

VIOLENCE AGAINST WOMEN

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1. GENERAL INTRODUCTION:

Nepal has an estimated population of 20 million of which 50.1% are female with about 39% of total literate population. The existing literacy rate of male and female population varies and thus are 54 and 25 percent respectively ². About 46% of the population lives in the Hills, 46% in the Terai and 8% in the Mountains. Approximately, 90% of the population dwells in rural area and are primarily dependent on subsistence agriculture. 70% of the total population lives in absolute poverty ³.

Nepal is a patriarchal society. Women and girls are manifestly subjected to discrimination and exploitation of various forms. The gender-based discrimination as such originates at home, and has been institutionalized as a culture. The law does not oblige the parents to provide good care, maintenance and education of the girl children. For instance, Clause 10 of the Chapter on Partition of Property in the *New Muluki Ain* (New Code of the Country) obliges the father to take good care and maintenance of son and wife only but not the same obligation to the daughters. Girl children are thus engaged in family labor from early childhood. A survey study conducted in 26 districts of Nepal discovered a higher rate of female child labor resulted out of discriminatory treatment within the family⁴ and thus are deprived of opportunity to education and development. This tendency has consequently been giving rise to discrimination of many kinds in further stages of life. The discrimination in education is evident from the Census Report of 1991, which shows that only 38.33% of girls, aged between 6-14 years, have access to education compared to 61.66% of the boys ⁵. Such discrimination has root cause on the defective value system of Nepalese society which is being carried on as a socio-cultural legacy. The same defective value system also provides the source for various other forms of violence against women and children.

2. VIOLENCE AGAINST WOMEN:

Generally, the violence against women is the result of unequal patriarchal power relations deeply rooted with social structure devised, reinforced and perpetuated by social-political institutions dominated by men and which thereby ensure that men, by virtue of their gender, have power and control over women and children⁵. The violence against women comprises all those acts defined as an assault against women's personhood, mental or physical integrity or freedom of movement.

2.1 Types of Violence against Women:

It is very hard to classify the types of violence against women. It is a widespread phenomenon throughout the world, and has a closer connection with the socio-cultural characteristics of a particular society and thus may differ in various societies. However, there are commonalties in terms of areas the violence occurs. The following table presents the main areas and kinds of violence against women :

² 1991 Census, Central Bureau of Statistics, Planing Commission, HMG/N)

³ Ibid.

⁴ Shyam Thapa, Devendra Chettri and Ram H. Aryal, Poverty, Literacy and Child Labor in Nepal, A District Level Analysis. Asia Pacific Population Journal, Vol. 11, No. 3. 1996.

⁵ HMG/N. Population Census 1991, Social Characteristics Table, Vol. 1. Part X. National Planing Commission Secretariat, Central Bureau of Statistics, Page, 82-83

⁵ Arju Rana-Deuba, Ph. D: Violence Against Women: Focus on Domestic Violence. Paper Presented in a Seminar organized by "Sathi"- An Organization Working Against Violence March 1997

Areas	Kinds of Violence
Domestic violence	Alcoholism related physical and mental torture, gender-based beating of wife and daughters or daughter-in-law, incest, forced or traditional prostitution, polygamy, dedication to god or goddesses, marital rape, sexual abuse, burning, maiming, murder of wife or daughter-in-law, intimidation, humiliating verbal abuse, dowry related physical and mental torture, emotional insult and economic deprivation i.e. denial of right to property or opportunity of earning or destruction of the property owned by women, family coercion to abide by certain forms of conduct or behavior, discrimination in treatment, i.e. less health care, inadequate foods, excessive workload, restriction on social relations, education and entrepreneurship.
Sexual exploitation	Concubinage, sexual slavery, prostitution, trafficking for prostitution, unwanted or forced pregnancy (for son), female feticide, child marriage, marriage with older person, coercion to use contraceptives by wife etc.
Incest	Social degeneration of women as assault of illegal sexual relations with kins, the cruel punishment for incest which generally happens because of enticement, threats or coercion of the male relatives.
Rape	The Physical and mental harm caused by rape, the resultant social humiliation, the torturous court trial, including the burden of proof.
Sexual harassment:	Chasing and teasing by males in the streets, educational institutions and workplaces, coercive exposure of the body in the places like hotels, restaurants, musical and dance groups etc.
Sex discrimination	Sex discrimination in opportunities, development, self-determination, employment and decision making.
Medical abuse	Exploitation of ignorance, unethical behavior to amuse oneself by intriguing in secret organs etc.
Abuse of women and girls with physical and mental disabilities	Less preferential treatment at family, verbal abuses, humiliation, deprivation of opportunities etc.
Culture-bound practices harmful to women, including ritual abuses	Tattooing the body, keeping in dark and secret rooms during first menstruation, isolation and placement in unhygienic places during post delivery period, restriction on widow to have social life, practice of worshipping the husband as a god etc.
Marital rape	Forced sexual relation with wife, unwanted pregnancy.
Pornography and abuse of women in media	Obscene advertisement and photography, exposure of secret organs, fashion show and vulgar publication about women.
Custodial abuse	
Female feticide	Unwanted pregnancy, denial of contraception, abortion, use of unhygienic and deadly means and skill of abortion etc.
Dowry related violence and murder	Bride burning, mutilation, exaction of the property from wife's family, blackmailing and number of physical and mental torture.

3. SITUATION OF VIOLENCE AGAINST WOMEN IN NEPAL (VAW):

No study is available to reflect on the exact situation of violence against women in Nepal yet. However, most of the above mentioned forms of violence do exist in the forms of institutions inherited as gender-biased cultural legacy. Certain forms of VAW such as beating and abuses of wife, daughters and daughter in-laws, polygamy, restriction on social life of females, child or early marriage of girls, trafficking of women and girls for prostitution, rape, incest, etc. can be taken as the most common forms in Nepal. The unequal status of women in matters of property, personality and contract has been defined as inherent because of their being female gender and weaknesses related thereto. The society has discriminated in such matters in order to maintain so-called equilibrium of the social relations which, in fact, is the most degraded sense of gender biased thinking and it is from which a series of excuses for male folk to inflict violence against women sprout and the female folk is subjected to tolerate therewith. Moreover, the gender biased cultural institutions have their reflections in laws and thus the whole legal system tainted by the gender discrimination.

An observation study of the records in police office and jails in Kathmandu was carried out in order to make an intellectual estimation of the nature and dimension of the incidents of violence against women. The following tables present the scenario of the problem:

Table 1

S. N.	Name of the Cases	Number of Cases initiated	Number of Conciliation	Total case
1.	Public Crime Cases which includes prostitution, assault	11	71	82
2.	Human Trafficking	9	24	33
3.	Children Lost	8	8	16
4.	Family Disputes		156	156
5.	Women Lost	6	9	15
6.	Rape	3	24	27
7.	Theft		17	17
8.	Cheating		18	18
9.	Bigamy	5	27	32

Record of Women Cell of Kathmandu District Police Office fiscal Year 2053/54 (1997)

Table 2

S. N.	CASE SUBJECT	1998
1.	HOMICIDE	7
2.	SUICIDE	8
3.	ABORTION	4
4.	RAPE	8
5.	PUBLIC CRIME which includes assault, obscenity and prostitution	180
6.	TRAFFICKING	23
7.	BIGAMY	8
TOTAL		238 Cases

Cases Initiated By Kathmandu District Police Office.

These are the total numbers of cases investigated and reported to the public attorney responsible for violence against women. The figure also includes cases registered and dealt by the Women Cell. It also shows that the major cases are directly dealt by general police even though a separate Women Cell has been established.

Table 3

S.N.	Cases	Registered in 1994/1995	Registered in 1995/96	Registered in 1996/97
1.	Traffickings	150	133	107
2.	Rapes	162	152	142
3.	Polygamies	173	155	96
4.	Abortions	83	76	68
5.	Child Marriages	11	7	5

Source: Central Women Cell, Police Head Quarter. (Recorded total cases of Nepal)

This chart shows nature of the major violence related cases in Nepal.

Table 4

S.No	Cases	Regd. No. of 1992/93	Regd. No. of 1993/94	Regd. No. of 1994/95	Regd. No. of 1995/96	Regd. No. of 1996/97
1.	Abortion	1	3	1	3	4
2.	Rape	3	3	2	3	2
3.	Trafficking	1	2	5	1	2
4.	Polygamy	7	6	6	10	4
Total						

Cases Initiated by Kaski District Police Office, 1997/98.

Table 5

	1993/94	1994/95	1995/96
Homicide (including infanticide as well)	2(infanticide)	8	3
Accident	3 out of 15	4 out of 28	3 3 cases of women out of 19 accidents
Suicide*1	6 out of eight	4 out of 11	
Public Crime*2		2 out of 11	2 out of 6 cases registered under p.c.1 was related to women
Bigamy	1	1	
abortion	1	1	
Rape			1

Cases Initiated by Solukhumbu District Police Office, 1997/9

As presented in the table, the trafficking for prostitution, prostitution, rape, abortion and polygamy constitute the major forms of violence against women in Nepal.

4. LEGAL FRAMEWORK RELATING TO VAW:

4.1. International Obligation: His Majesty's Government of Nepal is the signatory of Universal Declaration of Human Rights, 1948 and it has also ratified the following international conventions, which directly or indirectly prohibit discrimination against, and exploitation of, women and girl children:

International Instruments	Ratification or Accession Date
Slavery Convention	7 Jan, 1963 (a)
Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institution and Practices similar to Slavery.	7 Jan, 1963 (a)
Convention on the Prevention and the Punishment of Genocide	17 Jan, 1969 (a)
International Covenant on the Elimination of All Forms of Racial Discrimination	30 Jan, 1971 (a)
International Covenant on Economic, Social and Cultural Rights	14 May, 1991 (a)
International Covenant on Civil and Political Rights	14 May, 1991 (a)
Optional Protocol to the International Covenant on Civil and Political Rights	14 May, 1991 (a)
International Convention on the Suppression and Punishment of the Crime of Apartheid	12 July, 1977 (a)
Convention on the Elimination of All Forms of Discrimination Against Women	5 Feb, 1991 (r)
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	14 May, 1991 (r)
International Convention Against Apartheid in Sports	1 March, 1991 (r)
Convention on the Rights of the Child	14 Sept, 1991 (r)
Convention on the Political Rights of Women (11)	26 April, 1966 (a)
Convention on the Suppression of Immoral trafficking and Protocol	10 Ashad, 052

By ratifying these international instruments, Nepal has categorically accepted the international commitment to eliminate the violence against women by enacting appropriate laws and effective implementation thereof.

4.1.1 Ratification of the Treaties and Conventions: The Article 126(1) of the Constitution of the Kingdom of Nepal, 1990, requires the ratification or accession to or acceptance or approval of the treaties or agreements to which Nepal is a party is done with simple majority of the House of Representatives and is governed by the Treaty Act, 1990.

4.1.2 Validity of the International Treaty and Convention: The notice about ratification, accession to, acceptance or approval of the treaties or agreements must be given to the concerned party or authority⁶ and are subjects to a retrospective effect thereby making it enforceable *ab initio*⁷. The Treaty Act⁸ provides that treaties or agreements are enforceable as the law of Nepal. The Treaty Act further provides that the provisions inconsistent with the treaties or agreements as such becomes null and void.

The enforcement of the Treaty Act, however, is weaker because there are still many laws manifestly discriminatory to women. The Government of Nepal has not been honest to amend the inconsistent laws or enact the new with a view to enforcing the various treaty provisions. For example, the Section 3 of the Citizenship Act, 1964(2020) deprives a child, born out of wedlock of a Nepalese wife and alien husband, of obtaining the Nepales citizenship. The section states that no child can have Nepalese

⁶. Treaty Act, Section 4(3)

His Majesty's Government of Nepal shall give, as required by the treaty or agreement, a notice of ratification of, accession to, or acceptance of, or approval of the treaty or agreement to the concerned party or authority while such treaty or agreement is ratified, acceded or accepted or approved by the House of Representatives.

⁷. Treaty Act, Section 8

Except otherwise provided by the treaty or agreement, the treaty or agreement may be enforced retrospectively.

⁸. Treaty Act, Section 9(1)

Anything contained in any law of Nepal shall be void if it is inconsistent to any provision of a treaty or agreement in which Nepal is a party through ratification of, accession to, or acceptance of or approval of the parliament, and such provision of the treaty or agreement shall be enforced as a law of Nepal.

nationality whose father is not a Nepalese national. This clearly discriminates against women and thus is inconsistent with the Convention on the Elimination of All Forms of Discrimination Against Women and International Convention on Civil and Political Rights. The country report submitted to the Beijing Conference has made a commitment to identify and amend laws inconsistent to the Constitution. The report stated that the government would prepare and present a bill providing equal ancestral property rights to women to the legislature within one year. The legal provisions concerning violence against women, including those related to trafficking, would be reviewed and the enforcing agencies be strengthened. The commitments were also made to fashion laws and provide to victims of violence the rehabilitation on a broader scale. However, no improvement has so far seen in these respects. The Equal Property Rights Bill is yet to enact, and no bill relating to VAW is introduced in the parliament.

5. NATIONAL LEGAL FRAMEWORK:

5.1 Historical Perspective: Nepal was ruled, over the centuries, by a series of predominant Hindu customary rules having widely divergent applications based on vague interpretations and localized meaning of the custom. These customary rules were not adequately precise to provide as a guide to popular practicability thus leaving an only option to resort to religious rules unfolded from ancient Hindu scriptures. However, since such scriptures were also vulnerable to contradictory interpretations dependent on the given facts, situation and the status of persons involved, the lack of uniformity in regulating the citizens' conduct became a serious problem for the Government ⁹.

5.1.1. Promulgation of Muluki Ain (Code of the Country): The *Muluki Ain (Code of the Country)* promulgated in 1853 was a compilation of customary rules prevailing in Nepal over the centuries. As the Nepalese society was predominantly governed by Hinduism, the provisions of the *Muluki Ain* largely comprised the Hindu religious dogmas and thus regarded as an offshoot of the Hindu Legal system prevalent in Indian sub-continent. The Hindu Legal system, in course of its evolution, developed two different schools, namely the Mitakshara and Dayabhaga. The latter was evolved in Bengal Province of India, and claimed to have represented the new thoughts of Hindu legal system evolved out of progressive changes in the society.

The Mitakshara School prevailed mostly in northern and southern India which was again sub-divided into various schools. Of them, the Banaras School was dominant in Uttar Pradesh and Bihar provinces of India and Nepal., Mitakshara School -the oldest pedigree of Hindu law- is considered relatively to be conservative to gender issues. According to its original thought, women and children were considered to be the property of the father, and thus had no rights or claim to the paternal property. The Dayabhaga school refused to accept that idea but urged that heirs -the wife or wives and sons- had independent personality in matters of property, and entitled to have a share in it ¹⁰. Yet, the Dayabhaga School failed to recognize the equal status of daughter, and obviously denied defining daughters as heirs or co-parceners to the property of natal family.

The *Muluki Ain* followed the Mitakshara School by avoiding the thought as to the women and children deserved no claim to the family property. The wife or wives and sons has been defined as heirs to and co-parceners of the father. The clause 1 of the Section on Partition of Property between Father and Sons of the *Muluki Ain* stated that the father is not bound to effect partition of the property among his sons and himself during his lifetime. However, if he has more sons born out of more than one wives and thus fails in his responsibility of providing equal treatment and proper maintenance, he

⁹. Preamble to Muluki Ain, 1853) Hence, an unified code of law, known as the Code of the Country (*Muluki Ain*) was adopted, during the reign of Rana Prime Minister Junga Bahadur, in 1853.

¹⁰. Priya Nath Sen. General Principles of Hindu Jurisprudence (Concept of Patria Potestas in Chapter in Parental Relationship), Allahabad Law Agency, 1984. page 122-266.

is obliged to make equal division and give respective shares of his property to all sons¹¹. Similarly, clause 1 of the section on Husband and Wife further provides that the husband executing the partition of the property in favor of wife or wives, against whom he commits physical assaults, or fails to provide to them proper maintenance. These both sections, however, do not even make a mention about the daughters in terms of maintenance as well as right to parental property. From these, one can infer that the daughters are deliberately excluded from becoming heirs or co-parceners.

The *Muluki Ain* introduced a unified system of law even though the population was divided into more than a dozen ethnic and tribal communities. The unification of the legal and administrative systems was not a result achieved overnight. The creation, development and implementation of a uniformed code of law and centralized administrative system took many years to be completed. Earlier, the governments under the Shah dynasty and later the Rana oligarchy focused on the extension of the political control and development of revenue through the co-option of regional political elite, the manipulation of the land tenure systems, the introduction of novel tax system and social institutions based on the caste system and concept of inheritance and acquisition of ownership based on the kinship system¹². In defense of the order thus created, the Rana regime, like its predecessors, promulgated Hinduism as a guiding societal base.

Having incorporated the dogmas of Hinduism, the *Muluki Ain*, apparently made attempts to define legal relations of individuals in terms of *Kul* (Kin Group), *Santan* (Family Lineage), *Jat* (Caste) and *Linga* (Sex) as societal base. Status of individual was, therefore, defined in terms of his/her gender and caste. For instance, Clause 2 of the Section on Partition of the *Muluki Ain* permits a father to discriminate against his son(s) born out of wife of lower caste while distributing the shares of the property. For example, if a Brahmin person married a Sudra (the lowest cast in order) woman, the son born out of their wedlock would be entitled only one-fourth part of the share that the son born out of wedlock between a *Brahmin* (highest caste in societal order) wife and husband¹³. Thus the provision had clearly discriminated the right of a person to ancestral property on the basis of caste of his mother. Further, Clause 4 of the section deprived a son born out of a prostitute of the right to ancestral property.

5.1.2 Promulgation of New Muluki Ain: In 1949, a popular movement overthrew the Rana regime. Subsequently, the people vehemently opposed the customs that prevailed for centuries. In the new perspective, the *Muluki Ain* was replaced by a revised code *New Muluki Ain* in 1964. The new code introduced a secular system, yet it perpetuated the gender segregation by denying again the daughter's equal right to the ancestral property and proper maintenance from their fathers¹⁴.

The *New Muluki Ain* is still in effect as a general law in Nepal. The Clause 4 of the Section on Preliminary Arrangement provides that this law should prevail as a law if no special law exists to govern the matter. Since no special law has so far been enacted by the parliament, the *New Muluki Ain* is in force as a sole law in matters of inheritance, partition of the property between co-parceners, individual transactions, acquisition and termination of the ownership and possession, divorce, marital relations etc. Since, the *New Muluki Ain* has not done away with the concept of gender segregation as a societal base, the discrimination against women continues in many matters.

¹¹. For detail also see Clause No. 2 & 3 of the Section on the Partition of the Property Between Father and Sons, Main Text *Muluki Ain*, 1853. HMG/ Ministry of Law and Justice, 1966 Edition.

¹². The Section on Inheritance of *Muluki Ain*, 1953, embodies the concept of Kinship. Obviously, the Cause 1 of the Section on Inheritance excludes daughter from right to inherit the property of deceased father. In absence of the written will of the father, the property of the deceased person goes to male cousins instead of daughter. For detail see, Section on Inheritance, *Muluki Ain*, 1953, HMG/Law and justice Ministry, 1966 Edition.

¹³. For detail see, *Muluki Ain*, 1853, Section Partition, Clause No. 3, 4,5, 6, 8, 10 and 11. HMG/ Law and Justice Ministry, 1966 Edition.

¹⁴. Clause 1 & 16 of the Section on Partition, New Muluki Ain, 1964. The Clause 1 entitles only the sons and the wife to have share over the ancestral property. Clause 16 provides the daughter with the right to have share over the property with conditions that she should remain unmarried and must be above 35 years of age. If the marriage takes place after she gets the share, the property returns to her coparceners.

The *New Muluki Ain* is divided into sections dealing with various matters. Some of the sections related to the scope of present study are enumerated as follows:

S.No.	Sections	Related Matters
1.	Court Management	The section on Court Management is concerned with procedure relating to general investigation, prosecution and adjudication of the crimes. The section is also concerned with procedure relating to filing of the case, examination of the witness and evidences and adjudication of the civil matters. Also, the section governs matters like jurisdiction of the courts, execution of the judgement and appeal against the judgement. Further, questions relating to limitation and <i>locus standi</i> of the claim are governed by this section. The definition of bilabial and non-bilabial offences and the procedure thereof is another important aspect of the section.
2	Punishment	Procedures relating to execution of the Punishment is a matter dealt with under this section.
3	Physical Assault	Crimes and punishment relating to physical assault and injuries are dealt with under this section. This section has classified the crimes of physical assaults based on the seriousness of the injury suffered. Under this section, one can directly approach the concerned District Court for remedy for injuries suffered by him/her. No investigation and prosecution is carried out by state in crimes under this section. Obviously, no provisions of State Cases Act, 1993, are applicable in matters falling in this section.
4	Murder	The crime of and punishment relating to murder, homicide, manslaughter, accidental homicide, provocation homicide are the matters of concerns of this section. Crimes and punishment relating conspiracy, attempt, abatement, preparation etc. related to murder are also dealt with by this section. Crimes under this section are investigated and prosecuted by the state according to the State Cases Act, 1993.
5	Rape	This section relates to crimes and punishment of rape of a girl and women. The crimes under this section are investigated and prosecuted as per the provisions of State Cases Act, 1993. For the purpose of the punishment, the section classifies the victims based on their age. Lower the age stiffer the punishment. Under the section, sexual relation with a girl under the age of 16 irrespective of her consent is defined as crime of rape.

