CHILD MARRIAGE:
Legal Responses
CHILD MARRIAGE : LEGAL RESPONSES

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Study Conducted & Published by
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FOREWORD

It gives me great pleasure to share the findings of this Study entitled “Report of the Study on Child Marriage”. For UNIFEM South Asia, the issue is a very important one, working as it does to advance women’s human rights and human security. Globally on the incline, violence against women is an area of critical concern for UNIFEM.

This Study is a step towards breaking one of the links in the chain of violence that accompanies women throughout their life cycle - from before they are born till the day they die. Gender inequalities collude to render women and girls extremely vulnerable, to diverse forms of violence, cutting across continents, class, caste, ethnicity and cultures. Their rights are compromised through multiple forms of violence, which include denial of their rights to food, health, information, education and marriage, just to list a few. Anchored in patriarchy, and sanctioned by society, the violence is perpetuated through continuing religious, cultural and social practices, which have drawn acceptance over the years. It is perhaps, one of the central factors, which impedes the realization of human rights and fundamental freedom of women and girls in South Asia - and thereby of national development as well. It is also the single biggest deterrent to any kind of empowerment.

Child Marriage is a human rights abuse – it ensures that young girls do not have a fair chance in life. Mentally, physically, socially, the girl child is vulnerable and at a disadvantage. Not only does it result in high
maternal mortality, it puts at risk her physical as well as mental health. The young mind and bodies are less able to cope with the physical and mental stress of sexuality, pregnancy and childbirth. They are also more susceptible to HIV/AIDS. She is deprived, not only of her childhood but also of her adolescence. A discontinuation of education and a loss of career building opportunities, deprive her of opportunities to grow and learn, closing options and choices, which would otherwise be available to her.

In Nepal, as indeed in some other countries of South Asia, beliefs and practices, which promote child marriage, such as son preference; the essentiality of women’s chastity and the importance of girl’s virginity before marriage; as well as the myth, that sex with virgin girls helps to combat HIV/AIDS, are all factors that need to be dealt with sternly and impatiently, as a priority.

Though, Nepal is a signatory to 21 international human rights instruments including CEDAW and CRC, child marriage, especially of girls, persists. Despite pro-child laws, abuses and violations continue. To protect the rights and interests of children and to ensure their physical, mental and intellectual development, the Children’s Act of 1991, was enacted; the Interim Constitution of Nepal, 2007 gives each child a right against physical, mental or other forms of exploitation, with exploitation of a child being punishable by law. Freedom from violence against women is recognized as a fundamental right and discriminations of any kind are prohibited by law.

In July 2006, the Supreme Court, in a significant move, issued a directive order to the Government of Nepal, to effectively enforce the law against child marriage. It gave the directive of “equal age of consent” – that of 20 years for both girls and boys, in cases of marriage without parental consent and 18 years in cases, which have parental consent. It also directed the government to ensure consistency in the age for marriage in the law.
This Study coincides with this directive from the Supreme Court. In order to effectively combat the violence inherent in child marriages, UNIFEM felt it was important to first identify and review the underlying causes that lead to it; and gauge the level of its impact. We wanted to note the gaps and weaknesses in the prevailing laws on child marriage and to understand why child marriage is still there. We also sought to comprehend, the extent to which, implementation of the existing law was successful; and the initiatives that had been taken by the Government and civil society to address the problem.

The Study brings into the public domain, what is generally considered, a private matter in Nepal, and which is therefore, rarely reported. It examines the impacts of child marriage on children, particularly on girls and women. It shows how due to child marriage, women face multiple adverse impacts, in comparison to men. How though, both girls and boys are married under the legal age of marriage, there are significant gender-based differentials and discriminations, which are evident in terms of the age difference between the bride and the groom; the age of girls being considerably lower in relation to that of boys/men; very young girls being forced to leave their maternal homes extremely early in their lives and being treated as unpaid family laborers in the grooms’ homes; and being the prey of divers forms of violence on different pretexts. Using case studies, the study reveals that parents prefer to marry their daughters at an early age, as educated girls would need to get an educated groom, thereby inevitably increasing the dowry in some parts of Nepal. The study makes it abundantly clear that the problem is a multidimensional one, and that it needs a multi-sectoral response.

UNIFEM South Asia is privileged to be associated with this Study, not only because the issue is close to UNIFEM’s heart, but also because it has been undertaken by the Forum for Women law and Development. For this excellent work, I take the opportunity to congratulate Advocate Sapana Pradhan Malla, President, FWLD. I extend my appreciation to
her dedicated and competent team, without whom, it would not be possible to produce quality work. In particular, I laud the courage of the respondents, without whom this research could not have been accomplished. My special thanks goes to Ms. Sangeeta Thapa, UNIFEM Programme Coordinator, UNIFEM-PON, for her valuable guidance and feedback provided by her during the whole process of this study. Ms. Aruna Rana Thapa, National Programme Manager, UNIFEM-PON also deserves acknowledgement for her inputs and follow up on this study.

We hope that the findings of the Study will be helpful in formulating strategies to address the problem of child marriage; that it will enable the adoption of preventive measures through adequate legal provisions and effective implementation of the law. We hope it will assist in changing mindsets and facilitate the partnership of multiple stakeholders, including the youth, men and interfaith leaders. We look forward to it being used as an effective tool for advocacy among diverse development practitioners, including government bodies, NGOs, national and international organizations, the justice delivery system, law enforcement agencies, parliamentarians and policy makers, academia and the civil society. Being effectively used and showing results on the ground would be its reward.

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Chandni Joshi
Regional Programme Director
UNIFEM South Asia
December 2006
ACKNOWLEDGEMENTS

The main goal of Forum for Women Law and Development (FWLD) is to achieve an equal and just society. How can there be an equal and just society until and unless our children are treated well and not deprived of their rights? Child marriage is a crime which leads to violation of basic rights of all children. Child marriage is a reality that occurs almost every day, although there are laws to prevent it. Children of both genders are subjected to this malpractice, but it is a fact that girl children bear the brunt of the issue.

FWLD, therefore, undertook this study to document the current legal situation and come up with a future strategy. Although, this study has not been conducted all over the country, it will not be an exaggeration to say that it has been able to highlight the major problems in law and enforcement mechanism and gives recommendation on the next steps we can take. We hope that those working towards the elimination of child marriage will find this study useful, especially from a legal perspective. The study has highlighted major challenges in combating child marriage due to ingrained cultural and traditional values; law and society should work together for the practical realisation of the child’s right.
Here, I would like to acknowledge UNIFEM for supporting us in conducting this study. I would also like to express my gratitude to Namrata Sharma for putting the report together. I would also like to thank Sneh Rajbhandari for editing the report.

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Sapana Malla Pradhan
President
Forum for Women, Law and Development (FWLD)
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**LIST OF ABBREVIATIONS**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>BPFA</td>
<td>Beijing Platform for Action</td>
</tr>
<tr>
<td>CBS</td>
<td>Central Bureau of Statistics, Nepal</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination Against Women, 1979</td>
</tr>
<tr>
<td>CWIN</td>
<td>Child Workers in Nepal Concerned Centre</td>
</tr>
<tr>
<td>DSP</td>
<td>Deputy Superintendent of Police</td>
</tr>
<tr>
<td>FWLD</td>
<td>Forum for Women Law and Development</td>
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<tr>
<td>GoN</td>
<td>Government of Nepal</td>
</tr>
<tr>
<td>ICPD</td>
<td>International Conference on Population and Development</td>
</tr>
<tr>
<td>ICRW</td>
<td>International Centre for Research on Women</td>
</tr>
<tr>
<td>IEC</td>
<td>Information, Education and Communication</td>
</tr>
<tr>
<td>INSEC</td>
<td>Informal Sector Services Centre</td>
</tr>
<tr>
<td>MDGs</td>
<td>Millennium Development Goals</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
</tr>
<tr>
<td>NHRC</td>
<td>National Human Rights Commission</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNIFEM</td>
<td>United Nations Development Fund for Women</td>
</tr>
<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
</tr>
<tr>
<td>UNFPA</td>
<td>United Nations Fund for Population Activities</td>
</tr>
<tr>
<td>VDC</td>
<td>Village Development Committee</td>
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</tbody>
</table>
There are countless women like Mayadevi quoted above who have been the victim of child marriage in Nepal. Although recognized as a violation of a series of human rights, child marriage is very much a reality in the country. Despite the country’s laws for protecting the rights of children and criminalizing child marriage, it is a phenomenon, which is practiced widely all around the country. The official data received from the Central Bureau of Statistics suggests 47 percent of the population is married between the age group of 15-19. This indicates that even though Nepal is a signatory to various international Conventions protecting child rights, there needs to be stronger commitment and policies for combating child marriage.

This study has been conducted with an aim of identifying the causes of child marriage, its impact, and the gaps and weaknesses in the prevalent laws on child marriage. It aims to understand why child marriage still

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1. Quote of one of the 100 women who was among the sample survey of the study. The name has been changed for confidentiality purposes.
prevails in the country and evaluate the effectiveness of the implementation of existing laws. During this study, sample survey was conducted with hundred women who were married off during their childhood. Similarly, interviews were conducted with sixty-nine key informants who have been engaged in various government offices and other human rights organizations.

This study further substantiates the widespread prevalence of child marriage as 94 percent of the key informants interviewed indicated their knowledge of its occurrence in their communities. The causes for high prevalence of child marriage include religious norms and values, cultural traditions, economic hardships, illiteracy and mass unawareness amongst parents and marrying couples as to the adverse impact of child marriage. The weak law against child marriage and its even weaker implementation further exacerbate the issue. The societal value system of son preference ignores issues relating to the well being of girls, and the practice of child marriage is often taken to be a non-issue. As a result, cases of child marriage are least reported to the law enforcement agencies.

This study has examined the impact of child marriage on children, particularly on girls and women. It is found that women in comparison to men face multiple adverse effects due to child marriage. Most serious of these impacts is the deteriorated physical and mental health of the mother, deprivation of education, and the addition of household economic and social burden. Other impacts include torture and violence within the family including denial of foods, clothes or basic costs for maintenance, physical assault and sexual violence including abandonment, denial of right to self determination, violation of right to reproductive health and the resulting impact on overall well-being of women and the children born to them.

Child marriage has gender dimensions within it as the age of marriage and the family responsibilities after the marriage have been gender-constructed to the detriment of the wife. This is evident by the fact that even within child marriages, the age of the husband tends to be much
higher than that of the wife. Out of the hundred women victims of child marriage, 90 percent were between the age group of 11-17 when they got married, and the remaining 10 percent were between 3-10 years of age. Contrary to this, 50 percent of the husbands fell between the 18-24 age group while getting married.

The Constitution of the Kingdom of Nepal, 1990 prohibits discrimination based on sex and it guarantees the right against exploitation. The Interim Constitution of Nepal, 2006 provides that each child has right against physical, mental or other forms of exploitation and that exploitation of a child shall be punishable by law. Violence against women is recognized as a violation of the fundamental right to live free from exploitation. Any form of discrimination is prohibited by law.

