COMMUNITY MEDIATION: A PEDAGOGIC REFLECTION

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ABSTRACT

This paper reflects on 'need of evolving community mediation as a popular means of dispensing justice'. The access to justice is one of the core rights of human beings to address 'conflict or causes of conflict'. The concept of justice, which originally evolved through 'different forms of ordeal' both in the eastern and western world', has now been transformed into 'litigation'. It however largely fails to 'ensure justice to ordinary people as the access to litigation has been limited, and the extreme formalism practiced in the form of 'procedures' is unfriendly to people who are pushed to marginal lines in different forms such as ' hierarchical social strata, poverty, and isolation'. Their phenomenal disenfranchisement makes to unable to 'use the litigation as a means of protecting their genuine interests and rights'. Unfortunately, the litigation has been defined as 'mainstream course of justice' which is absolutely 'wrong'. The legal education system in the past has nurtured set of 'doctrines' which treat 'means of justice such as community mediation as 'Alternative Dispute Resolution'. In Nepal, litigation has continuously been used as 'a means of revenues' for the State. Hence, no litigation process can be approached by the people who have no capacity to pay 'different forms of fee'. Nepal as a nation with about 30% of population living under the poverty line cannot be expected to receive benefit from the kind of 'justice system in which the cost is unbelievably unreasonable'. In litigation practice prevalent in system like Nepal, the justice is 'not delivered but auctioned'. Hence, the person who is rich and powerful snatches the justice'. The vices of nepotism, financial irregularities, corruption coupled by 'formalism' makes the formal justice system 'a mockery'. Just for example, in many countries in South Asia, the judgment of the court and all other court documents are prepared in English language whereas the literacy proportion of the population is still not above 50%. Hence, the people seeking justice do understand nothing as to what their lawyers and judges are talking about. Is this what we 'intend to have in the name of justice'? Unfortunately, no community mediation and many others similar forms of 'popular justice' system which conveniently provide access to justice to the 'mass of unprivileged and disenfranchised population' have received the 'proper attention of the university education and government funding in so-called developing countries like ours'. This paper therefore challenges the 'authenticity and credibility of justice system' as well as the legal education system in Nepal'.

The paper proceeds with 'inspectional or primary theoretical discussion on notion of justice analyzes the problems facing the formal justice system and delves into necessity of developing instruments like community mediation. These issues have been dealt pedagogically. The roles and responsibilities the Universities in countries like Nepal are discussed along with the contents and issues they are supposed to address by their cubicula.

HUMAN BEHAVIORS AND DISPUTES

Human behaviors are not always consistent and stable; they are full of contradictions.[2] Conditions of livelihood, protection of freedoms, operation of the system of law and order, etc. do immensely influence human behaviors in daily life. Often, human beings are compelled to live with dilemmas-imbalance between needs and supplies, values and facts, efforts and constraints, quest for freedom and imposition of rules, etc.[3] In societies, the ruling echelon in particular, wrongly believe that stronger law and its rigorous enforcement is the only way of 'settling disputes' between human beings, which generally occur due to failure in adjustment of interests of two or more peoples.[4] Psychologists argue, the human mind is often in tense condition due to impulse of change for the conditions of lives towards betterment (progress), and constraints posed by surroundings accompanied by crisis of resources, including lack of required knowledge and skills. Physiologists describe this condition strife between 'red and white blood cells'. Sociologists describe it as a conflict between 'enshrined values and objectives facts'. For Theologians, it is a condition of conflict between 'good and evil'. For jurists, the condition is either an outcome of 'conflict between 'need and supply' or 'freedom and constraints created against its exercise'. As the very basic character of nature demonstrates, every living organism grows tending to overreach the growth of others. In animal kingdom, this phenomenon is fully

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2 . Zaki-ur Rahman Khan, 1996. "Human Behavior and Legislation" in D.R. Saxena (ed.) *Law, Justice and Social Change*. Deep and Deep Publications: New Delhi.

3 . These dilemmas get changed consistently in the changed context. Sometimes they change the system of law and other time they are addressed by laws. Formulation of laws and system is not a capricious political phenomenon in the society. Laws are scientific and with this capacity they become able to harmoniously accommodate the contradictions of interests among peoples. As Prof. George P. Fletcher (1996:29, *Basic Concepts of Legal Thought*, Oxford University Press: New York) says, "The idea of law stands, more than anything, for inevitability. When a law applies, things cannot be otherwise; they conform necessarily to the law. Scientific laws represent more than just and observed co-relation between cause and effect". Law's relation's with human behavior, beyond the causal relation, is determined by the necessity. Obviously, a law exists not because it is implemented by some one, but because it is necessary for 'systematic accommodation of human relations in the society'. As Prof. Fletcher says one thing what we know for sure is that human laws are not fully and necessarily obeyed. Legislatures can pass laws telling people how to behave, but there is no necessary response from the public at large. Sometimes peoples conform to the changes in the statutory laws; sometimes they continue to o what they want to do. This tendency is more obvious where the law is associated with pleasurable habits, like smoking, drinking etc. The necessity may not successfully attract the positive response of the peoples. The fact may diverge from the law. In such a situation, the law demands for review and reformulated to address the need.

4 . Traditionally, the Nepalese society developed an approach to settle disputes through 'community involvement'. As early as Lichhhavi period (2nd -12th Century), *Gosthi* (currently known as *guthi)* was the lowest body of the society to 'mediate disputes'. In course of time, a system of settling disputes by 'five elderly villagers' in presence of several peoples developed. This practice was called '*panchyati'*. Mediators involved in the dispute settlement process were called '*bhaladmi*' (bhala- gentle and *admi*-men). Bhalaadmi allowed peoples to put their causes and arguments, and persuaded to reach a settlement. In failure, they intervened with 'decision', generally supposed to be founded on 'righteousness, necessity and benefits of both parties). This practice continued for long time in the history, in fact till sometime after take over by brutal Rana regime. Although the exact date is not available, the Rana regime destroyed the 'practice of community mediation for its deceptive move to 'generate revenues out of court proceedings and penalties'. Every dispute was then dragged to the court so that the proceedings could be used to generate 'revenues'. They introduced a system of court fee, according to which every disputant to enter the court should have paid fee. In each step of the litigation procedure, parties had to pay some cost. For instance, litigants could produce witnesses but had to pay 'fees for that'. Even the compromise of the dispute in the court could be possible only after payment of fees. Party who intended to withdraw the case also could do so only by paying penalty. Since the Ranas extorted peoples, the litigation was found one of the most regular source for that purpose. "Community mediation was thus unfriendly to corrupt and extortion-loving regime'. See, Rishikesh Shaha, 1992. *Ancient and Medieval Nepal.* Ratna Pustak Bhandar. Kathmandu, Nepal; Rewatiraman Khanal, 1977 (2035). "Kotling Court in the Judicial History of Nepal", in Kusum Shrestha, et.al. (ed) *Nyaydoot*. No. 28. Year, 9. Nepal Bar Association, Kathmandu Nepal; Hodgson, B.H. 1880. "Some Accounts of the System of Law and Police as Recognised in the State of Nepal in Vol. II Section XII, Miscellaneous Essays. Reprinted by *Kanoon, a* Monthly Journal. Issue No. 45. Vol. 14. Lawyers' Club. Kathmandu Nepal; Kirkpatrick, 1811. *Account of the Kingdom of Nepaul. London.*

regulated by 'competition and survival strategies'. There exists nothing as 'regulation' of behaviors except that is a system 'maintained by the competition and survival strategies' itself.[5]

