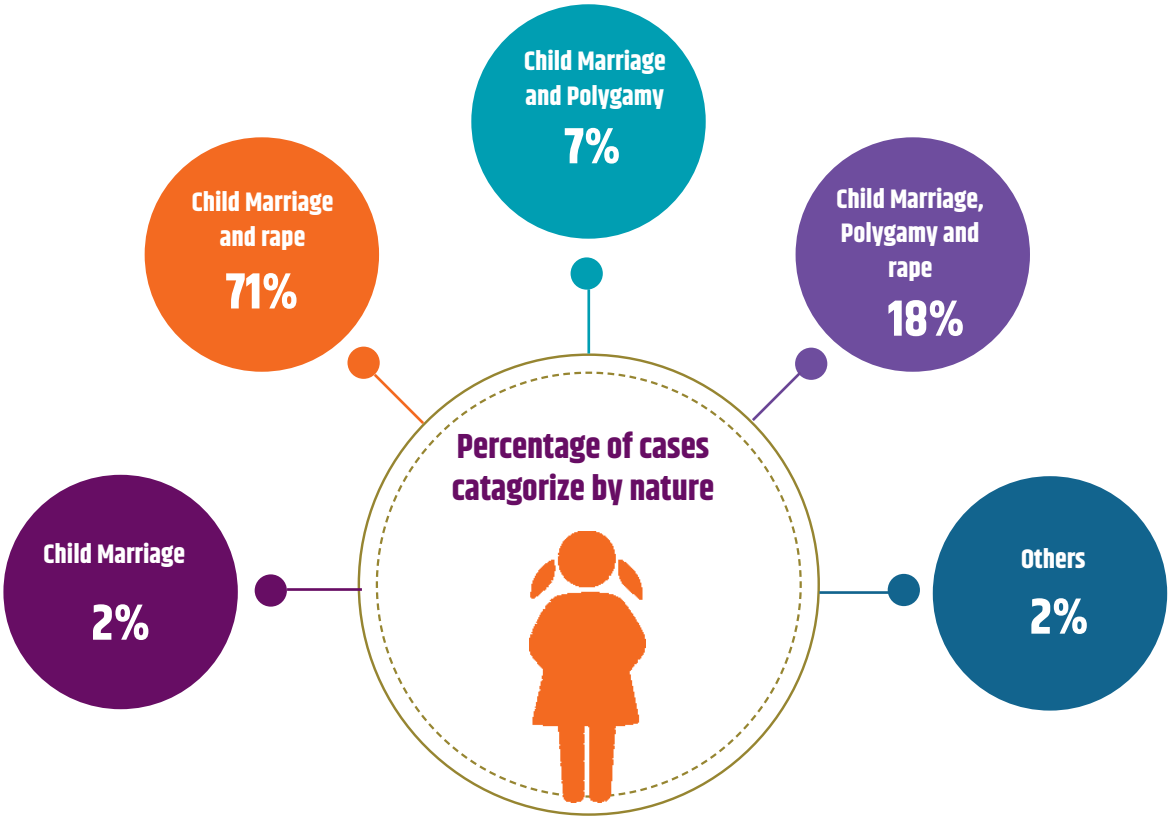
5.3.1 Child marriage is often prosecuted as linked with other offences

One of the primary reasons marriages involving minors are not solely registered or prosecuted is that child marriages are often associated with other serious offenses, such as rape and polygamy.[67] The legal system typically addresses these additional offenses alongside the child marriage itself, making it more complex for authorities to focus on the marriage alone.

In many instances, child marriages involve sexual relations, which under the law, constitute statutory rape due to the minor's inability to provide legal consent. Therefore, instead of focusing solely on the marriage, the legal proceedings often shift towards prosecuting the rape charges, which carry heavier penalties. This focus can overshadow the prosecution of the marriage itself, as the rape offense takes legal precedence.

Out of 45 cases analysed, 32 cases are linked with rape. The majority (71%) fall under the category of child marriage and rape, indicating it the most prevalent issues among the categories and highlighting the intersection of these two crimes. A significant portion (18 %) involves all three offences: child marriage,

66. Abhimanyu Ahir Yadav vs. GoN, Case No. 078-CR-0200.
67. See Annex 2.



polygamy and rape. A smaller percentage (7%) involves both child marriage and polygamy, indicating that while less common, polygamy still occurs in some child marriage cases.

In summary, child marriage remains the most widespread issue in this dataset, while more complex cases involving multiple factors (like polygamy and rape) are less frequent. Rape and polygamy, being another criminal offense, becomes a central issue during the prosecutions. As a result, the child marriage aspect becomes a secondary concern in the judicial process. The analysis suggests a need to address the various dimensions of child marriage, particularly when these offenses intersect with other violations.

5.3.2 Complexity of multiple offenses

Child marriage often coexists with additional crimes, the legal process becomes multifaceted. The complexity of prosecuting multiple offenses simultaneously dilutes the focus on child marriage as a standalone issue. Prosecutors and courts prioritize more severe offenses, such as rape and polygamy, while the marriage, though illegal, may not receive the same attention in the courtroom. This multi-offense scenario not only complicates the judicial process but also potentially allows child marriages to escape the full scrutiny of the law, as the focus remains on more serious criminal charges associated with the cases. It seems like courts focus on prosecuting rape and polygamy, as it carries significant social and legal implications, diverting attention from the child marriage itself.

5.3.3 Inconsistent convictions in child marriage linked with rape cases

Most child marriage cases are intertwined with charges of rape. However, in several instances, courts have convicted individuals of marital rape instead of rape as originally claimed. Such rulings, in effect, validate child marriage, despite the law prohibiting and declaring such marriages void ab initio. The fact that courts treat these cases as marital rape rather than rape is problematic, as it indirectly acknowledges the legitimacy of the child marriage, which is otherwise illegal.