S.No.	Sections	Related Matters
6	Incest	<p>Sexual relations between relatives of seven generations have been defined as incest under this section. Such crimes section are investigated and prosecuted according to the provisions of State Cases Act, 1993.</p> <p>The punishment for incest in distant relation is lenient compared to the crime between closer relatives. Incest with mother and sisters has been taken as heinous crimes. Incest is a crime to be prosecuted under the State Cases Act, 1993.</p>
7	Marriage	<p>The section of Marriage defines the conditions of a valid marriage, the marriageable age, criteria for consummation of a valid marriage, prohibited conditions of marriage and punishment for illegal or prohibited marriage. Child marriage, polygamy, unmatched marriage etc. are defined as crimes to be prosecuted by state according to the provisions of State Cases Act, 1993.</p> <p>Polygamy is permitted in case the wife is incapable of begetting children even after 10 years of marriage. This privilege is given only to the husband. Apparently, the wife has no privilege of marrying any other man on the ground that the husband is incapable of begetting a child.</p>
8	Husband and Wife	<p>Section on Husband and wife deals with conjugal relations of married couples. The matters such as of divorce, custody of child, alimony and matrimonial relations are the subject of the section. This section lays down the conditions and procedure for divorce; describes privileges of parents for custody of child; and states competent jurisdiction for settlement of disputes and has provided for various kinds of jurisdictions. For instance, a wife seeking to divorce can have access straight to the district court, whereas a husband has to lodge petition in the concerned village development committee or municipality. The jurisdiction in matters of matrimonial and parental relation is given to the district court. The cases under this section are tried according to the procedure laid down by the Summary Trial Procedure Act, 1972. Under this Act, cases must be decided within three months' timeframe.</p> <p>But if a wife under the same Section involves herself in sexual intercourse with person other than her married husband, no formal process needs to be taken for divorce. Yet, the same is not true in case of husband if he involves himself in adultery.</p>

S.No.	Sections	Related Matters
9	Trafficking of Human Being	This section lost significance following the enactment of a separate statute in 1986 by parliament concerning matters of trafficking. Previously, the section dealt with crimes relating to trafficking of human being, especially trafficking of women and girls for prostitution. The section still exists but has limited scope of application. The Human Trafficking Control Act 1986 is a specific law in matters of trafficking.
10	Partition of Ancestral Property	<p>This section represents most significant aspect of the family and property of Nepal and defines the characteristics of family property; qualifications for sharing it; disposal by and partition thereof between the coparceners; and many other matters relating thereto. The section also deals with the competent jurisdiction for settling disputes and matters in respect of limitation and locus standi. The jurisdiction relating to this matters is given to the district court, and the section on Court Management of <i>New Muluki Ain</i> governs the court's procedure. However, the court procedure on case relating to maintenance of the wife is governed by the Summary Trial Procedure Act, 1972. According to this, the decree or award must be given in such a case within a timeframe of three months.</p> <p>This section does not include daughters as coparceners with father, mother and brothers. A daughter must remain unmarried till 35 years of age to qualify herself as a coparcener.</p>
12	Women's Exclusive Property	The Nepalese law has defined certain kinds of properties to be exclusive of women. Such properties are called " <i>Daijo and Pewa</i> ". Daijo and Pewa means gifts given by parental and in-laws relatives respectively and the Section provides for protection of Daijo and Pewa and governs matters relating to disputes thereon .
13	Succession	Under the existing Nepalese laws, there are two modes of ownership transfer of the property to coparceners. Firstly, to co-parceners by virtue of his/her right to the property. This mode is called "Angsa" (Partition). Secondly, if the process of transfer does not take place in the lifetime of the owner (parents), the same is transferred through process of "Aputali"(Succession). The Section on Partition governs the process of ownership transfer during the lifetime of the owner, whereas the section on Succession governs the process of transfer subsequently after death of owner. Further, Section on Succession has provided for a list of the successors, the procedure of succeeding, and the jurisdiction of settling the disputes and so on. This section has not given any priority of succession to daughters.

The Clause 4 of the Section on Preliminary Arrangement in *New Muluki Ain* precedes to application of the specific statutes in related matters, if such statutes do exist. Obviously, the provisions of *New Muluki Ain* are applicable merely as the common law, and as such cannot overrule the application of a specific statute. However, no specific statutes are available in matters of family property, succession, marriage and matrimonial relations, adoption, incest, and crimes relating to sex. Moreover, no specific statute is available in matters of physical assaults, injuries and other forms of bodily harms. The Public Offence Act is often invoked to address the problem of crimes relating to physical assaults, yet this cannot be applied to cover the incidents strictly related to violence between the family members. Thus, the common law (*provisions of New Muluki Ain*) is the one that can be applied in matters relating to violence against women.

However, the trend of having specific statutes to regulate specific matters is becoming increasingly spectacular since recent past. The Human Trafficking Control Act, 1986, Children' Act, 1993, State Cases Act, 1993, Public Offence Act, 1971, Labor Act, 1993, Legal Aid Act, 1997, etc. are the most important developments in respect of protecting women from violence. HMG's initiation to enacting Domestic Violence Act and Family Court Act is also taken a positive advancement in this respect. However, the delay and sluggishness on the part of the government to enact these statutes have become major hindrances to the positive development. The Ministry of Law and Justice is reportedly considering the bills for last many months. The Ministry of Women and Social Welfare, which is a line ministry to gear up the process, is lying idle as no efforts of lobbying are carried out.

5.1.3 Constitutional Development: In 1949, Nepal achieved democracy through a popular movement and recognized in principle the concepts of equality, freedom and rule of law. The Interim Constitution was promulgated in 1951. Although, the Article 17 of the interim Constitution provided for certain rights to freedom of speech, expression and movement, to assemble peacefully, to form unions and right to acquire, hold and dispose property, it did not mention anything about the gender equality.

The first constitution--Constitution of the Kingdom of Nepal-- was promulgated in 1959. Article 4 of the Constitution guaranteed to all citizens the rights to equal protection of the law irrespective of their sex, race and caste, or tribe. Nonetheless, the gender discriminatory provisions of the *Muluki Ain* continued to exist, as the Supreme Court had given no power to declare such inconsistent laws as void. Apparently, the concept of gender equality had no meaning in practice. In 1961, democratic system was banned by scrapping the constitution by the King Mahendra. A party-less Panchayat System (so-called indigenous democracy) replaced multi-party system. In 1963, a new Constitution was promulgated to institutionalize the political system thus established. Article 10 of the constitution, like previously, guaranteed the rights to equal protection of law for all citizens irrespective of their sex, race, caste or tribe. Subsequently, a *New Muluki Ain* was adopted with a view to introducing a progressive system based on social justice, yet it also failed to ban the prevailing gender discrimination over the centuries. The *New Muluki Ain* like the previous one continued to define the legal position of women in terms of their sex and marital status and denied the daughter's right to have share in the paternal property. Moreover, similar to the past code, a widow was required to remain sexually chaste to inherit the deceased husband' A mother was required to obtain permission of the son to dispose off her property³² And a wife was to surrender the right to the property of the husband if she failed to remain sexually faithful to him¹⁵.

The Constitution of Nepal, 1963, was replaced by the Constitution of the Kingdom of Nepal, following a people movement in 1990. The fundamental rights, including sex equality, of citizens have been incorporated as one of the basic features of the new Constitution. Article 11(2) stipulates that no citizen can be subjected to discrimination on the ground of religion, race, sex, caste, tribe or ideological conviction or any of these in matters of general application of laws. Further, the Article 11(3) prohibits

¹⁵. Section on Partition, New Muluki Ain, 1964.
Clause No. 5. "The wife of the sons shall obtain the share of the property of their husband, if he dies before the partition among the co-parceners takes place. The wife having not remained chaste to the deceased husband shall have no right to obtain the share of the property".

the state from discriminating among citizens on the same grounds. However, the proviso of Article 11(3) enables the state to enact special law in order to protect and advance the interest of women, children, the aged, or the physically or mentally incapacitated, or economically, socially or educationally backward classes. Article 11(5) provides for safeguard against discrimination with regards to remuneration of men and women for the same work.

The basic principle of modern jurisprudence such as an effective and independent judiciary can protect and enforce the fundamental rights of citizens has also been taken care by the constitution as the Supreme Court is empowered to entertain writs and make directives to protect such rights. Article 1 provides that the constitution is the fundamental law of Nepal, and any law contravening the provisions of the constitution becomes *ipso facto* null and void. In such case, Article 88 (1) confers the Supreme Court with the jurisdiction to declare a law as void, either ab inito or from the date of its decision. The Supreme Court has frequently exercised the jurisdiction as such on dispute relating to the question of right to entry into temples or religious places by the people socially treated as untouchables such as Kami (Blacksmith). A writ petition was lodged by a member of the National Council (the Upper House of the Parliament) in the Supreme Court asking for declaration of the "Explanation Part" of the Clause 11 (a) of the Section on Miscellaneous Arrangement as provided in New Muluki Ain null and void. The restriction was claimed as inconsistent to Article 11(3) of the Constitution of the Kingdom of Nepal¹⁶. The writ was issued by the Supreme Court declared the said explanation void for its being inconsistent with Article 11(3) of the constitution. Similarly, the Supreme Court reviewed the consistency of Clauses 1 & 16 of the Section on Partition of the New Muluki Ain that prohibited the daughters to share or inherit the natal ancestral property. The court in this case issued an instructional order to His Majesty's Government to introduce a bill in the parliament within one year from the date the acknowledgment of the verdict.

Although, gender discrimination in any manifestations or forms is prohibited by the constitution, a number of discriminating laws against women still prevail. For instance, no child can obtain citizenship of Nepal by virtue of descent if his/her father being an alien. The mother's nationality thus cannot be a valid ground for a child to acquire Nepalese nationality. Generally, this is a defect placed on the part of the child by an unreasonable on women. Similarly, a husband is legally allowed to consummate a second marriage provided the wife has sexual disease, or becomes insane or blind or paralyzed, or becomes unable to beget a child within ten years of marriage. The same privilege, however, has not given to a wife. Although the existing law prohibits polygamy, it does not invalidate the marriage once consummated. For one committing the crime has nothing more to undergo than an imprisonment for a term of two months without having the marriage thus consummated invalidated¹⁷. A wife is, however, not permitted to consummate second marriage without terminating the first one. If she maintains a sexual relation with a man other than the husband, it provides an *ipso-facto* ground for divorce. In fact, these discrimination are sprouted out of the defective value system nurtured for centuries, and the discrimination as such provides rich source for incidents of violence against women.

¹⁶. Mr. Man Bahadur Bishwokaram vs. His Majesty's Government of Nepal. Nepal Kanoon Patrika (Nepal Supreme Court Reporter) 2049 Vol. 12 Page 1010

¹⁷ Section on Marriage, New Muluki Ain, 1964.

Clause No. 9.

No man, except satisfying the conditions as mentioned below, shall consummate second marriage till the first wife is living or not divorced:

- The wife has infected with incurable sexual transferable diseases.
- The wife has become insane incurably.
- The wife becomes unable to procreate children even after ten years of marriage.
- The wife has got paralyzed rendering herself incapacitated for movement.
- The wife has become blind.
- The wife is separated legally receiving her share of the property.

6. OVERVIEW OF THE CRIMINAL JUSTICE SYSTEM:

Criminal justice system is an integrated three-pronged process that begins with investigation, proceeds with prosecution and ends with adjudication. These three components are integrally related, interdependent and complementary. Obviously, the more effective the investigation, the greater the chance of success of the prosecution. However, the prevailing system of investigation presents a sad and alarming picture. The investigation process is long, traditional, conservative, unscientific in approach and marred by series of defects as such, the prosecution suffers from several weaknesses and eventually the adjudication becomes incredible.

6.1 Investigation Procedure:

6.1.1 First Information, Arrest and Collection of Evidences: The Article 14¹⁸ (1) of the Constitution guarantees that no one can be subjected to punishment for an act that is not punishable whereas Article 14(2), the right against double jeopardy is guaranteed and the Article 14(3) guarantees the right to silence, and thus no person accused of any offense can be forced to be witness against himself. Similarly, the right against any form of torture is guaranteed under Article 14(4) and the right against detention without valid cause and ground is also guaranteed. Finally, the Article 14(5) guarantees the right to be defended by a legal practitioner of choice.

In Nepal, the responsibility of investigating the crime lies solely on department of police. Generally, the process as such begins with the first information report lodged in the police office. Section 3(1) of the State Cases Act, 1993, obliges a person having knowledge about the crime to report the same to the police authority sooner as possible¹⁹ and Section 3(3), in turn, obliges the concerned police officer to record such the information properly²⁰. No police officer can refuse recording the information thus given. Complaint on refusal on the part of the police authority can be lodged in office of the Chief District Officer or the higher police authority. To begin with the investigation, the investigating police officer must submit a preliminary report of the crime to the government advocate comprising necessary information about crime and the suspect²¹. The Government advocate, upon receiving such report, may issue instructions to the investigating officer in relation to the procedures to be adopted.

^{18.} Article 14

- (1) "No Person shall be punished for an act which was not punishable by law when the act was committed, nor shall any person be subjected to a punishment greater than that prescribed by the law in force at the time of the commission of the offence".
- (2) "No person shall be prosecuted or punished for the same offence in a court of law more than once".
- (3) "No person accused of any offence shall be compelled to be a witness against himself".
- (4) "No person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman, or degrading treatment. Any person so treated shall be compensated in a manner as determined by law".
- (5) "No person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds for such arrest, nor shall be denied the right to consult and be defended by a legal practitioner of his choice".
- (6) " Every person, who is arrested and detained in custody, shall be produced before a judicial authority within a period of twenty-four hours after such arrest, excluding the time necessary for the journey from the place of arrest to such authority. No such person shall be detained in custody beyond the said period except on the order of such authority".
- (7) " Nothing in clauses (5) and (6) shall apply to a citizen of a enemy state, and nothing in clause (6) shall apply to any person who is arrested or detained under any law providing for preventive detention".

^{19.} Section 3 (1). "Any person having knowledge of the crime mentioned in Annex 1 of the Act has taken place or is taking place or is likely to take place shall give information in written or oral form to the nearest police station as soon as possible. Such information must state all those evidences procured by him/her or those known or seen by him/her."

^{20.} Section 3 (3). "The concerned police staff must record the statement of the person giving information of the crime. Such information must state all those facts provided by such person, as required by sub-section (2). Such statement must be read out to such person and get him/her signed it".

^{21.} Section 6:

As required by the Section 7 of the State Cases Act, a police of officer rank must take responsibility of conducting investigation and is obliged to collect associated evidences as soon as possible. On completion of the investigation process, a comprehensive report comprising details of the crime, including information about crime scene, suspects and other important facts discovered in and around the crime-spot, must be prepared and submit to the concerned government advocate. During investigation the investigating officer is empowered to take photographs of the fingerprints and footprints or anything else related to the crime. The evidences can be examined forensically and biologically, if necessary. The report of the forensic and serological tests are accepted as good evidences by the courts of law upon duly testified in the court.

The investigating police officer has power to conduct search of the places and buildings connected to crime and body of the person suspected; record the statement of the suspect and deposition of the witnesses;²² arrest the suspect and accomplices; and detain the suspect till investigation is completed²³. Ordinarily, the investigation must be completed within 25 days of the arrest of suspect. The suspect must be produced before the judicial authority within 24 hours of the arrest²⁴. The judicial remand must be received to place the suspect in the police custody beyond 24 hours²⁵. On completion of the investigation, the relevant documents, including exhibits, must be submitted to the government advocate responsible to frame a criminal charge against the suspect. The government advocates initiates the process by examining and scrutinizing the credibility of the evidences submitted to him/her. If the evidences are not found reasonable or substantive to establish the allegation, he/she can issue an order to release the suspect from detention immediately. The case is then dropped out on the ground of inadequacy of the proofs to prosecute the suspect.

6.1.2 Forensic and Medical Investigation: The investigating officer may forward the materials viz. blood samples, semen or any part of the body to a government medical practitioner or to a laboratory for scientific examination, provided that he has sufficient belief that the findings could assist in the collection of evidence necessary to indict the accused. Presence of a female medical practitioner for the examination of a woman is prescribed by the State Cases Act 1993. Provided, such female practitioner is not available then any other women under the direction of a male doctor should conduct it. Similarly, if an investigating officer deems it appropriate to acquire an opinion from an expert regarding any fact in relation to a crime, may do so.

In Nepal, scientific aid in criminal investigation is largely centered in Royal Nepal Science and Technology (RONAST), but the service as such outside the Kathmandu is very nominal. In the event the court deems it appropriate to acquire the opinion of experts with regards to foreign law, science, arts, finger prints or thumb impression, it may do so. Section 26 of the Evidence Act, 1975, stipulates for the examination of any signature in dispute and the court may direct for such examination and keep them as evidence. Similarly, Clause 2 of the Section on Homicide in **New Muluki Ain** and State Cases

(1) " Any investigating police officer, having responsibility to investigate the crime under section 7 of the Act, shall present a preliminary report about the matters to be investigated to the concerned office of the government advocate before the investigation process is initiated".

(2) " Upon receipt of the preliminary report of the investigating police officer, the concerned government advocate may give necessary instruction for investigation of the crime".

²². Section 9:

(1) " The statement of the concerned accused person shall be recorded by the police officer involved in investigation in presence of the government advocate".

²³. Section 15:

(1) "Except otherwise provided by this section, no person shall be detained in custody exceeding 24 hours. The journey period however shall not be included herewith".

²⁴. Section 15(1):

"Except otherwise provided for in this section, no one shall be detained more than 24 hours in custody for investigation of the crime"

²⁵. Section 15(2): State Cases Act.

" Any one detained for investigation of the crime included in the Annex 1 of this Act, shall be presented before the court within 24 hours of arrest if he has to be investigated being put into police custody. While asking for the remand to keep the person in custody, the reason must be given to the court, which must include allegation, the basis thereof and the statement of the accused, if such is recorded already"

Act 1993 prescribe for the examination of the corpse and postmortem in cases of murder, homicide and suicide. The doctor performing the postmortem is required to describe specifically the parts in a prescribed format and present his opinion as to the cause of death. Because whilst, the nature of the injuries is wholly the concern of the medical experts, information as to these will often provide valuable indications and other points of possible significance. In *Milkiram Gurung v. The State* the Supreme Court observed "that where other evidences do not corroborate the opinion presumed by the doctor, it is the duty of the judge to look into all the facts before delivering any justice." Similarly, in *The State v. Bindeswore Raya and others*, the Supreme Court observed " that the opinion of the medical practitioner should not be final but should be evaluated with respect to other evidences available." It has also been recommended that where the report of the doctor is doubtful then provision should be made to acquire opinions from different doctors. Furthermore, it has also been recommended that forensic and medico-legal fields should be defined by law, autopsy report should be sent to the police within 72 hours whereas, forensic and medical reports in serious and urgent cases should be dispatched within 24 hours.

6.1.3 Witness Deposition: The investigating officer during the investigation can call upon witnesses, experts or the aggrieved party or the person who has witnessed a crime and a deposition to that effect is derived from them. Provided, such persons are not subjected to cross examination by the accused party, then such statements are not admissible as evidence in courts as per to Section 18 of the Evidence Act, 1975. In order to facilitate this provision, the police are authorized to produce such witness through the office of the public prosecutor on court's demands. But it is a common grievance that the public prosecutors generally fail in their duty to produce such witnesses. Owing to the lack of fund, incapability to find witness for their migration to different places renders the prosecution ineffectual. The police do not feel any compulsion to bring forward such witnesses for testifying in good number of cases. Although, the courts invoke Clause 115 of the Section on Court Management in *New Muluki Ain*, failure to produce witness renders the case to be a failure.

6.2 PROSECUTION

6. 2.1 Framing of Charge-sheet: Charge sheets are accusation of an alleged offence with specific charges submitted to a competent court or notice given to an individual by the concerned office. It is also termed as an accusation of a crime preceding formal trial. The prosecutor, the government advocates, after having compiled all the documents and evidence against the accused frame a charge sheet by which punishment is sought for the accused. The charge sheet submitted by the prosecutor is accepted *in toto* and is never scrutinized by the court. No matter how weak the case may be, it is but the job of the prosecutor to throw the case at the discretion of the presiding judge and no matter how untenable, unjustifiable or preposterous the charge sheet may be, it is readily accepted by the courts, since the courts are devoid of any rights or any legal provision to check such imbalances since the judiciary is devoid of an inquisitorial system of criminal proceedings.

6.2.2 Provision Relating to Filing of Charge- sheet: Sub-section (2) of Section 17 of the State Cases Act 1993 provides for filing of a Charge sheet, whereby the prosecutor upon perusal thereof deems it appropriate to press charges, shall submit a charge sheet in a prescribed manner along with the evidences or any articles relevant to the case filed to a competent court within a prescribed time frame. The following must be observed while filing a charge sheet.

- Name and residential address of the accused.
- Notice regarding the commission of the crime.
- Description of the crime.
- Allegations made and evidence supporting such allegations.
- Relevant laws.
- Quantum of punishment to be levied upon the accused.
- Amount of compensation (if any) to be given to the aggrieved party.

If there is no reasonable ground to justify the submission of charge sheet, the case file along with the evidences shall be returned to the police in order to keep in custody the accused for a prescribed period of time. In fact, this was an additional feature enshrined in the State Cases Act 1993. This Act did away with the inquisitorial system and made the Court to act as an umpire in the criminal cases filed by the public prosecutor.

6.2.3 Production of Accused: Section 18 (4) of the State Cases Act 1993, underlines that upon completion of the investigation and with the formation of an opinion that a case can be made out, the concerned prosecutor must submit the charge sheet along with the accused including all material evidences to the concerned court. On the day of the submission of the charge sheet, if the accused is still at large, a warrant may be issued by the court in the form prescribed under Clause 98 of Section on Court Management in *New Muluki Ain*. The court may issue a warrant against the accused in the following cases²⁶:

- Offences against the Crown or the Royal Family.
- Offences against the State, where capital punishment or life imprisonment is sought for.
- Homicide.
- Dacoity.
- Cow slaughter.
- Counterfeit of local and foreign currency, its use or attempt.
- Cases relating to rape.
- Cases relating to Trafficking of Human Beings.
- Cases relating to Narcotics and Drugs.
- Cases relating to defalcation of money or goods by a public servant.
- Cases relating to arson to government property.