Laws against child marriage have existed for a long time in Nepal. Child marriage is recognized as an offence against the State. However, the penalties in breaking these laws are negligible and not well implemented. Government agencies which are responsible for enforcing laws are silent about the offence. The definition of ‘child’ itself is ambiguous. The respondents of this study reported that their consent was immaterial at the time of their marriage. The Children’s Act, 1991 protects rights and interests of children and ensures their physical, mental and intellectual development. The Act outlaws discrimination amongst children born before and after marriage. According to this Act, one of the main duties of parents towards their children is to avoid showing a preference to a particular gender. However, enforcement of this Act is very weak.

Similarly, there are government policies and programs to combat child marriage, however, most of them are confined to awareness raising activities. The CEDAW Action Plan has programs promoting reproductive health, mother-infant health, family planning and preventing sexual diseases for enhancing women’s reproductive and basic health. However, this action plan does not contain any specific mention of child marriage. Likewise, the Tenth Plan (2002-2007) does not have any concrete plan of action to eliminate child marriage. It
only speaks about the broad strategies of raising awareness for gender equality and women’s rights, and encourages enacting laws to eliminate traditional forms of violence against women.

Being a multidimensional problem, child marriage needs a multi-sectoral response for its prevention. The formal government authorities such as lawmakers, police and courts and all the relevant stakeholders from NGOs to parents, *pundits* and religious leaders must come together against this social malpractice. The institutional mechanism to respond to the issues of child marriage includes the governmental and non-governmental organizations engaged in its prevention and the governmental institutions for enforcement of laws. However, although legal sanctions are there, political and social commitment to implement sanctions against child marriage in Nepal is lacking.

The NGO sector has a greater role to play to raise awareness against child marriage. The success of *Upka Nepal*, a local NGO based in Biratnagar, to stop three child marriage events is an example of this. Civil society organizations also play a vital role in law reform and policy advocacy. The case filed by FWLD to declare discriminatory marriage law invalid and to order for effective implementation of the law against child marriage and the judicial response in this case is an encouraging trend in this regard. However, there needs to be better coordination among such organizations to avoid duplication of work and also to develop strategies to work towards the protection of interests of the children.

Nepal has ratified international laws relating to child marriage, has accepted accountability at the international arena to eliminate child marriage in all its forms. However, here too, the implementation part lacks consistency. There are various requirements of international instruments that the signatory countries must follow. Nepal has committed herself to all instruments, but implementation within the country is very weak.

The International Conference on Population and Development (ICPD) requires creating a socio-economic environment conducive to the
elimination of all child marriages and early marriage. The Beijing Platform for Action (BPFA) requires governments to give priority to eliminate harmful attitudes and practices including child marriage. The Vienna Declaration and Programme of Action urges the State parties to repeal the existing laws and regulations and to remove customs and practices which discriminate against and cause harm to the girl child. The Millennium Development Goals (MDGs) have accorded high importance to eliminate child marriage as it is linked with the issues of promoting gender equality and empowerment of women, as well as reducing child mortality and improving maternal health.

Comments from the treaty monitoring bodies such as the Child Rights Committee and the CEDAW Committee are found to be deeply concerned with the high prevalence of child marriage in Nepal and have persistently urged the country to eliminate all forms of violence against women and children including gender discriminatory laws and practices. The General Recommendation No. 21 of the CEDAW Committee has provided that a woman’s right to choose a spouse and enter freely into marriage is central to her life and her dignity. The Recommendation requires the State Party to protect and enforce by law the woman’s right to choose when, if, and whom she will marry.

This study strives to explore what the people interviewed thought should be the approach to address this problem. Based on the views of the respondents and the review of the relevant literature, it seems that reforming laws and lobbying at all levels for it, raising awareness for changing attitudes, conducting research and improving data, providing free education to girls, introducing compulsory education to children, strong monitoring and inspection teams are the major areas of intervention to control child marriage in Nepal. Together with this, developing the capacity of officials engaged in law enforcement agencies such as the line ministry, police, government attorneys and courts is highly required for effective enforcement of the laws. Such officials must be sensitized and trained in child rights and reproductive health rights issues as well as the violation of rights due to the practice of child marriage.
1.1 Rationale of Study

According to the national census report prepared by the Central Bureau of Statistics of Nepal (CBS), about 47 percent of the population shows that their age at their first marriage is between 15-19 age group.\(^1\) In this age group 55.5 percent women get married and about 99 percent of the women get married before the age of 29. The same CBS report mentions that only one percent women get married after 30 years of age while most males get married after 35.

The above paragraph verifies that child marriage is still a day-to-day reality in Nepal with girl children being subjected to it more than boys. Several UN reports as well as the CBS reports indicate the high prevalence of child marriages in the country. Nepal has the tenth position where prevalence of child marriage is high.\(^2\) Repercussions of child marriages are immense – psychological and physical problems being the most significant. Early marriages coincide with child bearing at a young age thereby posing enormous threat to the health of the mother and the new born. Child marriage deprives girls from the opportunity to education and career advancement. Although there is a law against child marriage, it is not implemented. Being considered a private matter, child marriage is rarely reported. There is mass ignorance about the existing laws regarding child marriage among the general population and particularly amongst the vulnerable children. It is high time to identify the underlying causes that transpire child marriages in society, the impacts of child marriage on the child concerned, the new

\(^1\) CBS 2001 Vol 111
\(^2\) Early Marriage - A Harmful Experience - Statistical Exploration, UNICEF, 2005, P.1
born babies, the family, society and the nation as a whole, and to suggest the measures that have to be taken for controlling such marriages. Meanwhile, on 13 July 2006, the Supreme Court has issued a directive order in the name of the government for the effective enforcement of law regarding child marriage. It is with reference to this Supreme Court directive order that this study has been conducted this study to find out the causes and consequences of child marriage and to identify strategies that would be effective to address at all levels.

1.2 Study Objectives

The objectives of this study are to identify causes of child marriage in Nepal, to understand the impact (repercussions) of Child Marriage, to find out the causes of ineffective enforcement of law, to suggest recommendations for effective control of child marriage, and to develop strategies for effective implementation of law to prevent child marriage.

1.3 Study Methodology

Selection of Districts

Three districts (Morang, Kathmandu and Dang) were identified for conducting the study. This was based on the statistics of high prevalence of child marriage. These districts have been selected also with the objective of striking a balanced geographical representation covering the Eastern, Central and Mid-Western regions of the country.

Study Design

The study has been designed in the following manner:

a) Desktop review: A review of available literature on child marriage both in the national and international context has been conducted (refer to bibliography for details). The existing international conventions related to this issue have been reviewed together with the existing laws and policies in the country.
b) **Secondary data**: Information was gathered from the CBS. Information has also been collected from published data, reports and reference materials on the websites.

c) **Case studies**: Case studies have been done during this study and cases from FWLD’s past work have also been documented.

d) **In-depth interviews**:

<table>
<thead>
<tr>
<th>S. No</th>
<th>Types of interviews</th>
<th>People interviewed</th>
<th>Number (n)</th>
<th>Methodology of selection</th>
<th>Districts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Key informants (Men &amp; Women)</td>
<td>Key informants: Law enforcers including police, public attorney, court officials, law and policy advocates including NGO leaders, paralegal groups and religious leaders</td>
<td>N= 69</td>
<td>Interviewee selected from the districts on the basis of the statistics of high prevalence of child marriage as received from the CBS. The districts were selected also representing different geographical regions of the country.</td>
<td>Dang – 17, Morang – 22, Kathmandu – 30</td>
</tr>
<tr>
<td>2.</td>
<td>Sample Survey of Women who were victims of child marriage</td>
<td>Women who had been married before 18 years of age</td>
<td>N=100</td>
<td>Interviewees identified based on the legal aid cases of FWLD, and Elders Welfare Homes</td>
<td>Dang - 20, Morang – 20, Kathmandu-60</td>
</tr>
</tbody>
</table>
The instruments used to conduct these interviews were two separate sets of questionnaires for the two groups of interviewees.

1.4 Study Limitation
This has been based on the responses of 100 victims of child marriage representing three districts and 69 key respondents representing various government agencies and human rights organizations. Thus, the responses may not include all causes that are responsible for perpetuating child marriage or all of its impacts on the spouse, the newborn, the family and the society as a whole. Moreover, the three districts may not represent all modes of child marriages prevalent in the country. A key limitation of this study has been time; since the study was conducted over the period of a month, we hope the analysis of the data collected is prudent given the time frame we had to work with.
2.1 Prevalence of Child Marriage in Nepal

The following bar chart shows the prevalence of child marriage in the various development regions of the country. It is clear that the Eastern Region, Western Region, and Central Region respectively have higher prevalence as compared to Mid Western and Far Western Regions.

This study has been conducted in Morang, Kathmandu and Dang districts. As explained in the methodology section in the previous chapter, it is based on the high prevalence of child marriage in the respective regions and districts selected. The following table verifies this.
Table 2: Status of Child Marriage in Five Development Regions of Nepal

<table>
<thead>
<tr>
<th>Development Region</th>
<th>District</th>
<th>No. of Child Marriage Cases</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern Development Region</td>
<td>Morang</td>
<td>223465</td>
<td>3.4%</td>
</tr>
<tr>
<td></td>
<td>Siraha</td>
<td>195384</td>
<td>3.0%</td>
</tr>
<tr>
<td>Central Development Region</td>
<td>Dhanusha</td>
<td>211617</td>
<td>3.3%</td>
</tr>
<tr>
<td></td>
<td>Sarlahe</td>
<td>212087</td>
<td>3.3%</td>
</tr>
<tr>
<td></td>
<td>Kathmandu</td>
<td>234224</td>
<td>3.6%</td>
</tr>
<tr>
<td>Western Development Region</td>
<td>Nawalparasi</td>
<td>194961</td>
<td>3.0%</td>
</tr>
<tr>
<td></td>
<td>Rupandehi</td>
<td>200848</td>
<td>3.1%</td>
</tr>
<tr>
<td></td>
<td>Kapilbastu</td>
<td>184581</td>
<td>2.8%</td>
</tr>
<tr>
<td>Mid-Western Development Region</td>
<td>Dang</td>
<td>137443</td>
<td>2.1%</td>
</tr>
<tr>
<td></td>
<td>Bardiya</td>
<td>116823</td>
<td>1.8%</td>
</tr>
<tr>
<td>Far-Western Development Region</td>
<td>Kailali</td>
<td>179366</td>
<td>2.8%</td>
</tr>
<tr>
<td></td>
<td>Kanchanpur</td>
<td>105642</td>
<td>1.6%</td>
</tr>
</tbody>
</table>

Source: Population Census, National Report, 2001

The following table 3, contains the latest data prepared on the basis of census conducted by CBS, Nepal. The table shows that there are more girls than boys to get married below the age of 19 years. Also, more men marry as the age increases above 20. For example, out of the total married population belonging to the age group below 19, about 55.5 percent are girls and about 99 percent women get married before the age of 29. Whereas less than one percent women get married above the age of 30, most of the male population are married above the age of 35.3
Table 3: Ever married population 10 years and above by age at first marriage by sex and 5 years age group for municipalities

<table>
<thead>
<tr>
<th>Sex</th>
<th>&lt;10</th>
<th>10-14</th>
<th>15-19</th>
<th>20-24</th>
<th>25-29</th>
<th>30-34</th>
<th>35-39</th>
<th>&gt;40</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>20</td>
<td>2748</td>
<td>20513</td>
<td>2957</td>
<td>1534</td>
<td>823</td>
<td>252</td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>118</td>
<td>11111</td>
<td>43406</td>
<td>2193</td>
<td>4853</td>
<td>6445</td>
<td>1482</td>
<td>731</td>
</tr>
<tr>
<td>Total</td>
<td>138</td>
<td>13859</td>
<td>63920</td>
<td>5150</td>
<td>2019</td>
<td>4462</td>
<td>9718</td>
<td>325</td>
</tr>
</tbody>
</table>

The following analysis is based on the data collected during the study. This study includes data derived from sample survey with 100 women married under the age of 18 years.