Human society is different because it comprises of efforts, backed by prudence, to organize and reorganize 'lives of every member of the society in such a way that he/she is allowed to grow in an atmosphere where his/her genuine interests (claims, privileges, powers and immunities) are consistently and systematically (often defined as legally) recognized and protected.[6] This approach of living makes possible for emergence of a concretely and coherently established framework for 'harmony in lives of human individuals possible'. At this point the necessity of 'system of resolving disputes and adjusting differences in interests between individual members comes in'.[7] Obviously, when behaviors of two or more members become contradictory or their interests collide against each other, the existence of a system to resolve such contradictions becomes a condition precedent for a society to 'ensure peace, stability and harmony' among the members. However, such a system cannot be legitimate, if it has not been governed by a set of' norms or rules'. As eminent jurist John Rawls opines 'the rules and norms must be shaped and guided by democracy', meaning the protection of rights of everyone to participate in the process without fear and exclusion.

Nevertheless, the universities in the developing countries like Nepal, India, and Bangladesh hardly pay attention hardly to such issues and realities. The legal systems of these countries have densely been influenced by 'notion of colonial ideas', which unduly emphasize 'formalism'. The established procedure is practiced 'rudely' in a way to victimize the victim. Sapahala Devi who spent 23 years in court to obtain justice and died without getting the property she lost is an example of 'inefficiency of the judicial system'. But University Faculties in country like Nepal do hardly pay attention towards this short of miscarriage of justice. What they emphasize to teach are the '19th century formalist doctrines' by insulated teaching methods. They hardly have any components in their curricula which inspires students to 'think of new ideas, means, approaches and methods' of justice.

NECESSITY FOR DEVOLUTION AND DEMOCRATIZATION OF THE SYSTEM OF DISPUTE RESOLUTION:

The notion of justice should underpin 'principles of objective and participatory process of dispute settlement'. Long back in the history, almost all civilizations used 'ordeal' as a system of delivery of justice, which believed on unseen force as the 'deliver of the justice'. The societies believed that 'the

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5. The survival strategy for the sake of human being may be defined as the 'necessity' of the society for securing peace. 'Justice' is the foundation of 'peace', and the concept of 'justice' is the guarantee and reinforcement of the 'genuine interests' of the society legally as prescribed by the values of democracy and constitutionalism. Harmony of human relations in a society is thus not 'imposed phenomenon'. It is simply not possible to 'achieve only by a rule made by the authority capriciously'. The participation and consent of the people themselves is the crucial factor or this. Thus, the survival strategy in the context of human society means a 'struggle for achieving peace founded on justice'.

6. Although jurisprudence is a 'repository' of thousands of dissimilar ideas and opinions, one can for sure say that 'the recognition and protection of genuine claims, privileges, powers and immunities' is the main domain of the human desire, which requires the law to protect as its prime concern. No law can obtain legitimacy ignoring this domain of function.

7. System of justice, in order to systematically address the 'concerns of human beings, ' has been evolved as a crucial aspect of the human civilization. As pointed out by Herbert Spencer, civilization and laws are products of biological, organic evolution, with the struggle for existence, natural selection and survival of the fittest as the principal determination factors. According to him, civilization was a gradual progress of social life simple to more complex forms, from primitive homogeneity to ultimate heterogeneity (See, Edgar Bodenheimer, 1997. *Jurisprudence*. Universal Book Traders: Delhi.

God would intervene in favor of truth, and, hence, would protect the right person.[8] In course of time it was found that 'the system was full of vulnerabilities'. Many civilizations thus gradually turned to 'litigation' through a formally established state apparatus. Procedures, formalities and principles emerged to 'regulate the fairness of the litigation'. However, these procedures, formalities and principles could hardly avoid the 'adverse conditions or circumstance of some persons created by disparities to access to power, knowledge, wealth and equality'.[9] The 'litigation' thus could not go far from being tainted as a 'game between two unequal players'. A few very unwanted as well as undemocratic characters developed in and within the litigation system are identified as follows:[10] The Universities ignored to see these pitfalls of the system, and they continued to train lawyers to indoctrinate 'the principles of formal system'. Most importantly, the university legal education ignored to 'empirical evaluation of the impacts made by the formal justice on the lives of people'. The access to justice as a fundamental right of persons had never been taught in the universities, and even today this practice continues. Hence, law students are not critically aware of the following pitfalls of the litigation system:

- Litigation is costly, as it has been basically founded on the notion of 'punishing the wrongdoer'. Obviously, the system does not concentrate on the 'cause of the dispute'; rather superficially makes attempt to 'find out one of the parties as wrong doer'. The wrongdoer is then penalized.
- Litigation is generally a 'competitive game' between two lawyers representing the litigants and the sole objective of the competition is to win over rather than to 'address the cause of the conflict' and avoid win and loss situation. Obviously, the participation of the parties in the process does not ensure 'involvement of them in finding out the cause of their conflict and the solutions to address it', but it prepares them to 'organize a 'wrestling' with all tricks so that the one handling tricks in better way 'overpowers' the other. Unfortunately, this setback has not been an issue of the 'legal education in the universities'.
- Litigation is formalized in a way that 'the parties may hardly understand what they have to do or refrain from doing'. Agents' cooperation is thus vital. The litigation is thus mainly a 'process to allow settlement of the conflict through arguments of legal professionals', but not through 'reaching minds between disputants'. Litigation thus divides society by 'institutionalizing

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[8] . Both eastern and western societies used 'ordeals of various' kinds. In Nepal Agni and Jal parikchya (Fire and Water Ordeal) were popular till recent past. At least Prithwi Naryan Shaha is known to use it in Nuwakot, when he was planning to invade the Kathmandu Valley. . In 1818 B.S., King Jaya Prakash of Kathmandu, with assistance of Jaishis (a sub-caste or second class status Brahmin hierarchy) conspired to arrest Pratap Singh (son of Prithwi Narayan). Jaishis had been used by him to entice for hunting of wild bore in forest of Chitlang. This plot was leaked to spies of Prithwi Narayan. He thus arrested the alleged conspirators and tried. They did not confess the crime. Eventually, they were subjected to an 'ordeal'. On their palms, over a leaf of Pipal tree, a burning coal was placed. It is said that the culprit immediately confessed the crime. They were then subjected to death penalty (See, Ancient Nepal, Number 22, Page 10, Archeological Department, and HMG. Nepal).