6.3 Enforcement Situation of the State Cases Act, 1993:

State Cases Act 1993 is one of the most significant legislative instruments for the modernization of the criminal justice system in Nepal. This Act has given tremendous independent authorities to the police as an investigating and government advocates as prosecuting agency. The Act envisages a criminal justice system that can guarantee a system where people are not subjected to injustice. However, the attainment of the goal depends on effective and efficient enforcement of the Act.

The Nepalese society is passing through a transitional phase marked by rapid changes in values and social relations. The industrialization, urbanization and advent of cross-cultural variations have caused the society to adopt new values having both positive and negative impacts. The new values on the one hand are much more progressive to women, they are responsible to increasing numbers of family breakdown and violence against women on the other. For instance, the child prostitution and rape have become more acute than in the past in cities like Kathmandu, Biratnager, Pokhara, and Birgunj. The trafficking in girls and women for prostitution has increased rapidly in the recent years. The murder of wives for dowry and other reasons is also increased.

In such a perspective, the effective and efficient investigation and prosecution of the crimes may help the society a sense of security. However, the enforcement situation of the State Cases Act is not encouraging rather frustrating in matters of violence against women. Just for example, about 5000/7000 girls and women are being trafficked to India for prostitution every year, of which only very negligible number of cases have been investigated and prosecuted. The following table presents the general scenario of the enforcement situation of the State Cases Act:

²⁶. Clause 94 of the Section on Court Management, New Muluki Ain.

S.N	Items	Details
1.	TRAFFICKING OF WOMEN	23 New + 16 pending from last year = 39 running case.
2.	RAPE	7
3.	HOMICIDE	18 (out of 18 case in 4 case women were murdered)
4.	ATTEMPT TO MURDER	5 out of 5 case in one case Women attempted murder.
5.	PUBLIC CRIME WHICH INCLUDES	175
	ASSAULT	
	OBSCENITY	
	PROSTITUTION ²⁷	
9.	ATTEMPT TO RAPE	1
10.	POLYGAMY	8
11.	ABORTION	2

Financial Year 1997/1998: Cases Registered in Government Advocates Office Kathmandu. Source: Kathmandu District Government Advocates Office.

A study has revealed that the investigation and prosecution procedures are extremely slow and delayed. Maximum time limit available for investigation and prosecution is 25 days. Generally, since the investigation does not complete sooner than 25 days, the accused has to stay longer in the police custody.

6.4 Trial and Adjudication:

6.4.1 Statement of Accused: After the submission of the charge sheet framed against the accused, the court accepts it in its entirety. The accused present before the court is made to record his/her statement and is given the right to plea not guilty. The accused at the time of recording his/her statement is allowed to submit the names of witness who are later summoned by the court to record their deposition in favor of the accused.

6.4.2 Pre-Trial Procedure: Clause 118 of the Section on Court Management in *New Muluki Ain* provides for a pre-trial procedure. On the basis of the documents and evidences presented before the court, the prosecutor asks for the court for the application of Clause 118 (2), which allows the trial keeping the accused under judicial custody. The accused can ask for bail against the said charges. Clause 118 provides a wider range of judicial discretion to the judges of the trial courts. Pre-trial procedure is only confined with *prima facie* evidences attached in the case file. It has been widely prevalent that the application of Clause 118 (2) is always against the advantage of the accused. The prosecutors elevated to the post of judge of the trial courts are generally most reluctant to use this section in a more liberal way and are generally very conservative. This may be mainly due to the fact that they were previously vociferously advocating for the application of this section against the accused.

Clause 118 (2) lays emphasis on *prima facie* evidences and it is often seen that the trial court judge relies heavily on the so called confession of the accused at police; no reliance is generally made to his/her statement made at the court. Since, Section 9(1) of the Evidence Act allows confession at police custody as a decisive and credible evidence for conviction of the crime, the investigating agency generally tends to extract confession of the accused as an easy way of discharging the obligation and hence exploring other avenues of investigation are generally avoided. Former Chief Justice Trilok Pratap Rana, while opening the national conference on June 12, 1997, has rightly pointed out "the basis of verdict in criminal cases has, until now, been the confession of guilt extracted from accused

²⁷. As this study was going on in the district public attorney office we came to know that more than 10 cases were filed on prostitution, and in most of the cases photographs with hoarding was published.

person in the police custody". Moreover, there is a regrettable tendency among the judges of suspecting the vitality and discarding forensic and biological evidences. Another reality is that the forensic experts, including medical doctors, are occasionally uncooperative and generally hesitant to appear before the court to testify their opinion.

Under clause 118(3) of the Section on Court Management in *New Muluki Ain*, the accused for offences with punishment less than 3 years, can ask for bail as a privilege, and grant thereof cannot be rejected. The clause 118(10) stipulates that the gravity and nature of crime committed, amount of compensation to be borne, economic and family background and the age of the accused are taken into consideration before determining the bail amount. Besides this, a special provision for pre-trial has been adopted in the Special Court Act, 1975, Prevention of Narcotics Drugs Act, 1986, and Prevention of Trafficking Act, 1986. The criminal legal system of Nepal does not provide for an anticipatory bail system prevalent in other countries.

6.4.3 Post Pre-Trial Procedure: Provided, the accused has been remanded to judicial custody, he/she may file a correctional petition under clause 17 of the Section on Court Management in *New Muluki Ain* at the court of appeals. This correctional petition does not tantamount to an appeal. The court of appeal may sustain the previous order passed by the trial court or if it finds that the trial court has erred in its order, it may direct the trial court for a re-trial.

As a regular post pre-trial process, the witnesses mentioned by the accused at the time of his deposition at the court are presented whereby they are examined and cross-examined by the defense and public prosecutor in the presence of the judge. Unlike, the western judicial system, the witnesses are not examined at the time of the final hearing but it is done before the final hearing. After the completion of pre-trial, the court sets a date for the presence of witnesses of the prosecution and the defendant. On the prescribed date, the concerned parties must have their witnesses present at the court. In criminal cases, the witnesses of the prosecution are produced and examined by the concerned prosecutor. Provided, the court deems it vital to examine a witness in a case, shall do so by taking recourse of Clause 115 of the Section on Court Management.

All criminal cases are dealt and disposed off by the District Court. Nepal does not have a separate criminal court or a criminal bench and thus the procedure is very long and tedious. The criminal proceeding suffers from serious maladies on the part of the prosecution. When the court calls the prosecution witnesses, the prosecutor very rarely succeeds in bringing these so-called witnesses to court for their deposition. After having failed to fulfil their legal duties to produce witnesses they tend to take recourse of clause 115 of the Section on Court Management, which allows court to order for appearance of the witnesses of prosecution. By exercising the clause 115, the court may fix an additional time frame. Thus, Clause 115 has been widely and grossly misused.

6.4.4 Final Hearing: The prosecutors' opening statement acquaints the judge with the nature of the charge against the accused and gives description of the evidence supporting the charges and asks for sentencing as demanded in the charge sheet.

When the prosecution has rested his case, the defense lawyer opens the defense and offers supporting evidence in favor of the accused. Examination and cross-examination of witnesses are done during the deliberation of the case but at an earlier stage as mentioned above. The prosecution offers a final argument to rebut the defense.

6.4.5 Adjudication:

The judiciary is structured in a shape where criminal and civil jurisdictions do not separate. Thus, the judge hears the criminal and civil cases from the same bench. The district court is the court of first instance, and acts as a trial court. Except the criminal cases under the Immigration Act, Forestry Act, Public Offenses Act, Arms and Ammunition Act, Custom Duty Act, Income Tax Act, and so on, the district court has been given the general jurisdiction of adjudicating the criminal offenses. District

Court has jurisdiction over cases within its territorial jurisdiction²⁸. Weekly and daily schedules of cases for hearing are published for knowledge of the common public. Clause 11 of the Section on Court management has set the criteria for the priority of hearing. According to this Clause, the accused under judicial custody is given the first priority of hearing. The abandoned minor, older above the age of 75 years, disabled, and the women of matrimonial cases have been given priority of hearing respectively.

The courts are absolutely open and no individual privacy is protected. Since there is no concept of closed camera, crimes like rape are heard in public thus jeopardizing the victim's right to privacy guaranteed by Article 22 of the Constitution. The victim on the one hand is thus absolved completely from participating in the investigation process and collecting necessary evidences, she/he is exposed to cruel social humiliation on the other.

The existing system of law incriminates many forms of violence against women and offers some forms of remedy and compensation. However, only a very few victims of violence have been benefited by the system because of the inherent defects underlying the investigation and prosecution system. Since the criminal cases are tried in open court indiscriminately, only a few cases of violence are reported to the investigating agency--the Police. The victims of offences like rape, trafficking and various forms of sexual harassment are testified in the open court. The cross examination often turns treacherous since the Nepalese women generally do not want to speak of sex and sex related issues openly in public. This weakness finally turns fatal against them.

The witnesses are examined and cross-examined frequently just in the presence of the court clerk. Obviously, no judicial guidance is observed during the examination. Such practices are always prejudicial to women. Culprits frequently subject the victims of rape and trafficking to threat. Since there is no witness protection scheme with the prosecution, many victims do not turn up in the court to testify. This makes the cases weaker as the Evidence Act 1975 does not accept deposition as a valid proof until and unless it is testified in the court²⁹.

7. JUDICIAL PROCEDURE OF NON-STATE OFFENCES:

The legal system of Nepal places criminal offences into two categories. The criminal offences included in the Annex 1 of the State Cases Act³⁰ are defined as "criminal offences against state" and are termed

²⁸. Clause 29 of the Section on General Court Procedure of the New Muluki Ain, 1964.

²⁹. Section 18.

³⁰. (Annex 1 of the State Cases Act, 1993: The Annex 1 includes the following offences as crime against the state:

- Offences related to the crown and royal family
- Criminal acts under the Treason Act, 1989.
- Crimes under Sections of New Muluki Ain on Homicide, Theft, Rape, Arson to State Property, Cow Slaughter, Counterfeiting of Currency Bills and Coins and Human Trafficking, Cheating
- Offences relating to destruction or irregularity of the state or public property
- Offences relating to arms and ammunition
- Offences relating to forgery of the governmental official documents
- Acts relating to publicity and campaign of religion to impair or cause derogation of other's religion, and acts to cause conversion of religion
- Offences relating to gambling
- Crimes under Postal Act, 1963.
- Crimes under Espionage Act, 1962.
- Acts punishable under Citizenship Act, 1964 and Archaeology Preservation Act, 1956. Public Offence (Control) Act, 1971, Narcotic Drugs (Control) Act, 1976, Essential Service Act, 1957, Black Marketing and Social Crimes (Control) Act, 1975, Disability Protection and Welfare Act, 1982, Privacy of the Documents Act, 1982, Passport Act, 196, Foreign Employment Act, 1985 and Essential Service or Commodity Protection Act, 1955
- Offences under Human Trafficking (Control) Act, 1986
- Offences relating to extraction of money, by submitting forged or fake documents, from Bank or Institutions under Government's full or partial ownership
- Offences relating to pick-pocketing
- An offence defined by concerned Act as state offence

as "State Cases". It means that the state itself becomes a party to such cases. The Attorney General of the Kingdom of Nepal assumes responsibility of prosecuting and defending such cases on behalf the state. Cases not included in the said Annex are defined as private or non-state offences, and as such the state does not involve itself as a party to the case. Injuries resulting from altercations or encounters between two private or more private individuals and injuries sustained because of the incident of beating, whipping, thrashing, battering, physical abuse assaultment and so on are typical examples of private or non-state offences. Similarly, the injuries or damages to reputation caused by defamation, by conduct or expression of some one, and forgery to private property or documents are also taken as private or non-state offences. For instance, sale of a property by using false document of ownership or false name and address or discarding one as co-parcener in order to deprive him/her from benefit amount to private offences. Similarly, acts of looting or unlawful seizure or plundering of the property of other person, act of issuing bad Cheques and counterfeiting of the bank Cheques and other negotiable instruments also fall in this category.

No investigation and prosecution is done by the state in private offences. However, such offences are punishable, most commonly, in terms of imprisonment or pecuniary penalty or sometimes the both. The district courts, in their respective territory, hold jurisdiction to adjudicate such cases. Except otherwise provided by specific statutes, the procedures laid down by the Section on Court Management in *New Muluki Ain* are applicable to such cases.

The judicial trial of the private offences begins with the filing of *Feradpatra* (written complaint) by the person supposedly suffering the injury or damage. *Feradpatra* must be filed in the court within a specified period the legally defined limitation. For instance, in matters of whipping or beating or any other kind of physical abuses, the injured person must file *Feradpatra* within 35 days of incident . In such cases, first of all the victim must approach the police to obtain a clearance of medical investigation of the injuries or harms. The *Feradpatra* can be filed without medical report, yet it is almost impossible to prove the allegation without a medical report showing injuries or harms sustained.

The next step of procedure is to issue summon to the wrong doer, commonly referred to as defendant. A timeframe of 30 days is given to him/her for appearance in the court with written reply. However, pursuant to Clause 59 of the Section on Court Management in *New Muluki Ain*, this timeframe can be extended for another 30 days on the ground of illness and other unavoidable circumstances. The procedures applicable to deposition, examination and cross-examination of the witnesses and verdict of the court in state offences are equally applicable to private or non-state offences. Matters relating to divorce, maintenance of children and wife and matrimonial relations are, however, governed by a specific statute on procedure, known as Summary Procedure Act, and 1972. Pursuant to this Act, cases in such matters must be adjudicated within three months. Under this Act, no formal complaint is required to be lodged in the court; simply an appearance with application stating wrongs inflicted on him/her would suffice the court to initiate the judicial proceedings²⁰⁵. The defendant in such case must appear in the court within seven days of the summon.³¹

8. OFFENCES TO BE TRIED BY QUASI-JUDICIAL BODIES:

Specific statutes may provide the quasi-judicial bodies with jurisdiction to adjudicate the criminal offences. The Public Offence (Control) Act 1971, is a concrete instance. The definition of the public offence under the Act includes, *inter alia*, the commission of the following acts in the public places:

- To commit racketing or gangsterism or physical assaults against government employees with a view of inhibiting from discharging the duty;

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- Any offence declared by the government as state offence time to time through Nepal Gazette
 - Act of mutilation, fractures or injuries caused by accident of Vehicles.

³¹. Section 5,(3) (A), IBID.

- To commit violence against peace and order by way of racketing or gangsterism;
- To commit violence against peace and order by making obscene expression and demonstration;
- To publish or demonstrate obscene materials;
- To humiliate or embarrass women by way of racketing or disgusting behavior;
- To misbehave to public; and
- To embarrass by writing, calling, making gesture and so on with a view of causing fear or trouble or harassment.

Procedures relating to investigation and prosecution of such offences are governed by the State Cases Act, 1993. Obviously, the police and the prosecutors must follow the same procedures applicable to investigation and prosecution of the state offences, while investigating and prosecuting offences under Public Offence (Control) Act. As provided by the Act, the District Administration Office, an administrative office to look after law and order, is given the jurisdiction to adjudicate such offences. The offences relating to sexual harassment of women in the workplace, streets and other public places are supposed to be adjudicated as a matter of prime concern under this Act. However, instances are hardly found in this regard. The Act is rather enforced to achieve political high handness of the ruling party in the government. Hence, the Public Offence (Control) Act is viewed as a badly defamed piece of legislation.

9. LAWS RELATING TO VIOLENCE AGAINST WOMEN IN NEPAL:

9.1 Property Rights Law and Gender Discrimination:

As mentioned earlier, the Article 11 Constitution of the Kingdom of Nepal guarantees right to equality for all citizens irrespective of sex and thus prohibits any discrimination on that ground. The Article 17 guarantees, subject to the existing laws, the citizen's right to acquire, own, sell and otherwise dispose of property". But in practice there still exist a number of discriminatory laws against women. Legal provisions relating to rights to ancestral property, divorce, citizenship and so on are some of the examples violating the letters and spirit of the constitution. Women are discriminated from their very birth. They are treated and brought up as inferior class as against the men having additional care and comfort that family can afford. Sons are regarded by their parents as the perpetuators of family ancestral lineage and security in old age, whereas daughters leave their parental family as soon as they get married. Besides, sons enjoy higher status in a family even if their economic liabilities or intellectual capability is inferior to their sisters. On top of all these, there lies the discriminatory ancestral property law, known as "*Aungsabanda*"³², dictated by defective value system perpetuated through traditional practices, socio-economic norms or values and superstitions.

9.2 Law on *Aungsabanda*: The prevailing "*Aungsabanda*" rights are enjoyed exclusively by sons. Properties that fall into the category of "*Aungsa*" are divided between co-parceners according to a strict share system in which father, mother, sons, sons' widows or their children, and unmarried daughters are entitled to a single equal share³³. However, an unmarried daughter before 35 years of age is not recognized by law as a co-parcener to the property as such. If she marries after 35 years of age, the share she received must be returned to other co-parceners deducting her marriage expenses³⁴. These provisions are distinctly inconsistent to the Article 11 of the Constitution of the Kingdom of

³². Etiologically, the Sanskrit words "Aungsa" and "Banda" means shares and division respectively. The term "Aungsa" has received a technical connection with institution of the partition of the ancestral property, and as such it denotes to "right to share the ancestral property". The New Muluki Ain, a general code prevailing as common law in Nepal, contains legal provisions relating to ancestral property in the name of "Aungsabanda"

³³. Clause 1, Section on Aungsabanda, New Muluki Ain.

³⁴. Clause 16, Section on Aungsabanda, New Muluki Ain.

Nepal as well as the Article 15 of the United Nations Convention on All Forms of Discrimination Against Women (CEDAW), which His Majesty's Government of Nepal has already ratified.

9.2.1 Defective Value System as a Source of Discrimination: The laws of Nepal define status of women in terms of their sex and marital status. Similarly, women's right to *Aungsa* is also related thereto. If remains unmarried till the age of 35, she would be entitled to share the property of father otherwise the property of her husband but a subsequent marriage after 35 forfeits the right and in such a circumstance the parental property must be returned to other co-parceners. Woman's right to husband's property has not been recognized on independent basis. The *Aungsa* that a wife receives from her husband is governed by the condition of continuity of their marital relation. A wife can continue to hold the right as long as she remains chaste or sexually faithful to her husband and violation of which results in deprivation of the right as such. Obviously, it can be concluded that discrimination in property rights against women sprouts from the defective value system that defines legal position of women in terms of their sex and marital status.

9.2.2 Discriminatory Provisions of Law in Matters of Property: As stated above, an unmarried daughter attained the age of 35 years is entitled to a share of property equal to other co-parceners, e.g. father, mother and brothers. Provided she gets married after the age limit, the *Aungsa* thus acquired must be returned to other co-parceners deducting the marriage expenses not exceeding five percent of the total assets. Similarly, right to succession is not given to a daughter as long as the deceased person's husband or wife, son or son's son survive. If no such persons survive, the married daughter gets only one share of the succession, whereas two shares go to unmarried daughter. Provided the daughter or son-in-law have looked after the deceased person, succession goes to them.³⁵

Person having no son may declare the daughter a *Dolaji* before her marriage. *Dolaji* is an institution to enable daughter to entertain full right to ancestral property as a son. Yet, person having son cannot practice the institution as such. Daughter declared as *Dolaji* can marry but has to stay with her parents. The husband may stay together with in-laws. The husband of *Dolaji* has no right to the property that the wife inherits from parents. On death of *Dolaji*, the property goes to her sons. Yet, if she dies with no issue, the property goes to the nearest heirs of the person instituting *Dolaji*. If there is a daughter, she can be appointed *Dolaji* to inherit her mother.³⁶

If a person has more than a wife, each of them can have equal share in "Aungsa."³⁷ A wife having completed fifteen years of marriage, or has attained the age of thirty five years, may ask for her part of share to live separately. Section on *Aungsabanda* has imposed certain limitations with regard to the disposal of the property. One of such limitations restricts the disposing off more than a half of the immovable property without concurrence of co-parceners. **Married** women may enjoy movable or immovable assets earned by themselves in their own way.³⁸ A wife is entitled to obtain a share of husband's property without fulfilling the condition stated above if she is abandoned without providing maintenance or treated in a cruel manner. The same right is guaranteed by law if the husband commits polygamy.³⁹

A divorced wife can claim for the alimony provided that she is not capable of earning livelihood on her own. In such case, the husband must provide alimony for the maintenance as decided by the court. The alimony is decided as per the living standard of the husband and continues for a maximum period of five years, but terminates immediately if she gets married.⁴⁰

³⁵ Clause 2, Section on Aputali (Succession), New Muluki Ain

³⁶ Clause 5 and 6, Section on Dharmaputra (Adoption), New Muluki Ain.

³⁷ Clause 4, Section on Aungsabanda (Partition), New Muluki Ain.

³⁸ Clause 1, Section on Stridhan (Women's Property), New Muluki Ain

³⁹ Clause 4(A), Section on Logne and Swasni (Husband and Wife), New Muluki Ain

⁴⁰ Ibid.

Provided that a widow is denied of proper maintenance, including expenses for religious observances, she is entitled to ask for the partition of the share of property that belongs to her deceased husband. However, the law restricts the widow to dispose off more than half of such a property without concurrence her son. Thus, she is subjected to guardianship of her son.

9.2.3 Law Relating to Procedure in Matters of *Aungsabanda*: Generally, the prevailing law restricts the co-parceners to force for the partition of their respective shares over the property⁴¹ unless it is proved that the guardian (*Muli*) of the family or property has failed to provide maintenance adequately. The prevailing law does not provide locus standi to co-parceners asking for partition of the shares on property. Even a wife having right to ask for partition after 15 years of marriage or 35 years of age cannot force for partition as long as she is maintained well⁴². Provided that the proper maintenance is denied, the affected co-parcener can resort to the district court of the residence of defendant for partition of the share on the property he/she is entitled to. The court of law in such case follows the procedures laid down by the Section on Court Management in *New Muluki Ain*. However, if the claim relates only to provision for maintenance the court of law follows the procedures laid down by the Summary Procedure Act, 1971.