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Chart 2 shows that 10 percent of women were married between the ages of 3-10 whereas, 90 percent were married between the age of 11-17.

**Chart 2** Age of wife during marriage – from sample survey

Chart 3 shows that 50 percent of these women were married to husbands who were between the ages of 18-24. Thirty six percent husbands were married between the ages of 10-17 and 14 percent of them married while they were either 25 or above.

**Chart 3** Age difference between husbands during marriage
Age at Marriage

The result of this survey shows that child marriage is a harsh reality in Nepal and that there are both girls and boys who are married under the legal age of marriage. As shown in the table below, while 90 percent of the women interviewed were married at or before the age of 17, fifty percent of their husbands were married at or above the age of 18. As against this, 10 percent of the 100 women were married at or below the age of 10. This data clearly shows that there is significant gender-constructed age difference between most of these married couples. The gender-constructed age difference in marriage suggests that the wife is usually much younger than the husband.

<table>
<thead>
<tr>
<th>Age of Husband</th>
<th>Age of Wife</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age Group</td>
<td>Percent</td>
</tr>
<tr>
<td>10-17</td>
<td>36</td>
</tr>
<tr>
<td>18-24</td>
<td>50</td>
</tr>
<tr>
<td>25 and above</td>
<td>14</td>
</tr>
</tbody>
</table>

2.2 Causes of Child Marriage

There are various causes for high prevalence of child marriage in Nepal. Family and cultural norms as well as religious beliefs vary from one ethnicity to another. As a result, the gender disparity also differs according to different ethnic communities. While certain ethnic communities in Nepal do not practice child marriage, others do. Population Census 2001 recorded 101 ethnic/cast groups in the country. Among them 28 ethnic groups have no married population.

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5. Population Census Results in Gender Perspective, CBS/GoN 2001, Volume III
of 10-14 age group implying that these ethnic communities do not practice child marriage. In 35 minor ethnic/caste populations ever-married women of age 15-19 do not have more than two children ever born. Major ethnic/caste groups of population like Chettri, Brahmin-hill, Magar, Tharu, Tamang, Muslim, and Newar have teenage fertility. Four ethnic/caste groups like Punjabi, Walung, Raute and Yehlmo do not have teenage fertility.

Due to religious, cultural and social practices, parents have a tendency of marrying off their daughters at an early age and being "relaxed" afterwards. Clichés like "chori ta pahuna hun – Daughters are guests", as girls grow older it is difficult to find a groom for them, getting daughters married before they reach puberty being an act of salvation for parents among others are malpractices in the name religious and social values which encourage parents to get their daughters married off as early as possible.

In many countries civil and common law usually prohibit early marriage; however, customary and religious laws allow it. This is mainly common where marriages are performed through customary rites and remain unregistered.

Education is another important aspect of child marriage. Illiterate women are married earlier as compared to male in both literate and illiterate cases. Women who have higher education have higher age at the time of marriage. The CBS report clearly mentions that the age at marriage of about 74 percent of ever married illiterate women is below 20 whereas it is about 68 percent for literate women. At the same time 48 percent illiterate male married below the age of 20.

Out of the 100 sample survey women, 62 percent surveyed during the study said that they were married as per religious practices where child marriage was not only accepted but also practiced as a very holy
and sacred social function. Thirteen percent of these women reported that they were married due to poor economic conditions and the rest gave reasons like not being aware of the reason and not remembering, exchange marriage\(^7\) and marrying out of their own will.

**Chart 4**: Causes of Child Marriage (sample survey respondent)

![Chart 4: Causes of Child Marriage](chart)

However, as shown in Chart 5, among the key informants, 16 percent viewed rituals and 15 percent viewed religious beliefs to be the causes of child marriage. Their responses as to other causes of child marriage were diverse as they attributed child marriage to illiteracy (25 percent), poverty (19 percent), superstitions (16 percent) and indebtedness (9 percent).

As chart 5 shows, illiteracy includes low awareness of child marriage, illiteracy of guardian, ignorance about legal provision while poverty is linked to burden of education and care-taking of the children, the burden of dowry system and unwillingness to invest for daughter's education. Similarly, rituals include ancient practices such as Gauna system in Tharu community and Kanyadan amongst the Brahmin,

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7. In certain communities, a daughter is married off for getting the son also married within the relationship of son-in-law’s side and it is called exchange marriage.
Chettri, and Newar communities. Religious belief includes the influence of *Swastani Brata Katha* (a Hindu mythology of Lord Shiva and Goddess Parvati) and other religious beliefs such as a daughter must be married before menstruation period and that a daughter is another's pledge. Among Newars, *Belbibaha* is practiced where before menstruation, marriage has to be performed with a fruit and in a separate ceremony is married to the Sun. It is believed that after this ritual even if she becomes a widow, she doesn’t have to follow traditional religious practices.

**Chart 5**: Causes of Child Marriage (From key informants’ perspective)

<table>
<thead>
<tr>
<th>Causes of Child Marriage</th>
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<tbody>
<tr>
<td>Illiteracy</td>
<td>25%</td>
</tr>
<tr>
<td>Poverty</td>
<td>19%</td>
</tr>
<tr>
<td>Rituals</td>
<td>16%</td>
</tr>
<tr>
<td>Superstitions</td>
<td>16%</td>
</tr>
<tr>
<td>Religious Believes</td>
<td>15%</td>
</tr>
<tr>
<td>Bond/Indebted</td>
<td>9%</td>
</tr>
</tbody>
</table>

**Forced to register child marriage**

Local Registrars, who are entrusted with the legal obligation to register vital events including marriage, often encounter coercion to register child marriage. One of such Registrars says, "we try not to easily register such marriages. Whenever such marriages are to be registered and the people who want to register are interrogated, they respond in a threatening manner saying "your job is to register
marriages, just do it. Just let us know if any legal documents are not enough for registration.” We are compelled to register such marriage cases. People come to register for bigamy marriages also. We have at least 10 – 15 percent child marriage registration cases here in our office.”

Forces that Protect Child Marriage

On a question as to the forces that protect child marriage, 48 percent of the key respondents viewed that it is religious belief, while 40 percent said that the idea of beatitude after birth of son and 12 percent said it was due to the conflict situation. With the Maoist insurgency on the rise, parents also started marrying off their daughters as early as possible to avoid their forceful recruitment by the rebel forces.

This statement has been substantiated by other studies as well. According to a study conducted by UNICEF, the economic pressure faced by

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households is often cited as an explanation for child marriage. This study cites that in all the countries that they conducted the study, they found out that child marriage is most common among the poorest 20 percent of the population. In Chart 4, thirteen percent of the respondents having child marriage reported that they had been married off early due to poor economic conditions of their families. There are cases, as mentioned in Case 1 as shown below, where child marriage victims have cited that they were married off to men much older than them as they promised to help the girl's family.

Nepal is very rich in social and cultural diversity. People being highly pious, religious values are very dominant in the decision making process in families. Therefore, it may not be an exaggeration that there are many aspects of our culture, tradition and social factor, which leads to child marriage and exploitation against the girl child. Some communities still believe that marrying girls off before they reach puberty leads to salvation. As shown in Chart 4, 62 percent of the 100 sample survey women reported that the reason of their child marriage was due to religious beliefs.

According to the 2001 census, the proportion of the married adolescent girls aged 10-19 years (16 percent) were two and half times as compared to the married boys (6 percent) in the same age group. Among the 15-19 age group age group, 34 percent girls as against 12 percent of boys were married.9

Child marriage is deeply-rooted in religion and culture

In the ancient Hindu scriptures dated back to 400 to 100 BC, there were strict moral laws that require the father to marry off his daughter at a very young age. Those religious texts indicated that the best age for a girl to get married is between 8 to 10. It has also been mentioned

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that a girl should not wait for marriage for more than three years after attaining puberty, and if she is not married by then, the texts even instruct her to get married on her own. Such religious texts (the Vishnu Sutra and Gautam Sutra) direct the father to marry his daughter within three weeks of attaining puberty, and not later. By 200 BC, the rules for a daughter's marriage become stricter. Sage Manu of that time period has categorically written in his treatise, Manu Smriti, that if a girl remains unmarried after reaching puberty, the father has failed in his duty towards her. Manu himself had married off his daughter Devbhuti at the age of seven. Similarly, another sage, Parasara, said that the parents or guardians of a girl who reaches puberty before marriage will definitely go to hell.

**Child Marriage: a Cultural Practice in the Madhesi Community**

Presently, child marriage is common amongst Madhesi community in the southern plain region of Terai in Nepal. It is very common amongst Yadav, Gupta, Thahare, Kurmi, Lodh, Harijan, Bajiya, Kalwar, Pasi, Pashwan, Mourya and Tharu communities. These people believe that if the girl is married before her menstrual period starts, it amounts to the donation of 7,800 cows (the sacred Hindu animal as an incarnation of Laxmi, the goddess of wealth) and if the marriage is solemnized after her menstrual period, it amounts to the killing of 7,800 cows. Religious superstition coupled with lack of education and awareness are the major causes for this. Lack of awareness raising activities in local languages (Bhojpuri and Maithili) is said to be one of the major causes of failure of intervention programs against child marriage in places like Marchwar in Rupandehi District of western Terai where child marriage is most common.
I was married to a nine-year-old boy when I was three. At that point of time, I was unaware of marriages. I don't even remember my marriage event. I just remember that as I was too young and was unable to walk and they had to carry me and bring me over to their place. Getting married at an early age, I was destined to suffer a lot of hardships. I had to carry water in a small clay-pot in the mornings. I had to sweep and swap the floor everyday. Those were the days when I wanted to eat good food and wear pretty clothes. I used to feel very hungry, but I had to be satisfied with the amount of food that I was provided. I never got enough to eat. I sometimes secretly ate corn, soybeans, etc that used to grow in the field. And if I was caught eating, my in-laws and husband would beat me accusing me of stealing from the field and eating. Sometimes the villagers used to give me food and if my husband and in-laws found out, they used to beat me accusing me of stealing food from the house. They used to give me one black blouse and a cotton sari torn into two pieces. I had to wear these for two years. Never did I get other accessories like petticoats, belts etc. When my saris got torn, I used to patch them up and continue wearing them. My husband married three times after me. At present, he lives with his youngest wife. Since I married at an early age, early child-delivery was inevitable. As a result, I now have severe back problems. I used to weep a

* A traditional long piece of cloth that is wrapped around a body and is worn as the main garment especially by Nepalese and Indian women

14. The cases 1-8 are actual case studies conducted during this study. The names have all been changed for confidentiality.
lot and consequently, I faced problems with my eyes and had to undergo an eye operation. I often think that if I had the power to think like I do now, I would never go to that house. I also wish I had not given birth to any children. Retrospective sufferings make me wish not to see my husband again. Nevertheless, I do not want him to die because I don't want to lose my marital status.