[9] . In the formal litigation system, it is a state's apparatus that is decisive. In this system the civil society and community has no voice. Court is often not concerned with 'escalation of conflict in the community by its decision. Courts are not often concerned with the adverse implications of their decisions in welfare, stability and progress of the society. Obviously, courts are not the right forum for chandelling all disputes. In society often some citizens have the loudest voice whereas others have been suppressed. Judiciary is often vulnerable to 'give attention to those having loudest voice'. The judicial system as a state apparatus of justice functions with a fundamental weakness that it assumes that all participants have comparable access to, and influence on, the system. Many disputes in the society do occur because 'the political system does not function similar to all'. Obviously, some people think that their voice is not 'heard', and consequently they resort to 'alternative way of response- i.e. violence'. If the judicial system fail to take note of such agony of peoples, its response instead of addressing the problem further aggravates the situation. Generally, courts are the platforms that do not consider such issues. Consequently, citizens are alienated. Community involvement and treatment is the only trustworthy option to address this type of situation.

[10] . See, James J. Alfini, (et al) 2001. *Mediation Theory and Practice.* Lexis Publishing. USA. PP. 4-6.

controversy or enmity between the parties'. How universities have addressed this issue? The answer is blank.

- Judicial system responds to the dispute of peoples within the strengths and constraints of its institutional values and competence. The fundamental flaw in this system is that parties at the interest are not, due to series of legal formalities, able to trigger discussion on the very matters that mean the most to them with those persons in a position to effectively address their concerns.

- Mostly importantly, the litigation system fails, due to its institutional discipline and values secure civil stability and promote social welfare. It rather practices approaches that further deepen the controversy and mistrust among the parties. Judiciary is a passive intervener only. It has nothing to do with social relations of the parties. In fact, the court nothing to do with parties out of the court premise.

In brief, the litigation system lacks democratic character at least in two senses. Firstly, due to its established values and institutional constraints the free or unrestricted access to it is barred. Only those persons may be able to use it who have 'adequate financial resource, and knowledge and skills about its formalities. Secondly, it is less participatory as due to its established values and institutional constrains and competence the parties are not able to trigger out discussion on the very matters that concern them. Constraints of access and lack of parties' meaningful participation in the discussion renders the litigation process largely undemocratic.[11]

The university legal education most South Asian countries must review the 'curricula' and do introspect the harms caused to the society. The 'curricula' need to be reviewed to adjust the new changes in values and perspectives. Since the 'value attached to the objective of justice is fully changed in the present context, the access to justice need to be taken as 'fundamental issue of justice', and for this 'the doctrine of 'litigation as the mainstream justice process' and the 'other many forms of popular justice' as alternative dispute resolution should be altered. In the context of Nepal, the following characteristics of the community mediation must be give effect:

- It reserves to the parties the ultimate authority to "settle" the matter. Since disputing parties can refuse to accept settlement terms proposed in mediation, no one could be hurt by using it. Hence, the community mediation ensures participation of the parties and also secures the free access to justice.

- Terms of proposed solution are generated by disputing parties themselves in a circumstance without 'established values and institutional competence and constraints'. This situation helps parties to engage in 'triggering discussion on what that meant most to them with those persons who are in a position to effectively address their concerns. Why does this occur and what are the consequences?

- The mediation process is equally concerned with the 'impact of the dispute in future social relation of the disputing parties. Obviously, the settlement is an 'extermination of the cause of conflict' rather than the 'third party declared prize'.

- Mediation process protects peoples of not 'stronger voice' from being alienated. It provides a meaningful platform for 'their voice is heard and protected'. It generates respect of peoples of every walk of life to the 'community' which is so essential for 'consolidation of the democracy'.

[11] . See, Ibid.

Briefly speaking, the community mediation is a process of 'devolving the judicial power from the state to the people for meaningful response to the social problems. In this character, the mediation process can be taken as a 'democratic approach to settle disputes' as it is characterized by a system that (1) permits stakeholders to the controversy to establish the discussion agenda- that is , they could "put on the table for discussion whatever concerns mattered the most o them, whether or not they fit within the existing 'legal or administrative categories'; (2) involves an inclusive process, permitting participation not only by trained advocates but also those persons or organizations which had to abide by the resolution; (3) requires persons to be accountable for designing solutions to problems, not just complaining about them; (4) supports the belief that meaningful, direct participation of parties in the disputes enhances participants' respect for the fairness of the process and strengthens potentiality of compliance with negotiated outcomes by parties; and (5) appears to be both harmless and minimal in cost involvement. Most strikingly, since the mediation views serious or hot disputes as social, not legal, conflicts, its social acceptance is higher to that of court's decision. Mediation thus not only democratizes the 'justice system', but by securing easy access to justice socializes the legal system.

The continuous pace of social change is where the civilization unfolds in. However, it is not necessary that every change is necessarily directed towards 'betterment' of every one. In a state of penetrating imbalance in the condition of 'exercise of power', the social change might occur only beneficial or advantageous to some pushing others into a condition of disadvantage. In the modern time, the legislation has been taken as one of the most 'effective and power instrument' to address this problem. Legislation's crucial role to ensure that there is no 'advantage of one to the disadvantage of others', and the need that it emerges and operates to empower the 'weaker section or to safeguard its interests against vested interests of the powerful one by providing and protecting the 'access to justice to the former', are largely unrealized in a society like ours.

Under the existing form of states, the power of legislation is vested in with the politicians and its enforcement with the judiciary. The people's participation in law making is seriously ignored and obstructed. On the other hand, the independence of judiciary in a country like ours is fully controlled by the executive branch through 'control over the purse of courts'.[12] Obviously, the judiciary has a huge scope of coming under control of the politicians. And, as Zaki-ur Rahman Khan, an Indian intellectual rightly says, "Politicians in many countries have neither any understanding nor any faith in future. They are driven by partisan approach and present gains. This makes the legislation a 'paradise of rulers'. A

[12] . The judiciary's budget and modes of expenditure of it are fully controlled by Ministry of Finance, HMG. The court is not competent to use the 'recourse received from the state' in accordance to its own plan and needs. It receives 'itemized budget exclusively earmarked for the given item', and has to request the release of the costs on the expenditure basis. The judiciary is thus compelled to 'negotiate with executive branch for each coin it receives from'. This violates the independence of judiciary obviously, and these kinds of affairs render the role and efficiency of Judiciary in developing countries like Nepal subject to great suspicion. Additionally, A number of other factors pose a serious question to the 'objectivity, reliability and impartiality' of the justice delivered by courts. First, the judiciary is accessible to 'only a handful of rich and clever peoples'; a vast majority of disenfranchised community has never been in touch with the judiciary. Second, its formality and feudal fashions are 'scary' for downtrodden peoples. Third, the judiciary operates as an 'elite club' rather than an 'institution' of justice. Fifth, judges are comparatively conscious of issues of 'their position, protocol, and privileges and facilities' rather than their immense role of delivering fair justice. They demand for 'unlimited respect from people of their perceived position and protocol. They are happy to be 'addressed as "my lord, your hon'bel', etc. A psychology is sold to the poor people that 'the judge is a perfect person, and he/she never makes a mistake'. Sixth, the judiciary every day produces a huge volume of judgments', but what impacts these judgments create in the lives of many people is not a matter of concern for them. Seventh, access to this type of 'justice' is generally restricted. One has to pay 'court fees' to enter into the court's proceeding that continues for a considerably long time. It is sure that 'one of the parties' is definitely not satisfied with the court. Virtually, the court's justice is targeted not to all, but only to 50 % of those limited population that has access to justice. Even this 50% incurs huge cost for the so-called justice. Corruption, favoritism and other influences are rampant. Justice is thus not realized here; it is rather capriciously made.

justice made by the court based on centrally legalist interpretation of the court is thus vulnerable to commit a 'miscarriage of justice'. A court is thus not a platform for all types of cases.