Out of the cases reviewed in depth, six[68] were convicted as marital rape, despite being filed as rape. This reflects a trend where courts, rather than treating child marriage as illegal and prosecuting rape as a crime against a minor, opt for lesser charges under the pretext of marital rape, thus normalizing the child marriage in legal terms. In three cases, district courts convicted the accused of marital rape rather than rape, as initially claimed. In three other cases, the district courts convicted the accused of rape, but upon appeal, the high court overturned the decision, convicting them of marital rape instead. This inconsistency demonstrates the judiciary's lenient approach in child marriage cases, particularly in instances where rape is involved.

This leniency may stem from the courts exercising discretion to protect the rights of the child involved. The judiciary may be attempting to avoid imposing lengthy punishments for serious offenses like rape, which could have severe consequences for the child's future. Nonetheless, this approach can undermine the seriousness of both child marriage and rape, leading to contradictory legal outcomes that fail to deliver justice.

5.3.4 Victim/Survivor centric approach

In cases where the victim of child marriage is also implicated in the offense, courts have reflected their sensitivity in sentencing. While the law mandates penalties for both polygamy and child marriage, courts sometimes opt to postpone the implementation of these punishments, particularly when the victim is underage. This postponement allows the court to balance the enforcement of the law with the recognition that the victim may have been coerced or manipulated into the situation due to social, cultural, or familial pressures.

The judiciary recognizes that imposing immediate, harsh sentences on young victims could exacerbate the already adverse consequences they face. For instance, subjecting them to prolonged imprisonment or substantial fines could negatively impact their ability to rebuild their lives. As a result, courts are seen invoking provisions like Section 36 of the Act relating to the Children, which allows the postponement or suspension of sentences for children, offering a more rehabilitative approach rather than a punitive.

In a court decision,[69] while the child marriage, polygamy and rape were established, the courts chose to postpone the penalties for the victim on conviction for child marriage, such as one-year imprisonment for polygamy and one month for child marriage, recognizing the need for leniency. In these instances, the punishment was postponed under provisions that allow for discretionary powers in cases involving minors. This reflects a broader judicial trend towards prioritizing the rights and best interests of the victim over strict legal penalties.

5.3.5 Issue of caste discrimination in child marriage cases

Child marriage occurs in various contexts, with a significant number resulting from love affairs between underage individuals, particularly in inter caste relationships. These cases are often reported when the families of either party, particularly in inter-caste unions, do not accept the marriage. This is especially common in marriages between Dalit and non-Dalit individuals, highlighting the deeply rooted caste-based discrimination prevalent in society.

Article 24 of the Constitution guarantees the right against untouchability and discrimination. Additionally, the Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011 prohibits any act of caste-based discrimination. The Constitution explicitly states, "No person shall be subjected to any form of untouchability or discrimination in any private and public places on the grounds of his/her origin, caste, tribe, community, profession, occupation, or physical condition."[70] Furthermore, it mandates that

68. See Annex 1.
69. GON vs. Bogatan 70 (L), Case No. 078-CR-0734.
70. Article 24(1), Constitution of Nepal.

''any act of untouchability and discrimination in any form, contrary to this article, shall be punishable by law as a severe social offence.''[71]

These discriminatory practices violate not only the right against untouchability and discrimination, but also other fundamental rights enshrined in the Constitution, such as the right to live with dignity (Article 16), the right to freedom (Article 17), the right to equality (Article 18), the right relating to justice (Article 20), the right against exploitation (Article 29), and the rights of the child (Article 39).

In many instances, inter-caste child marriages are not just reported as child marriage but are also filed under more severe offenses like rape, abduction, or hostage-taking. Such practices inadvertently perpetuate harmful social norms like caste-based discrimination and untouchability, while also threatening the implementation of constitutionally guaranteed fundamental rights.

71. Article 24(5), Id.

CHAPTER 6

FINDINGS

6.1 Introduction

This chapter presents the key findings of the study, which focuses on the key impacts of legal frameworks and judicial response on individuals involved in child marriage. By reviewing relevant national and international laws, alongside a detailed analysis of significant court rulings, this section offers a comprehensive overview of how child marriage is addressed within the legal framework. It examines the effects of existing laws, identifies gaps in legal provisions, and explores how these laws are interpreted and enforced through judicial decisions. Additionally, the chapter considers the broader impact of these legal responses on individuals involved in child marriage cases, whether as perpetrators, victims, or associated parties. Drawing on the analysis from previous chapters, the findings are categorized into the following three sections for clarity and depth:

6.1.1 Impact - Assessing the Impacts Based on the Four Pillars of the CRC

Issues related to survival: Child marriage in Nepal has hindered children's fundamental rights, particularly the right to survival, making it difficult to get birth registration. Legal barriers, misconceptions, and a lack of citizenship documents prevent underage mothers from registering their children, denying them essential services. It disrupts education, perpetuates poverty, and leads to severe health and psychosocial issues, especially for young girls, exacerbating gender inequality.

Increase vulnerability: Child marriage has exposed children, especially girls, to heightened risks of domestic violence, sexual abuse, exploitation, and harmful labor, requiring measures to ensure their right to protection. NDHS (2022) shows significant rates of child marriage and associated violence. Child labor and trafficking are closely tied to child marriages, with children being trafficked under the guise of marriage. Psychologically, early marriages lead to trauma and mental health challenges, emphasizing the urgent need for stronger legal protections and effective enforcement.