**Low Education /Iliteracy**

Lack of education seems to be one of the important factors contributing to child marriage. As shown in the Chart 5 above, 25 percent of the key respondents viewed illiteracy as the main cause for child marriage. The overwhelming percentage (62 percent) attributed religious practices as the reason for prevalence of child marriage shown in Chart 4 above could also be linked to lack of education and awareness. A report on *Girls Education: Introduction*\(^{15}\) mentions that education could be a key factor in decreasing child marriage. This report gives data on how the age of marriage increases as the level of education of girls increase.

**Economic Burden**

There are various factors leading to early marriage. Getting boys married early in order to get more labour in the field is one rural practice. Also the practice of dowry is seen as a burden by the girls' parents so they usually try to get their daughters married off as early as possible. The economic pressure, faced by households, are often cited as an explanation for child marriage, mentions a study\(^ {16}\) conducted by UNICEF. This study cites that in all the countries that they had conducted the study they found out that child marriage is most common among the poorest 20 percent of the population.

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\(^{15}\) [www.unicef.org/girlseducation/index.html](http://www.unicef.org/girlseducation/index.html)

\(^{16}\) Early Marriage A Harmful TRichardonal Practice UNICEF 2005
Marriage Registration not Compulsory

There are laws to regulate the age of marriage; however, child marriages are not reported mainly because there is no mandatory requirement of registering marriages. This is evident by the data in Table 8 as an example of Nepal where the reported cases of child marriage is minimal. Large number (43 percent) of the 100 women interviewed reported that they had not registered their marriage. The reasons for not registering the case was due to their feeling that it was not useful, at the time when they got married it was not felt necessary; not to have citizenship of the father; citizenship being issued under husbands name, lack of awareness of the need to register, and unavailability of the spouse.

Lack of Knowledge of Marriage Registration

Respondent of sample survey, comprising of 68 percent of the women interviewed said that they did not have any idea about marriage registration at the time when they got married. In general, the need to register marriage and the incentives associated with it were not in knowledge of these women.

Case - 2  Abusive Husband

I was married to a twenty-eight year old man when I was sixteen. My parents got me married off at a very early age. During the initial days of my marriage, everything was fine. But after I gave birth to my first child, both of us frequently fought over petty matters. I found it difficult to live with my husband and went to live with my parents in their house. I wanted to be a nurse and also had an opportunity to acquire the nurse training. I had to forgo the training because I had to concentrate in the household matters. Even after my marriage I wanted to study but was unable to do so. I separated from my husband and lived with my parents for four years. Eventually, my
parents came under the social pressure of the community and compelled me to return to my husband. I am now living with him as I have no choice having sacrificed all opportunities to build my career due to my early marriage.

2.3 Impact of Child Marriage

Child marriage has tremendous impact on the child, family and society as a whole. It is also a fact the girl children being most vulnerable in the community bear the worst brunt of this impact which can be summarized below:

**Negative Impact on Education**

A good marriage prospect in developing countries often leads to withdrawal of the girls from school. Lack of education seems to be one important factor contributing to child marriage -- A report on *Girls Education: Introduction*\(^7\). In the context of Nepali society, married women get lesser opportunities to obtain further education. They have to undertake more social and economic burden rather than enhance opportunities to education. The CBS report clearly mentions that the ever married women having higher educational attainment marries at a higher age and vice versa.

As mentioned above girls in our society are made to succumb to a good marriage prospect leading to high number of drop out from schools. Twenty nine percent of the 100 women sample surveyed reported that they had had a negative impact on their education after they were married off. Fifteen percent of the 69 key informants viewed that child marriage would have a negative impact on the education of the girls. In Case 2 cited above, the sample surveyed woman said that she was very interested to undergo a nursing training but had to give it up because after marriage she was compelled to concentrate on household matters.

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17. [www.unicef.org/girlseduction/index.html](http://www.unicef.org/girlseduction/index.html)
Negative Impact on Health

Girls who get married early have a higher probability of getting pregnant and having more children. This opens them up to risks related to reproductive health and makes them more vulnerable to sexually transmitted disease. Teenage girls are more susceptible to sexually transmitted infections including HIV\textsuperscript{18} than mature women. Most girls who are married off in childhood are unaware of risks to their health. The young married girls are often most vulnerable in the power structure of a household. Due to lack of provision of nutritious foods also, their health is adversely affected.

Negative Impact on Adolescent Health and Reproductive Health

After marriage pregnancy is an expected outcome in Nepali society. As a result the probability of married young girls being pregnant is very high. This indicates that girls getting married at an early age have more chances of having more children, which increases their physical, emotional and economic burden. About 79 percent women who have five and more children born were married below the age of 20\textsuperscript{19}. About 30 percent of women who married between 15-19 years currently have 3-4 children and about 35 percent of such women currently have 1-2 children.

A woman has a right to refuse sex at any circumstance\textsuperscript{20}. However, it is a fact that the young underage girls are so low down in the power ladder in households that they are often unable to say no to any unwanted sex from their spouse. Pregnancy related deaths are the leading cause of mortality for 15-19 year old girls (both married and unmarried) worldwide. Mothers in this age group face a 20 to 200 percent greater chance of dying in pregnancy as compared to women aged 20 to 24. Those under the age of 15 are five times as likely to die

\textsuperscript{18} Innocenti Digest No. 7 March 2001 – Early Marriage- Child Spouses/UNICEF  
\textsuperscript{19} Population Census Results in Gender Perspective, CBS/GoN 200, Volume III  
\textsuperscript{20} Change newsletter 2000
as women in their twenties. The main causes are hemorrhage, sepsis, pre-eclampsia/eclampsia and obstructed labour. Evidence shows that infant mortality among the children of very young mothers is higher—sometimes two times higher—than among those of older peers.

Out of the hundred women interviewed, 44 percent gave birth to their first child when they were between 13-17 years and 40 percent between the age group of 18-27. It is obvious that majority of them had their first child as soon as they entered the stage of puberty. Socially, it is expected in the community that there will be no sexual contact with girls who have not entered the stage of puberty even in the event of child marriage. However, in reality the opposite happens as the data in Chart 7 shows. In Case study No 8 cited below, the girl was married to a man who was 32 years older than her. She was married to him at the age of 14. He was trying to get her since she was 10. This shows that it is not possible for girls forced into child marriage to resist sexual advances from their husbands. The studies show that teenage girls are more susceptible than mature women to sexually transmitted infections including HIV. Most girls who are married off in childhood are unaware of these risks to their health.

**Chart 7: Age when giving birth to first child**

23. Innocenti Digest No. 7 March 2001 – Early Marriage- Child Spouses/UNICEF
Out of one hundred women interviewed, 32 percent of them reported that when they were married, they did not understand what marriage was all about. This puts them in higher reproductive health risks. The negative health impact as reported by the key informants include uterus prolapse, maternity death, miscarriage, sexual disease, infanticide, and infertility.

As shown in the Chart below, highest percent (29) of the respondent women viewed that the impact of child marriage was deprivation from educational opportunities. Of these women, 22 percent viewed that the impact was deprivation from opportunity to live a healthy life and 18 percent viewed that the impact was deprivation from employment opportunities. Other impacts they cited were lacking decision-making power (14 percent) and lacking self-dependence (12 percent).

Different from the women victims, 28 percent of key informants responded that the main area of impact is health (including children’s health) compared to 15 percent who stressed deprivation of educational opportunities as the greater injustice.
Psychological Impact

All the cases cited in this study suggests that child marriage has a negative impact on the psychology of the victims. Out of 100 respondents, 31 percent said that they experienced trauma. The compulsion to early forced sex, mostly with men much older than the girl child, led to pregnancy in an immature stage of physical development. Lack of education and awareness, loss of freedom and access to nutritious food and enduring burden of heavy household chores force them to live a risky and very unhappy life. They have to spend such painful moments in extreme isolation, as no one is sympathetic towards them or will listen to their problems. This results in acute depression and trauma. As most of the women in the above cited cases have reported they are often victims of violence, they are not given enough food to eat and are physically and verbally subjected to torture.

Case - 3 | IMMATURE DECISION-MAKING

I fell in love with my helper when I was only fourteen. My family members disliked him. One day I ran away with the boy. My family located us after four days and persuaded me to leave the boy, but I refused. They took me to the
police, yelled at me and fought with me and begged me to leave the boy, but I was firm with my decision. They explained the consequences I had to face if I lived with the boy. I still refused. The police also told me that the law would never permit such marriages as I had not reached the legal age of marriage. When we reached home, I threatened my parents of committing suicide if ever I was separated from the boy. They thought it was only a strategy to being together with the boy and behaved indifferently. I couldn't take the indifference and tried committing suicide one day. My parents caught me in the act and were forced to succumb to my wishes. I ran away with the boy for the second time and married him. He was unemployed then. He gradually developed a habit of eating, sleeping and drinking alcohol the entire day. After all the tantrums I threw to marry this boy, I had no courage to go back to my parental home. My husband's habit started deteriorating and subsequently he started beating me. I don't have the courage to go back to my parental home. I was too young and blindly in love and therefore disrespected my parent's decision against my marriage. I have endured a lot of pain. I'm in a dilemma. If I leave my husband I have nowhere to go. I'm compelled to accept the wrong-doings of my husband. My mother often secretly comes to meet me and provides me with my requirements. But how long can she help me? I personally feel one should marry only when one has reached the right age, only then will the person be able to make the right decision.

According to this study, the adolescent age and the immature mind paves way for children to make impulsive and rash decisions as to their life partners even if it has to be against the will of their family
members which later turns out to be costly and detrimental. This study also suggests that one of the causes of child marriage is the voluntary, yet impulsive decision of teenage boys and girls.

<table>
<thead>
<tr>
<th>Case – 4</th>
<th>Daughter’s Birth – Misfortune</th>
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<tr>
<td>I was married at the age of eleven. I had no idea about marriage or husband. Being a daughter-in-law, I had to comply with the tradition of getting up early in the morning and touching my in-laws' feet with my head; and only after doing all the household chores, was I allowed to eat. I had to do tasks like cooking food, carrying water, washing clothes, carrying fertilizers, cutting fodder, etc. As I was very young and small and was brought up in my parents' place with a lot of care, I used to find the household work extremely tedious. I wished to study. I used to keep in touch with the teachers in the schools in my neighborhood. My in-laws did not like me keeping in contact with them. My mother-in-law used to come while serving food. After feeding all the members of the family, she used to call me for food. She used to shout for my name to ensure the neighbors heard that I was summoned for food. When I sat down to eat, there used to be no food but only the dirty utensils. I had to wash all the dirty utensils, weeping in hunger. I was pregnant then. One day, pretending to show concern, my husband suggested that I go to my parents' place and stay there since I was going through a lot of hardships. He wanted me to stay there till the time I delivered a son. He asked me to come back only if I delivered a boy and not a girl. He was inculcated with the idea of marrying a second woman as my parents-in-law felt that I was not able to work hard enough in the house. I knew that it was all a facade so I refused to go and</td>
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continued living there, doing all the household chores. The oppression and neglect from my husband and in-laws doubled when I gave birth to a daughter. After fifteen days of delivery I went to my parents’ house and never returned. Later on I filed a case against him asking for alimony. They gave some amount, only for a short period though. I now live with my daughter. Some lawyers suggested me to file a property-rights case but my son-in-law didn’t favor the idea. Both my husband and my son-in-law are dead now. I now want to fight for my property.