In Nepal, University legal education has not institutionally addressed these issues. While Purbanchal University has some components of it included in the course, it is simply not enough to prepare students. Kathmandu School of Law, however, has made efforts in collaboration with Center for Legal Research and Resource Development (CeLRRd) to popularize the concept among the students. They have been engaged in the process of mediation as interns in districts the programs are implemented by CeLRRd. In Tribhuvan University, the clinical education program introduced the concept in 1992. However, the program did not continue and the institutionalization of the same was halted.

Considering the need of overtly emphasizing 'community mediation and similar means', Kathmandu School of Law has implemented the following activities in the past:

a. Mediation skill training of "chiefs of Thakali community in Mustang' which protects the culture of mediating conflicts between people of their communities.

b. Formation of 'Village Woman in Dhadhikot, Bhaktapur' and training to help them mediating family disputes.

c. Formation of 'cells' in villages by Student law Society in Bahaktapur district, and popularizing the concept of community mediation.

RETHINKING ABOUT JUSTICE SYSTEM: NECESSITY TO REVIVE THE CURRICULA

The discourse hereinbefore calls for 'rethinking about the system of justice', especially in less developed country like Nepal, of which large population is illiterate, economically and socially marginalized and psychologically humiliated and oppressed for long period of time. In this context, a formal system of justice which wrongly perceives that the 'access to it stands on equal footing for all' is nothing but a 'glaring lie and myth'. Rethinking about the justice is thus urgent need of the Nepali society. The following prevailing conditions of the justice system make the need of 'rethinking further glaring':

- Delay in proceeding is severe. Over 50% of cases in all level of courts are every year shifted to next year.[13] About 90% of caseload in the Supreme Court is occupied by the civil matters, and the petty cases constitute the large proportion of it.[14] Obviously, litigants have to run behind the unproductive and people unfriendly procedures of the court for unreasonably longer time. Every month, litigants have to ensure their presence in courts, and 90% of these appearances have nothing to do with the process of justice.[15] They doom to be merely a formality, irrespective of the cost, psychological embarrassment, and physical trouble of the concerned peoples.

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13 . CeLRRd/TAF 2002. *Trial Court System in Nepal.* Kathmandu, Nepal.

14 . Ibid.

15 . Ms. Shaphala Devi, a poor village woman, is a typical example of the failure of justice system in Nepal. It took for over two dozen years to 'knock the door of courts', to get a judgment, without any execution of the same. Finally she died while still struggling to get the court's judgment executed. Some peoples from the judiciary occasionally defended the judiciary that 'execution is a matter of concern' of the government. They might be right to say that, but what forgot to remember is the 'overseeing responsibility' of the court. The court has given a powerful instrument of the 'contempt of court to ensure the authority of judiciary prevails over, if some one ignores the compliance of the court's judgment. This is, however, only example. Currently, the Supreme Court of Nepal has a caseload over 30,000 cases. With existing

- Issue of corruption by certain percentage of judges is also a problem.[16] The rate of reversal of judgments at different level of courts is huge. Language put in judgments is vague, ambiguous and dubious. Execution of judgments is almost 'none'.

- The courts are considered as a 'revenue generating institutions'.[17] Obviously, one has to first pay 'court fee to enter the court'. The courts do not even entertain petitions concerning violation of human rights without the fee being deposited first. According to official statistics, 38% of the population of the country lives at abject poverty. Where this population does obtain the court fee to 'enforce it rights' from? The judiciary of Nepal thus does not exist for needy and poor.

- Petty corruption at all levels of' judiciary's employees are institutionalized'. The psychology among the common people that 'justice is sold at the courts' is widespread.[18]

- Courts are seriously influenced by 'feudal hierarchical values'. Women, so-called untouchable peoples, and minorities feel that it is not possible for them of obtain justice from courts.

Purbanchal University, Kathmandu School of Law, in collaboration of CeLRRd, has prepared detailed outlines of the course on Community Mediation. Three approaches have been suggested for that objective, i.e. (1) Introduction of the MA course on community mediation (2) Establishment of the Resource and Research Center on Community Mediation in the School and (3) Introduction of Mediation Subject as independent subject at LL.B. Course. Currently, the alternative dispute resolution is taught as a part of Comparative Study in the LL.M. and Advance Jurisprudence in LL.B. level. However, they are far short to address the need of specializing about ideas of community mediation. There are challenges: (1) traditional lawyers are yet not prepared to accept 'community mediation' as a part of the legal education, and, hence, it is often difficult to convince the university policy makers to agree to incorporation of such courses; (2) availability of the funding is problem to introduce such courses as government, donor agencies and non-governmental organizations, except some, have no culture of working with universities; and (3) the human resource to teach 'community mediation' effectively is greatly deficit. Hence, KSL's activities are stranded somehow.

Despite all these problems and challenges, KSL on behalf of Purbanchal University is working hard to develop the 'curricula' and while doing so the following 'principles' have been adopted as the general policy guidelines:

a. Approaches and Workability, and Importance of the Suggested Reform: Resurrection of the judicial system is an urgent need of the Nepalese society for social equanimity as well as the

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human resource and the facility available, it may take over six years to clear the backlog. But by then another greater backlog will be accumulated there.

16. Recently, one of the judges at district court level is rounded up by "Royal Commission on Corruption Investigation". Reaction of the judiciary is, however, less visible. No changes are forthcoming even after the incidents. Judiciary has neither accepted nor denied the existence of corruption in there. The situation is, however, adversely affecting the people's confidence over the system of justice.

17. This practice was introduced by Rana regime, as a part of extortion. This system continues even after 1951. However, Prithiwi Narayan Shah fully prohibited the deposit of such revenue in the state's exchequer. He issued an explicit order for judges and state officials to refrain from depositing the fines and charges like courts fees, etc. (*danda kunda*) in the State's account. As he instructed, such fines had been used to support indigent, sages and charity activities. He said: "One can be protected from stigma of untruth". He further said: "Court is temple of identifying the truth and untruth. No case does come to case without one of the parties being bad, holding untruth'. The revenue generated by the court is thus in this or that way is stigmatized by untruth. Such income should be used by the state'. Moreover, he said: "Sometime the truth might be overshadowed by circumstance, and in such a situation an innocent person might have been condemned to punishment, and as such by appropriating the fines in the state coffer a wealth earned out of injustice will stigmatize the justice" (See, Rewatiraman Khanal, 1979. "Justice System in the Reign of Prithwi Nrayan Shaha", in Kusum Shrestha, et.al. (ed.) *Nyaydoot,* No. 32. Year. 13. Nepal Bar Association).