Obstructed development: Child marriage in Nepal obstructs children's right to development by limiting access to education, healthcare, and personal growth opportunities. Despite legal protections, weak enforcement and cultural norms perpetuate the practice. Early childhood development services, school attendance, and vocational training are significantly compromised, especially for girls and children with disabilities, hindering their prospects.

Limited participation: Child marriage has severely limited children's ability to participate in decision-making, especially for girls. Girls, often married before 18, are frequently removed from school and excluded from community decision-making, reducing their agency and voice. Traditional norms, low educational attainment, and domestic responsibilities further restrict their ability to express opinions or participate meaningfully in society. Boys, though less affected, also face limitations. Psychological impacts, such as social isolation and low self-esteem, exacerbate these challenges.

6.1.2 Legal Framework and Gaps

Underreporting and low prosecution: Despite the high prevalence of child marriage, as highlighted by the 2021 National Census, the number of cases reported to the judicial institutions is significantly lower than the actual occurrence, raising concerns about underreporting.

Marriageable age: The national and international legal frameworks define a child as a person below the age of 18. The national law determining marriageable age as 20 has created a key legal ambiguity when considering whether marriage at the age of 19 constitutes child marriage. This creates a grey area that has confused both the public and the judicial system regarding the legality of such marriages. The law assumes that a person above 18 is capable of making decisions and their consent is considered valid. However, this contradicts in case of marriageable age, which suggests the need for a legal provision that validates the early marriages (marriage between 18 to 20) rather than defining it as child marriage.

Consent consideration: The law does not differentiate between marriages that occur with or without the minor's consent and considers it a child marriage. The law assumes that a person who is 18 years old is capable enough to consent to any matter except for marriage, which requires attaining the marriageable age, which is 20 years.

Child marriages are often reported linking with other offences: One of the most significant legal repercussions of child marriage is its potential classification as rape diverting cases to the realm of rape law. This is based on the premise that individuals under 18 are legally unable to give valid consent for sexual relations or marriage. In many cases, child marriages are reported when family members or others oppose the marriage, such as when parents disapprove of the match due to caste, economic status, or other factors, and reported as rape. Further, child marriages are also associated with other serious offenses, such as polygamy, abduction, and suicide.

Minimal use of provision relating to postponement of punishment: Given the best interest of children, the law intends to immunize children from punishment except in serious offences. In this regard, Section 36 of the Act relating to Children 2018, provides that the Juvenile Court, while declaring punishment to the children it shall also consider the age, sex, maturity, nature, and circumstances of the offences and may postpone the punishment with or without condition. However, this provision has been rarely exercised. Of the 45 cases analysed, only in one case was this provision referred to by the High Court.

Lack of Survivor Support Systems: The legal provisions are largely punitive and do not offer a structured support system for children who are married off at an early age. This creates a gap in the protection of child rights and the rehabilitation of child marriage survivors.

Lack of victim/survivor-centric approach: Despite the constitutional mandate, legal frameworks often categorize children involved in child marriages as offenders rather than survivors. This has significant consequences. For instance, children, especially girls, may face legal action or societal stigma, further victimizing them instead of offering protection or justice. The misclassification of children as offenders hampers their access to compensation and justice.

6.1.3 Judicial Interpretation and Enforcement

Imperative of social engineering: Despite legal prohibitions, child marriage continues in society due to factors such as family circumstances, changing social structures, economic conditions, religious beliefs, cultural practices, and deeply ingrained superstitions. In this context, having laws to prevent child marriage is not enough; there must also be legal and social awareness campaigns to help reduce its prevalence. For this to be effective, the judiciary, alongside social advocates, must play an active role as a ''social engineer.'' The Supreme Court of Nepal, in a case,[72] also highlighted the critical role courts can play as social engineers in preventing child marriage. However, the judiciary must pay critical attention to several key issues when handling cases involving children and child marriages. Addressing these considerations is essential to ensuring justice for children and effectively tackling the root causes of child marriage in society.

72. GON vs. Santosh Kumar Yadav, Case No. 075-CR-2638.

Safeguarding the best interest of children involved in child marriage: The role of the court is very significant in safeguarding the best interest of the children. The court not only invalidated the child marriage but also took proactive steps to protect the rights of the girl child. In some cases, judicial activism has been instrumental in interpreting the language of the law for the best interest of the children and the necessary care and protection of the children engaged in child marriage.

Emphasis on Social Impact and Accountability to balance justice: The Court, in its judgment, emphasized the need for courts to assess both the nature of the crime and its wider social implications. It highlighted the importance of balancing the rights of the accused, the victim, and society. In a specific case, the court held the accused responsible for the victim's suicide due to persistent abuse, applying the National Criminal Code's provisions on abetment to suicide. The court warned that failure to enforce these provisions would erode public confidence in the legal system and risk promoting similar behaviour in society. Judicial interpretations about child marriage underscore the court's responsibility to balance the strict application of the law with the real-life circumstances of the individuals involved, ensuring that legal outcomes are fair and take into account the context in which the marriage occurred.

Diverting child marriage into relationship legitimacy: While the court may grant immediate legal recognition, this approach diverts cases into unnecessary legal complexities. Though it offers short-term benefits, such actions undermine child protection laws, leading to long-term challenges like health risks, disrupted education, and personal growth. Child marriage laws aim to safeguard children's rights and prevent the negative consequences of early marriage. Manipulating the legal framework to legitimize underage unions undermines these protections and can create additional challenges for those involved.

Acceptance of sexual relations among underage individuals: The judiciary has shown leniency toward consensual sexual relations between minors while upholding a strict stance on child marriage convictions. The court has emphasized the fundamental differences between statutory rape and child marriage, noting that age alone should not be the determining factor for statutory rape in such cases. Courts often view sexual relations within child marriages as natural, differentiating them from statutory rape. This reflects a nuanced approach to child marriage complexities. Some legal systems, like in the U.S., exempt married couples from statutory rape laws under certain conditions, mirroring "Romeo and Juliet" laws that offer close-in-age exemptions for consensual relationships between minors.