9.2.4 Judicial Activism in Relation to Protection of Women's Property Rights: Despite the right to *Aungsa* is guaranteed, unmarried woman are facing impediments towards enjoying the benefits. The hurdles thereto are often created by other co-parceners taking advantage of their ignorance of law. However, the judicial activism in this regard can be rated as encouraging. The Supreme Court has held that the right of unmarried women attaining age of 35 years to *Aungsa* is similar to what given to men; it is neither inferior nor defective. Therefore, it is held that the right of unmarried women to *Aungsa* receives same protection as to other co-parceners. This principle was laid down by the Supreme Court in the case of Sanu Tandudukar vs. Manilal Tandukar and others⁴³. This judgement has been used as a precedent.

Another landmark precedent is established by the Supreme Court in the case of *Bhishma Kumari Maharjan vs. Asha Lal Maharjan*. In that case, the Supreme Court held that "the law does not restrict granting of property to a daughter before reaching age 35 years if all co-parceners are willing to make partition including such daughter as a co-parcener thereof"⁴⁴.

It is clear from the above discussion that daughters are not given inherent rights to *Aungsa*. The existing laws and sections on *Aungsabanda*, impose conditions on daughters to obtain shares on the ancestral property. The clause 1 of the *Aungsabanda* excludes daughters as co-parceners to the ancestral property. The clause 16 of the same section has put a condition of 35 years of age and avoiding marriage. These two provisions are found on segregation of sex, and thus inconsistent to the Article 11 of the Constitution.

⁴¹. Clause 10, Section on Aungsabanda (Partition), New Muluki Ain.

⁴². Clause 10, Section on Aungsabanda (Partition), New Muluki Ain.

⁴³. Nepal Kanoon Patrika, 1997. Supreme Court, Page. 568. This case was filed in 1987 and final verdict was given in 1996. It took eight years to get the final decision on the case. The details of the case is as follows:

Sanu Tandukar lodged a complaint against her brothers, the defendants, who restricted her from enjoying the right to share family property. She was 54 years old and unmarried. She was staying with a brother who refused to look after and also to provide her share of property. The other brothers replied in the courts that the partition was carried out in 1949 A.D, and the marriage expenses were set aside. The mother and one of the brothers took extra share of property. Hence, they were not concerned to the complaint made.

Rejecting the plea of the defendants, the Supreme Court in its judgement gave order to a new partition of the property, which was left not partitioned. The house which was kept as common property of all co-parceners was handed over to the plaintiff, the monetary value of which was equal to what other co-parceners received during the partition in 1949

⁴⁴. Nepal Kanoon Patrika, 1996. Decision No 6085. Supreme Court Page 870. The facts of the case was as follows:

It has been accepted in Bhishma Kumari Maharjan V. Asha Lal Maharjan, where the Supreme Court said "If the person who would like to make partition gives the share of the property of the daughter who has not attained 35 years and is unmarried and after receiving such property if she makes a deed to give up the property, in such a situation the deed to give up the property cannot be invalid even though she has not reached 35 years as she is already above 16 years

9.2.5 Activism to Do Away With the Discrimination: In Nepal, as discussed above, not only the social and cultural biases but also the legal discrimination exist against women. Particularly, the Clause 1 and 16 of the Section on *Aungsabanda* in *New Muluki Ain* are laws contravening distinctly to the letter and spirit of the Constitution of the Kingdom of Nepal, 1990. Two women advocates through a writ petition raised this issue in the Supreme Court and the latter passed an order Mandamus to the Government on 15 March 1994 instructing the Government to introduce a bill in the Parliament to do away with discrimination inflicted by laws as such.⁴⁵

9.2.6 Post Judgement Activism: Legal Aid and Consultancy Center (LACC) assumed leading role to draft a private bill to replace the existing law on *Aungsabanda*. Meanwhile, the Ministry of Women and Social Welfare formed a task force in order to draft an official bill. The initiative of LACC emphasized on the concept of birth right of daughter to parental property as well as right to the property of the husband. The bill prepared by the Ministry, however, ruled out the concept of guaranteeing both the rights.

Advocacy programs had been launched in various parts of the country by LACC, ILRR, FWLD and SAP Nepal and many other NGOs are motivating the people with a view to building a strong pressure to the government to expedite the process of getting the bill adopted by the parliament. Mechanism to check the negative impacts were incorporated in the bill after reviewing the feedback received from experts, families, parents and religious groups.

The private bill, along with the findings of comparative study, was submitted to Law and Justice Ministry. And instead of submitting it as a private bill in the parliament, it was decided to merge the draft with the bill prepared by the Ministry of Women and Social Welfare. The bill prepared by the Ministry after holding regional workshops in different geographical regions was also submitted to the Ministry of Law. To give pressure to the Ministry of Law and Justice, a series of workshops, advocacy campaign and public hearings were organized by Sancharika Samuha, ILRR, SAP-Nepal, LACC,

⁴⁵. (Meera Dhungana V. HMG. Ministry of Law and Justice, Nepal Kanoon Patrika. 1995. Supreme Court, Decision no 6013, page 462.

The major part of the decision is as follows:

"Taking into consideration the social condition of men and women, the Nepalese law has provided only some different process of getting partition share. Instead of depriving a daughter of the right to get partition share or making discrimination against her, the right of a daughter to get partition share has only been managed in a slightly different manner from that of a son, taking into account the social status of the women. For instance, according to No. 16 of the Chapter on Partition, an unmarried daughter should attain the age of 35 years in order to get partition share, while even a married daughter should attain the age of at least 35 years and a period of 15 years should have been spent from the date of marriage to get partition share. In regard to the process of getting partition share, a son gets partition share at his birth, but a daughter should fulfill some terms to get the same, which cannot be disregarded. Before declaring No. 16 of the Chapter on Partition unconstitutional and making provision as to the same entitlement of a daughter to partition share as that of a son, the negative sides thereof or its implications on the society should also be taken into account. This results in a great impact on the structure of the patriarchal society like ours, handed down from ancient times; a daughter may not be compelled to get married and to go to her husband's house after marriage, and while on the other hand declaring No. 16 of the Chapter on Partition unconstitutional and making provision entitling a daughter to get partition share as of a son, a married daughter will be entitled to get partition share from the properties of both her father and husband, and a son will be entitled to get partition share only from the property of his father, in regard to the right to obtain partition share, this will create the right of a daughter to obtain more partition share than a son's right to obtain partition share thus, creates conditions discriminatory against son. This affects all the laws of the country made in regard to the property right.

Therefore, declaring clause No. 16 of the Section on Partition void and making provision entitling a daughter to get partition share as of a son is not a solution to the problem. In making sudden changes in traditional social practices and in matters of social norms pursued by the society since a long time ago, the society happens to become unable to adopt several matters, and if so happens, a different situation beyond perception would emerge. Therefore, before reaching a decision all of a sudden, a just provision should be made by holding wide and extensive discussions and deliberations taking also into account the constitutional provision vis-à-vis equality. As the family law relating to property is to be wholly considered, this directive is hereby issued ordering that His Majesty's Government introduce an appropriate Bill in Parliament within one year of receipt of this order, by making necessary consultations on this matter with the recognized women's organization, sociologists, the concerned social organizations and lawyers as well, and by studying and considering also the legal provisions made in other countries in this regard."

FWLD, Caritas Networking, and Beyond Beijing Network. These organizations played a leading role to elucidate the importance and need of the bill. ILRR organized a training workshop on Legislative Advocacy for women's property rights to facilitate the advocacy in a coordinated and efficient way. This workshop pointed out that the advocacy campaign should be conducted considering the Government, the media and the grassroots sectors as important actors for lobbying and advocacy. Sancharika initiated the task of mobilizing advocacy through all forms of media.

9.2.7 Challenges: Since it's being a national issue, a few organizations would not have been enough to lead the movement successfully. The legislative proposal drafted by LACC and Women Ministry looked into possible positive discrimination. Yet, the lack of adequate initial public debate, a series of confusion and ambiguities marred causing a serious setback in the process of gearing up the pressure to get the bill through the parliament.

9.2.8 Outcome of the initiatives: Eventually, as a result of constant pressure on the part of activists and organizations, a bill to amend the concerned sections of *New Muluki Ain* was introduced in the parliament on January 13, 1998. However, the hearing of the bill in the parliament could not gain momentum because of apathy of the concerned Ministries and the certain members of the parliament. At the last moment, the bill was supposed to go for hearing in the parliament, the government was displaced and the parliament was prorogued. Consequently, all the efforts made came into stagnation. Right now, the bill is under the consideration of the Human Rights Committee of the House of Representatives and it has made the following interventions:

1. The guardian of the family is responsible to provide with appropriate and adequate maintenance to daughters. The daughter shall be given a birth right to the parental property. Provided that the guardian of the family fails to his responsibility of providing adequate maintenance to the coparceners, including daughters, the later are entitled to get their share of **Aungsa**.
2. A widow may undergo separation and take away the share of property she receives on behalf of her deceased husband on her wishes. If she remarries, the remaining property of her prior relationship must be returned to the heirs of her former husband.
3. A woman has absolute right to her exclusive property. After her death without will, the rank and order of succession is as follows: sons and daughters staying together; separated sons and daughters; the husband; married daughters and son's sons; and if any of the above relations do not exist, the other heirs will have the rights over such property.
4. If an unmarried daughter gets married after succession and after she has consumed the property for her lifetime, the remainder must be returned to the successors in her maternal home.
5. The proposed bill provides that once a woman files an application for divorce, the court should direct the partition and should provide one share of the family property to her in case the cause of divorce is the husband.

It is obvious that the proposed bill has failed to create an equality before law in matters of property rights and thus has done nothing about treating women as independent persons. Thus, it can be concluded that the discrimination inflicted on property rights still persists without many changes.

10. DIVORCE AND CHILD CUSTODY

In a society like Nepal, the institution of marriage attaches social and religious significance. It is why, there is the presumption in favor of the continuation of the marriage. The conjugal relationship between married is presumed to end only on the death. However, legally divorce is accepted under the law. Despite the fact that it has certain stigma, the number of divorce is, in reality, increasing in the society. Since women can go to the court for divorce, divorce cases filed by women outnumber those by men. However, mostly, the women are forced to resort to divorce by their husbands.

10.1 Legal Grounds for Divorce: Legally, for a husband to resort to divorce, the criteria therefore is living in separation for a period of more than three years without his consent or if the wife is involved in conspiracy against his life, or commits a crime of inflicting him a serious bodily injury.⁴⁶ Marital relationship is, *ipso facto*, terminated if the wife commits an extra marital sexual relationship or elopes with other person. A declaration on the part of the wife in a competent court confessing an extra marital sexual intercourse can also be an adequate ground for the divorce.⁴⁷

Like the husband, the wife may resort to divorce on the ground of husband's living separately for a period more than three years without her consent. Moreover, a wife may seek divorce on the grounds that the husband consummates a second marriage or keeps a wife or fails to provide her with proper maintenance. Attempt to life or infliction of serious injuries provides another ground for divorce ⁴⁸. The husband and wife can also effect divorce by mutual understanding⁴⁹.

10.1.1 Jurisdiction and Procedure: If the husband or both the parties are seeking a divorce, the application is lodged to the concerned Village Development Committee (VDC) or Municipality. Divorce is taken as an unusual incident by the Nepalese law and hence, the conciliation between the couples is always emphasized, the VDC or the municipality is sought to make sincere attempts to conciliate between them. Only if the conciliation process fails, the concerned authorities make resort to take decision based on the merits of the case. For the purpose of achieving conciliatory solution, the VDCs and the Municipalities are authorised to prolong the case for a period of one year. If the conciliation cannot take place, the case is forwarded to the concerned district court for judicial decision. However, the wife can have a straight approach to the district court for the divorce. Procedure relating to divorce is governed by the Summary Procedure Act, 1971.

10.1.2 Status of Child: Unless proved otherwise, any child born within two hundred and seventy two days from the date of divorce is presumed to be the child born out of the divorced husband⁹⁴. The mother has a right to legal custody till the child attains the age of five. The father shall maintain such minor if the mother does not so desire. The mother has the right to keep the minor above the age of five provided that she remains unmarried. However, the father must maintain such minor if the mother does not want to maintain him or her or she remarries. Father or mother may maintain the minor if both of them agree to do so by turn⁵⁰.

10.1.3 Right to visit the child: Right to visit the minor from time to time is given to the father and mother unless there is reasonable doubt that such visits may be detrimental to the interest of the minor ⁵¹. Similarly, due to divorce or for any other reason, if the parents are separated, the separated parents shall have the right to visit the child and the child shall also have the right to stay for some time with the father or mother with whom he/she has not been staying. However, if there is any reasonable cause that meeting with the child is against the interest of the child, in such case, the right of either parent to visit and stay can be curtailed by the Court.⁵²

10.1.4 Expenses for Maintenance of Child: If the mother maintains the child, the father should provide the mother with reasonable expenses for subsistence, education and medical treatment of the minor. If the child is maintained by the father and not by the mother and if the mother's income is higher than that of the father, the mother shall be obliged to bear the expenses for subsistence, education and medical treatment of the minor, as specified by the court. (Clause 3(5) of Section on Husband and Wife)

10.1.5 Alimony: If the cause for the divorce is the husband, the wife can claim alimony from him, provided that she is unable to earn her livelihood. The husband in such a case must provide alimony

^{46.} Clause 1 (1), Section on Husband and Wife, New Muluki Ain.

^{47.} Clause 2. Section on Husband and Wife, New Muluki Ain.

^{48.} Clause 1(2), Section on Husband and Wife, New Muluki Ain.

^{49.} Clause 1(3), Section on Husband and Wife, New Muluki Ain

^{50.} Clause 3 (1,2, 3), Section on Husband and Wife, New Muluki Ain.

^{51.} Clause 3(4), Section on Husband and Wife, New Muluki Ain.

^{52.} Section 8, Child Act 1992.

for the maintenance of the divorced wife as decided by the court as per the living standard of the husband. Such alimony is provided for a period of five years from the date of divorce or until she is remarried.

10.1.6 Case to Establish the Relationship: Anybody may sue in the court for the establishment of relationship. In case of minor, the guardian may sue for the establishment of relationship on behalf of the minor. A petition by a woman to establish the relationship or legal certification of birth name enjoys the priority in hearing and decision.

10.1.7 Judicial interpretation: A landmark decision was made to confirm the father of a child in the case of Tej Ratna Tuladhar vs. Sonam Tuladhar. In this case, Supreme Court held that since the mother gives the birth, it is easy to confirm the mother of a child, whereas the father cannot be confirmed with the facts and is mostly based on assumption. Therefore, If the dispute arises concerning the father of a child, it is always the mother's statement that has to be taken into account to confirm the father.⁵³

But in a recent case⁵³ the Supreme Court has changed its previous stand. It held “Generally mother's statement is a valid proof in relation to child, but that has to be proved with enough evidence. In the absence of enough evidence, if a woman points out an unknown man as her husband, it would be unjustifiable from the judicial eyes to establish the spousal relationship. Hence, due to lack of evidence the relationship as such cannot be established.”

In matter of child custody, the case of Dr. Alok Raj Chalise V. Dr. Shiru Chalise can be taken as a landmark case. In that case, the mother had taken custody of the child. The father filed a case of habeas corpus against the mother accusing that the child had been tortured. The petitioner asked for an order to remove the illegal detention of the child. The mother replied that the petitioner had never visited the son. Hence, writ petition based on false charge should be rejected. The court said “even in case of divorce the mother has the right to legal custody up to five years, if she refused to have custody only then the father would have such right under clause 3(1) of the Section on Husband and Wife in Muluki Ai. As there is no question that Master Rahul is under the age of five and the mother has looked after him, the custody as such cannot be defined as an illegal detention.”⁵⁴

10.1.7 Limitation to file the case: Limitation to file the case is one year from the date of commission⁵⁵ except to file an open divorce case.

10. 2 Gaps in the legal system: Law relating to divorce is not well fashioned and has been enforced for years without any changes, whereas the society has been vastly changing over the years. Obviously, the following discrepancies prevail as serious problems:

- Re-marriage of woman denies her right to legal custody of a child.
- A divorced woman does not have right to inherit either from the husband or from the parents.
- A divorced woman has right to alimony only for maximum period of five years if the cause for the divorce is under clause 1(2) of the Section on Husband and Wife.
- During the case studies, it was realized that the provision of the law requiring conciliation between husband and wife by the municipality or VDC has not been practiced rather they make recommendations for the divorce without caring the child's situation. There are a lot of cases of divorce in Pokhara and Kathmandu district courts filed, in fact, by women for its being easier from procedural point of view.
- Mostly, the mother has to take care of the child without support of the father.
- Limited grounds are given for the divorce.

⁵³. Purna Sunar V. Putte Sunar, Nepal Kanoon Patrika (Supreme Court Reporter) Page 536

⁵⁴. Nepal Kanoon Patrika (Supreme Court Reporter). 1995,Page 247

⁵⁵. Clause 6, Section on Husband and Wife, New Muluki Ain.

- There is a discriminatory legal provision as extra-marital sexual intercourse or delopment with any other person terminates the marital relationship, whereas in case of similar conduct by the man, the marriage is not terminated.
- Maintenance right has not been asked for in most of the divorce cases.

10.3 Activities: The bill for the amendment of the New Muluki Ain introduced in the parliament, stipulates that the court must make arrangement for the partition of property prior to the decree of divorce. As the Nepalese law denies child custody to a mother if she remarries whereas a man's second marriage doesn't deny him with this right, the Forum for Women Law and Development filed a case in the Supreme Court and the latter issued a show-cause notice to the government. The case is still under consideration of the court.

11. TRAFFICKING FOR PROSTITUTION:

The Article 20(1) of the Constitution has guaranteed the right against exploitation by explicitly mentioning "the traffic in human beings, slavery and serfdom or forced labor in any form" as the exploitation. Any act contravening thereto is, therefore, punishable as a criminal offence. Pursuant to the constitutional provision, the trafficking of human being is rendered as a criminal offence against the state.

11.1 Definition of the Crime of Trafficking in Women and Girls:

11.1.1 Section on Human Traffic of the New Muluki Ain, 1964: New Muluki Ain defined the traffic in human being as a crime already in 1964. Clause 1⁵⁶ of the Section on Human Traffic of **New Muluki Ain** prohibits the act of taking any person or persons, by fraud or enticement, out of the territory of the country with an intention of selling. The same clause has pronounced such an act as punishable by 10 to 20 years of imprisonment, and also prescribed the same punishment for those involved in purchasing the person or persons on his/their being present within the territory of Nepal.

The clause 2 of the Section prohibits the separation of a minor person or any one having mental disorder without consent of his/her legal guardian. The clause also restricts an act of enticing such person or persons to separate themselves from their legal guardians. Such an act was made punishable by a imprisonment of 3 years or a fine of five hundred rupees or the both.

11.1.2 Human Trafficking (Control) Act, 1986: In 1986, the Human Trafficking (Control) Act was enacted to combat the growing menace created by the crimes of trafficking in women and girls for prostitution. Since the Clause 4 of the Section on Preliminary Arrangement of the **New Muluki Ain** stipulates the application of the specific Act in effect in specific matters, the new law replaced the provisions of the **New Muluki Ain** relating to human traffic. Also, the section 11 of the Human Trafficking (Control) Act, 1986 stipulates that no other law should apply in matters covered by this Act⁵⁷. The Human Trafficking (Control) Act, 1986, is, therefore, a specific law relating to crimes of trafficking in human beings.

⁵⁶. "No person shall entice and take any human being out of the territory of Nepal with the intention of selling him/her, or take him/her outside of the territory of Nepal and sale him/her. In case any person has taken somebody for sale in foreign countries, and is arrested before he can do so, he/she shall be punished by an imprisonment for a term of ten years. In case the sale has been completed, he/she shall be punished by an imprisonment for a term of twenty years. In case the purchaser is traced out within the territory of Nepal, he/she shall be sentenced to the same punishment as the seller".

⁵⁷. Section 11, Human Trafficking Act, 1986

"No matter what is provided for by Section on Human Traffic of New Muluki Ain related to human trafficking, all that is provided for in this law shall be treated in accordance with this Act".

Section 4 of the Human Trafficking (Control) Act considers the following acts as the crime of trafficking in human being:

- Selling of a human being for any purposes;
- Taking any person to foreign territory with an intention of selling;
- Involving any woman in prostitution by enticement or allurements or fraud, or threat or coercion, or by any other way or means; and
- Abetting or assisting or conspiring and making attempt to carry out any of the above mentioned acts.

The above mentioned acts are, as per section 8 of the Act, liable of following punishments⁵⁸ :

- 10 to 20 years of imprisonment for the crime of selling a person.
- 5 to 10 years of imprisonment for the crime of taking a person to a foreign territory with an intention of selling.
- 10 to 15 years of imprisonment for the crime of forcing a woman into prostitution.
- 5 years of imprisonment for the crime of abetting or assisting or conspiring, or making attempt to accomplish the above mentioned acts.

Sub-section 5 of Section 8 provides also for the pecuniary penalty. The person convicted of the crime of selling human being is penalized, in addition to the imprisonment, with an amount of money equivalent to the amount involved in the transaction. The Act, however, does not provide for any punishment or pecuniary penalty for the person engaged in the crime of purchasing.

11.1.3 Special Provisions: Human Trafficking (Control) Act, 1986 provides for stringent penal system. Considering the complexity of the situation associated with this kind of crimes, the Act has made a special provision of shifting the burden of proof on the defendant. As such, the accused person has to discharge the evidentiary obligation to prove his innocence.

11.2 Procedure and Jurisdiction: The State Cases Act, 1993, has defined the crime of trafficking in women and girls an offense against the state. Apparently, it obliges the state to investigate and prosecute the offense. As provided for by the Act, the investigation is initiated by the complaint about the offense by the victim or any person having knowledge thereof. The complaint of the victim is recorded by the concerned government attorney, the prosecutor, and authenticated by the judge of the concerned district court. The victim then becomes an important witness of the prosecutor.

The Human Trafficking (Control) Act, 1986, is one of the very few statutes which recognizes the principle of extra-territorial jurisdiction. Obviously, the Act stipulates to have the extension of the jurisdiction in any crime committed under this Act beyond the frontiers of Nepal. As such, any crime relating to the trafficking taken place in the foreign territories is cognizable in the courts of Nepal.