18. In an event of 'street law program' organized by Kathmandu School of Law in a village west of Nagarkot, common peoples expressed complete lack of confidence with judiciary.

consolidation of devolution of the power to the people. But the resurrection scheme should not be confined to the 'reforms of the formal system and mechanisms' alone as it is 'doomed to be fiasco' in absence of a scheme to popularize, devolve and democratize the judicial system. To seriously consider for introduction of the 'community mediation' program as a 'mainstream system of justice' is the point to begin with. The most important issue to 'give priority in rethinking about the system of justice' demands for 'recognition of the unrestricted and unhindered access to justice as one of the indispensable elements of democracy, rule of law and fundamental rights of the citizens'. In the context of the Nepalese society, like many others, the following values or norms and dynamics confirm the viability of, and preference for, 'community mediation as a right option for revitalizes the 'system of justice':

- Nepalese people posses a tradition of believing on the 'community participation in dispute resolution' as an instrument of the 'sustainable form of justice'. Litigation is generally discarded by the Nepalese society; it is of course considered to be 'stigmatic' in individual's character. "k*ul ko santan and mool ko pani*" is a common proverb having great influence over the behaviors of peoples in Nepal. Litigation is often taken as one of the 'indicator' to test the honesty of person. Obviously, the practice of 'settling disputes' by relatives of 'disputants' in all types of ethnic groups is a common practice in rural villages.

- Social or clan bonds are still stronger in Nepal. Obviously, any dispute that arises between two peoples ultimately virtually becomes a 'dispute between families, relatives and clans'. Vulnerability of 'division of the society' by dispute is immense. The community's involvement in such a situation is not only a guarantee to amicable resolution of dispute, but also a powerful sanction to 'the enforcement of the terms and conditions agreed upon'.

- Disputes in the Nepalese society mostly relate to the 'lands, family or public forest, pastor lands, family issues relating to marriage, divorce, maintenance, etc. These issues are never properly adjudicatable by courts on the basis of proofs and evidence.

- Dispute and its escalation affect not only two parties but the society as a whole.

These values, norms or dynamics of the Nepalese society do not prefer the 'litigation' as a system of choice. The viability of the 'dispute resolution by community' participation is thus overtly stronger. However, the Government of Nepal has seriously failed to 'develop this sector'. Its overemphasized reliance on the 'formal justice system' is one of the major causes of the 'emergence of violent conflict' in Nepal. In any society, when the normal and progressive growth of the 'societal development is suppressed or obstructed', the potentiality of social conflict being transformed into violent one is simply a natural phenomenon. If we analyze the emerging dynamics of the Nepalese society, the following trends demonstrate pro-violence characters, and as such strongly justify the 'role of community mediation' as an important apparatus of the peaceful transformation of the conflict:

- The disparity between men and women were not progressively addressed by laws, but they were intensified by 'enactment of various laws that directly and indirectly subordinated women'. Women, for instance, were defined in terms of 'marital status'. As a matter of fact, daughter's rights are not determined by her 'being an independent person', but by her 'being a married or unmarried woman'. A woman is not defined as a person, but she is defined as a 'married woman, unmarried woman, married wife or kept wife or borrowed wife, *sadwa* (women with living husband) or widow, etc. Dynamics in the changed context of the present society do reject such values and practices. However, the law still holds them large. The function of courts is confined to 'reinforce' such obsolete laws. The judgments

of courts thus obviously intensify conflicts. The pro-hierarchical status based society is prone to 'intensification' of conflict. Community mediation can play a vital role to eliminate 'hierarchical status-based disparity, and rationalize behaviors of peoples. Capacity to influence the attitudinal change and attached social sanction are two major 'instruments' community mediation to rationalize traditional behaviors of the people.

- Disparity between peoples from various castes is also protected by laws to the exclusive advantage of some caste groups. This fact constitutes another source of conflict, which formal justice system has failed to address. The same instruments mentioned above can enhance the 'change in this particular' situation. Community mediation being an effective means to transform social conflict into equanimity can be progressively used to address problem of untouchability.
- Local resource distribution is another significant issue of conflict. Resources are monopolized by some groups and agencies of the central government. But the formal justice system is not only unconcerned with it, but also incapable of granting ownership of the local resources to the local peoples. Community mediation can work as a strong source for enabling people claim ownership over the local resource.
- Access to justice has been recognized as a 'right of the people'. It has rather been taken as the privilege of the government. The community mediation can be catalytic to change this mentality.

b. ***Deinstitutionalizing gender and caste disparity***: Community mediation has an immensely great scope of democratizing the 'justice system', as it grants voice to the concerned party or interest groups. Women are often voiceless in the formal justice system due to their ignorance and dominance of males in the present set up of judiciary. Introduction of the dispute resolution process through participation of community will ensure women's voice is heard equally, and as such helps to 'deinstitutionalize' the 'stereotyped' gender disparity in the justice process. Similar impact will emerge in the context of relation between peoples of various castes.

c. ***Breaking of obstacles to 'access to justice'***: Dispute resolution by community participation does relieve economically and socially disenfranchised community from obstruction to access to justice. Obviously, they can have their voice heard in a system. They should not, therefore, refrain from having access to justice simply because of poverty or lack of resource.

d. ***Breaking the monopoly over local recourses by a group or outsiders***: Possession of resource such as lands by disenfranchised community is not possible to be held at court due to lack of proofs and financial capacity to play with the formal system. Poor peoples' language is often incomprehensible for formal system, as they are trained to understand what the government and lawyers say. Community dispute resolution method will thus be an effective platform for poor people to 'establish their possession' over the resource.

e. ***Philosophical Foundation of the Community Mediation Program***: While the belief on, practice of, mediation in the neighborhood common in the Nepalese society, the efforts to introduce and institutionalize modern Community Mediation model can be said a recent 'initiative'. It can be said that such efforts have been largely induced by the 'incorporation' of a concept of 'hybrid of mediation and arbitration' in the Local Self Governance Act, 1999. The model presented by the Act has three dimensions:

- Firstly, it recognizes the concept of 'devolution of justice to the grassroots' as it provides for a 'panel of mediators in each Village Development Committee (VDC);
- Secondly, it recognizes the right of disputants to 'engage in discussion, and arrive at the points of agreement; and
- Thirdly, it grants a power to the VDC authority to intervene and take a decision if the parties to negotiation fail to reach a consensus agreement.

These three provisions recognize the right to access to justice but do not adequately ensure 'effectiveness and propriety of the concept of community mediation' that works for mutual and respectable agreement disputants as opposed to 'win and loss' verdict. The possibility of intervention by the elected members in the situation of failure to reach an agreement is politically as well socially vulnerable. Significance of the community mediation as discussed in the preceding part is thus obscured by the Local Self-Governance Act. Nevertheless, the community dimension of the mediation process is always independent, as it is not a matter of law. In fact, community mediation always being a social institution can exist and operate even in absence of law, because it takes dispute as a social problem, not a legal problem. Hence, no authority or law can prohibit 'people's right to amicably resolve their disputes in accordance with procedures and process as agreed in between themselves'. Moreover, no authority or law can prohibit 'role of the civil society or social activists to help needy people to resolve their disputes'. The legal debate is thus virtually redundant and obsolete. In legal theory, the practice and emphasis on community mediation as a mode of justice making process is a pro-people effort 'to socialize the jurisprudence' as a opposed to its 19th and 20th century centralist legalist approach. This was what the philosophical foundation of the 'Community Mediation Pilot Project' jointly implemented by CeLRRd, Pro-Public, SUSS, RUWDUC and IGD[19] in technical and financial assistance of The Asia Foundation.