Child marriage frequently linked with other offenses: Child marriages often intersect with serious offenses like rape and polygamy, complicating prosecutions. Legal focus typically shifts to rape, overshadowing child marriage charges. Analysis shows 71% of cases reviewed involve both child marriage and rape.

Legitimization of child marriage through marital rape convictions: In child marriage cases involving rape, courts often convict individuals of marital rape instead of rape, effectively legitimizing child marriage. This leniency undermines the law and creates inconsistent, contradictory outcomes.

Need for a Victim-Centric Approach in the Judiciary

The postponement of punishment in child marriage cases demonstrates the judiciary's focus on a victim-centric approach, prioritizing victims' welfare while considering socio-cultural factors. This evolving role emphasizes protecting children's rights and minimizing harm, ensuring equitable justice without doubly punishing victims for circumstances beyond their control. However, the court doesn't seem to exercise this approach in most of the cases. Only in one case out of 45 analysed cases, this provision been referred, requiring more judicial activism in this regard.

Lack of survivor perspective

One of the critical challenges highlighted in this review is the lack of a survivor perspective in both law and judicial proceedings. Many court decisions view the children as offenders rather than survivors, especially in cases where the minors themselves elope or engage in marriage without parental consent,

which contradicts the law's intent to protect their rights. This has led to difficulties in enforcing the law's protective provisions and ensuring appropriate compensation for child victims. The judicial system must adopt a more nuanced approach, recognizing that in many cases, the children are survivors of socio-cultural pressures or coercion, and not willful offenders.

Exacerbation of caste-based discrimination in child marriage: Child marriage, particularly in inter-caste relationships, often reflects deep-rooted caste discrimination. Families frequently reject these unions, especially involving Dalits, violating constitutional rights against untouchability. Reports show these cases are often linked to severe offenses like rape or abduction, perpetuating harmful norms and undermining fundamental rights guaranteed by law.

CHAPTER 7

CONCLUSION AND RECOMMENDATIONS

7.1 Introduction

This chapter brings together the key insights from the analysis of laws and court decisions regarding child marriage, drawing on the findings presented in the previous sections. The legal framework surrounding child marriage has undergone significant developments over the years, but gaps in enforcement, interpretation, and societal acceptance remain significant barriers to eliminating this harmful practice.

By synthesizing the existing laws and court rulings, the conclusion highlights the progress made and the persistent challenges that need addressing. The chapter also outlines actionable recommendations aimed at reforming relevant legislations, strengthening legal mechanisms, improving judicial practices, and fostering a more coordinated response from all stakeholders involved, including the government, judiciary, civil society, and local communities.

7.2 CONCLUSION

Nepal has taken significant legal steps to combat child marriage and protect the rights of children, as evidenced by the Constitutional provisions and the National Criminal Code's strict stance on marriageable age. While the country has defined the age of majority as 18, the higher marriageable age of 20 demonstrates a commitment to safeguarding health, reproductive rights, and the well-being of individuals. However, the gap between the legal age of adulthood and the marriageable age can lead to confusion and necessitate further public education and clarification. Ultimately, the marriageable age in Nepal reflects a balance between respecting international conventions like the CRC and addressing the specific socio-cultural and health concerns prevalent in the country.

However, the current approach to child marriage under Nepal's legal system falls short of fully recognizing the complex realities children face. By labelling minors involved in child marriage as offenders, the law inadvertently undermines their rights and further exposes them to harm. It is imperative to reframe child marriage within a survivor-centric framework that not only criminalizes the act but also offers protection, support, and rehabilitation to the children involved. Only then can the law truly serve its purpose of safeguarding the rights and well-being of vulnerable children in Nepal.

While Nepal's legal framework has made strides in prohibiting child marriage and declaring such marriages void, it lacks a holistic, victim-centric perspective. Children who are coerced into early marriages face a multitude of challenges, yet the current legal provisions do not address their needs for support and rehabilitation. A shift towards a more victim-centric justice system is essential to ensure that children forced into marriage are recognized as survivors, given the necessary resources to overcome their experiences, and empowered to rebuild their lives. The law must move beyond punitive measures and towards safeguarding the rights and well-being of vulnerable children.

7.3 Recommendation

a) Legal Reform

While Nepal's Constitution offers progressive provisions against child marriage and guarantees compensation for victims, there remains a significant gap between the constitutional ideals and their practical enforcement. A stronger focus on the rights of child marriage survivors and proper implementation of compensation mechanisms are crucial for addressing the shortcomings in the current legal system.

Underreporting of child marriage

Under-reporting of child marriage cases reflects a serious concern, which requires massive awareness at the community level. This also suggests a pressing need for systemic reforms, including improving investigation methods, strengthening prosecutorial processes, and enhancing judicial training to handle child marriage cases more effectively. Moreover, a more robust focus on victim support and witness protection may increase the chances of successful prosecutions and convictions, ensuring justice for the victims and reinforcing the rule of law.

Further, the ratio of acquittals is higher than convictions in child marriage cases. The increase in acquittals indicates potential weaknesses in the investigation, prosecution, and adjudication process, such as a lack of sufficient evidence, procedural errors, or other legal challenges that make it difficult to secure convictions in child marriage cases. Additionally, it highlights the importance of strengthening the legal framework to ensure that more cases lead to convictions, thereby serving as a deterrent to those involved in the practice of child marriage.

The data highlights the need for further scrutiny into the reasons behind this trend, suggesting a need to improve legal strategies, ensure better evidence collection, and strengthen the judicial process to secure more consistent convictions in child marriage cases.