11.3 Inadequacies and Ambiguities: Human Trafficking (Control) Act, 1986, has suffered a very serious weakness in terms of its definition as it fails to bring within its ambit the act of separating any

⁵⁸. [Section 8\(1\)](#)

"An individual engaged in selling a human being shall be punished by a term of imprisonment of 10 to 20 years".

[Section 8\(2\)](#)

"An individual who takes a person abroad with the purpose of selling him/her shall be punished by a term of imprisonment 5 to 10 years".

[Section 8\(3\)](#)

"An individual who makes a woman engaged in prostitution by undue persuasion or enticement or coercion or threat or by any other means shall be punished by a term of imprisonment from 10 to 15 years".

[Section 8\(4\)](#)

"An individual who conspires for committing any act, or assist to commit such act or makes an attempt to encourage any one to be engaged in such act shall be imprisoned for a period not exceeding 5 years".

person from the legal guardian with an intention of trafficking for prostitution. Hence, no crime is established against someone found engaged in separating women or girls from their guardians, but has not yet taken the victim out of the territory of the country. Similarly, the Act has no provision of punishment to the culprit involved in the purchase of the women and girls for prostitution.

As mentioned above, the victim of trafficking is an important witness of the prosecutor during the trial. However, the state has no place of protecting such witnesses. The prosecutor shows no concerns once the complaint is recorded. Apparently, the victim is often exposed to the danger of being threatened or forced by the culprits to change the statement or become indifferent to the case. The tendency as such has been found in several judgements of the courts, in which many accused have been released on the ground that the victim failed to turn up to the court⁵⁹.

Cases relating to trafficking of women and girls are tried by the courts openly like other ordinary crimes. This practice poses problems to the victims, especially the younger girls who have become prey to the agents. There lies a risk of threat of many kinds as no protection is guaranteed by the state once the case is prosecuted. Since, the victim becomes a special witness to the prosecutor; the offenders may act to create obstacles to victim's making easy approach to present testimony in the court. Thus, only rare number of victims do appear in the court once their deposition is recorded. The court acquits most of the offenders because the victims decline to testify themselves in the court. Moreover, the women do not want to appear in the court just to escape humiliation they are supposed to be subjected to during examination and cross-examination in the open court.

11.4 Enforcement Situation: Although the trafficking of women and girls is the most pressing issue in Nepal over the years, the enforcement of the Act has not been found effective. There is an intelligent estimation that 5000 to 7000 women and girls are being trafficked to India every year for prostitution. It is often said that the Human Trafficking (control) Act is one of the poorly enforced Acts. As per the official record, only 150 cases were reportedly investigated by the enforcement agency in the fiscal year of 1994-95⁶⁰. The number of cases has decreased in subsequent years as only 133 were investigated in 1995-96, and 107 in 1996-1997. As learned from the Government Attorney's office, out of 150 cases reported in fiscal year of 1994-95, only 39 cases were produced in courts of law.

11.5 Landmark Cases:

11.5.1 Dambar Bahadur Chettri Vs. HMG. Damber Bahadur married Ms. Tara Kumari Bishokarma and promised a good life. She left home with Damber Bahadur for Krishna Nagar, a border town western Nepal. After four days, she knew that she had arrived in Bombay City, and found that so-called husband had sold her to Suni Tamang's brothel for IC. 20,000.00. In the brothel, she was forced to entertain customers. Fortunately, she was able to contact the Indian police force, which rescued her and made arrangements for her return.

On her return to Nepal, she lodged a complaint in the police office at Rupendhei district and the accused Damber Bahadur on his return after selling Tara Kumari was arrested by the police and prosecuted for committing crime under Clause 1 of the Section on Human Trafficking of the Code of the Country.

The case was filed in Rupendhei District Police Office where Tara Kumari had lodged the first information report accusing Damber Bahadur of deceitfully marrying her with an intention of trafficking her to prostitution. Damber Bahadur confessed the crime, and the written confession was recorded at the police office. The prosecution was accordingly made on the basis of the confession of

⁵⁹. On first information report of Geeta Danuwar, His Majesty's Government vs. Mrs. Simla Tamang and others. "Geeta lodged the first information report that she was engaged into prostitution in several brothels of Bombay by Mrs. Simla Tamang. Based on the report Mrs. Simla Tamang, Mr. Ranjit Tamang and others had been prosecuted. Geeta did not turn up to the court to testify her statement. Based on the reason that the statement was not testified in the court, the allegation was found not sustainable. This is only one example to mention.

⁶⁰. Source, CID Magazine. Vol. 3. 1997. Criminal Investigation Department, Police Headquarters, Central Women Cell, Naxal, Kathmandu

the defendant. The Rupendhi district court found the defendant guilty thereof and as such announced 20 years of imprisonment as punishment. Finally, the Supreme Court reviewed the judgement, and held that "since the defendant had failed to provide with the precise and adequate evidences to prove his innocence, the punishment declared by the Rupendhi district court needs not to be altered. The punishment of twenty years imprisonment according to the Clause 1 of the Section on Human Traffic in the New Muluki Ain, therefore, must be executed"

The Supreme Court in this case held that the onus of proof lies on the defendant to prove that he had not sold Tara Kumari for prostitution. Although the Supreme Court did not elaborate the principle in detail, it was the first case in which the Supreme Court deviated from Section 25 of the Evidence Act, 1975 that stipulates the prosecutor to prove the guilt of defendant beyond reasonable doubt. This case had lasting bearing in the subsequent cases relating to trafficking in women and girls for prostitution. Even the Human Trafficking Act, 1986, was influenced by the judgment as it expressly laid the principle that the onus of proving innocence in the trafficking cases remains on the defendants.⁶¹

11.5.2 HMG Vs. Batku Tamangni and Others: Supreme Court, 1988

The first information report was lodged on 30/9/2040 by Jit Bahadur stating that he and his parents had been out for work leaving Gaymchi, the younger sister, alone to look after the home. On their return, Gyamchi was disappeared and after three days of search Gyamchi was discovered at the cowshed of Mr. Jit Bahadur. Gayamchi reported that she was taken by Jit Bahadur and kept in secret.

The report was lodged by Mr. Jit Bahadur (Gyamchi's brother) alleging that Mr. Jit Bahadur, Renjin Lama and Batku Tamangni had separated Gyamchi from her guardians by enticing her of a good job in Bombay. Accordingly, the three culprits had been arrested and produced before the judicial authority for the crime of separating the girl from legal guardian without consent thereof. The charge sheet was then filed.

All the culprits confessed the crime of separating Gyamchi without consent of her legal guardians for the purpose of trafficking to Bombay for sale. The Sarjamin (witnesses collected at the spot of crime) corroborated the confession of the accused persons. All the three culprits were tried under judicial custody.

Eventually, the district court convicted all the three culprits and sentenced them with an imprisonment of 10 year for Jit Bahadur as principal offender and imprisonment of 5 years for Renjin Lama and Batku Tamangni as accomplices.

An appeal was then filed by the defendants to the Regional Court (presently the Appeal Court) at Kathmandu, then the second court of appeal. The Regional Court reversed the judgement holding that "merely a separation from the guardians" does not constitute a crime of trafficking.

The government attorney lodged an appeal to the Supreme Court to get the judgment of the Regional Court quashed on the ground that the judgment suffered from an error of wrong interpretation of Clause 1 of the Section on Human Traffic of the New Muluki Ain.

The Supreme Court, agreeing to the argument of the Government Attorney, reversed the judgment of the Regional Court. It held that the transfer of the girl from one place to another with an intention of trafficking is adequate to constitute the crime of trafficking as stipulated by Clause 1 of the Section on Human Traffic. The Supreme Court thus established a principle clearly that one need not be taken out of the Nepalese Territory for committing the crime of trafficking⁶². This was one of the landmark cases, which clearly defined the meaning of the term "separation from legal guardians". However, the provision incorporated in clause 1 of the section on Human Traffic of the New Muluki Ain, did not find expression in the Human Trafficking (Control) Act, 1986, being practiced as specific legislation in matters of traffic in human being subsequent to its enactment.

⁶¹. Nepal Kanoon Patrika (Supreme Court Reporter), 1988, Issue No. 12, Page 1313

⁶². Nepal Kanoon Patrika, 1988, Issue No. 11, page 1163

As has been discussed above, the present Human Trafficking (Control) Act, 1986 has ousted the provision defining the crime of separating girl from legal guardian without consent. Apparently, the Supreme Court, subsequent to the enactment of the Human Trafficking (Control) Act 1986, has interpreted the element of "crossing the border" as essential ingredient to constitute the crime of trafficking. This can be defined as regressive development of law.

A Task Force under the aegis of ILRR is now preparing a new draft bill. A National consultation Workshop held at Melamchi in April, 1997 made recommendations to have a new legislation to address the weaknesses of the existing statute. Accordingly, a task force of 20 people comprising representatives from all the concerned Ministries of HMG, judges and lawyers was constituted to study and draft the proposed bill. The task as such is now in completing phase and has, inter alia, provided for:

- a. Precise definition of the crime of trafficking in human being,
- b. Punishment for persons engaged in enjoying prostitution,
- c. Punishment for women engaged in prostitution voluntarily,
- d. Trafficking of girls and women for prostitution within the territory of Nepal and other countries,
- e. Punishment for act of separating a person from his/her legal guardians with an intention of trafficking,
- f. Compensation for victims of trafficking or prostitution from offenders and the state,
- g. Closed camera trial of the case, and
- h. Protection of the victim and witnesses by the state.

The bill is supposed to be introduced in the next session of the parliament.

11.6 Activism:

ILRR: ILRR has concentrated on preventive activities through the women paralegal training program. This program was first introduced in December 1993, and extended later in five Village Development Areas of Sindhupalchok District, one of the most problematic districts in terms of trafficking in women and girls for prostitution. In 1993, the program was launched for girl students and women teachers of the six secondary schools of Melamchi area. The training program was conceived in three different tiers and launched from top to bottom, i.e. the district level training program preceded the Village Development Committee and Ward Level training programs. The participation of the target group in the program was encouraging.

The District Level Paralegal Training Program has now been completed in Sindhupalchok and Nuwakot districts. 53 women attended this training from 24 Village Development Committees (VDCs) of Sindhupalchok and 33 women from 16 VDCs of Nuwakot. The prime objective of the training was to generate a group of volunteers to assume a role of organizing grassroots women against trafficking in respective districts. Hence, upon completion of the six days training course, a District Level Paralegal Committee consisting of 11 trainees was formed in each district as a tangible outcome which has been taken as a prelude to a progressive community surveillance system. The program is now being thought to be conducted nationwide with assistance from the Unicef-country office.

ABC-Nepal: It is launching a number of income-generation programs through cooperatives in Ramechap, Sindhupalchok, Dhading and Kathmandu Districts and has no separate programs for girls and women returned from India, though some persons have been included as members in the cooperatives.

ABC-Nepal is involved in the issues of domestic violence against women and has concentrated on the problem of trafficking through awareness building activities. Street dramas have been chosen as one of the best means to achieve the objectives. It has been reported that 200 street dramas have been performed so far in 21 districts. Another activity of the organization is related to providing sex education for the children of schools.

CWD: The Center for Women and Development is another NGO working in this field, with a particular emphasis on advocacy. The prime concern of this organization is the dissemination of information on issues related to women. One of the important achievements of this organization is the compilation of the information, report and bibliography of the activities of various organizations relating to the problem of trafficking.

CWIN: Child Workers in Nepal is basically concerned with children in difficult circumstances. It advocates justice and equal rights for children, and has done situation studies, awareness programs, publication, training, networking and exhibition concerning children. CWIN has a common program for street children, and has established an emergency hostel for at-risk girl children in collaboration with CAR-NWG. Being one of Nepal's oldest child-rights organizations, CWIN has promoted awareness on the issues of children working in carpet factories, brick factories, tea estates, and domestic service. CWIN has made special contribution to conduct micro survey research on situation analysis of the problem of trafficking.

WOREC: WOREC has contributed to address the problem of trafficking through various literacy programs for carpet girls, STD/AIDS education for students in Kathmandu, AIDS education program among Nepalese sex workers in Bombay, AIDS education for carpet workers and rehabilitation programs for victims of trafficking.

Maiti- Nepal: Maiti-Nepal is engaged in rehabilitation of the victims of trafficking. As such, it has centers run for rehabilitation in Kathmandu and Nuwakot. This organization is also involved in campaign against trafficking in cooperation with the Nepal Police.

Others: Other organizations working against trafficking in women and children are the Children at Risk Network Group (CAR-NWG), the Creative Development Center (CDC), the Informal Sector Service Center (INSEC), and Women Acting Together for Change (WATCH).

The CAR-NWG is a forum of NGOs and individuals dealing with children in difficult circumstances, primarily street children, and child workers, child sex workers and trafficked girls and concerned primarily with advocacy on the rights and interests of children.

The CDC is run by a group of women victimized in one way or the other. The center provides income-generation training for victimized women and girls, particularly in tailoring and handicrafts. The center also has facilities for legal aid.

Weaknesses: These organizations work independently and separately. Except very few activities, no coordination of the activities exists among them rather there exists duplication of the activities. Some the organizations have made attempts to form a federation but has made no tangible progress and achievement in respect of the prevention of the problem.

12. CRIME OF RAPE

12.1 Definition: A sexual intercourse with a unmarried girl or married woman or widow without their free consent is defined as a crime of rape under Section on Rape in *New Muluki Ain*. Sexual intercourse with a girl below 16 years of age irrespective of her consent is a statutory crime. Sexual intercourse committed with force or threat or intimidation or undue influence is a crime of rape.

In Nepal, rape is defined as crime against state. As such, it is investigated and prosecuted by the state itself. Crime of rape is also defined an offence of moral turpitude. In the fiscal year of 1994/1995, 132 cases of rape were reported in the various police stations in the Kingdom of Nepal. Similarly, in

1995/1996 the number of registration decreased to 112 while again in 1996/1997 fiscal year it increased to 126⁶³

12.2 Penalty for the Crime of Rape: Rape of a girl below the age of 14 is punishable by an imprisonment ranging from 6-10 years. If the victim is above 14 years of age, the convicted is imprisoned for a term from 3-5 years.⁶⁴ Person assisting in the crime of rape is imprisoned for a term not exceeding 1 year. In case a girl below 10 years is raped, the punishment is doubled.⁶⁵ Attempt to rape is punishable by imprisonment half to what is prescribed for the rape. Any person instigating the commission of rape or attempt is penalized half of the punishment as for the rapist or the person who attempts to rape.⁶⁶

12.3 Compensation: Half the property of rapist shall be confiscated and given to the victim.⁶⁷

12.3.1 Right to Defense: Any person with the intention of committing rape, catches, holds or obstructs a woman and to protect her chastity if the woman uses any weapon, stick, stone etc., and kills him within an hour, she is exempted from any punishment. If she kills him after an hour, she shall be penalized with a fine not exceeding Rs.5000 or upto 10 years of imprisonment.⁶⁸

12.4 Jurisdiction: The rape case being a crime against the state has to be registered in the area police station where it has been committed and thus the police is authorised to investigate thereon whereas the Government Advocate's office initiates cases. Crime of rape must be reported to the police within 35 days of the incident⁶⁹

12.5 Judicial Interpretation: If there is a lack of evidence to prove that the sperm found on the woman's vaginal canal belongs to defendant, it is an injustice to establish the crime of rape.⁷⁰ After being separated from the man being on top of her and inspite of her having ample opportunity to escape if she killed the accused, the Section 8 of the Section on Rape is not attracted.⁷¹ The man's sexual excitement should be diverted elsewhere so that the man will have limp penis.⁷² One can not say that rape has not been committed only in the absence of witness because mostly in a sexual crime eyewitness cannot be found easily.⁷³

A leading interpretation on rape has been made in a case of HMG Vs. Jimidar Kurmi.⁷⁴ Jimidar Kurmi raped a nine-year old girl in the lentil field far away from the village where she went for buffaloes hazing. When she screamed, no one heard. The Jimidar Kurmi accepted the allegation in the Police Station. The age of the girl was mentioned to be nine years when the FIR was filed but in her statement she mentioned to have been 11 years old. Jimidar Kurmi denied the allegation in the court and took alibi on the date when the incident occurred.

In this case, the court has interpreted the questions as to when the rape could be established:

- (a) If the accused can not provide an alibi of being in another place
- (b) If there is absence of cause for the false allegation
- (c) If the confession has been made in the police statement and not denied within the time

^{63.} Source; Crime and Investigation report, Annual Publication, vol. 3, 2054, published by Criminal Investigation Department, Police Head Quarter.

^{64.} Clause 3, Section on Rape, New Muluki Ain

^{65.} Clause 4, Section on Rape, New Muluki Ai

^{66.} Clause 6, Section on Rape, New Muluki Ain

^{67.} Clause 10, Section on Rape, New Muluki Ain

^{68.} Clause 8, Section on Rape, New Muluki Ain

^{69.} Clause 11 of Section on Rape

^{70.} His Majesty's Government V. Brijia Lodha Nepal Kanoon Patrika (Supreme Court Reporter). 1989, P. 572

^{71.} Nepal Kanoon Patrika (Supreme Court Reporter). 1974, Page 123

^{72.} HMG V. Babu Kaji, Lab Dev Bhatta, Collection of Full Bench Decision, P. 158

^{73.} HMG V. Brijia lodh, Nepal Kanoon Patrika (Supreme Court Reporter) 1950, Page 739

^{74.} Nepal Kanoon Patrika (Supreme Court Reporter), 1971, vol.5, Page 79

- (d) If he can prove that the confession was extracted with force or coercion and even if he denies in the court, it proves the commission of rape.
- (e) If there is no symptom of violence -

If a woman declares of having been raped after intercourse because of her inability to hide the latter and stays quiet and does not complain to anyone and if there is no symptom of violence on the body of the woman, then it can not be seen as a case of rape.

The circumstance when a woman's age to be under fourteen years can not be considered: If there is a contradiction between the doctor's assumption of a girl's age and what is mentioned in the application statement, or if it is not mentioned in the police report that the girl is below the age of fourteen and the Board of Doctors later orders the examination of the age but the girl's age to be determined does not show up within the time limit, then it can not be said of her being less than fourteen years.

In **HMG Vs. Sita Maya Kharel 's** case (Case no 2050, 1279 decision 18.03.1997) Sita Maya murdered Krishna Mohan Thakur who attempted to rape her. The plea taken by the applicant was that she was having an affair with him and therefore it was an intentional murder. On the contrary, Nirmala, sister of Sita stated that "the accused closed the door, held the breast and body of my sister, tried to take off her lungi (dress) and as I tried to rescue her. As he showed me a knife, I lost my consciousness. The time as I opened my eyes I found him dead." However, her statement was not taken into consideration. The District Court and Appellate Court gave her life imprisonment confiscating her property. Finally, the Supreme Court decreased the penalty to the 5 years which she had already spent in the prison, stating that "as the diary and letter found with the deceased does not prove sufficient mens rea to kill and establish illicit sexual relation "

During the case study, it was realized that Sita Maya was denied the plea of sec. 8 of the Chapter on Rape as it was assumed that if she was having sexual relation she must have continued and had no right to deny sex. Secondly, during the hearing of the case, Sita did not say that it was not the rape but her "Izatt" (dignity) was attacked. She said the accused put his hand on her chest and he tried to molest her. It is realised that the words used in certain cases should be appropriate to the preconceived notion, that once one had relation she is a bad woman and must continue the relation forever, therefore one can not take the plea of attempt of rape.

12.6 Positive Decision: Under Nepalese law, a victim of rape is compensated with half the property of the culprit. In a case of a girl of six years was raped by a 15-year old boy, District Court decreased the penalty by giving the benefit of being juvenile delinquent. It further said that half of the property of the culprit cannot be claimed.

The plea taken by the defendant was that he was alibi and the claim to confiscate half of his property can be made only if the victim is woman. Here the victim was child so she could not be benefited of that Clause.

The Supreme Court in this case said that the alibi has to be proved by the defendant with the supportive evidence and the word woman includes unmarried, married and widow as well. Therefore, the court did not accept the argument of the defendant lawyer against compensation to the victim with half of his property under section 10 of the chapter on rape ⁷⁵.

12.7 Execution of the Compensation: The Execution Section (Tahashil phat) has executed very few cases in the Kathmandu District Court. A girl child Mangali was raped. The Supreme Court ordered confiscation of property of the culprit on 2045/3/6. This decision was executed only on 2052/2/3. Normally as cases go on, they transfer the property in other person's name. Therefore, in that case also a case on forgery and to void the registration was filed. In the meantime, the father left the case to get

⁷⁵ Mohan Tamoli Vs. Ghanshyam Tamoli. Nepal Kanoon Patrika (Supreme Court Reporter), 1995, Page 166.

compensation executed, therefore, once the girl became 16 years, she took up the case and received the compensated property.⁷⁶

12.8 Discriminatory Legal Provision: Any person having sexual intercourse in any manner with a prostitute without her consent or through the use of force shall be fined upto Rs 500 or imprisoned upto 1 year.⁷⁷ This shows a prostitute is not treated as a human being and she does not have the right to deny sex. And there is a different punishment imposed for raping a prostitute as compared to other women.

The husband of the victim of rape is considered to be a first husband. And if she is raped, she is entitled only to use the property of the husband during her life time.⁷⁸

12.9 Proposed Bill on Rape: The proposed bill of amendment on *New Muluki Ain* has sharply increased the degree of punishment in the crime of rape. The bill has prescribed a punishment of 10 to 20 years of imprisonment for crime of rape of girl below the age of 10, 7 to 14 years imprisonment for a crime of rape of a girl above 10 years, and 5 to 10 years for a rape woman above 16. People involved and helping in the commission of rape are punished with an imprisonment of 3 years, and in case if the victim is below 16 years of age, the punishment is made double.