Pregnancy related deaths is the leading cause of maternal mortality for 15-19 year old girls (both married and unmarried) worldwide. Mothers in this age group face a 20 to 200 percent greater chance of dying in pregnancy as compared to women aged 20 to 24. Those under the age of 15 are five times as likely to die as women in their twenties. The main causes of the death are hemorrhage, sepsis, pre-eclampsia/eclampsia and obstructed labour.

Case – 5 Hungry, Teary Eyed and Sleepless Nights

My father died when I was only two months old and my mother died when I was three years old. My maternal grandmother raised me. Distant relatives from my father’s side betrothed me to a sixteen-year-old boy when I was only eleven years old. We were informed about the engagement three days before the marriage. I was married at an early age and had to forgo education and play time. I had to work very hard and had to engage myself with intensive household chores at a very early age. During the severe cold months, I had to take off my clothes to prepare food. I had to clean the dishes and do all the

other household tasks. My husband yelled at me and beat me up when I was unable to perform certain works or if I made mistakes while working. There were times when they didn't give me any food. I spent countless sleepless nights weeping with hunger. I spent my life with pain, unhappiness and hardships. During this difficult phase, I gave birth to seven daughters. I subsequently gave birth to two sons after my seven daughters but unfortunately both my sons died. I was awfully blamed for not possessing any sons and as a result my husband married another woman. My husband and I are now separated. We are not divorced nor have I received any property from him. At the moment I live with my daughter. Early marriage has led my life to misery.

Evidence shows that infant mortality among the children of very young mothers is higher—sometimes two times higher—than among those of older peers. Among the hundred women interviewed, 11 had had their first child still born. The key informants interviewed also reported that they had observed infant mortality and lack of proper childhood care in cases of very young mothers.

**Violence and Abandonment**

According to the law against rape, having sexual intercourse with girls below 16 years, even with her consent, is defined as rape. Therefore, child marriage also violates the provision of Criminal Law on rape.

All the women in the case studies cited in this study and interviewed during the study have reported that as soon as they were taken to their married homes, they lost contact from their friends and family.

26. No. 1 of the chapter on Rape, Country Code, 1963
They were subjected to severe hard labor including intensive household chores. Most of the girls of the case studies reported that they were not given enough food and they were often hungry and were not attended to. All of those girls reported that their husbands and in-laws beat them. The sample survey member in Case 5 reported that she was often given none or very little food whereby she had to spend her days weeping from hunger and torture. At times she used to eat corn and soya bean growing in the field and if by bad luck she were caught doing so, both her in-laws and husband would beat her again. The sample survey member in Case 4 reported that when she was pregnant, often her in-laws made her work very hard but gave no food. She had to sleep and keep doing hard household chores with nothing to eat. Most of the victims also mentioned that their husbands remarried, some of them several times. In one case, the woman said that her husband asked her to go to her parental home for the delivery of their baby and subsequently abandoned her to get remarried.

**Case - 6**

In the past, it was believed that parents would attain salvation if they married their daughters off before puberty. Therefore, I was married early at the age of fifteen. I was too young to know about marriages then. My husband was in the Indian army. He was there before we got married and continued to do so even afterwards. I had three children. Since I married at a very young age and he constantly traveled to India, I was not emotionally involved nor felt any kind of attachment whatsoever. We had a tenant living in our house. While my husband was living in India, the tenant managed to seduce me and managed to take NRs 7, 00, 000/- from my husband’s earnings that I had saved. The tenant ran away with the money. I came to Kathmandu to look for him. I found him. He assured me that he would return all my money.
and cajoled me to live with him for a few months. He took all my jewelry and sold them. He refused to recognize me in public. He betrayed my trust and left me, never bothering to return my money. I couldn’t return to my husband. Now, though I have a family, I am alone. My children are in the village and my husband is in India. I cannot go back to either of them. I blame child marriage for ruining my entire life.

In addition to physical and mental torture, the victims of child marriage also share the horror stories of escaping rape attempts by none other than their father-in-law. She was nearly raped because her husband was out of the country for employment and she could not continue her study and develop the capacity to live independently because of early childhood marriage. If she could have her earning capacity, she would not have to live with such abusive parents-in-law.

**Case - 7**

Chhama Tharu is a *Kamaiya* (bonded labour) and has been residing in the land distributed by the state. She was unemployed and the family had no source of income. When she was 10 – 11 years old, she was engaged in a hotel to work by her parents. She had other siblings as well. A local NGO spotted her and set her free and wanted to send her for schooling. The local NGO commenced a class entitled *Kamlahari* for the bonded labors. Chhama Tharu got out from being a bonded labour and started attending school. When she was in class 2, her parents fixed her marriage with a boy who was 5 – 7 years older than her. After her marriage, she had to drop her classes and get involved in the household chores. After two months of her marriage, her husband left for Shimla, India to earn money. She was taken by the Maoists for two
days, mainly to hear their principles out. She was subjected to physical and mental torture by her in-laws after she came back. She was nearly raped by her father-in-law one night. When she tried to protect herself, her father-in-law accused her of sleeping with the Maoists and said, "when you can sleep with the Maoists why can’t you sleep with me"? She ran away from the house and came to her paternal home and refused to go back thereafter. Her parents took her back home and questioned the in-laws about the reasons for her behavior. When they questioned the in-laws, they were insulted and were also told that their daughter was involved in a voluntary sexual intercourse with the Maoists and were also made to leave the house.

2.4 International Human Rights Instruments and State Obligations

2.4.1 International Instruments to Eliminate Child Marriage

Elimination of child marriage is one of the commitments the state has made before the international community. Having ratified and accessed human rights instruments and signed on international human rights declarations, Nepal has made itself accountable to the international arena to eliminate child marriage in all its forms. Child marriage is any marriage that occurs before the age of 18 unless under the law applicable to the child, majority is attained earlier. This standard is reinforced by a general consensus among various international Conventions and human rights agreements that outlaw child marriages or the betrothal of young girls before the age of puberty.

The various international human rights instruments have dealt with the state’s accountability to eliminate child marriage and to adhere to

the values of universal human rights and fundamental freedoms relating to marriage and forming a family. Major provisions of the relevant human rights instruments have been given in the following table:

Table 5  Provisions of Child Rights relevant Human rights Instruments

<table>
<thead>
<tr>
<th>S No.</th>
<th>Name of the Instrument</th>
<th>Article</th>
<th>The Provision</th>
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<tbody>
<tr>
<td>1.</td>
<td>Universal Declaration of Human Rights, 1948</td>
<td>16(1)</td>
<td>Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.</td>
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<tr>
<td></td>
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<td>(2) Marriage shall be entered into only with the free and full consent of the intending spouses.</td>
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<tr>
<td>2.</td>
<td>International Convention on Civil and Political Rights, 1966</td>
<td>23(2),(3)</td>
<td>(2) The right of men and women of marriageable age to marry and to found a family shall be recognized. (3) No marriage shall be entered into without the free and full consent of the intending spouse.</td>
</tr>
<tr>
<td>4.</td>
<td>CEDAW Convention, 1979</td>
<td>16(1)</td>
<td>State parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; The same right and responsibilities during marriage and at its dissolution;</td>
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<tr>
<td>S No.</td>
<td>Name of the Instrument</td>
<td>Article</td>
<td>The provision</td>
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<td></td>
<td>16(2)</td>
<td>The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.</td>
</tr>
</tbody>
</table>
| 5.    | The Convention on the Rights of Child, 1989                                           | 34      | State parties undertake to protect the child from all forms of sexual exploitation and abuse. For this purpose, the state parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:  
(a) The inducement or coercion of a child to engage in any unlawful sexual activity;  
(b) The exploitative use of children in prostitution or other unlawful sexual practices |
| 6.    | Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, 1964 | 1(1)    | No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law. |
| 7.    | The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices, 1956 | 2       | .........., the States Parties undertake to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages. |
Most of these instruments have put emphasis on the following aspects relating to marriage:

**Marriage to be solemnized with consent of intending spouse**

Basically, most of the international human rights instruments provide that marriage must be entered with the free consent of the intending spouse. Since children are unable to give free consent such marriage is prohibited.

**Ensuring equality of rights and duties of spouses as to marriage**

Universal Declaration of Human Rights, 1948 provides, *inter alia*, that men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family and they are entitled to equal rights to marriage, during marriage and at its dissolution. Similarly, the International Convention on Civil and Political Rights, 1966 requires the State Parties to take appropriate steps to ensure equally of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, the Convention requires affording necessary protection of any children.

**Specifying minimum age for marriage**

The Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, 1962 requires the state parties to take legislative action to specify a minimum age for marriage and stipulates that no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a

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30. Article 16(1) of the Universal Declaration of Human Rights, 1948.

dispensation as to the age, for serious reasons, in the interest of the intending spouses.

**Forced marriage amounts to slavery**

The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices, 1956 equates any marriage that is forced upon a girl or woman by her family or guardians as similar to slavery and requires the state party to eliminate it.

**Marriage of the girls under puberty to be eliminated**

The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964 calls upon parties to eliminate the marriage of girls under the age of puberty and requires that states stipulate the minimum age of marriage.

**Eliminate discrimination on marriage and family relations**

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 requires the state parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular to ensure a basis of equality for men and women, the same right to freely choose a spouse and to enter into marriage only with their free and full consent. The Convention also provides that the betrothal and marriage of a child shall have no legal effect and all necessary action, including legislation, must be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

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32. Article 1(c) (i) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices, 1956.
34. Article 16(1) of the CEDAW Convention, 1979.
35. Article 16(2) of the CEDAW Convention, 1979.
"A woman’s right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. An examination of States parties’ reports discloses that there are countries, which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman's marriage to be arranged for payment or preferment and in others, women’s poverty forces them to marry foreign nationals for financial security. Subject to reasonable restrictions based for example on a woman's youth or consanguinity with her partner, a woman’s right to choose when, if, and whom she will marry must be protected and enforced law."  

**Minimum age for marriage to be 18 years**

The Convention on the Rights of the Child, 1989 precludes State parties from permitting or giving validity to a marriage between persons who have not attained their majority. In the context of the Convention on the Rights of the Child, "a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier." Notwithstanding this definition, and bearing in mind the provisions of the Vienna Declaration, the Committee on the Rights of Child considers that the minimum age for marriage must be 18 years for both men and women.