Incorporation of Survivor-Centric Approach: The legal system needs to shift towards a victim-centric approach, treating children involved in child marriages as survivors who require protection, rehabilitation, and compensation. Given the nature of the cases where minors are engaged in all cases, survivor survivor-centric approach should be taken into consideration throughout the judicial process for the protection of the rights of the children, treating them as survivors rather than as offenders. The law must incorporate a survivor perspective that protects the rights of children and provides them with psychosocial, educational, and economic support. A survivor-centric approach would focus on addressing the root causes of child marriage and rehabilitating survivors.

Establishment of Referral Mechanism: Since child marriage is a multi-faceted issue, which requires multi-stakeholders' engagement to effectively control these ill practices. Moreover, a coordinated approach is very important to support survivors of child marriage during the judicial process. For this, a strong and effective support mechanism is required which ensures all the required support to the survivors, including psycho-socio counselling, legal aid, pro-bono legal aid, basic health, shelter, rehabilitation centre, etc. Law should mandate the establishment of a referral mechanism to ensure an effective referral system and strengthen coordination among relevant stakeholders to complement each other in protecting the rights of children.

Strengthening Legal Enforcement: There should be stronger enforcement of constitutional mandates, ensuring that the judiciary and law enforcement agencies prioritize the rights of child marriage survivors, including their right to compensation. In many cases, the court verdicts provide compensation to the victim, which is often another challenge to receive in a practical sense. Therefore, there should be clear legal provisions and mechanisms to facilitate victims to get compensation as decided by the court.

Enhancing shared understanding of the issue: As analysed above, child marriage is contextual and children involved are not always offenders rather survivors in many instances. Therefore, stakeholders, particularly investigating police officials, prosecutors, lawyers, court officials, and judges, should have a broader rights-based understanding and be sensitized to the nuances of child marriage cases, ensuring that children are not wrongfully treated as offenders and are given the protection they deserve. A

comprehensive training package should be developed for enhancing their shared understanding to deal with the cases from a nuanced approach for ensuring the rights of the children.

Amendment of Legal Provisions: There is an urgent need for legal reform to distinguish between children who voluntarily engage in child marriage and those who are forced into it. In the latter cases, children should be treated as survivors, not offenders. The legal framework should explicitly recognize children forced into marriage as victims, ensuring they receive the necessary legal protections and support services.

Strengthening Legal Frameworks to Protect Children: Legal frameworks should evolve to emphasize preventive measures, social protections, and effective rehabilitation strategies for children trapped in child marriages. This includes access to education, livelihood opportunities, and counselling services.

Implementation of OAG directives: The OAG, had a serious concern on the increasing trend of filing child marriage cases often linking with severe offences such as rape, polygamy and abduction. Considering the seriousness of the trend, the OAG circulated a directive to its all-subordinate offices ordering not to prosecute on severe offences like rape just because of child marriage. The directive itself is a very landmark in terms of safeguarding children from life threatening offences, which awaiting a swift and effective implementation. A mechanism is also required for regular follow up and monitor the effective implementation of the directives.

Provision for Post-Marriage Support: The law aims to end child marriage by declaring it void and making it punishable, however, it does not mandate for post marriage support. Preventing child marriage through punitive measures is important but equally important is to mandate comprehensive support systems for children whose marriages are declared void. This could include access to education, counselling including career counselling, legal aid, and financial support to help them rehabilitate and reintegrate into the society. Law should also make the State accountable for post marriage support to the survivors of the child marriage.

Development of Rehabilitation Programs: There needs to be a nationwide framework for rehabilitating children affected by child marriage, ensuring they can recover from the psychological, social, and economic impacts of their experience.

Enhance consent consideration: While the law nullifies non-consensual marriages, more emphasis should be placed on protecting children's right to consent and ensuring that their voices are heard throughout the process. Basically, law assumes a person matured and capable to give consent for any matters but for marriage until he/she is 20 years. This contradiction creates confusion to the general public and also an issue for discussion even within the legal community.

Awareness and Community Engagement: It is also vital to raise awareness among communities about the harmful effects of child marriage and promote a cultural shift that discourages this practice. Community-based programs that support education, gender equality, and economic empowerment could contribute to preventing child marriage in the first place. Community should also play a pivotal role on legal awareness including to erode the confusion regarding the age of adulthood and age for marriage and the consequences it might bring.

b) Judicial Reform

Judiciary is to deliver justice in accordance with the constitution, law and the recognized principle of justice and therefore, it is considered as an ultimate protector of the rights of the people. Judiciary has played a very instrumental role in shifting the perception towards child marriage and dealing the cases from rights-based approach. However, there seems some capacity gap within the officials at different level for shared understanding of the issue, pro-activeness for reformation, institutionalizing victim centric approach and human rights-based approach. This urges some reformation within the judiciary to ensure common understanding and ensuring consistency of the judgement at all levels of court.

Courts' proactiveness needed to protect the best interest of the child: Considering the best interest of the child, the law intents to immune children from punishment expect in the serious offences. As per

the Section 36 of Act relating to Children 2018, the Juvenile Court while sentencing, considering the age, sex, maturity, nature and circumstances of the offences, may postpone the punishment with or without condition. However, this provision has rarely been exercised. The court should take proactiveness for utilizing such provisions intended for the best interest of the child. The court should focus on corrective measures than punitive measures, particularly in cases like child marriage. Furthermore, courts should prioritize continuous hearings to minimize delays in the justice process.

Judicial interpretation should safeguard the rights of children: Judiciary interprets the provision of the Constitution and the law, where there is ambiguity, as it serves as an ultimate protector of the rights of the people. The punishment given in the criminal offence might have a severe impact in the overall life of the children. Therefore, law should be interpreted and exercised in such way that broadly safeguards the rights of the children.