Much debate has flowed in this regard, but the action of these organizations has largely brought to an end to it. However, what one cannot deny is that 'the enforcement of the legislation will definitely provide the community mediation with popular recognition'. Thus, importance of the legislation is generally confined to 'recognition or enabling of the process by the state. Value of the mediation attached to 'authority' has, however, nothing to do with the law, because, as stated before, the outcome and effectiveness of the agreement between the disputants exist independent of law. This understanding has surely guided the objectives of the 'Community Mediation Pilot Project".

The pilot project comprised of three fundamental objectives:

- To establish the necessary enabling legal framework for mediation under the Local Self-Governance Act, 1999.
- To build the institutional capacity of VDCs and Municipalities to conduct mediation
- To increase public awareness of the community-level dispute resolution provision and the availability of local-level capacity to resolve dispute.

At the implementation and impact level, the objective of the project was, however, broader and substantive. To be very frank, the project was not implemented simply to test as to whether the local Nepalese community is receptive of the community mediation or not. It was a pilot project only in the sense of 'the geographical locations of implementation' and 'the number of beneficiaries'. In terms of

[19] . CeLRRd: Center for Legal Research and Resource Development; Pro-Public: Forum for Protection of Public Interest; SUSS: Service to Underprivileged Section of Society; RUWDUC: Rural Women's Unity and Development Center; IGD: Institute for Governance and Democracy.

significance and impact, the project was a beginning of an 'immensely great shift in the notion or understanding of the concept of justice'. In terms of impact, the project intended to:

- Reorganize the concept of mediation with modern values and justifications, i.e. democratization and devolution justice system.[20]
- Empower peoples to perceive justice as an attainable and objective phenomenon, largely controlled by their own choice.[21]
- Enhance access to justice with firm conviction that 'justice is not something a prize to be handed over by someone' but something that could be 'bargain or negotiated between concerned peoples themselves'.[22]

Specifically speaking, the project's objective at the impact level was 'to give the grassroots people of a sense of ownership over the system of governance'. This project has largely articulated an idea that 'systems of delivering services to people' are virtually controllable by themselves. The over all objective of the project in this context is to 'strengthen democratization process at the grassroots level' through ensuring an 'access to justice' by media of community's involvement in the dispute settlement process. The project has thus fully proved that 'the community mediation is the mainstream' of the notion of justice in the Nepalese society.

Impacts of the Community Mediation Program:

Outcomes of the program can be analyzed both qualitatively and quantitatively. Qualitatively, the following outcomes deserve presentation:

Clarity of the Concept: The implementation of the project in 75 locations (VDCs and Municipalities) amidst the confusion created by the 'failure of the Government to enforce the Local Self Governance Act concerning mediation, was a great breakthrough in itself. It broke the silence of the Government as well as the civil society. In this context, attainment of the 'clarity' of the concept of the community mediation has been the most outstanding outcome of the project which has helped tremendously to popularize the faith of people to the 'settlement of disputes' by their fellow villagers.

Creation of Efficient Human Recourses: Based on discussion with local mediators, one of the most important factors for high rate of success in mediating disputes goes to the 'outstanding training' that created skills of negotiating. Gathered from the impression of mediators, the skilled based training had been instrumental in achieving the:

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[20] . Observation of the Post Evaluation Forms filled in by disputants (Form No. 4) shows a great interest of disputants on the community mediation program. They invariably suggest that 'disputes should be resolved in the community itself'. A large number of such disputants have suggested 'setting up mediation units or celling at the level of each neighborhood'.

[21] . Study of Evaluation Forms (which are filled in by disputants subsequent to resolution of their disputes) shows that most them liked Community Mediation for its unique character of 'letting them to say their concerns' and very friendly behaviors of the mediators. (This information is generated from post evaluation sheets (Evaluation Form No. 4) of disputants, which gives their opinions concerning mediation process).

[22] . According Gyanu G.C. Mediation District Program Coordinator at Nawalparasi, community mediation program is substantially important in a society like Nepal for (1) large number of people at rural villages are poor and cannot afford litigating dispute at the courts, (2) behaviors or social relations of people at rural villages are influenced by 'conventional and defective values', so that justice is inaccessible for large number of them, and (3) ignorance is rampant and people are not aware of their rights and duties. The community mediation brings justice at their home. It educates people that 'justice is possible in community itself'. Moreover, it responds to 'conventional and defective value system that justice is privilege available only to some category of people'. In her opinion, the largest benefit of the program goes to the 'women', the most marginalized section of the Nepalese population. She opines that the 'program has broken the silence of women and habit of tolerance of violence'. Progress Report of Nawalparasi District, 2004.

- developing the conviction of the mediators that the 'the model of the community mediation program would be an effective alternative to access to justice and create a positive impact in the society,
- convincing that 'community mediation program' was a need of the disenfranchised community, but not an importation,
- generating social responsive attitude in mediators, and
- planning strategies for smooth and meaningful holding of mediation sessions.

Building of Institutional Set up of Community Mediation Program: The community mediation program has given an institutional set up to the community mediation structurally. A group of 1300 community mediators are trained.[23] Each location (VDC or Municipality) has at least 18 mediators trained to deliver service to the people. Similarly, orientation has been carried out for VDC or municipality ward secretary. Similar orientation is conducted for district officials of the ministerial line agencies in the district. Series of 'practice sharing meetings are conducted among the community mediators, program coordinators, disputants and civil society members. Timely refreshment for community mediators is implemented, and most importantly the 'adequate social marketing of the mediation process reflecting on importance, techniques and methods has been done. Along with these several capacity and awareness interventions, the following institutional set of the community mediation is established:

- Placement of community mediation's office at VDC or Municipality premise. Mostly, office of the community mediation is placed at the VDC or Municipality premise. However, in some VDCs the office has been placed in a 'rented space due to destruction of the VDC premise in the wake of the insurgency'. VDC and Municipality administration have extended full cooperation to the community mediation activities. The support includes:
  - referral of the dispute registered at the VDC or municipality office,
  - provision of the communication support, i.e. telephone facility,
  - endorsement the list of mediators trained under the program, and
  - use of the VDC or municipality authority to secure presence of the parties in the mediation process.
- Listing of the trained mediators: In all VDCs and Municipality under the project area, the list of trained community mediators is displayed in a place visible to the common people. In some of the VDCs and Municipalities, the photos of the mediators are displayed at the community mediation office.[24]

[23]. This figure valid tills the end of 2004. Subsequently, all partner organizations have initiated training mediators for additional VDCs. Obviously, by the end of this year the number of trained community mediators will exceed 2000. Since training activities are still in progress, the figure of this year (2005) is not included in this presentation.

[24]. Nawalparasi district is seen highly innovative in quality promotion and added social marketing of the community mediation program. For instance, In Ramagram Municipality, the Municipality Office has provided a space and telephone facility to the mediation office. In the space, the team responsible for implementing the program has displayed the list of mediators as well as the photographs of all mediators. According them, the display of photographs helps disputants to 'recognize mediators by face'. This practice in itself is an inceptive to the mediators, as they are recognized as mediators by large number of peoples in their surroundings.