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2.4.2 Declarations to Eliminate Child Marriage:

Create socio-economic environment to eliminate child marriages

The International Conference on Population and Development stipulates, *inter alia*, that countries should create a socio-economic environment that is conducive to the elimination of all child marriages and other unions as a matter of urgency and should discourage early marriage. The Declaration has also recommended that the social responsibilities that marriage entails should be reinforced in countries' educational programmes.\(^\text{38}\)

Create enabling atmosphere for developing full potential

The Beijing Declaration and Platform of Action adopted during the Fourth World Conference on Women held in 1995 in Beijing, China recognizes the girl child of today as the woman of tomorrow and provides that the skills, ideas and energy of the girl child are vital for full attainment of the goals of equality, development and peace. The Declaration also provides that for the girl child to develop her full potential, she needs to be nurtured in an enabling environment, where her spiritual, intellectual and material needs for survival, protection, and development are met and her equal rights are safeguarded.

Eliminate harmful attitudes and practices

The Beijing Declaration and Platform of Action requires governments to give priority to both formal and informal educational programmes that support and enable women to develop self-esteem, acquire knowledge, make decisions and take responsibility for their own health. Furthermore, BPFA encourages women to achieve mutual respect in matters concerning sexuality and fertility, and educate men regarding

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the importance of women's health and well-being, placing special focus on programmes for both men and women that emphasize the elimination of harmful attitudes and practices, including female genital mutilation, son preference (which results in female infanticide and prenatal sex selection), early marriage, including child marriage.  

**Repeal discriminatory laws, customs and practices**

In the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, the States are urged to repeal the existing laws and regulations and remove customs and practices, which discriminate against and cause harm to the girl child.

**End child marriage to reduce child mortality and maternal mortality**

The Millenium Development Goals (MDG) deals with child marriage in three different goals: Goal three promoting gender equality and empowerment of women; Goal four reducing child mortality and Goal five improve maternal health. Eliminating child labour is necessary not only for empowering women, but also for reducing child mortality and maternal mortality as younger mothers have higher rates of both child mortality and maternal mortality. In this sense, no MDG could be achieved without eliminating all harmful practices against girls including child marriage.

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39. Strategic Objective No. C 2 (Strengthen preventive programmes that promote women’s health Actions to be taken (108. By Governments, in cooperation with non-governmental organizations, the mass media, the private sector and relevant international organizations, including United Nations bodies) of the Beijing Declaration and Platform of Action.
40. MDGs Goals 3, 4 & 5
2.4.3 Comments from the Treaty Monitoring Bodies:

Concluding Observation of the Committee on CRC

The Committee on the Rights of the Child has, in its concluding observation on early marriages in Nepal, expressed its concern over the widespread practice of early marriage especially in certain ethnic and religious communities, and the situation that girls, once married, are not afforded the protection of their rights as enshrined in the Convention, including the right to education.\(^{41}\)

The Committee has recommended the State party to strengthen its enforcement of the existing legislation to prevent early marriages and to develop sensitization programmes, involving community and religious leaders and society at large, including children themselves, to curb the practice of early marriages. It has also recommended the State party to take measures to ensure that when underage girls are married, they continue to fully enjoy their rights as set out in the Convention, including the right to education.\(^ {42}\)

The Committee is concerned by the inadequate measures adopted to ensure that national legislation fully conforms to the principles and provisions of the Convention. The Committee notes in particular the lack of conformity of legislative provisions concerning non-discrimination in relation to marriage, inheritance and parental property, torture, and corporal punishment. The Committee is also concerned about the gap between existing legislation and its practical implementation.\(^ {43}\)

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43. Committee on the Rights of the Child, Concluding observations on Nepal, Twelfth session, 1996, (CRC/C/15/Add.57)
The Committee is particularly concerned at the insufficient measures adopted to ensure the effective implementation of the principle of non-discrimination. It notes the persistent discriminatory attitudes towards girls, as reflected in the prevailing son preference, the persistence of early marriages, the notably lower school attendance of girls and their higher dropout rate. The persistence of such traditional practices and attitudes seriously hampers the enjoyment of the rights of the child.  

**Concluding comments of the CEDAW Committee**

In responding to the Initial report of Nepal on CEDAW, the CEDAW Committee has expressed its concern about traditional customs and practices detrimental to women and girls, such as child marriage, dowry and polygamy. The Committee has also expressed its concerned about high incidence of girl children being taken across the border for the purpose of child marriage.

In its concluding comments on second and third periodic report of Nepal, the Committee again expresses its concern over continued existence of child marriage and polygamy and other practices and requires the state party to enforce its marriage laws, particularly as they relate to the prohibition of child marriage and polygamy in light of General Recommendation 21 on equality in marriage and family relations.

**2.4.4 Validity of Treaty Jurisprudence in Nepal:**

Every state, which is a party to any international Convention, is obliged to implement the provisions of the Convention according to its spirit. The Vienna Convention on the Law of Treaties, 1969 provides that

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44. Committee on the Rights of the Child, Concluding observations on Nepal, Twelfth session, 1996. (CRC/C/15/Add.57)
45. CEDAW/C/SR.434 and 439; 1999.
46. Committee on the Elimination of Discrimination against Women
every treaty in force is binding upon the parties to it and must be performed by them in good faith and that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.\textsuperscript{47}

In pursuance to this international law provision, the Nepal Treaty Act, 1990 validates the treaty jurisprudence in Nepal. It provides that in case the provision of a treaty to which Nepal or the government has become a party after its ratification, accession, acceptance or approval by the Parliament, is inconsistent with the provisions of prevailing law, the latter shall be invalid to the extent of such inconsistency for the purpose of that treaty and the provisions of the treaty shall be applicable in that connection as national law.\textsuperscript{48}

The Treaty Act also provides that in case any treaty which has not been ratified, acceded to, accepted or approved by the Parliament, but to which Nepal or the Government has become a party, imposes any additional obligation or burden upon the Government of Nepal, or upon Government, and in case Legal arrangements need to be made for its execution, Government shall initiate action as soon as possible to enact laws for its execution.\textsuperscript{49}

The Supreme Court has played important roles in recognizing the human rights treaty jurisprudence as binding national law in Nepal. Giving validity to treaty jurisprudence in Nepal, the Supreme Court in \textit{Reena Bajracharya and other vs. HMG},\textsuperscript{50} referred to the CEDAW Convention and declared as \textit{ultras vires} a Royal Nepal Airlines Corporation Service Law requirement of early retirement of its women.

\textsuperscript{47} Vienna Convention on the Law of Treaties (1969)

\textit{Article 26: Every treaty in force is binding upon the parties to it and must be performed by them in good faith.}

\textit{Article 27: A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.}

\textsuperscript{48} Section 9(1) of the Nepal Treaty Act, 1990.

\textsuperscript{49} Section 9(2) of the Nepal Treaty Act, 1990.

\textsuperscript{50} Writ No. 2812 of 2054 (1997)
workers considering it discriminatory and inconsistent to the Constitution of the Kingdom of Nepal, 1990. In many PIL cases, the Supreme Court has issued directive orders in the name of the government to make laws for protection of women's rights such as the law to eliminate gender discrimination, law to criminalize marital rape and law against sexual harassment. Hence, the State has an obligation to respect the right to protect children from child marriage. There is an obligation to monitor with due diligence whether those rights are violated by the State, family or by the community. There is also an obligation to enforce the rights taking positive steps, and proactive measures, in ending violation against girl child through law; programme policies; services; budget allocations; capacity building; data gathering; and information dissemination.

2.5 Policy Framework

2.5.1 The National Plan of Action for Children

The National Plan of Action for Children has stipulated so many policies and programs for overall development of children. However, it does not have any preventive program to control child marriage. It only provides for raising awareness and sensitizing the issue against all forms of exploitation against children including child marriage. In the specific context of a relatively ambitious target of reducing maternal mortality rate by one third by the year 2010, and by three fourth of the rate by 2015, the plan should have specific preventive programs against child

51. See, for example, Lily Thapa vs Office of Prime Minister and Council of Ministries in which the Court declared No. 2 of the Chapter on Women's Exclusive Property ultra vires as it contradicts with the Constitution and international human rights treaties where Nepal is a party. In Meera Dhungana for FWLD vs. the Office of Prime Minister and Council of Ministers the Supreme Court held that No. 1(1) of the Chapter on Husband and Wife of the Country Code allowing the husband to seek divorce if a government recognized medical board affirmed the wife's inability to conceive to be discriminatory and thus, it violates Article 11 of the Constitution.


marriage. It is because the single largest cause for maternal mortality is child marriage and immature age of pregnancy. It is difficult to achieve this target merely by launching awareness raising programs. Effective implementation of the law must be ensured by facilitating, reporting and investigating cases.

2.5.2 The National Plan of Action on Gender Equality and Women Empowerment, 2004

This action plan has an awareness-raising program to end cultural violence against the girl child including child marriage and other forms of violence such as Deuki and Jhuma. One of the objectives of the plan is to eliminate all forms of discriminations against girl child. The program to achieve this goal is law reform. No other special programs for prevention of child marriage have been incorporated.

2.5.3 The CEDAW Action Plan

This plan has been formulated to implement the CEDAW Convention in Nepal. Guaranteeing women's reproductive and basic health rights is one of the programs of the plan which mentions providing co-education with the involvement of both men and women in training and education programs like reproductive health, mother-infant health, family planning and sexual diseases. However, this action plan does not contain any specific mention of child marriage.

2.5.4 The Tenth Plan

The Tenth Plan (2002-2007) does not have any concrete program to eliminate child marriage. It speaks about broad strategies of raising awareness for gender equality and women's rights and to bringing law to eliminate traditional forms of violence against women. The plan

also has the policy of mobilizing NGOs, community organizations and civil society to raise awareness on gender inequalities based on religious values and social and economic realities. Despite all these policies, the plan document has failed to address the specific problem of child marriage.

2.6. Legal Framework:

2.6.1 Constitutional Provision:

Right against exploitation

Interim Constitution of Nepal, 2006 provides separate articles for the protection of children and women that includes right against physical, mental or other forms of exploitation. Interim Constitution also guarantees right against violence against women, reproductive health right and equal right in parental property. Interim Constitution recognizes rights against exploitation based on tradition and cultural practices. Child marriage is a form of exploitation against girls based on sex, culture, religion, and tradition, and most of the victims of child marriage are girls.

Prohibition of discrimination on the basis of girl child

The Constitution of Nepal guarantees right to equality and provides that no discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe, ideological conviction, or any of these. Child marriage is a form of discrimination against girls based on sex as most of the victims of child marriage are girls. The constitutional guarantee of non-discrimination is violated due to the prevalence of child marriage. The Interim Constitution of Nepal,

60. Article 13(2) of the Constitution of the Kingdom of Nepal, 1990.
2006 also guarantees the right of non-discrimination for being a woman.\(^{61}\)

### 2.6.2 Legal Provision

**Major laws to deal with marriage:** The following are the major laws in Nepal that deal with or are related to child marriage:

- The Country Code’s Chapter on Marriage, 1963
- The Marriage Registration Act, 1971
- The Birth, Death and Other Personal Events (Registration) Act, 1977

#### a) Accepted modes of marriage:

Except in case of court marriage, the law in Nepal does not prescribe any specific procedures to be followed for solemnising a marriage. Marriages arranged in a traditional manner, court marriage, and love marriage are the widely practiced modes of marriage and arranged marriages still dominate all other modes. Even among child marriage, the traditionally arranged mode is most prevalent.