Judicial Sensitization: Courts and law enforcement agencies should be sensitized to the social and psychological nuances of child marriage cases. Rather than approaching such cases from a purely legal standpoint, a more empathetic and rehabilitative approach should be prioritized. Therefore, court should demonstrate a degree of sensitivity towards the child marriage cases which are often associated with other severe offences having multi-faceted impact in the lives of the children.

Strengthen Survivor-Centric Approach in Judicial process: The study highlights the lack of a survivor perspective in judicial proceedings. In many cases, court decisions view children as offenders rather than survivors failing to protect their rights. In many cases children are offender not because of their action but of law. This has led to difficulties in enforcing protective provisions and ensuring appropriate compensation for child victims. Therefore, the judicial system should adopt survivor centric approach, recognizing that the children are survivors for various reason, and not wilful offenders.

Use of Diversion provision: Section 27 of the Act relating to Children, 2018 allows for case diversion in the best interest of the child, but this provision is limited to cases where the sentence does not exceed three years of imprisonment. Amending this section to allow diversion in all cases, regardless of potential sentences, would promote a more child-centric and restorative approach to justice. This would ensure that children involved in child marriage and related offenses receive support rather than punitive measures.

Maintaining consistency of judgement: Judicial perception on child marriage and the trend of judicial decision has been gradually changed towards progression. Court at different level doesn't seem to be consistent while delivering judgement in child marriage cases. Court used to take orthodox approach with the literal meaning of the letter of law in many cases, which has gradually progressed with the right based approach. However, there is lack of uniformity of judgements in the similar nature of cases. This is also because the child marriage cases are often linked with severe offences like rape, polygamy, abduction and hostage taking etc., always making the cases more complicated. In recent years, the Supreme Court of Nepal has developed some landmark jurisprudence in child marriage cases linked with other severe offences, which is very instrumental for safeguarding the rights of the children. Those jurisprudence should be taken into consideration by the subordinate courts to establish consistency and uniformity in the decisions at all level.

Development of bench book: Judiciary has shifted from orthodox approach to lenient approach while dealing with the child marriage cases. This was also a need of the time as child marriage cases is not a standalone rather associated with other severe offences in most cases. Though judiciary is progressive and landmark precedent set by the Supreme Court is equally applicable to the subordinate courts, there is lack of shared understanding of the issue at all level of courts due to the lack of explicit guidelines in this regard. Therefore, there is an urgent need of comprehensive bench book that provides comprehensive understanding of the issues, applicable national and international laws, recognized principle of justice, international best practices, survivors centric approach and human rights-based approach, simplifying the procedures, different associated issues with child marriage, their linkage and impact in the life of the children etc. This will ensure uniformity and consistency in the court judgements of the different level, and help ensuring rights of the children in line with the recent progressive judgements of the Supreme Court.

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ANNEXES

ANNEX 1: TREND OF JUDICIAL DECISION MAKING

Analysis Judicial Trend on Child marriage linked with other offences

S. N	Name of the case	Nature of the case	Decision of the District Court	Decision of the High Court	Decision of the Supreme Court
1	Raju Bishankhe Sarki vs. GON, Case No. 077-CR-0984	Child marriage and rape	• Convicted under Section 173(3) for child marriage and sentenced to one month of imprisonment along with a fine of one thousand rupees. • Convicted of rape under Section 219(3)(d) and sentenced to ten years of imprisonment, along with a compensation of five thousand rupees.	• Upheld the decision of the District Court concerning child marriage • Partially annulled the District Court's decision on rape, imposing a penalty in accordance with Section 219(4), which includes three years of imprisonment and a fine for marital rape.	Ongoing in SC
2	GoN vs. Suman Khadka and et al. Case No. 077-CR-0427	Child marriage and rape	• Convicted under section173 (3) for child marriage and sentenced to one month of imprisonment along with a fine of five thousand rupees, while being acquitted of the rape charge.	• Upheld the District Court's decision regarding child marriage • Convicted for rape, receiving a sentence of three years and one month of imprisonment in accordance with Section No. 3(6) for the offense listed under No. 1 of the chapter on Rape.	On going
3	GON vs. Kamarulhak Ansari, Case No. 077-CR-0534	Rape and Child marriage	• Convicted under section 173 (3) for child marriage and sentenced to one year of imprisonment along with a fine of ten thousand rupees. • Convicted of rape under Section 219(3)(d) of the Criminal Code, resulting in a ten-year prison sentence and a compensation of fifty thousand rupees to the victim in accordance with Section 228 of the Criminal Code.	Upheld the decision of the District Court	On going