- Disputes registration book, agreement book and progress report books are maintained in the office. In each program VDC and municipality, a facilitator is appointed to look after daily affairs of the mediation process.
- Copy of the agreement is provided to the VDC or Municipality Office.

This structure has helped to familiarize and gradually institutionalize the structural shape of the community mediation program. Most importantly, the population of the trained mediators is a great asset to the nation itself. There has been a tremendous potentiality among these mediators as a 'resource persons to train mediators in other parts of the country once the State will officially embark into the program.

Institutional Support to Court Referred Mediation: The community mediation has supported or strengthened the court referred mediation in many ways. The observation and interviews with mediators and court staff reveal the following positive impacts of the community mediation program:

- The social marketing of the community mediation program as well as the very high rate of success of mediation at the community level has indirectly motivated litigants to mediate disputes in the courts. Obviously, the community mediation program has created a positive environment for the court referred mediation. There is number of instances now in which the litigation is referred to mediation by the court.[25]
- After the amendment of the District Court Regulation with effect to provide for mediation of the cases as initial step in the court, the interest of parties to 'resolve the case through mediation is significantly' increasing. In this process, the community mediation-trained mediators are found of great assistance to the court to achieve its goal. For instance, in Banke district more than ten listed mediators come from community mediation program. In fact this has been a matter of great 'success of the program'.[26]
- According to community mediators of Banke district, the benefit is mutual. The enlistment of community mediators as mediators for the court referred cases has given respect and sense of pride to community mediators. The enlistment also has given a positive message to the people. On the other hand, the court has been benefited from the knowledge and skills of the highly trained community mediators.

These interesting facts show an interesting achievement as to how community mediation and the court referred mediation are mutually buttressing each other. Increasing success of both these programs is an indicator of 'merging culture of conflict resolution' at the community level.

The quantitative analysis of the following figures of success also presents a variety of outcomes and impacts.

Distribution of Mediators: One of the major reasons for the wider margin of success of the community mediation program is the 'wider distribution of mediators in terms of gender, ethnicity and the social strata'. The following figures give a 'detail picture of the scenario'.

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25 . In Nawalparasi, a litigation continuously going for 17 years has been settled by mediators. This case had been running at the Supreme Court during the occasion of mediation. This incident is an unique event in itself. Interview with disputants revealed a deep sense of 'remorse in both of them' for fighting a case for so long time. According them the loss they sustained economically, socially and psychologically during those 17 years is irreparable. However, they are now fully convinced that they have through community mediation brilliantly protected their children from the same fate.

26 . Source, The Notice of the Banke District Court dated 2061/2/3.

Mediators Total Number Effective till December, 2004	Gender		Ethnicity/Social Starta		
	Females	Males	Brahmin Chettri	Minorities/ Indigenous	Dalit
1327	377	950	665	639	123
Percentage	28	72	50	41	9

While these figures still show disparity, there has been tremendous improvement compared to other sectors such as politics, civil service, judicial service etc. In the civil service, Brahmin, Chettri and Newar three dominant communities occupy 96% of positions,[27] whereas minorities/indigenous community and dalit together have only 4%stake. In Judicial service, the proportion of women and minorities together is less than 5%, whereas not a single judge is found in the judiciary from the Dalit community. Compared to the participation of women, minorities and dalits in other sector of public life, the proportion in community mediation service is immensely huge and promising. These figures thus present the following positive characters and trends:

- The approach of the project towards the participation of women, minorities and dalit population is positive and inclusive.
- The project activities have reached to the grassroots level, and are grounded on philosophy of mobilization of excluded community in the justice making process.
- Through inclusive nature, the project has been able to strategize the access to justice for the whole population through a single and unstratified platform.
- Seen it from the rate of success of the mediation of disputes and the durability of the agreement, it is clearly established that women, minorities and dalits are equally competent to address the social disputes, with sense of impartiality, honesty and prudence.
- Comparatively wider participation of women, minorities and dalits in the community mediation process accompanied by higher rate of success in resolution of disputes and their durability indicates to the fact that 'community mediation process' is a right approach to reform and democratize the justice system.

These characters or trends themselves are an important outcome of the program. They obviously show that the 'community mediation is an effective and efficient alternative to the costly and poor people unfriendly litigation system'.

Disputes Disposal and Success Rate of Mediation Program: Dispute disposal and success rate is one major indicator of judging the 'effectiveness' of the community mediation program. The following figures give a clear message in this regard:

Total Disputes Registered Till the End of December, 2004.	Disposal and Success Rate		
	Total Settlement Achieved	Process Launched and Pending	Failure to Settle

[27] . See, Deepak Thapa, with Bandita Sijapati (2003), *A Kingdom under Siege: Nepal's Maoist Insurgency, 1996 to 200:* Published by Printhouse, Kathmandu

1,473	1,185	159	129
Percentage	80	11	9

The proportion of disposal and success rate in the table projects an extremely positive trend. The total figure represents performance of the program in a period of 9 months. The analysis of the figures in the table presents the following trends:

- Overwhelming majority of disputants have their disputes settled, thus setting a new trend of participatory justice making process.
- The proportion of the disposal and success rate indicates to potential of the community mediation program to develop as a viable and credible alternative of the justice system.
- Overwhelming proportion of the disposal and success rate as compared to that of failure rate indicates to the emerging trend of conflict resolution culture in the community
- The cost involved in the process is negligible. Obviously, the community mediation program has proved its 'poor friendly' alternative of the justice.

From this situation one can very easily assume that the progressive expansion and enlargement of the performance of the community mediation program will relieve the courts of law from their huge caseload. From this point of view, the impact of the community mediation program can be projected as follows:

- Increased use of community mediation may relieve districts courts of their civil caseload, which currently constitute 73.20% of the total caseload at the national level. To distribute at Supreme Court, Appellate Court and District Court level, the proportion of the civil caseload is 90%, 74% and 66% respectively.[28] These figures show that the problem of delayed justice in the judiciary is largely caused by the overflow of the civil cases, and thus reform of the judiciary is virtually impossible without addressing the overflow of the civil litigations. The community mediation program directly responds to this problem as it refrains from taking cognizance of the criminal cases. The impact of the community mediation in reform of the current system of the justice is thus obvious. In this context, the community mediation can contribute to strengthen the formal system of justice in two ways:
    - It provides an alternative forum for resolution of civil disputes, thereby helping to reduce the stress of the courts concerning. The impact is visible at all level of judiciary. Once the judiciary is relieved of the civil caseload, it may invest its time, resources and efforts to revamp or reform the criminal justice system. The strengthening of the fair trial is virtually impossible without getting rid of the massive civil caseload of the judiciary.
    - The national poll on the judiciary conducted by the Law Society[29] records a bleak situation about people's confidence over the system of justice and its apparatus. One of the major causes for decreasing confidence to the judiciary is its long time to dispose cases. The community mediation in this context is a vital intervention to revamp the confidence of the people to the judiciary.