Rape is a heinous kind of gender-based violence. It is an outcome of unequal power balance between male and female. Most of the victims of this crime are children. Merely a fraction of cases are reported in Nepal. It should be an issue of serious concern for the state as it gives mental, social, legal and physical torture to the women. The crime of rape violates the basic human rights of women, including fundamental freedom, right to live with dignity, right to movement, right to privacy, right against exploitation and right to equality among others.

13. DOMESTIC VIOLENCE:

13.1 Marital Rape:

13.1.1 Legal Framework: An act of sexual intercourse with a girl below the age of sixteen years, with or without consent, and with a married or unmarried woman or a widow without her consent is defined a crime of rape. The sexual intercourse committed with consent taken under duress or intimidation or undue influence or by other means also constitutes the crime of rape under clause 1 of Section on Rape of the *New Muluki Ain*. As the inference can be drawn from the provision, the victim must not be the wife of the culprit to constitute the crime of rape. Under the prevailing law, no kind of sexual intercourse with the wife constitutes the crime of rape. As a fundamental element, the victim must be a woman other than the wife⁷⁹. It can, therefore, be said that there is no concept of marital rape and penalty thereof in Nepal as yet. In fact, the existing law does not recognize the right of wife to refuse the husband's desire of sexual intercourse. Not even a forceful or violent sexual intercourse consummated by husband constitutes a crime of rape under the existing law. Apparently, the Nepalese legal system has no concept of marital rape.

However, incidents of marital rape cannot be denied in practice. The following case can give a glance at situation of many women in Nepal.

⁷⁶. Source: Tahasil Section, Kathmandu District Court) (In each district court there is a execution section that executes the decision of the court once it is finalized.

⁷⁷. Clause 7, Section on Rape, New Muluki Ain

⁷⁸. Clause 10, Section on Rape, New Muluki Ain.

⁷⁹. Clause 1, Section on Rape, New Muluki Ain.

"Any person commits sexual intercourse in any manner with an unmarried girl or widow or a married woman, who is 16 years of age, with or without consent, or in case he does so in any manner, who is above 16 years of age, without her consent through force, threat, intimidation or undue influence, he shall be deemed to have committed rape.

13.1.2 An Incident of Marital Rape: Mrs. Durga Wagle had been married to Mr. Shanker Wagle. She had five children during her 13 years of cruel conjugal life with him. Her husband had been a drunkard and unemployed thug. He hardly had a day without beating her with sticks, and occasionally the iron rod. She could not report the treatment, because that might subject her to undergo further cruel torture. She had to spend days without food, and was subjected to constant pressure to get money from her parents for his alcohol.

27th of Jestha, 2054, was the last day of her life. That evening, while she was cooking, the husband entered the kitchen and started dragging her into his bedroom. Since she was not well for a couple of days, she was not in position of helping him for sexual pleasure. The husband was angrily insisting for sex. Since she did not like it, a feeble resistance was made. Consequently, she had to undergo cruel torture before she was made lie down on the floor and stripped naked. She was then raped mercilessly. When she tried to shout for the help of children, he covered her mouth with cloths, and when there was more resistance from her part she was murdered.

This is only an instance of many cases, which go unreported. It becomes a subject to make fun of even for the police, if a wife reports incidents of rape by the husband.

13.2 Murder of Wives/Daughters-in-law by Family:

13.2.1 Legal Framework:

According to the Clause 1 of the Section on Homicide in **New Muluki Ain**, no one can be deprived of his life except as prescribed by law. The crime of murder is punishable by a life imprisonment with forfeiture of the property⁸⁰. Conspiracy to cause murder is punishable by a term of imprisonment of 10 to 15 years⁸¹.

As provided for by clause 17(1) of the same section, a person not involved as a principal conspirator, but acting as a accomplice, by being providing equipment of murder like fire arms or supplying poison or guarding with arms at the spot of the crime, is punished by an imprisonment of 10 years. Similarly, persons assisting in crime by blocking the way of victim or encircling him/her is punished by an imprisonment of 5 years under clause 17(2).

The law relating to homicide applies irrespective of sex and the relations between the culprits and the victim. The Section on Homicide is equally applicable to incidents which occur as a result of the violence wife or in-laws. Since, the murder of a person is defined as a crime, the objective behind does not make difference in conviction and the punishment.

13.3 Some Recent Incidents of Murder of Wife:

Goma Acharaya: Mr. Bikash Sinha was a poor kid when he arrived in Kathmandu from a Terai district. Fortunately, with an assistance of a businessman, he was able to get a job and established in Kathmandu. He married a woman from Kathmandu whom he murdered brutally. Since he was able to cover the crime, he just escaped justice. For a long time, he was able to pretend that his wife disappeared. Then came Ms. Goma Acharaya, a teenage girl, from Jhapa as an adopted daughter. When she grew up, he induced her turn alcoholic and exploited her sexually. She desperately tried to escape but failed. Eventually, she resisted and then was murdered on 24 Jan. 1997 at home.

⁸⁰. Clause 13, Section on Homicide of the Muluki Ain:

"Except otherwise mentioned in other provisions of the section, if someone is murdered by action of other, he/she has to undergo a punishment of life imprisonment along with confiscation of the property. If someone has been involved as conspirator to induce other to murder someone and the one who has been abetting or assisting the crime as accomplice, he /she has to undergo a punishment of life imprisonment".

⁸¹. Clause 16 of Section on Homicide, New Muluki Ain, "Person or persons acting as a principal conspirator to plan or induce the crime of murder is punished by an imprisonment of 10 to 15 years of terms. However, he/she is punished only by an imprisonment of 5 to 12 years provided that the victim survives".

The dead body was then thrown away in a secret place, which was discovered by the police. Once, the body was identified, he was arrested and prosecuted. The case is now progressing to final hearing in the Kathmandu District Court.

Munni Aggrawal: Munni Aggrawal was married to Mr. Bhavani Prasad Aggrawal. At the time of marriage, Mr. Aggrawal had demanded a dowry of one hundred thousand from Munni's family. Munni's family was unable to pay as demanded. Consequently, the married life between Munni and Bhavani could not go well. He kept pressurizing the wife to get ransom from the natal family. When he thought that there was no chance for getting the ransom, he started making plans to murder Munni. Accordingly, on 14 Poush, 2052 she was murdered by beating and torture. The dead body was cremated instantly to hide the crime. The post-mortem was also avoided.

On 29th Jestha, 2053, the first information report was filed in the police office by the brother of the deceased. The investigation was then carried out, and a letter written by Munni stating the plan of her husband and the family to murder her was discovered. The Sunsari District Court is now hearing the case.

Sarasoti Adhikari: Sarasoti had been ailing for quite a time. She was taken to a woman practicing as a "witch doctor" at Maitidevi, Kathmandu. Sarasoti was then kept in a dirty dark room for three days without any food and water. In the pretext of removing the influence of witch, Sarasoti was subjected to a number of cruel bodily torture like putting hot water on head, remaining inside the room in smoke of chilly, beating and stabbing with knife. In three days, she was completely exhausted by torture. Eventually, she was found crying because of unbearable torture and rescued by social workers. While social workers intervened, she was found lying on the floor with her hands and legs tied down. She was rushed to the Hospital, where she died after a while⁸².

13.4 Landmark Case:

HMG Vs. Udhav Pudasaini: Supreme Court, Nepal, 1993.

Deceased Sangita was married to Udhav Pudasaini, defendant, on 27/11/2037. There was a son born out of wedlock from Sangita and Udhav. While she was pregnant of six months, on 7/12/2041, an information concerning her being in the emergency ward of Biratnager Hospital was received by her natal family. As her father went to visit her, Sangita was burned completely below the neck and had been in semi-conscious state. Next day, the mother visited her and asked the reason thereof, the son-in-law did not respond her. Later, it was revealed from Sangita that on 7/12/2041 she had been severely beaten up by the husband and became unconscious. That day as she was given no food and kept in isolation, she could not complain thereof. She also revealed that Udhav came drunk at 10.30 at night and started beating her. The mother-in-law dragged her by holding her hair and the husband punched her with nosy shoe. She was again made unconscious. As she regained consciousness, she was completely burned. The father of Sangita complained to the police by stating what Sangita had told to them.

Sangita died a few days later in the hospital. A charge sheet was then brought against Udhav and his mother by the prosecution in the trial court. Although, both the defendants denied the commission of the crime, the trial court convicted them and made punishable by life imprisonment with property confiscation. Eventually, the case was reviewed by the Supreme Court, in which it held that, since the deceased had categorically declared the statement of the cause of death and alleged that the defendants had been involved in murder, the judgment of the lower court needed no reversal.

This was the first case in which the Supreme Court held up the punishment solely on the ground of the dying declaration of the deceased. Since the violence against daughter-in-law takes place inside the family and often the whole family is involved and committed therein, it is generally not possible to

⁸². This case is no being Tried by District Court of Kathmandu.

discover other evidences to prove the guilt. It is in fact a progressive approach to hold the dying declaration of the deceased as the major evidence to convict the offenders⁸³.

13.5 Incest:

13.5.1 Legal Framework:

Incest is strictly prohibited in Nepal and has been defined as a sexual crime committed between the relatives within seven generations. The crime of incest is punishable with terms of imprisonment. However, the degree of the punishment varies as per the distance of relation involved therein.

13.5.2 Sexual Intercourse with Mother and Other Close Relatives: Sexual intercourse with mother is regarded, both morally and legally, as one of the most despised crimes in the Nepalese society. This crime has been taken as one having effect of moral turpitude. According to clause 1 of the Section⁸⁴ on Incest of the **New Muluki Ain**, the crime of having sexual intercourse with mother and other close relatives is punishable by terms of imprisonment as follows:

- a. A person committing the crime of sexual intercourse with mother is punished with terms of life imprisonment.
- b. A person committing the crime of sexual intercourse with sister of the same parents or with daughter is punished with 10 years of imprisonment. However, the term of imprisonment is reduced half if such a sister or daughter has had sexual intercourse with other than her husband.

A man is punished with six years of imprisonment⁸⁵ for committing sexual intercourse with a woman of his father's ancestral lineage:

- a. Step mother, grand mother, daughters-in-law, wife or daughters of heirs in son's line, wife of brother from same parents, daughters or daughters-in-law of brothers from same parents and cousins from same grand father.
- b. Grand daughters from daughter's line, daughter's daughters-in-law, mother's or father's grand mother, mother-in-law, grand mother-in-law, sisters of mother from same parents, sisters born out of same father, the daughters or daughters-in-law of sisters and daughters or daughters-in-law of maternal uncle.

Sexual intercourse with other women of relation within seven generations of father or mother's ancestral lineage, other than those mentioned above, is punishable with an imprisonment of 2 years⁸⁶.

The section on incest has emphasized the chastity of women in view of provisions for punishment based on the past character of the women. Obviously, a woman's status degrades if she is involved in sexual intercourse other than her husband and it is treated also as a ground for mitigating the sentence of one committing incest.

Being influenced by the traditional Hindu moral values, the courts tend to be strongly conservative in the issues as such. Incest has far-reaching and more serious impacts in the life of a victim woman and is almost ostracised from the society, and has no status socially.

13.6 Incidents: Incidents of incest frequently occur and only very few of them have been reported for fear of the social ostracization. For instance, not a single case of incest was reported by the police in the

⁸³. Nepal Kanoon Patrika (Nepal Law Reporter) No. 7. 1993 Page 648.

⁸⁴. Clause 1 of the Section on Incest of the New Muluki Ain:

"One shall be punished with a sentence of life imprisonment who is commits sexual intercourse with mother giving birth to him. One shall be punished with an imprisonment of ten years who commits sexual intercourse with sisters from the same parents and who commits sexual intercourse with daughter of his own. The punishment shall be only half if such sisters or daughters have been infidel for committing sexual intercourse with a man who is not the husband".

⁸⁵. Clause 2 of the Section on Incest of the New Muluki Ain.

⁸⁶. Clause 3 of the Section on Incest of the New Muluki Ain.

fiscal year 1994-95 and 1995-96⁸⁷ whereas the media report stories of incest. Two years before a newspaper reported that Geeta - a 12-years old daughter - alleged that her father raped her. Current status of the case is not clear.

14. SOME COMMON FORMS DOMESTIC VIOLENCE IN NEPAL:

Beating, whipping, floggings and abuses of wives are most common forms of domestic violence in Nepal. Normally, such forms of violence's are tolerated by women as ill-fate. Since, no concrete study is carried in this regard, to refer to exact position is difficult. Yet, it can be generally estimated that such incidents do occur in the most of the houses in Nepal, but are rarely reported to the police or the courts.

14.1. Legal Framework: No special law prohibiting the domestic violence exists in Nepal. However, the provision of the Section on Physical Assaults in *New Muluki Ain* can be used to punish the wrong-doers, provided the victim wishes so. Since, the offences falling under this section are taken as non-state or private offences, no prosecution by the state takes place in acts like beating, whipping, flogging and so on by the husband or family members. Under the section, the following acts are defined punishable as private or non-state offences ⁸⁸:

- a. Injuries inflicted by use of hands, legs, teeth, nails.
- b. Injuries inflicted by use of weapons, stick and stone.
- c. Injuries or harms caused in the body by using electricity.
- d. Injuries or harms caused by use of fire or other igniting matters, acid and similar types of other materials.
- e. Injuries or harms caused by poisonous gas or smoke or compounds to cause loss of sense.
- f. Injuries or harms by any other means .

These offences are punishable with terms of imprisonment or pecuniary penalty or both. The injuries resulted in defect of any part or parts of the body are defined as grievous and punishable with maximum of 8 years of imprisonment and a penalty upto five thousand rupees⁸⁹ .

Such cases being non-prosecutable offences, it would be the responsibility of the injured person to approach to the court for remedy. The court process begins with filing a sort of petition, stating the injuries sustained and remedy asked for, that is called *Feradpatra*. The petition must be filed within 35 days of the incidents. Crossing the limitation has no access to court. Mostly, the family incidents on such matters fall within the jurisdiction of this law. However, there are only negligible number of cases registered by women against husband and other family members under this section. Since the procedure is clumsy and tiresome, the people geerally avoid this section. However, if such violence takes place in the public place by non-family members, it is tried under the Public Offence Act as discussed above.

15. CONCLUSIONS:

Generally, violence against women is resulted from unequal power shares between men and women. Because of the patriarchal structure of the society, the men wield much power than women. Obviously,

⁸⁷. See, CID Magazine, Criminal Investigation Department, Police Headquarters. Vol. 3. 1997. Page 2.

⁸⁸ Clause 1, Section on Physical Assault in New Muluki Ain.

⁸⁹ Clause 6, Section on Physical Assault in New Muluki Ain

the relations between them are governed by the values influenced by the patriarchy. The long practice of unequal power share has given rise to a tradition of imposing on women a culture of tolerance to discrimination and exploitation and in fact has become the sources of violence of all kinds.

Obviously, incidents of violence must not be seen in isolation. By forgetting the society, no measures can be developed to curb the problem thereof. In this context, wider consideration should be given to the gender disparity for its elimination as it exists in every walk of life, and until and unless an effort is made to address it, nothing can be done with regard to violence.

Law, as a social measure, plays a vital role for positive transformation of the society. Wisely and properly fashioned law can tremendously help build a rational society which can not permit negative segregation of any forms. The Nepalese society had been segregated in religion, cast and gender in an extremely degraded form. The system of law plays a role as catalyst for positive changes in the society and is immensely influenced by the defective value system on gender discrimination. Many laws are still prominently protecting the high handedness of the patriarchal society. The law refusing equal share to daughters on parental property is one of the examples as such. Therefore, the reforms must begin from eliminating what cannot be accepted as a civilized being.

Nepal has accepted to abide by the international obligation relating to respect and dignity of the human being irrespective of sex. As such, Nepal has ratified many international instruments which call for elimination of all forms of discrimination against women. However, a statute like Citizenship Act, 1964, still prevails which effectively contradicts with the international instruments as regard to the status of women being an independent personality. Similarly, many such laws exist which, in this or that way, are discriminating to women in terms of personality, opportunity, development, participation and career building as a dignified citizen despite the constitutional provisions guaranteeing equality, irrespective of sex, in terms of protection of general law, development opportunity and participation.

As our's is a hidden society, the injustice and sufferings being inflicted upon the women are not reported and an example of the Nepalese women is a best example thereof which can be defined as culture of silence as every day they are subjected to humiliation, torture and pain. A daughter should walk gently hiding her face; a daughter is supposed to hide herself inside the house when guests visit the elders of the family; a girl is kept in dark isolated room when she has the first menstruation; a girl is dedicated to the temple to earn heaven in the next life; girls are given to marriage in childhood to earn grace and blessing of the god; women are subjected to a number of pregnancy to beget the son to run the family lineage; more women are married to ease the burden of the family workload; a bride is tortured to exact wealth; and daughters are refused schooling to support family as baby-sitters and collecting fodder. These incidents are something as culture-based injustices, women are frequently subjected to physical and mental torture, sexual exploitation and harassment and degraded treatment.

The legal system is indifferent in many of these matters. Even the judiciary takes these injustices against women as a normal practice of the society and are taken not as a serious offence. No special laws are there to protect the women thereagainst.

If women take resort to legal remedy, the process is much more exploitative than what they suffering every day. A raped woman has to prove that she tried to resist the invasion on her body. Further, to get the culprit punished, she has to prove that the penetration has taken place. She has to pass through all these rubbish to be protected by the state. It is why, the assertion is common "going to the court a raped woman is twice raped".

The investigation and prosecution systems are far below to the minimum standard accepted by the international community. No special investigation, prosecution and trial systems are conceived to impart justice to women in violence related offences. No special law is enacted to address the growing problems of violence against women. No special policies are adopted by the state to protect women from day to day violence taking place in the streets, working places, schools and houses.

This situation cannot be improved until and unless the special laws are enacted to prohibit such incidents. Women must be safeguarded against what is happening to them in their surroundings. This process must begin by fashioning a fundamental law equalizing women with men.

16. RECOMMENDATIONS:

16.1 Implementation of the International Treaties and Convention: His Majesty's Government of Nepal has ratified many international treaties and conventions providing for elimination of gender discrimination and exploitation and has fully accepted to act in accordance therewith. The Treaty Act of Nepal recognizes the validity of such treaties and conventions in absolute terms. However, HMG has not sincerely acting as per such international obligations and not behaving like a competent government. For this the following actions must be taken sincerely, honestly and urgently:

- a. The Property Right Bill introduced in the parliament must be enacted as soon as possible with positive formulations of the contents and must not make any attempt to relate women's legal position based on their sex and marital status
- b. Law relating to trafficking, rape, sexual harassment etc. must be enacted or amended and have special provisions relating to investigation, prosecution and trial system. The women police must be involved in the investigation of the crimes of rape, trafficking, sexual abuses and so on. For making the women police efficient in processing investigation, the existing women police cells should be equipped with training on law and policy related to VAW. The scheme of women police must be expanded to all districts with necessary logistic support and infrastructure for medical and forensic investigation.
- c. The existing structure of criminal trial system must be changed. The Existing Judicial Administration Act must be replaced by new Act having provision for separate criminal court guaranteeing a closed camera to try and adjudicate the cases relating to rape, trafficking and sexual harassment or abuses.
- d. Considering the present state of law relating thereto, a separate and integrated law must be enacted as soon as possible. Such law must give a special privilege to women affected by the violence to participate in the investigation process.

16.2 National Policy on Violence Against Women: Several issues relating to violence against women have received no policy interventions. Such issues need to be addressed by the government with special attention and consideration. For this, the following recommendations are suggested:

- a. Violence against women must be given high priority in the national agenda and strong political commitment is important for its prevention. Activities like providing more access to basic education and skills, effective provision of health services, quality education, training and a supportive environment to families and children vulnerable to sexual exploitation should be included in the national planning scheme.
- b. Trafficking is a trans-border issue and, therefore, must be addressed at a global or regional level. Pressure must be accelerated to eliminate the crisis brought about by trafficking through bilateral and multilateral dialogues. Adequate resources must be mobilized to combat trafficking and a regional and bilateral plan of action should be initiated immediately. Till now, the problem of trafficking is confined to India. However, it has symptoms of crossing the Indian sub-continent. Therefore, a special attention should be given to cope up the problem before it becomes serious. With regard to trafficking of women and girls to India, HMG must immediately make arrangement for implementing the law on extradition of the criminals involved therein and take initiatives

to establish a SAARC police to combat against the problem. Like regional convention on terrorism, an initiative to have regional convention against trafficking must be made through utilizing the forum of SAARC.

- c. The Ministry of Women and Social Welfare established in September 1995 with the goal of bringing women into the mainstream of national development by encouraging gender equality and their empowerment (Initial Report of CEDAW Submitted by HMG, National Planning Commission, May 1997, page 38) is committed to formulate a national action plan for women's development based on national priorities and international declarations and convention. The plan of action prepared by the Ministry to eradicate violence against women should be analyzed and a work plan should be developed by involving governmental and non-governmental organizations, lawyers, doctors, human rights workers and social activists.
- d. Special training package on violence against women must be developed and imparted to the judges, prosecutors, district administrators, police, lawyers, doctors and human rights workers. The training package as such must include orientation on knowledge and skills both for effectively combat violence against women. Priority must be given to generate a special group of women lawyers to assume role of leadership of gender-based legal issues. A team of lawyers should be constituted to support the victims of VAW all over the country. This responsibility must be given to the Ministry of Women and Social Welfare as a national agenda.

A policy of special legal aid scheme for victims of violence must be adopted nationally and legal aid and monitoring team should be established to oversight responsibility of the investigating and prosecuting agencies, and make timely suggestions. Such team must also be empowered to visit shelters and prisons and to provide necessary suggestions and support.