S. N	Name of the case	Nature of the case	Decision of the District Court	Decision of the High Court	Decision of the Supreme Court
4	Mahesh Bhattarai vs. GON, Case No. 081-CR-0302	Child marriage, polygamy and rape	• Convicted under section 173 (3) for child marriage and sentenced to six months of imprisonment along with a fine of ten thousand rupees, with the child marriage declared void. • Sentenced to one year of imprisonment and a fine of ten thousand rupees for polygamy under Section 175(4). • Convicted of rape under section 219 (3) (d) and punished to ten years of imprisonment.	Upheld the decision of the District Court	On going
5	GON vs. Koshi Bha 3 (Pseudonym), Case No. 077-CR-1288	Child marriage and rape	• Convicted under section 173 (3) for child marriage. • Convicted of rape under section 219(3) (C)	• Upheld the decision of the District Court regarding Child marriage. • Partially void the decision of the District Court and punished under section 219 (4) for marital rape.	On going
6	Narayan Bahadur Bhujel vs. GON, Case No. 078-CR-0711	Child marriage and rape	• Acquitted in child marriage • Convicted of rape, resulting in an 18-year imprisonment sentence and a fine of 25,000 rupees under Section 219(3)(b) of the Criminal Code.	Upheld the decision of the District Court	On going
7	GON vs. Bogatan 70 (L), Case No. 078-CR-0734	Child marriage, polygamy and rape	• Acquitted in child marriage and polygamy. • Convicted on juvenile delinquency (instead of rape as claimed) under section 225 (1 and 2) and punished 2 years of imprisonment and 20,000 fine and compensation of 50,000 to the victim.	• Convicted on all three charges: sentenced to 2 years of imprisonment and fined 20,000 rupees for polygamy; 1 year of imprisonment and a fine of 10,000 rupees for child marriage; and 12 years of imprisonment along with 300,000 rupees in compensation to the victim for rape. • The High Court also sentenced the victim, a young girl, to 1 year of imprisonment for polygamy and 1 month for child marriage. However, due to her age, the court postponed her punishment under Section 36 of the Children Act.	On going

S. N	Name of the case	Nature of the case	Decision of the District Court	Decision of the High Court	Decision of the Supreme Court
8	Deepak Kami vs. GON, Case No. 078-CR-1028	Child marriage and rape	Acquitted of both charges on child marriage and rape.	• Void the decision of the District Court • Convicted under section 173 (3) for child marriage • Convicted of rape and punished 14 years imprisonment and compensations of 100,00 to the victim The decision of the District Court was overturned, resulting in a conviction for child marriage and rape. The accused was sentenced to 14 years of imprisonment and ordered to pay 100,000 in compensation to the victim.	On going
9	Saideep Limbu vs. GON, Case No. 078-CR-1125	Child marriage, rape and abetment for suicide	• Acquitted for child marriage and abetment for suicide • Convicted for rape and punished 10-year imprisonment and 1800 compensation to be deposited in Victim Relief Fund	• Partially void the decision of the District Court • Convicted under section 173 (3) for child marriage and punished for 6-month imprisonment and 5,000 fine. • Convicted for rape and punished 10-year imprisonment. • Upheld the decision on abetment for suicide.	On going
10	GON vs. Birendra (I), Case No. 079-CR-0290	Child marriage and rape	The court did not convict for child marriage, despite acknowledgment by the involved parties. However, the accused was convicted of marital rape and sentenced to 2 years of imprisonment, along with a 50,000-compensation payment to the victim, despite the claim being filed as rape.	Upheld the decision of the District Court	On going
11	Til Bahadur Darji vs. GON, Case No. 079-CR-0927	Child marriage and rape	• Acquitted for child marriage. • Convicted in rape and punished 12 years of imprisonment and 400,000 fine.	Upheld the decision of the District Court in relation to child marriage and rape but didn't retain the fine as decided by the District Court.	On going
12	Bhumiraj Yakha vs. GON, Case No. 079-CR-1066	Child marriage, polygamy, rape	• Convicted for child marriage, polygamy and rape. • Punished 10 years 6 month of imprisonment and 5000 fine.	• Upheld the decision of the District Court, • Granted compensation of 50,000 to victim	On going

S. N	Name of the case	Nature of the case	Decision of the District Court	Decision of the High Court	Decision of the Supreme Court
13	Khuse Gurung Vs GON, Case No. 079-CR-1578	Child marriage and rape	• Convicted for child marriage and punished for 6-month imprisonment and 6000 fine • Convicted for rape and punished for 10 years and 250,00 compensation to victim	• Upheld the decision of the District Court on child marriage • Convicted for marital rape instead of rape as claimed and punished for 2 year 9 month imprisonment.	On going
14	GON vs. Kishan Bayalkoti, Case No. 079-CR-1817	Child marriage and rape	• Convicted for rape and punished 10 years imprisonment and 400,000 fine and 50,000 thousand compensations to victim. • Decided to pay the fine amount to the victim as compensation.	• Void the decision of the district court • Convicted for child marriage and punished for 3 years and 30,000 fine. • Acquitted for rape.	On going
15	GON vs. Bipin Karki and Kabiraj Giri, Case No. 079-CR-1931	Child marriage and rape	• Convicted for child marriage and punished for 1 year 6 months imprisonment and 15,000 fine. • Declare the child marriage void. • Convicted for marital rape and punished for 3 year and 50,000 fine.	• Void the decision of the District Court. • Convicted for rape and punished for 12 years imprisonment and 25,000 compensation to victim.	On going
16	Tori Bahadur vs. GON Case No. 080-CR-0905	Polygamy, Child marriage and rape	• Convicted for polygamy and punished for 2 year and 15,000 fine. • Convicted for child marriage and punished for 1 year imprisonment and 10,000 fine. • Convicted for rape and punished for 18 year and 50,000 compensation to victim.	• Void the decision of the District Court on rape • Convicted for polygamy and child marriage.	On going
17	GON vs. Sandesh Tamang, Case No. 080-CR-1050	Child marriage and rape	Convicted for rape and punished 12 year and 50,000 compensation to victim	Void the decision of the District Court and acquitted from all charges.	On going
18	GON vs. Shankar Luitel, Case No. 080-CR-1392	Child marriage and rape	• Convicted for child marriage and punished for 1 year and 10,000 fine • Convicted for rape and punished 10 years and 100,000 compensation.	NA	On going