  One significant problem facing the justice system of Nepal is related with the 'enforcement or execution of judgments' of courts. While there is a lack of specific findings to show an exact

[28] . See for detail, CeLRRd/TAF, 2002. *Trial Court System of Nepal.* Kathmandu, Nepal.
[29] . See for detail, Law Society 2002. *The Judiciary in Nepal: National Survey of Public Opinion.* Kathmandu, Nepal.

dimension of the problem, it is believed that the proportion of failure in this regard is enough to frustrate peoples about the current state of the system of justice. As often pointed out by the judiciary, one of the serious problems facing the execution of the courts' judgment is uncooperative attitude of the local authorities and peoples. However, there have been reasons for such 'non-cooperation'. As presented by the Law Society's poll, the level of suspicion of the people towards the impartiality of the courts is rampant. This problem, however, is not encountered by the community mediation program. This is exactly why there has been a serious attraction of the people to the community mediation program.[30] The issue of execution of the judgment is thus not related with the 'cooperation of the people'; it is rather related with the 'impression of people' to the process. The court's judgment is perceived as an 'imposed decision', whereas the agreement made through community mediation is conceived as a 'social obligation'. Obviously, one very significant impact to be made by the community mediation is in the sector of the 'execution of the agreement', which in turn is seen instrumental to 'institutionalize the culture of conflict resolution' at the community level.

Analysis of the TAF concerning durability of the agreement explores interesting findings. According to it, out of 85 cases examined, 64% were found fully executed. Of them, 19% had been partly executed. Only 6% agreements had been not implemented. Thus, even to take the 64% at the bottom line of the success, the potential of the community mediation to 'develop a culture of conflict resolution at the community level' cannot be underestimated. Moreover, the similar analysis of TAF concerning 'level of satisfaction' records 79 percent. One of various reasons driving to satisfaction is the 'disposal of case' in one strike. A number of cases settled did take not more than 'one sitting'. This factor is important in many respects:

Firstly, it relieves the disputants from prolonged stress or tension,

Secondly, it saves their time, which is so crucial for people to earn livelihood through every day's work,

Thirdly, it did not involve humiliation such as payment of penalty, fines etc.

Types of Disputes and Access to Justice: Analysis of disputes settled presents that community mediation program has been particularly effective in issues relating to *kutpit* (physical assaults), land issues, such as encroachment of boundary, possession, etc, *sarsapati* (small scale money lending and transactions), *Gharaysi samasya* (domestic disputes, such as maltreatment of spouse, animosity between brothers, parents and children and spouces), *galigalauz* (defamation), and others. If one minutely examines the types of cases dealt by courts, there is hardly difference in nature, except the difference in terms of values, seriousness and acuteness. In these types of cases, the social hierarchy and stereotyped conceptions seriously affect cases. Women dalit approaching courts for such issues will have hardly anything to achieve. Issues of defamation of dalit peoples, domestic violence against women, etc. are types of cases which hardly motivate judges to deal seriously. The access to justice in such cases is thus a serious problem in the formal system. But the community mediation has been proved a significant forum for such issues. Impacts in this regard are obvious:

[30] . Disputants while asked about the interest to 'get the dispute settled through local community mediation' instead of courts pointed out the following reasons: (1) it was easily accessible and there was no compulsion to accept the terms of reference, if they were found unjust, (2) the mediation was carried out by persons familiar to them, and they also had information of the disputes (3) it provided an opportunity to select a mediator from amongst those who are familiar (4) once the agreement is reached consensually, the scope of non-compliance is very limited as the social sanction attached to the agreement is stronger. These impressions are gathered from interview with disputants at Nawalparasi.

- Women and dalits facing violence, humiliation, intimidation and assaults have a forum to complain against problems and get social redress thereof. In the community mediation they get not only their voice heard, but it also provides for them a social platform of protection, as perpetrators have to face social sanction in repetition of their actions in contrary to the agreement.
- This marginalized community has found a forum which understands their language. In the courts they have to speak formal language, but in the community mediation they can tell their story, they can cry, they can shout, and most importantly they will decide what is good for them to agree on.

The access to this platform has thus broken the obstacles which prevented marginalized peoples to 'break their silence and unjust tolerance'.

Challenges Facing the Community Mediation Program:

It is said that a good program faces more challenges then others. The Community mediation program is not an exception. Some pressing challenges facing the program can be outlined as follows:

1. ***Confusion about the Legality of the Activities of Mediation***: The Local Self Governance Act provides for concept of mediation in a hybrid form. Local authorities thus understood it not in its true dimension. Largely, it was understood as a 'system where the decision can be imposed'. This impression was very much reflected by participants of the master training and subsequently by mediators. The suspicion that how would/could the mediation work beyond the scope of the legislation was pervasive. Obviously, in the initial days the confusion did cast suspicion on successful implementation of the program. Among others, the following issues or concerns seriously hindered in the ways to effective implementation of the program:

    - How to ensure the execution of the agreement in absence of a clear law in this regard was one of the most strong issue of debate in the 'meeting of steering committee', seminars and even during training activities.
    - While considering the nature of the community mediation the issue of execution was not a very important hindrance, however it was good to have some legal sanction in the agreement for ensuring effective execution. Thus, alternatives had to be searched about. The trouble to convince mediators and local authorities had thus been major challenges. It still looms large. The government has not still invoked the regulation to give implementation to the provisions of the Local Self Governance Act.

    In this situation, while the community mediation activities been effectively implemented with bright success, the legal framework in order to institutionalize it is still lacking. Most importantly, the Local Self Governance Act exist with is hybrid structure of the mediation program. If the concept gets enforced by the government without any change, it can largely affect the 'philosophy' of the community mediation practiced at present.

2. ***Lacking of Networking of Various Programs***: Besides the program under the umbrella of TAF, community mediation programs had been implemented under the umbrella of DFID, UNDP and others. Communication among actors and stakeholders of these various programs was seriously lacking. Obviously, implementation of various modalities of the community

mediation program not only was potential of duplication of activities, but they also were prone to 'generate unnecessary competition, confusions and envies among each other. This problem has partly been addressed through building communication between implementing organizations and donors, yet it still exists in this or that form.

3. ***Absence of Local Bodies***: The elected local bodies had been dissolved by the government. In absence of the local bodies, a great lapse or lake of coordinating agency had been felt. This problem still continues affecting the further smooth implementation of the program.
4. ***Frequency of Transfer of Government Officers***: The role of CDO, LDO and other officials in the government offices is crucial for successful implementation of the program. But their frequency of transfer often created the problem in coordination between the program and the government offices.

Many of these challenges still persist. However, the lacking of local elected bodies and prevailing situation of insecurity pose problems in smooth implementation of the program activities. The issue of insecurity can be managed applying security awareness and measures, but the absence of local bodies may hinder in the process of institutionalization of the program.

CONCLUSION:

The settlement of disputes through application of 'mediatory role of trusted person' in the local context has been a long tradition of the Nepalese society. However, the same has been destroyed by 'coercive application of the common law litigation' system after 1952. The over-burden of the present judiciary and immense backlog of the cases running for several years has been seriously tarnishing the image of the judiciary. The community mediation can be the most reliable and trusted solution to the problem. Hence, we need to rethink on the issue of justice.