16.3 Miscellaneous: The following recommendations are made with a view to combating the problems:

- a. Monitoring mechanism should be developed to oversee how victims and accused are dealt with by the police, lawyers and the court. On the basis of the monitoring, support should be provided if necessary.
- b. Government advocate's office should be well equipped with a separate section to deal with the cases related to VAW.
- c. A family court should be established to have a speedy trial on family issues. The concept bill prepared by Ministry of Law should be finalized and should be submitted to the Parliament as soon as possible.
- d. Regional networks of women lawyers, activists, media and civil society should be established to lobby on the issues of violence against women. This will also help in reforming the law and policy through the network.
- e. A national study on situation on violence against women must be conducted to identify the accurate magnitude and dimension of the problem.
- f. Center for counseling services for victimized women must be set up. Intensive counseling services must also be given to men.

Human Trafficking Activities Eradication Act, 2054 V.S.

Seal and Publication Date

Act No. of 2054

Act enacted to eradicate the activities related to human trafficking

Preamble : Given that it is desirable to control an extremely cruel, immoral and inhuman crime like human trafficking and to effectively implement the international treaties and conventions to which Nepal is a party and to safeguard the interest of the general public and maintain good conduct,

The parliament has enacted this act in the year of **His Majesty King Birendra Bir Bikram Shah's** rule.

1. Concise Name and Prolegomena

- a. The name of this act is "Human Trafficking Activities Eradication Act, 2054 V.S."
- b. This act shall be effective soon.

2. External Application of this Act

- a. An individual performing a crime deserving punishment according to this act even while residing outside the Kingdom of Nepal shall be treated as if she or he had performed such crime while residing inside Nepal and action and punishment shall be taken in accord with this act.
- b. If for the purpose of sub-article (1) an alleged person is to be handed over, concerned district court can issue an order to His Majesty's Government to take necessary action in accord with current law.
- c. If in connection with the action in relation to the case it is known that the victim is outside the country and if such person needs to be inquired , the court can order His Majesty's Government to present him/her before the court.

3. Definitions : No other meaning shall hold for the content and interpretation of this act :

- a. "Human trafficking" is to be understood as any action like selling humans for any purpose, using humans in flesh trade and separating them from their guardians with the purpose of trafficking and causing them physical, mental harm by means of sexual exploitation.
- b. "Prostitution" is to be understood as the sexual flesh trade carried out in a commercial and vocational manner.
- c. "Victim" is to be understood any victim in accord with this act.

4. No Act of Human Trafficking can be Performed :

No one is allowed to perform and cause to perform an act of human trafficking.

5. Acts to be Considered as Human Trafficking :

Any one performing the following acts shall be considered to have performed acts of human trafficking:

- a. To sell or buy a person for any purpose,
- b. To take abroad any person with the purpose of having him/her engaged in prostitution by persuasion or enticement or deception or under threat or pressure or by bringing under control or by kidnapping or perform such act inside the country or elsewhere,
- c. To take any one away for any purpose of trafficking separating from his/her guardians' protection,
- d. To engage oneself and have others engaged in prostitution in the country or abroad,
- e. To take any one abroad with the purpose of prostitution,
- f. To buy or consume the sex of any person who has been made to be engaged prostitution in the country or abroad,
- g. To marry or adopt any woman with the purpose of trafficking,
- h. To conspire or to become accomplice or make arrangement to perform any act mentioned in section (a), (b), (c), (d), (e) and (f) of article 5 or give consent or to encourage or make an attempt to perform such act,
- i. Besides those mentioned, if a person performs or gets performed prostitution at his/her own will.

6. Lodging Complaints:

1. Any individual having the knowledge that a human trafficking act is performed or is going to be performed, or a victim can lodge a complaint with any police office. While lodging a complaint the one who does so shall submit as many evidences as she/he has obtained.
2. The police shall submit any complaint under sub-article (1) to the nearest district court and if the court finds a reasonable ground to take action in relation to it and issues an order to that effect, the police shall make necessary investigation.
3. Also the police who comes to know that human trafficking is being performed shall, in accord with sub-article (1) , give report of the same to the office where he has been posted and after submitting before the court such report for action if the court issues an order finding a reasonable ground, the police shall carry out necessary investigation in relation to it as well.
4. If, in relation to the crime mentioned in sub-article (1), any hint is obtained, it shall be a compulsory duty of the local people's representative to report of the same to the police office.

7. Investigation

1. In order to carry out investigation of cases registered under this act, arrangement shall be made for separate necessary police personnel and police unit.
2. The court can give necessary instructions to the police personnel mentioned in sub-article (1) responsible for investigation.
3. If it is known or apprehended that in the course of investigation there has been some mistakes, the victim or his/her relative or his/her legal practitioner can submit an application and in relation thereto, there shall be an immediate hearing in the court in a closed bench.
4. In the course of investigation, the government advocate and a legal practitioner representing the victim can be present in the whole process.

8. Having Statements Attested:

1. If the individual lodging a complaint under article 5 is a victim, the government advocate shall have to take his/her statements in the presence of witnesses and such statements shall be attested within 24 hours by the nearest district court.
2. No matter what is written the current law, if the statement of the victim is brought to the court to have attested, the concerned justice shall read out such statement and attest it if it is found to have been written as per what he/she had exactly said and if it not found, it shall be attested as what mentioned as different.

9. Action to Take Place in Closed Bench :

1. While trying a case related to an allegation of which punishment would be given in accord with this act and while carrying out petition action and pronouncing verdict, it shall be done in a closed bench.
2. Only the victim, members of his/her own family or his/her guardian or successor and his/her legal practitioner and the guardian of the alleged one or successor and legal practitioner shall be allowed to come into the closed bench.
3. Arrangement for the closed bench and the procedure shall be as fixed by the court.

10. The Responsibility to Submit Evidences :

1. In the case a woman being taken to a foreign land by any person If anybody lodges a complaint under article 6 that she is being taken away with the propose of selling or engaging her in prostitution, the accused shall prove with ample evidences that she is not being taken away for those purposes.
2. In accordance with sub-article (2) of article 8, the accused shall prove with ample evidences that the statement attested by the court is false .

11. Confidentiality and Protection :

1. In the course of investigation and hearing of any case, arrangements shall be made not to allow people see the case other than those involved in the case, the witnesses and the legal practitioners by discretion of the justice or if so demanded by the plaintiff or his/her legal practitioner.
2. The procedure related to confidentiality and protection in accord with sub-article (1) shall be as fixed by the court.

12. Punishment :

1. Any one who sells a person shall receive a sentence of twenty years of imprisonment.
2. Anyone who takes away anyone with the purpose of making him/her engaged in prostitution by persuasion or enticement or deception or threat or pressure or by taking under control or by kidnapping or performs such act inside the country or elsewhere shall receive a sentence of 15 years of imprisonment.
3. Anyone who separates anybody from his/her guardian with the purpose of selling him/her shall receive a sentence of 5 years of imprisonment.
4. Anyone who makes people engaged in prostitution inside the country or abroad shall receive a sentence of 10 years of imprisonment. If the person being made to be engaged in prostitution is a minor, the culprit shall receive punishment in accord with sub-article (1).
5. Anyone who takes anybody abroad with the purpose of selling him/her shall receive a sentence of 7 years of imprisonment.
6. If anyone marries or adopts a woman with the purpose of selling her, he/she shall receive a sentence of 5 years of imprisonment.
7. If anybody engages in prostitution at his/her own will, he/she shall receive a sentence of upto 3 years of imprisonment. While punishing thus persons engaged in prostitution, the situation in which the guilty has committed the crime, the economic and social condition and nature of crime.
8. Individuals buying or consuming the sex of persons being engaged or having been engaged in prostitution shall receive a sentence of 3 years of imprisonment. But if a minor's sex is bought or consumed, the term of sentence shall be 8 years of imprisonment.
9. Anybody who makes an arrangement, gives consent, conspires or becomes an accomplice to commit a crime for which punishment shall be as mentioned above or anybody who encourages or makes an attempt to engage in such act shall receive upto half of the punishment mentioned above.

13. Fine :

1. If a human is bought or sold, the amount of the buyer shall not be returned. The buyer and the seller shall also be fined on the basis of the amount by making the amount paid by the buyer as the basis.
2. In cases under this act in which the amount is not clear, while considering the physical and mental condition of the victim or the mental condition of his/her family members or economic status and even the previous character of the victim the authority dealing with the case shall decide appropriate amount and in addition to the sentence of imprisonment in accord with article 12 fine an amount equal to the damage that has been caused.

14. Compensation

1. In a case of purchase and sale the amount paid shall be determined as the basis and that amount and the amount of fine shall be added and the defendant shall be made to pay the victim for compensation five times more than the total amount.
2. In cases in which the amount is not clear, the amount determined in accord with sub-article (2) of article 13 as compensation for the victim shall be added another amount

equal to that and shall be multiplied by 5 and the resulting amount shall be given to the victim against receipt.

3. No matter what is written in sub-article (1) and (2), if someone has been married or adopted with the purpose of selling, the victim, in condition when the marital or adoption status has not been established, shall be provided with an amount for compensation equal to the amount which the victim would get while marriage or adoption is established.
4. As regards making the payment of compensation for the victim it shall be as determined.

15. Government shall be the Litigant

1. His Majesty's Government shall be the litigant in cases under this act and those cases shall fall under Annex 1 of the government case-related Law 2049 V.S.
2. While carrying out investigation of cases under this act shall be in accordance with this act and other matters shall be treated in accordance with government case-related act 2049 V.S.

16. Action can be taken keeping the person behind bars :

1. No matter what is written in the central Nepal Law, in a case related to the crime under this act, if there are enough and reasonable causes to put the accused behind bars and put him to trial, and if the government advocate has any claim in relation thereto, the accused can be put behind the bars and put him/her to trial having prepared documents making a mention thereof as well.
2. If the accused is not satisfied in having been put to trial under imprisonment, he /she can file a complaint with the petition hearing court through the authority who is empowered to hear cases. The authority to hear cases shall have to send such complaint and the document of imprisonment to the petition hearing court within three days and act in accordance with the order of that court.

17. Right to Make regulations

1. His Majesty's Government shall be able to enact necessary regulations in order to implement the purpose of this act.

Women Trafficking (Control) Act, 2043 V.S.

The Act Enacted to Control Women Trafficking

Preamble : Given that it is desirable to control women trafficking in order to safeguard the interest of the general public and maintain good conduct,

His Majesty King Birendra Bir Bikram Shaha has with the advice and consent of the National Panchayat enacted this act.

Concise Name and Prolegomena

(1) **The name of this law is “Women Trafficking (Control) Act, 2043 V.S.”**

(2) **This act will be effective soon.**

(3) External Application of this Act

An individual performing a crime deserving punishment according to this act while residing outside the Kingdom of Nepal will be treated as if she or he had performed such crime while residing inside Nepal and action will be taken in accord with this law.

No Permission to do act of Women Trafficking : Nobody is allowed to perform an act of women trafficking.

(4) Acts Considered to be Women Trafficking

If an individual commits any of the following acts, she or he shall be considered to have committed a human trafficking act :

- (a) To sell a person for any purpose,
- (b) To take a person abroad with an intention of selling her/him,
- (c) To have a women engage in prostitution by persuasion or enticement or deception pressure or to encourage anyone to be engaged in such act,
- (d) To make arrangements for performing any act mentioned in the above sections or assist to perform such act or to make an attempt to encourage anyone to be engaged in such act.

(5) Lodging Complaints

1. Any individual having the knowledge that a women trafficking act is performed or is going to be performed can lodge a complaint with any police office and while lodging a complaint the one who does so shall submit evidences as many as she or he has obtained.
2. The police shall submit any complaint lodged under sub-article (1) to the nearest district court and if the court finds a reasonable ground to take action in relation to it and issues an order to that effect the police shall make necessary investigation.

(6) To have Confession Proved

1. If the individual who lodges a complaint under article 5 is a person taken away to be sold or be engaged in prostitution or sold out or have engaged in prostitution and if such person is present, her statement shall immediately be heard in the presence of a government advocate and the person shall be taken to the nearest district court to have the statement attested within twenty-four hours.
2. If in accord with sub-article (1) the statement made by the individual who has lodged the complaint is brought to have attested, no matter what is written in the act currently in practice the concerned justice shall read the statement and have it read out to the person who has made it, and if it is found to have written what the person had exactly said, he or she should attest it accordingly and if it is not found to be exactly what the person had said, he or she should attest it mentioning what different things it contains.

(7) The Responsibility to Submit Evidences :

1. If a woman is being taken to a foreign land by any person other than her guardian or her close relative and if anybody lodges a complaint under article 5 that she is being taken away to be sold out or to have her engage in prostitution, the accused shall prove that she is not being taken away for those purposes.
2. In accord with sub-article (2) of article 6, the accused shall prove that the statement attested by the court is false.

(8) Punishment

1. An individual who sells a person shall be imprisoned from ten to twenty years.
2. An individual who takes a person abroad with the purpose of selling her/him shall be imprisoned from five to ten years.
3. An individual who makes arrangements for performing any act or assist to perform such act or makes an attempt to encourage anyone to be engaged in such act shall be imprisoned from ten to fifteen years.
4. An individual who makes arrangements for performing any act or assists to perform such act or makes an attempt to encourage anyone to be engaged in such act shall be imprisoned for five years.
5. In the case of selling a person, the money of the person who buys shall be not be returned and as for the one who sells she/he shall in addition to the punishment mentioned in sub-article 91) also fined an amount in accord with the amount of that money.

(9) Government will be the Litigant:

His Majesty's Government will be the litigant in cases under this act and those cases will fall under Annex I of the government case related Law 2017 V.S.

(10) Action can be taken keeping the person behind bars :

1. No matter what is written in the current Nepal Law, in a case related to the crime under this act, if there are enough and reasonable causes to put the accused behind bars and put him to trial, and if the government advocate has any claim in relation to that, the

accused can be put behind the bars and put him/her to trial having prepared documents making a mention of that's all.

2. If the accused is not satisfied in having been put to trial under imprisonment, he/she can file a complaint to the petition hearing court through the authority empowered to hear cases. The authority as such shall send such complaint and the document of imprisonment to the petition hearing court within three days and act in accord with the order thereof .

(11) Protection

No matter what is provided for by Section on Human Trafficking of New Muluki Ain, all that is provided in this law shall be treated in accordance with this Act.

(12) Right to Make Rules

In order to implement the spirit of this law, His Majesty's Government will be able to make necessary rules.

Chapter 12

Regarding husband and wife

No. A husband and a wife cannot divorce except as mentioned in article 10 of No. 2 and No. 4, 5, 7 and 8 of the marriage Chapter and under the following conditions. Even when such conditions arise and divorce becomes necessary, it can take place only after an application is submitted before the office stating the reasons for the same and a decision is made by the office

If a wife stays separately from her husband for 3 years or more continuously without her husband's consent or if she is found to be engaged in acts that can take her husband's life, can cripple him or can cause him any other tremendous physical pain or if she is found to be engaged in tricks against her husband, the husband will have the right to get a divorce from such wife.

If a husband brings another wife or keeps or drives the wife out of home or does not provide her with food and clothing or stays separately from his wife for 3 years or more continuously without taking her care or if he is found to be engaged in acts that can take her life, can cripple her or can cause her any other tremendous physical pain or if she is found to be engaged in tricks against her husband, the wife will have the right to get a divorce from such a husband.

Apart from the situations as mentioned above, the divorce of a husband and wife can take place when both of them agree to do so.

#No. 1 a : The party seeking to get a divorce in accordance with article 1 of No. 1 of this Chapter or both the husband and the wife seeking to get a divorce with mutual consent will have to submit an application before the Village Development Committee or the municipality. The Village Development Committee or the municipality on their part should try to reconcile them with each other by means of persuasion. If no reconciliation is possible even by such means and if it seems better to have them divorced rather than maintaining the marriage, the application should be forwarded to the concerned district court having the right to perform divorce within one year following the submission of the application.

#No. 2 : If it is proven that the wife has had a sexual intercourse with another man or if she has eloped, the husband and the wife will be automatically divorced. Even if she has not had sexual intercourse with another man but makes a confession that she has had it, then the husband will have the right to get a divorce.

@No. 3 : A baby born within two hundred and seventy two days following the divorce of the husband and the wife in accordance with law will be proven to be the offspring of the divorced husband, unless proven otherwise. Regarding the upbringing of such offspring or those under five years of age and the minors above the five year's of age, the provision will be as follows:

If the mother wants to take care of the children under five years of age until they become five years old, she can do so. If she does not want to do so, then the father will have to take their care1

If the mother who has not eloped wants to take care the minor above five years of age, she can do so. If she does not want then the father will have to take their care.....2

No matter what is written in article 1 and 2 of this No., if both the mother and the father agree, any one of them can take care of the minor child, or they can do so turn by turn.3

Added by the sixth amendment.
@ Amended by the Ninth amendment

Whoever takes care of the child - the father or the mother - if there arise situations hamper the well-being of the minor child or if there are reasonable doubts that such situations will arise, then the father or mother who happens to be taking care of the child should provide the opportunity to the other who is not taking care of the child to visit the child at certain intervals. Even an eloped mother is entitled to have such opportunity4

If the child is being taken care of by the mother, the father will be obliged to provide appropriate expenses for the child's food, clothing, education and medical care according to his means and social standing. If the child is taken care of by the father and if the income of the mother is greater than that of the father, then such a woman will have to bear expenses for the food, clothing, education and medical care of the child as reasonably fixed by the court, keeping in mind the real situation.5

No. 4 : If the wife has been driven out of home without providing food and clothing by the husband together with in-laws or by the husband alone or if she is frequently made to suffer by being beaten or if the husband has kept another wife, then such a wife can have her share separated from her husband's share in property. If that wife dies or elopes, then the property left after being used by her for food and clothing will go to the heir. In a situation of her being driven out of home by the in-laws only, she should be provided with food and clothing according to the means and social standing.

§No. 4. a : In accordance with article 2 of this No. of this Chapter, if the divorced wife lacks property or income enough for food and clothing and wants the divorced husband to provide her with these expenses, then the divorced husband will have to provide the expenses as fixed by the court depending on his means and social status. Such expenses should be born out up to five years following the divorce or until the woman gets remarried, whichever comes first.

No. 5 : If there exist in the family members entitled to have share in property at the time of spending the wife's dowry or personal belongings, the property spent can be paid back in accordance with the Chapter related to the transaction of dowry or personal belongings from common property of those having share in it only if there exists a written agreement of all those above the age of sixteen years. If it is spent without fulfilling the written conditions, it cannot be paid back from the common property of those entitled to have a share in it or to be born by them unless they all agree to it.

No. 5. a : One can register a petition requesting to establish relationship with a certain person. If the person is a minor, other heirs can also register a petition requesting to have his/her relationship established.

No. 6 : Except for what is written in No. 1 of this chapter and except for the question of elopement fine, any lawsuit related to other matters will not be valid if is not submitted within one year following the event.

§ Added by the sixth amendment
- Added by the ninth amendment

Chapter 13

Regarding Partition of Property

No. 1 : While partitioning property, it should be separately partitioned between the father, the mother, the wife and the sons.

No. 2 : Except for what is written elsewhere, while partitioning property in accord with No. 1 of this chapter, all those receiving share in property should receive equally.

No. 3 : As for the sons of brothers living together, only their fathers receive the share in property.

No. 4 : If there are co-wives, all of them are entitled to have their share from their husband's share in accordance with law.

No. 5 : If the husband or the father dies before the property is partitioned, the share in property that he is entitled to, will go to his wife and his heirs in accordance with law. The wife having betrayed her husband will not receive anything from the share of the husband as such.

No. 6 : #.....

No. 7 : The offspring born of a woman without a husband will receive only the mother's property if the husband is not identified.

No. 8 : A wife kept outside without making it public or a son born of her cannot claim their share in his property after the husband or the father is dead.

No. 9 : One who performs Vijaya Hom (religious offering) having his saved he cannot claim his/her share in property.

No. 10 : The sons cannot compel their father their share in property as long as the father is alive. Likewise, no father can separate a son giving him the share in property unless the son wants to be separated. The wife also cannot be separated having received her share in property without the husband's consent as long as the husband is alive. The sons and the wife should also not be kept without providing food and clothing in accord with means and social standing. If not, they should be given their share in property. As regards tot he matters written in No. 4 of the chapter related to husband and wife, things will go accordingly.

No. 10 a: No matter what is written in No. 10 of this chapter, if a woman having been married at least for fifteen years and has at least reached the age of thirty five can willingly separate herself having received share in property from her husband.

***No. 10b. :** While partitioning property between the parents and the sons and the daughters, if the parents want to stay with a particular son or daughter, it should be mentioned in the related document and such a son or a daughter should keep the parents with them and take their care. If the aged parent's income is not enough for their food and clothing or if they do not have any son or daughter or grand son living together to take their care, even the sons or daughters living separately should take their care keeping them together and providing them with food and clothing in accordance with means and social standing.

Repealed by the sixth amendment.

* Added by the sixth amendment.

+No. 10c : If a woman proven to be entitled to be provided with food and clothing in accordance with the verdict made under No. ten of this chapter or No. 4b. of the chapter related to the husband and the wife is not provided therewith or the money to be received for that purpose, she needs not file a separate suit but instead submits an application before the court making verdict, the court stating the complaints should, after having inquired into the subjects and the aspects, in addition to imposing a fine of Rs. one thousand or one month's imprisonment or both on the person who has not provided them, issue an order to provide the woman with food and clothing or money for that purpose in accordance with the previous verdict. If the person ignores even this order, he should be punished again accordingly and the woman should be provided with share in property on the basis of the same application, having received the details of property.

No. 11 : If a man living separately after having received his share in property has mixed it with that of his wife or sons and kept with himself and afterwards, if he brings other wives and if sons are born to them, the share of property and livelihood portion of those living together should be put together and partitioned to those living together and those brought or born afterwards in accordance with law. If, after having separated with his share of property, he brings another wife and if sons are born, the ones brought or born afterwards will be entitled to have all the husband's or father's share of property and livelihood portion. Those brought or born later cannot claim share in property with those having been separated earlier after having their share in property.

No. 12 : A widow without sons living together before the partition of property has taken place, cannot receive her share in property and live separately until she has completed the age of thirty years as long as the heir living together provides her with food and clothing and with the means for religious offering. If the heir does not fulfill these conditions, she is entitled to receive her share in property and live separately even when she has not reached the age of thirty.