S. N	Name of the case	Nature of the case	Decision of the District Court	Decision of the High Court	Decision of the Supreme Court
20	Yogesh Chamlagain vs. GON, Case No. 080-CR-1727	Child marriage and rape	• Convicted for child marriage and punished for 2 year and 20,000 fine • Void child marriage. • Convicted for rape and punished 19 years and 200,000 compensation to victim.	• Convicted for child marriage and punished for 2 year and 20,000 fin • Void the child marriage. • Acquitted on rape.	On going
21	Raman Kapar vs. GON, Case No. 080-CR-1914	Child marriage and rape	• Convicted for child marriage and punished for 1 month to both accused • void the marriage. • Convicted for rape and punished for 10 year and 25,000 compensation.	• Acquitted for child marriage. • Convicted for rape as decided by the District Court.	On going
22	GON vs. Bishnu Giri Thapa, Case No. 080-CR-2301	Child marriage, Polygamy and rape	• Convicted for child marriage and punished for 6 months. • Convicted for polygamy and punished for 1 Year and 5000 fine. • Convicted for marital rape instead of rape and punished for 3 years.	NA	On going
23	Prakash Pandey vs GON, Case No. 079-CR-1123	Child marriage and rape	• Convicted for rape and punished 12 year and 75000 compensations to victim	Upheld the decision of the District Court	Upheld the decision

ANNEXES

ANNEX 2: LIST OF COURT CASES ANALYSED

Analysis Judicial Trend on Child marriage linked with other offences

Annex 2: List of Court Cases Analysed

S.N	Case No.	Parties to the Case	Details of the Case
1.	067-CR-1288	Laxmi Maya vs GoN	Child marriage and rape
2.	074-CR-0577	GoN vs Krishns B K	Child marriage and rape
3.	075-CR-2638	GoN vs Santosh Kumar Yadav	Child marriage and rape
4.	076-CR-1438	GoN vs Suman Pariyar	Child marriage and attempt to rape
5.	076-CR-1843	GoN vs Niraj Pariyar, Bhatare Damai, Sita Damai, Anita pariyar	Child marriage, polygamy and rape
6.	077-CR-0427	GoN vs Suman Khadka, Subash Khadka	Child marriage and rape
7.	077-CR-0534	Kamarlhak Ansari vs GoN	Child marriage and rape
8.	077-CR-0984	GoN vs Raju Bishanke Sarki	Child marriage and rape
9.	077-CR-1288	GoN vs Chitra Bahadur Biswakarma	Child marriage and rape
10.	078-CR-0200	Abhimanyu Ahir Yadav vs GoN	Child marriage and rape
11.	078-CR-0313	Ek Raj B K vs GoN	Child marriage, polygamy and rape
12.	078-CR-0492	GoN vs Suman Shrestha	Child marriage and rape
13.	078-CR-0711	Narayan Bahadur Bhuje vs GoN	Child marriage and rape
14.	078-CR-0734	GoN vs 70 Bogatan	Child marriage, polygamy and rape
15.	078-CR-0769	GoN vs Tara Sarki	Child marriage and rape
16.	078-CR-0856	Saroj Giri vs GoN	Child marriage and rape
17.	078-CR-1028	Dipak Kami vs GoN	Child marriage and rape
18.	078-CR-1125	Saideep Limbu vs GoN	Child marriage, rape and abetment for suicide
19.	079-CR-0064	GoN vs Vamiraj Khadka	Child marriage and rape
20.	079-CR-0290	GoN vs Barindranagar (Pseudonym)	Child marriage and rape
21.	079-CR-0528	Tali Bandaur Darji vs GoN	Child marriage and rape
22.	079-CR-0927	GoN vs Tali Bahadr Darji	Child marriage and rape

S.N	Case No.	Parties to the Case	Details of the Case
23.	079-CR-1008	Sabin Kharel (Pseudonym) vs GoN	Child marriage and rape
24.	079-CR-1066	Bhumiraj Yakha vs GoN	Child marriage and rape
25.	079-CR-1123	Prakash Pandey vs GoN	Child marriage and rape
26.	079-CR-1337	GoN vs Sakuntala B K	Child marriage and rape
27.	079-CR-1569	64 Chanichu (B4) vs GoN	Child marriage and polygamy
28.	079-CR-1578	GoN vs Khuse Bahadur Gurung	Child marriage and rape
29.	079-CR-1730	Dhurba Kumar Malla vs GoN	Child marriage, polygamy and rape
30.	079-CR-1817	Kisan Bayalkoti vs GoN	Child marriage and rape
31.	079-CR-1931	Bipin Karki vs GoN	Child marriage and rape
32.	080-RI-0116	64 Chanichu (Na) vs GoN	Child marriage and rape
33.	080-CR-0251	GoN vs Krishna Prasad Bhusal and Yamuna Dangi	Child marriage and polygamy
34.	080-CR-0413	GoN vs. Balaju 100	Child marriage and rape
35.	080-CR-0715	Aaiush Bedha Limbu vs GoN	Child marriage, polygamy and rape
36.	080-CR-0905	Tori Bahadur vs GoN	Child marriage, Polygamy and rape
37.	080-CR-1050	Sandesh Tamang vs GoN	Child marriage and rape
38.	080-CR-1288	Sagar Lama vs GoN	Child marriage and rape
39.	080-CR-1392	GoN vs Sankar Luintel and Goma Karki	Child marriage and rape
40.	080-CR-1495	101 Jagadulla (Gha) vs GoN	Child marriage and polygamy
41.	080-CR-1727	Yogesh Chamlagai vs GoN	Child marriage and rape
42.	080-CR-1914	Raman Kapar vs GoN	Child marriage and rape
43.	080-CR-2301	GoN vs Bishnu Giri Thapa	Child marriage, polygamy and rape
44.	080-RI-3702	Suraj Kumar Raut vs GoN	Child marriage
45.	081-CR-0302	Mahesh Bhattarai vs GoN	Child marriage, polygamy and rape