#### b) No consistent definition of child:

A child has been defined differently in varying laws of Nepal. The Country Code (*Muluki Ain*), the main law to provide for the matters relating to marriage law, does not define a ‘child’ and ‘marriage.’ Rather it uses the word ‘girl’ for a girl up to the age of fourteen years and the word ‘woman’ for a girl above fourteen years of age. The Children’s Act, 1991, which was enacted shortly after the ratification by Nepal of the Child Rights Convention, 1989, defines ‘child’ as children not attaining the age of 16 years.\(^{62}\) The Labour Act, 1991 defines ‘child’ as a person below the age of 14

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61. Article 20(1) and (3) of the Interim Constitution, 2006.
62. Section 2(a) of the Children’s Act, 1991
63. Section 2 (h) of the Labour Act, 1991.
years. The Child Labor (Prohibition and Regulation) Act, 1999 defines child as children not attaining the age of 16 years.

Unlike these national law definitions of child, the Convention on the Rights of the Child, 1989, defines it as “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.” The Convention is a part of the national law of Nepal which prevails over the inconsistent national law, by virtue of Section 9 of the Nepal Treaty Act, 1990.

c) Uniform Law on Marriage: The Country Code’s Chapter on Marriage is the main law in Nepal to govern the matters relating to marriage. Even if Nepal is a multi-religious and multi-ethnic country, the uniform pattern of marriage law is applicable to all religious and ethnic communities irrespective of their culture and religion. Though the law has recognized the tribal or clan traditions with regard to incestuous marriage, this recognition is not legally applicable in the matters of child marriage.

d) Marriageable age

- **18 years with parental consent and 20 years without parental consent:** Nepalese law on marriageable age incorporates the idea of marriage with parental consent and marriage with intending parties' consent. The Country Code provides that the age of the man and woman getting married must be 18 years in case the marriage is solemnized with the consent of the guardians and the age must be 20 years in case the marriage is solemnized without the consent of the guardians. Therefore, the law does not regard the man or woman aged between 18 to 20 years to be mature enough

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64. Section 2(a) of the Child Labour (Prohibition and Regulation) Act, 1999.
66. No. 2 of the Chapter on Marriage, the Country Code (Muluki Ain), 1963.
to get married without parental consent. The Code has made it punishable to marry or to get someone married having violated the said provision of the law. The scheme of punishment in case of child marriage is based on the age of the girl getting married: the lower the age, the higher the degree of punishment. In cases for the boy getting married, the punishment is constant irrespective of his age.

- **Attaining 20 years for Court Marriage:** The Marriage Registration Act, 1971 is the law that provides for court marriages. It requires that the age of the marrying man and woman must be above twenty years and it does not incorporate the idea of marriage "with the consent of parents."

**FWLD Initiative to Eliminate Discriminatory Marriage**

Earlier, the Marriage Registration Act, 1971 had a provision that the man must attain the age of 22 years and the woman must attain the age of 18 years to be eligible for having their marriage registered. FWLD filed a case challenging the constitutionality of this particular provision for being discriminatory on the basis of sex.\(^{67}\) Accepting the contention of the petitioner, the Supreme Court issued a directive order to bring an appropriate amendment to adjust the differential marriageable ages referred to in the Country Code and the Marriage Registration Act, 1971. Accordingly, the law has been amended by Gender Equality Amendment Act, 2007 recently and even in cases of the court marriage, the age of marriage for man and woman is the same, which is 20 years.

e) **Consent:** As marriage is a form of contract, the rule of consent referred to in the law of contract has to be taken into account.

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\(^{67}\) Writ No. 98 of the year 2062 (2005). The Case decided by the Supreme Court on 29 of Ashar, 2063. (July 13, 2006)
The Contracts Act, 1999 declares a minor to be ineligible for entering into a contract.68 However, Nepalese law on consent for marriage incorporates the dual idea of parental consent and spousal consent. Parental consent is required for any one getting married between the ages of 18 years to 20 years. For the boys or girls between this age group, spousal consent is not enough and it must be supplemented by parental consent.

Consent of the marrying couple is one of the basic elements through which a marital relationship acquires validity. The law in Nepal gives complete freedom to consensual relationship building except in incestuous relationships.69 Marriage without consent of the marrying man and woman is invalid (void).70 The law does not assume those not attaining the age of majority to be capable of giving consent for getting married. The reason behind this legal supposition is that a person below a certain age can not judge his/her best interests. The one who causes a marriage to be solemnized without consent is liable to a punishment of imprisonment up to two years.71

However, in many cases the family and social pressure precedes consent and children often do not have the confidence of reporting that they had not given consent.

The sample survey shows 67 percent of the 100 sample survey women had consented to the marriage, 25 percent reported they had not and eight percent reported that they did not recollect what had actually happened.

68. Sections 2 and 13(j) of the Contracts Act, 1999.
69. No. 1 of the Chapter on Marriage, the Country Code (Muluki Ain), 1963.
70. No. 7 of the Chapter on Marriage, the Country Code (Muluki Ain), 1963.
71. No. 7 of the Chapter on Marriage, the Country Code (Muluki Ain), 1963.
Case - 8 Paying for Parent’s Offense

My mother died when I was four. My father married seven wives. I was brought up by my grandmother from childhood. I was married to a person who was four times older than me. There was an age gap of thirty-two years between the two of us. My husband was very cunning. He used to work for landlord in the village. My father was implicated in a case. Taking advantage of my father’s plight, my husband tempted and assured my father that his exemption from the case was certain if he agreed to get me married to him. He had been pressurizing our marriage since I was ten years old. At the age of 14, I ran away to my maternal home in order to hide there. But all my family members coerced me into marrying him. They said that if I allowed him to put the red vermillion on my forehead (a tradition of getting married) then, then they would get me married to someone else later. I was cajoled and forced to accept the marriage. Our relationship lacked understanding as there was an enormous age difference between the two of us and I was very young. We used to fight at least ten times a day. My husband was very happy to have married a young girl like me. I always looked forward to his death and innocently hoped he died of diarrhea. I always used to imagine as to how happy and satisfying my life would be had I married a boy of my age at the time when I was ready for marriage. I always feel that my life has been completely wasted.

- **Reasons for giving consent**: As the respondent women had not attained the age of majority while getting married, in one sense it seems irrelevant to identify whether or not these women had consented to get married at that time. However,
when asked why they consented it was found out that the reasons for giving consent by these women seem to be much more important than the consent itself. According to the Chart 10 below, out of these 67 women who reported to have given consent, 26 (40 percent) said they had agreed for the sake of their family interests, 15 (22 percent) said they consented because the financial condition of their family was very poor, 11 (16 percent) said they were married for the dowry they were receiving, 12 (18 percent) said they agreed to the marriage as child marriage was an accepted norm, and 4 percent said that they were tempted by the clothes and ornaments they would have received during marriage.

**Chart 10: Reasons for consent to child marriage**

- **No Specific Procedures of Marriage Required**: Except in cases of court marriage, the law does not require any special process or formality for marriage to be concluded. The social and religious practices of the particular clan determine the process to be followed. These practices vary from place to place, community to community, and time to time. The marriage rituals in the southern part of the country have
significantly been influenced by the marriage rituals in neighboring India, while in the Himalayan north, the Tibetan culture is influential.

f) **Formal Process for Court Marriage**: In the case of court marriage, the law requires that both the man and woman be twenty years\textsuperscript{72} of age and the man and woman getting married are required to appear in person before the District Administration Office to submit the application at least 15 days in advance.\textsuperscript{73} The marrying couple must be living within the jurisdiction of the concerned authority at least 15 days in advance. The marriage declaration form must be signed by three witnesses.

g) **Consequences of child marriage**:

- **Punishment**: One of the direct and immediate consequences of child marriage is imposition of punishment in the form of imprisonment and/or fine to the guilty persons. The punishment scheme is as follows:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Age of the girl</th>
<th>Punishment</th>
<th>Age of the boy</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Below 10 years</td>
<td>From six months to three years of imprisonment and a fine from one thousand to ten thousand rupees</td>
<td>Below twenty years</td>
<td>Imprisonment up to six months or a fine up to ten thousand rupees or both</td>
</tr>
<tr>
<td>2.</td>
<td>Above 10 years up to 14 years</td>
<td>From three months to one year of imprisonment and a fine up to five thousand rupees</td>
<td></td>
<td></td>
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</tbody>
</table>

\textsuperscript{72} Sub-section (3) of section 4 of the Marriage Registration Act, 1971.

\textsuperscript{73} Section 5(1) of the Marriage Registration Act, 1971.
The table shows that in case of child marriage involving a girl, the punishment ranges from six months to three years of imprisonment and a fine from one thousand to ten thousand rupees if she is below the age of 10 years; from three months to one year of imprisonment and a fine up to five thousand rupees if she is of 10 years to 14 years; imprisonment up to six months or a fine up to five thousand rupees or both in case she is above 14 years to 18 years and imprisonment up to six months or a fine up to ten thousand rupees or both in case she is above 18 years to 20 years. In case of child marriage involving a boy below the age of 20 years, the punishment is an imprisonment up to six months or a fine up to ten thousand rupees or both.

The law provides the persons attaining the age of majority who is/are engaged to solemnize or causing to solemnize child
marriage shall be liable for the punishment mentioned above. 74 Those who are abettors or associates of the offence are liable to an imprisonment up to one month or a fine up to one thousand rupees. The law also makes the main persons to make the final decision of child marriage liable with a fine up to five hundred rupees even in the situations where marriage is yet to be solemnized. 75

- **Validity of child marriage:** Child marriage is not a valid form of marriage. It is a defective marriage because consent, the basic foundation which a marriage is based on, is lacking. The consent expressed by the parents/guardians does not amount in law as the "consent" in case of child marriage. Child marriage in Nepal is not void *ipso facto*, rather it is punishable. The Country Code provides that in case any boy or girl is married without attaining the age of 18 years, he/she may opt to invalidate such a marriage after attaining the age of 18 years. 76 However, if a child is born to such a person, he/she can not choose to invalidate the marriage. Here, the law has also protected the interest of the new born by not allowing the person to opt for invalidation of the marriage in case of birth of a child. However, law has not been able to protect the right of girl child and not been able to give right to make marriage void in case of a child in marriage.

- **Compensation in case of child marriage:** The Country Code requires that the fine collected from the perpetrator of child marriage should be given to the victim (girl child, woman or man). In case of failure to pay fine by perpetrator, partition share of that person shall be confiscated and given to the victim. 77 This provision has made the scheme of compensation

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75. No. 2 of the Chapter on Marriage, Country Code, 1963
76. Section 9 of No. 2 of the Chapter on Marriage, the Country Code, 1963.
77. No.2 (8) of chapter on Marriage of Country Code, 1963
totally dependent on the financial capacity of the perpetrator in the sense that if he has no property, the victim will not be compensated.