No. 13 : If a widow received no share in property and has not been treated in accordance with law, goes to stay elsewhere leaving her own house, the heir need not pay back the loan taken by such widow.

No. 14 : While partitioning property after the death of the father and the husband, the earnings and loans remained after performing the last rites of the father and the grand fathers living together, should be partitioned equally between the wives and the sons in accordance with law. If after the death of the father some sons are living with the mother or no sons are living together but are living separately without seeking share in the property at their own free will, the property remained after performing her last rites including the earnings and loans of the fathers and grand fathers should be partitioned equally between all the sons in accordance with law. The property and loans remained after the separation with maintenance should be treated in accordance with law.

No. 15 : The partition of property in a large or a small quantity is called livelihood portion. While giving livelihood portion, up to 5% of the share he/she receives will be legal. If, after giving livelihood portion, a complaint is lodged within the time fixed under No. 32 of this chapter, the property including the livelihood portion should be put together and be partitioned in accordance with law.

No. 16 : The daughter who has reached the age of 35 and who is unmarried is entitled to get share in property as equal to the sons. If she gets married or elopes after receiving the share in property, then the remaining property after having set aside the wedding expenses in accord with law from the property she has received will go to the person who is entitled to it.

No. 17 : While setting aside the wedding expenses for the sons and daughters who are not married, regardless of whether the number of unmarried sons and daughters is large or small, five percent should be set aside for wedding expenses if the total property amount to more than two thousand, ten percent if the total property amounts to less than two thousand up to one thousand and twenty percent if the total property amounts to less than one thousand and the resulting amount should be equally

+ Added by the ninth amendment.

partitioned for wedding expenses. While making the partition as mentioned above, if there is only one person to receive wedding expenses while those entitled to have share in property happen to be many and if the wedding expenses amount to more than the amount to be received by those entitled to receive share in property, then he/she will get up to two-third of the amount of the share that one gets as wedding expenses and no more than that. While partitioning property among brothers, no wedding expenses need to be set aside for the brothers' sons and daughters.

No. 18 : In the case of individuals living together partitioning their share in property, all the property collected by any individual from agriculture, industry, business etc. or the loan taken in accord with No. 8 of the chapter related to transaction will be partitioned between all those living together. But the property earned by any individual by his/her own knowledge, skill or efforts or the property given to him/her personally as donation or gift or the property from someone's absence of inheritance or received from the property of woman's share in property in accord with No. 5 of the chapter related to property will be proven as the personal property of the one who has received or earned it, so he/she can use it as he likes. He/she will not be compelled to divide it. If the individuals are living separately even when the property has not been partitioned or have been using the property without having it legally registered, being responsible for their own profit and loss, they will be proved to be separated having received their share in property, though they are living together. In this situation, their earnings and loans will be their own.

No. 19 : The movable and immovable property of the wife, sons and widow daughter-in-law-in-laws who have not received their share in property will be as follows :.....

As for the movable and immovable property from the ancestors' time, all of the movable property and up to half of the immovable property can be used as one likes to meet the household needs even without the consent of the wife, sons of widow daughter-in-laws. As for more than half of the immovable property, it can be spent only after having the consent of the wife, sons and daughter-in-laws even for meeting the household needs. If used without their consent, it will be not be lawful

As for the movable and immovable property earned during one's time, the person having only one wife and sons from only one wife or in a similar situation arising from the death of other sons and wives, can use as he likes. The person having wives more than one or sons from more than one wife or sons from this and that wife, can use such property as he likes, except that he cannot give it to his favorite wives and sons. He cannot give it as a gift to only the favorites wives and sons . It will be lawful only if it is partitioned among all wives and sons in accord with their lawful share.

The act of using the property mentioned in the above articles as per the will of individual without the consent of his wives, sons and widow daughter-in-laws will be lawful. As for the property which he cannot use as per his will, the act of giving the movable and immovable property from the ancestors' time to his favorite wives, sons and widow daughter-in-law as he likes will be lawful only if the wives, sons and widow daughter-in-laws above the age of twenty-one have not received their property agree to it.

If the property as mentioned above is given to certain wives, sons or daughter-in-laws after having the documents prepared before the partition of property, it needs not be partitioned afterwards. The one having received it can use it by himself/ herself. If the property given in this way proves to be unlawful, it should be put together with the rest of the other and be partitioned.

No. 20 : When a suit is filed for partition of property and if it the case proves to be reasonable, before announcing the verdict, the detailed description of the property both movable and immovable including debts should be taken from the head of the family responsible for all domestic transactions, having him pledged by god to have shown all the property and not hidden anything, and then it should be partitioned. If the person responsible for giving the details does not abide by the court order, he should be imprisoned in accordance with No. 21 of this chapter until he provides the details of all the

property. When he provides the details he should be freed from prison and then the property should be partitioned in accordance with law.

No. 21 : If the person responsible for giving the property share is imprisoned for disobeying the court's order of providing the property details, he should be ordered to give the details every two months from the date of imprisonment and those who want the share in property, should also be handed a notice with the order that they need to present the exact details of thereof to be partitioned in writing and let them sign a receipt for the same. If the imprisoned provides the details within six months, it should be accepted and then the property should be partitioned in accordance with law. If he does not do so, the court should obtain the document with details from those claiming the property share within the same period of time, and then the imprisoned for disobeying the court order should be given another order stating that if he does not report within thirty-five days from the date he receives the order that those claiming their share in property have either not shown all the property or listed the non-existent thereof or shown it to be more or less with intent to having it for themselves leaving aside the share of the imprisoned from the only property as listed, then all the property will go to his co-partner and his complaint will be invalid. Having handed this order he should be made to sign a receipt for the same and if he reports within that period of time then the property should be partitioned in accordance with law. If he does not report, a witness document should be prepared to the effect that the details of property as submitted by those claiming share in property is exact, and that if afterwards it proves to be false, they will be punished, and then the property as listed in the witness document should be partitioned in accord with law. If any property is found to have been hidden, the one not having hidden will receive it in accordance with law. No complaint of the one not abiding by the order will be accepted.

No. 22 : If in a case related to the partition of property, the party responsible for providing the details of property does not present himself before the court after the stipulated time terminates, the court issues order to arrest him immediately and obtain the property details. If the person as such is disappeared for one month excluding the time taken by the journey or after being arrested, and will not provide the details within the time fixed by law, then if those claiming property share are present, the details should be obtained from them and act in accordance with No. 21 of this chapter and if he continues to be disappeared and if those claiming property share have not shown any property that they want, a summon should be issued and be posted in the name of the person as such to present himself within the time, if he does not do so within the time as such the co-partners will receive the property solely. Following the summon being posted up, whether or not he presents himself before the court to report, the property should be partitioned in accordance with the same No. 21. If the one responsible for presenting the property details does not present it or if he gets arrested and so does not appear before the court and if those claiming their share say that they are also unable to present it for certain reasons, a document to that effect should be prepared and if signed, the verdict then should be made in accordance with law that the rest proceeding will take place on preparing and submitting the details. Following such verdict, if he comes and submit an application, it should be accepted and remaining action regarding the preparation of the document and the necessary receipt thereof should be prepared and handed over in accordance with law.

No. 23 : While describing the details of the land, houses and other articles to be partitioned, the four side boundary, the quantity of land in Ropani, Bigha or Muri, the taxes if levied on the production, and shutters, stories, the four side boundaries of houses, whether built from concrete or mud bricks and the approximate price, the number of saleable articles, if any, with descriptions of their shape and size, and the probable price in cash currently common in the village or the market and the approximate price should be mutually exchanged. If anyone lodges a complaint to the effect that the given price has been exaggerated, then the price be fixed by having a meeting of the rich and the gentle persons and by weighing the articles or estimating the reasonable price.

No. 24 : If the litigating party supposed to give the key of the store is not present by ignoring expiry date or if he does not give the key even if he is present and if the one entitled to receive property share presents an application demanding that the store be opened and the details thereof be checked and partitioned, then the court should, in the presence of the one having the key, or if not even in the

presence of only one of litigating party and at least two gentle persons along with the member or representative of the concerned Village Development Committee or that of the municipality, open the store, check and document the details and make partition thereof.

No. 25 : Once the property partitioned and one's own respective share is accepted no complaint made for replacement of the articles found damaged will be valid.

No. 26 : While making partition of property, if one providing the details thereof does not provide and the partition is made on the basis of details provided by others, the one not providing the details should be, in addition to the punishment to be given by other acts, fined by 5 percent of the whole property of which he has not provided the details.

No. 27 : If property is found to have hidden after a document is prepared then the one having hidden it will be deprived of share in it. The other co-partners not having hidden the property will be entitled to partition it among themselves in accordance with law. No punishment will be imposed for hiding the property.

No. 28 : While partitioning property, if the co-partners don not agree to receive a combination of good and bad articles, they should be partitioned by means of lottery.

No. 29 : Within three years of having the property partitioned, if the movable or immovable property of one's own share proves to be other's or if a complaint thereof registered at the court , it can be had on the basis of equal amount from all the others having received the share.

No. 30 : While partitioning property, witnesses should be present, and after having partitioned it in accordance with law a document thereof should be prepared, signed by those giving and receiving including the witnesses and registered. No partition of property without completing all these conditions will be valid. But if, before the time this act has been commenced, partition of immovable property is made by a combination of good and bad articles by preparing or not preparing a document thereof, and if following the partition the co-partners have lived and used separately taking their rightful share or even sold it as they liked, and if it is proven from practical evidences that the partition has taken place, then no complaint made on the ground that the document of partition has not been registered or that there has been more or less share in the partition will be valid. As regards taking less than the rightful share at one's own will or abandoning the share therein, it needs to be registered.

No. 31 : After a complaint demanding a partition in property share is registered and if it is established that the person concerned is entitled to receive share therein after the details of property share is submitted and if the plaintiff register an application demanding that the income from his share be stopped, then the share he is entitled to receive should be stopped* in accordance with No. 10 of the chapter related to the encroachment of land until the property is partitioned, and after the partition is made the restriction should be lifted.

No. 32 : While partitioning property it should be partitioned in accordance with law and should be no more, no less. If those above the age of sixteen and those below the age of sixteen are not satisfied with the partition of property within three months starting from the date of which the partition document is signed and within three months from the date of completing age of sixteen respectively, the complaint will not be valid. #In a suit related to partition of property, even if the plaintiff expires the date, rather than dismissing the case, verdict should made in accordance with what appears to be reasonable.

No. 33 : While living together, if the common land, houses, rice field etc. to be partitioned are taken away by the government or if they are stopped by the government or the salary, allowance and remuneration not being released are returned or released by any of the co-partners, the property as such will be partitioned in accordance with the document stating the portion to be shared to each if such a

* Amended by the first amendment.

Added by the sixth amendment.

document exists, if it does not exist, the co-partner who has returned it from His Majesty's Government is entitled to use the immovable property solely for three years starting from the date of having it returned and from the fourth year all the co-partners will be entitled to have their share therein, and as for the movable property, it should be partitioned among all co-partners but the one who has returned it can have up to ten times more than the others. The same law is applicable if any co-partner returns any property taken away by someone other than the government.

No. 34 : If one not eligible to have share of property registers a case demanding that he/she be given a share, he/she should be fined on the basis of the amount mentioned in the document, if not he should be fined up to two hundred rupees depending on his means.

No. 35 : If no partition of properties has been made, or if property has been partitioned not by registering in the concerned office and obtained a registration document, or even if not registered, both the parties have been using their respective share received equally, and if there exists neither a document nor the property is being used, then if a case is registered demanding that the portion of properties remaining from the partition made previously or claiming the portion hidden, the suit will be valid up to bhinna bhinna jiu. If there exists a document of partition received from the concerned office, each individual receiving his rightful share will be entitled to use it as he/she likes.

Chapter 14

Regarding Women's Share of Property

No. 1 : An unmarried woman or a married or a widow can use the movable or immovable property they have earned as per their will.

No. 2 : An unmarried woman, or married or a widow living separately can use all the movable property of their share and up to half of the immovable property of their share without anybody's consent. An unmarried woman can with the consent of her father, and a married or a widow with the consent of their grown up sons, can use even the immovable property as they like.

No. 3 : No debt taken by such woman can be paid back from the immovable property that she cannot use as she likes in accordance with No. 2 of this chapter.

No. 4 : The movable and immovable property a woman receives from her parents' family and from her mother's parents' family and the property that she has increased from it proves to be her dowry. The movable and immovable property given to her with a document of consent of all the heirs by her husband or the heir on the side of her husband, and the movable and immovable property given to her by other relatives or friends on the side of her husband and the property she has increased from it proves to be her dowry.

No. 5 : Women can use their dowry or exclusive property as they like. After she dies, this properties is treated in accordance with her written will if any. If such a document does not exist, her property goes to the son living with her if any, if not, goes to the son living separately if any, if as such again does not exist, goes to the husband, if the husband does not exist, goes to an unmarried daughter if any, if an unmarried daughter does not exist, goes to a married daughter, if a married daughter does not exist, goes to a son's son if any, if a grand son as such does not exist, goes to a daughter's son and if he also does not exist it goes to the one having the right to it.

No. 6 : In accordance with the chapter related to husband and wife, if the husband and wife get a divorce or if a widow pollutes the name of her husband, the wife will no more have right in the share of property she has received from her husband and the property increased from it. Then the property goes to the one who having the right to it.

No. 7 : If a woman has previously given something as religious or ordinary gift or sold the property other than dowry or exclusive property that she is entitled to, and if she gets degenerated by having sexual intercourse with the same person whom she has given it as gift or sold it, the transaction will not be lawful. Anyone having the right can get it back.

No. 8 : Regarding the mater mentioned in No. 7 of this chapter, no lawsuit will be valid unless it is registered within two years from the date on which the act of sexual intercourse becomes public and regarding other matters, within two years from the date on which the act occurs.

Chapter 11

Human Trafficking

No. 1 : Nobody is allowed to take anybody else outside the borders of Nepal or sell him/her there, enticing him/her with the purpose of selling. If he/she is taken to a foreign land to sell and if the one who does so is arrested before he has sold him/her, he/she will be imprisoned for ten years[#], and if arrested after having sold, he/she will be imprisoned for twenty years*. If the person who buys is found inside the borders of Nepal, he/she will also be punished as equal to the one who sells.

No. 2 : Nobody is allowed to separate or entice to separate a minor under sixteen or a mentally disturbed one of any age without permission of his/her legal guardian. If he/she is separated or enticed, the doer will be fined an amount upto five hundred rupees or imprisoned upto three years or both.

No. 3 : Nobody is allowed to make anybody else his/her servant, slave or bonded labour. The one doing so will be imprisoned for 3 to ten years, and the court will also be able to have the one convicted pay appropriate compensation to the one concerned.

No. 4 : Anybody helping intentionally to commit a crime as mentioned in No. 1/2/3 of this chapter will receive half of the punishment that the major culprit receives.

No. 5 : If a human is sold or bought in accord with No. 2/3 of this chapter, the amount of the buyer will not be returned and the one who sells will be fined based on the amount in addition to the punishment mentioned in these numbers.

[#] Amended by the sixth amendment.

^{*} Amended by the act to amend some Nepal acts, 1991.

Chapter 15

Regarding Adopted Son

No. 1 : While adopting a son, he should be from among the offspring of the brothers born from the same mother, if as such does not exist he should be from among the offspring's of step mother's, if such offspring also does not exist he should be from among the offspring's of the same grandfather, if not he should be from among the sons of daughters, if the daughters also have no sons he should be from among the offspring's of the great grandfather, if such offspring also does not exist he should be from among the sons of sisters, if the sons as such also do not exist he should be from among the brother's sons of the one's own clan. As long as such relatives exist, no adoption should be made from other clans. If the first person concerned does not allow to adopt a son when asked in the above serial order, a document to that effect should be received from him and if he does not provide a document, the next from him in the serial order should be adopted having a member or a representative of the concerned VDC or municipality as witness. If adoption is made against this serial order or without fulfilling the necessary conditions, proves to be unlawful. Such a son will receive the share of property from his own father.

No. 2 : A man having sons and a woman whose husband is alive or having sons from herself or from her co-wife should not adopt a son. If adopted, it proves to be unlawful.

No. 3 : If a son is born to the person having already adopted one by making a lawful document, the adoption cannot be canceled. He will receive share of property as equal to the rightful brother.

No. 4 : Even if a person is entitled to adopt a son in accordance with law and if he/she has taken care of a child under five years of age having found him somewhere on the path, he/she can adopt him as a son if he/she likes. If such a child is not adopted as son he will receive property only as much as is mentioned in the document if it exists, and if not only as much as is given by the one taking care of him out of his/her compassion. Even if he is not given anything out of compassion, he should be provided with food and clothing until he comes of age as per the social standing of the one having taken care of.

No. 4 a. : A person entitled to adopt a son in accordance with law, can also adopt a child under the age of sixteen having either no father or not been identified, with the consent of his mother if she exists and if she does not exist, with the approval of the person who has taken care or with the approval of the orphanage recognised by His Majesty's Government.

No. 5 : One having no sons but daughters can, without adopting a son, keep his daughter as girl adoption before she is given in marriage. The husband of such girl adoption cannot claim the movable and immovable property of his wife. He can have only what is willingly given to him by his wife. He will receive share of property only from the side of his father.

No. 6 : If a daughter becoming a girl adoption does not have heirs, the property from girl as such will go to the lawful heir on the side of the one having kept girl adoption. If she has only daughters, the mother can hand her over and in addition to the document concerning girl adoption, another document stating that she can use it as girl adoption, the daughter can use it as girl adoption. The claim of the one entitled to have it will not be valid. If there does not exist a written document concerning it, she will get wedding expenses and up to ten percent of the property as dowry. The rest will go to the one entitled to it.

No. 7 : If a woman becoming a girl adoption and having no sons and daughters makes a document in the name of her husband after she is over forty-five, the husband will receive it.

No. 8 : The daughter having had an adopted son, a girl adoption will lawfully have the right of her father to keep an adopted son and girl adoption.

No. 9 : If one becoming an adopted son of somebody else with a document of share of property from his own father, it should be accordingly.

No. 9 a.: Those except for a man having a daughter or a woman whose husband is alive or who has a daughter can adopt a girl child under ten years of age on preparing a lawful document.

No. 9 b. : There should be an age difference of at least twenty-five years between the one adopting a girl child and the one who is adopted.

No. 9 c. : An adopted daughter will have the right as equal to a real daughter. An adopted daughter cannot claim any right on the side of her real father.

No. 9 d. : Even if, a daughter is born to one entitled to adopt a daughter after she has already adopted one, the adoption cannot be cancelled. She will be equal to the real daughter.

No. 10 : If the one having thrown away a child is identified and if it is known that the child was thrown away by both father and mother, the share of property of both of them and also that of the child should be given to the one taking care of the child. If only one of them is involved in it, the share of property of the one involved in throwing her/him away and that of the child should be given to the one taking care of. If a child is born after the elopement of the mother, the share of property of the father and the mother as well as her dowry and exclusive property should be given to the one taking care of. If the child does not prove to be an adopted son in accordance with No. 4 of this chapter, the property given thus will be the child's.

No. 11 : After having adopted a son in accordance with law, it will not be canceled unless he breaks the terms and conditions as mentioned in the document concerned. If the one adopting does not provide food and clothing to the adopted according to his means, if he carelessly spends the family property, land etc. without consultation, if he beats or leaves home without consultation and with proper arrangement for the care of the one who has adopted him as son, then such an adopted son can be cancelled. The adopted son whose adoption is canceled will get share of property from his real father. If the one who has adopted a son does not provide food and clothing for him or drives out the adopted one, breaking the terms and conditions as mentioned in the document, then the son will be entitled, in accordance with law, to have share of property from the one who has adopted him, as equal to his legitimate son.

No. 12 : Even for those entitled to give and receive a son to adopt, a person having only one son and no other offspring's cannot give him to adopt and the one wishing to adopt a son cannot adopt him. If he is given or received for that purpose, this act will be unlawful.

No. 12 a. : If a foreign national wishes to adopt a Nepali citizen as a son or a daughter from among those who can be lawfully adopted, considering the character and economic condition of that foreign national and at the recommendation of the embassy concerned His Majesty's Government can give approval and receiving a son or a daughter to adopt under appropriate terms and conditions.

No. 13 : If a complaint is not filed within two years after having the knowledge of a son or +a daughter being unlawfully adopted, the complaint will not be valid.

+ Added by the sixth amendment.

Chapter 14

Regarding Rape

No. 1 : Having sexual intercourse with an unmarried girl, a widow or someone's wife * and with those under sixteen years of age with or without her consent and with one above sixteen years of age without her consent by using force or showing threat or even under inappropriate influence is proved to be a rape case.

No. 2 : For raping a woman within kinship, the rapist will get punishment mentioned in the chapter regarding sexual intercourse within kinship in addition to the punishment in accordance with this chapter. As for the case of life imprisonment, the punishment for rape will not be added.

No. 3 : One committing rape should be imprisoned from six to ten years if the woman raped is under fourteen years of age, and for three to five years if the woman is fourteen or above.

No. 4 : One who knowingly accompanies the one who intends to commit rape, and who grabs the woman or helps in the act should be punished upto one year each. As for the case of a girl under fourteen years of age, he will be punished twice as much.

No. 5 : The one having attempted to rape but has not committed rape will get punished equal to half of the one's who has committed it.

No. 6 : Someone instigating someone else to commit rape, the one who has instigated to perform the act will, in the case of rape having committed, get punishment equal to half of the rapist's, and in the case of attempted but not actually committed rape, he will get equal to half of the attempt maker's punishment.

No. 7: If someone has a sexual intercourse with a prostitution without her consent, will either be fined an amount of Rs. five hundred or imprisoned upto one year.

* Amended by the sixth amendment.

Dear Christa,

Enclosed are the copies of the Final Report. I am extremely sorry for delayed. Anyway, I was solely working for this. I hope that it has met the standard.

Further, comments are welcomed.

Thank you very much

Sincerely,

Yubaraj Sangroula

23th April, 1998.