- **Status of the baby born to child-mother:** The law does not distinguish the baby born to child mother from other children. The Children's Act, 1991 provides that no discrimination shall be made amongst children born before and after the marriage.\(^78\) The Country Code provides that if a baby is born to a child-mother, the mother does not have the right to opt for declaring such a marriage invalid. The vital registration law requires the citizenship of the father to get the birth registered. However, one has to attain the age of 16 years to obtain citizenship certificate. Thus, if a person below the age of 16 were to get married and have a baby, there would be complication to register the birth of such babies. Non-registration of birth would make such babies more vulnerable.

- **Parental duty of care and support:** The Children’s Act, 1991 enacted to protect rights and interests of Nepalese children and to ensure their physical, mental and intellectual development, provides various rights for children. It has particularly mentioned duty of parents and state towards children. The main duty of the parents in this regard is not to discriminate amongst son and daughter.\(^79\) However, no punishment has been made in case of violation of this provision. The Act does not specifically prohibit child marriage as such; however, the scheme of parental duties of care and support to be afforded to the children\(^80\) indirectly hints that child marriage should not be allowed for the best interest of children.

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h) Gaps in the law:

- **Low punishment**: The punishment in case of child marriage is very low. The highest degree of punishment is in case of a child marriage involving a girl below the age of ten years and the punishment is an imprisonment from six months to three years and a fine from one thousand to ten thousand rupees. With the increase in the age of the girl, the punishment decreases. Such low punishment can hardly create a deterrent against the offence of child marriage.

- **Wide discretionary powers**: The low punishment is further weakened by very wide discretionary sentencing powers to courts. For example, in case of marriage of a girl between the ages of 10 to 14 years, punishment is *imprisonment up to six months or a fine up to five thousands rupees or both*. Here, courts are given complete discretion whether to impose the punishment of imprisonment of one day or of six months or a fine of one rupee or of five thousands or of highest amount of both or only one rupee. Similarly, in case of child marriage involving a boy below the age of 20 years, the punishment is an imprisonment up to six months or a fine up to ten thousand rupees or both. There is no mention of aggravating situations given by the law so that the wide discretion may be rationalized in terms of the degree of culpability. Such wide discretion in its enforcement entail that child marriage is not a serious offence, nor does such a situation create a deterrent to the custom of child marriage.

- **Inconsistent age definition of child**: In order to ascertain the child marriage definitely, the age definition of ‘child’ must be consistent. The marriage law uses the word ‘girl’ for girls up to 14 years, and it uses the word ‘woman’ for girls above 14 years. The term ‘child’ has been differently defined in different laws- the Children’s Act defines ‘child’ as children
CHILD MARRIAGE: LEGAL RESPONSES

not attaining the age of 16 years.\textsuperscript{81} The Labour Act, 1991 defines child as a person below the age of 14 years.\textsuperscript{82}

- **Punishment based on age of girl only:** There is difference in the scheme of punishment for child marriage involving a boy and a girl. For an example, the marriage with a girl below 10 years is punishable with an imprisonment of six months to three years and a fine from one thousand to ten thousand rupees but the marriage with a boy below the age of 10 years is punishable with an imprisonment up to six months or a fine up to ten thousand rupees or both. Such difference in punishment does not have any rational basis.

- **No duty to inquire as to age:** Law provides that there would be no punishment if the marriage is solemnized without knowing that the boy/girl is below the statutory limits. It means that absence of knowledge as to the age of the girl or boy is a good ground to escape. Here, the law does not bother to see whether or not reasonable effort has been made to ascertain the age. This provision is problematic in the Nepalese context where vital record system is very poorly implemented. Mistake of fact is a good defense in criminal law; however, it must be proved that the parents of the marrying boy and girl have tried their best to identify the age.

- **No counseling and interim relief:** Child marriage is not only a criminal law issue that could be addressed just by punishing the perpetrators. The physical and mental harm caused to the marrying children must also be taken into account. However, there is no provision for psychological counseling and interim relief to the victims of child marriage.

\textsuperscript{81} Section 2(a) of the Children's Act, 1991
\textsuperscript{82} Section 2 (h) of the Labour Act, 1991.
- **Inadequate and irrational compensation:** The law provides that the victim of child marriage must be provided compensation of the fine imposed on the perpetrator. However, the maximum degree of such fine amount is Rs. 10,000/-. This amount is not only extremely low, but it is also difficult to obtain, as the maximum amount of fine is not usually imposed to the perpetrators because of wide discretionary power.

- **Short period of limitation:** The limitation to file case of child marriage and other offences under this Chapter is three months. This time limitation is very short in the Nepalese context where late reporting of cases is widespread, owing to the reasons of poor means of communication, transport, and societal attitudes. Higher time limitation is required for facilitating the reporting of cases.

  i) **Challenges in enforcement of laws:** In spite of laws against child marriage prevailing in the country, enforcement of the law is very weak and there are many challenges that leads to weak enforcement.

  - **Non recognition of child marriage as violence against child:** There is a public psychology that child marriage is not a form of violence rather it is an old form of marriage. It is generally understood that by getting children married at an early age, the parents fulfill their parental duty on due time.

  - **Lack of awareness on the rights of child:** The rights of the child are often not taken into account while making decisions for their best interest. Parents and society as a whole do not see child marriage or any other matter relating to children from a child’ rights perspective. They feel children are too immature to have a say in their future and require them to obey the guardians’ decision.
Perception that child marriage is a personal issue: Most of the matters falling under family affairs including child marriage are thought to be personal matters irrespective of issues of exploitation or any other form of human rights violation. As a result, it is thought that no one should intervene on personal matters and society is less concerned with incidents of child marriage.

Lack of awareness on impacts of child marriage: One of the major reasons for poor enforcement of laws is lack of awareness on the impact of child marriage on the mother and the newborn as well as society as a whole. People simply regard health problems arising out of child marriage as health problems of a general nature and do not attempt to identify the real causes. They need to grasp the opportunity to be familiar with the risk factors associated with child marriage. Moreover, the increment in public health expenses due to health complications arising out of child marriage is not taken into account.

Low reporting of cases: Low reporting of child marriage cases has been evident by the study of the data of the police as shown in the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of cases filed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998-1999</td>
<td>1</td>
</tr>
<tr>
<td>1999-2000</td>
<td>5</td>
</tr>
<tr>
<td>2000-2001</td>
<td>1</td>
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<tr>
<td>2001-2002</td>
<td>0</td>
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<td>2002-2003</td>
<td>2</td>
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<tr>
<td>2003-2004</td>
<td>3</td>
</tr>
<tr>
<td>2004-2005</td>
<td>2</td>
</tr>
<tr>
<td>2005-2006</td>
<td>1</td>
</tr>
</tbody>
</table>
This is because of lack of awareness as to the place of authority where child marriage cases have to be registered. Out of 100 respondents, an overwhelming majority of 86 percent responded that they do not have any idea of where cases of child marriage can be registered. Low reporting automatically reduces the chances of prosecution and punishment.

- **Perception that child marriage is not a crime against the state:** The police and government attorneys, who are the front line government agencies to combat child marriage, are already overburdened with other cases, which they think are more serious than child marriage. As a result, they perceive child marriage as if it were not a case against the state. The law enforcement agencies are not aware of the costs of public health that accounts for child marriage and the resulting health complications. They only perceive child marriage as a personal case involving a low level of punishment.

- **Low punishment:** Low punishment is often attributed to be one of the major aspects of ineffective enforcement of the law against child marriage. Low level of punishment helps create an impression that child marriage cases are less serious in comparison to other cases. One of the major recommendations made by the victims of child marriage and the key informants is of introducing rigid sentences to the perpetrators of child marriage.

- **Inadequate special cell to deal with child rights issues:** Though the police have special cells to investigate the cases of women and children, this service is confined to 22 districts out of 75 districts and the human resources engaged in those cells are inadequate in comparison to the high number of offences being committed against women and children. There is a dire need to expand the cells to all districts.
Case filed for enforcement of law: FWLD filed a case requesting an order for effective implementation of the law against child marriage. Examining the statistics submitted by the petitioner, the Supreme Court observed that a law without enforcement is good for nothing and issued a directive in the name of the government for effective enforcement of the law against child marriage. 83

2.7 Institutions to Combat Child Marriage

Being a multidimensional problem, child marriage needs a multi-sectoral response. Institutions and agencies right from formal government authorities such as lawmakers, police and courts and all the relevant stakeholders including civil society organizations, local government, parents, pundits and religious leaders need to get involved.

The major institutions to address the problems relating to child marriage are as follows:

a) Parliament and Parliamentarians: As law-makers, the members of Parliament have a very crucial role to play in formulating new laws and amending the existing laws. As the study has found some lacuna and gaps in the law relating to marriage, their role in amending law is highly important. Moreover, they may draw the attention of the government for its inaction and the resulting weak implementation of the law. As popularly elected leaders of their respective constituencies, the members of parliament may also help create or reshape public opinion on child marriage.

b) Government Ministries and Departments: Government Ministries such as Ministry of Women, Children and Social Welfare, and Ministry of Health and Population have the leading

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83. Writ No. 98 of the year 2062 (2005). The Case decided by the Supreme Court on 29 of Ashar, 2063 (July 13, 2006).
role to take law and policy reform initiatives and introduce new programs to combat child marriage. The Ministry of Law, Justice and Parliamentary Affairs has supporting roles in reforming laws. The government departments such as Health Services Department and Women Development Department have crucial roles to play in implementing policies and programs targeted for improving reproductive health and combating child marriage. If the nationwide network of rural village workers under the Health Services Department could be mobilized properly, increased grass-root level awareness against child marriage could be achieved.

c) **The Children Welfare Boards:** The Children's Act has created a Central Children Welfare Board at the centre and District Children Welfare Board in each district for carrying out welfare activities for children. According to the Act, a Central Children Welfare Board has to be formed comprising of social workers, medical practitioners, child psychologist, and teachers. Similarly, there is the provision of formation of a District Children Welfare Board in each District under the coordination of the Chief District Officer. In the District Children Welfare Board, social activists including women, medical practitioners, child psychologist, and teachers are members.

d) **The Women's Development Offices:** Women's Development Office has been in operation in each of the 75 districts in the country to implement programs to oversee matters relating to women and children. This office is responsible for implementation of women and children related government policies and programs in the district.

e) **The National Planning Commission:** The National Planning Commission has the role to take initiative to finalize overall

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development plans of the country. The Commission should ensure addressing child rights issues including free education for girls and establishing child welfare homes.

f) **Police:** Child marriage being an offence against the state, the police has to conduct investigation in the commission of the offences relating to child marriage. In order to make the investigation of the offences relating to women and children effective, the Police has established separate women and children service centers at District Police Offices. However, such cells have been established only in 23 districts with one regional and one head office in Kathmandu. In other districts, the District Police Office directly has the role to investigate such offences.

The police initiates investigation upon filing of first information report (FIR). Any one may file the FIR. The State Cases Act, 1992 provides that a first information report (FIR) may be submitted to the nearest police office stating therein the date, place and time of commission of the offence, name(s) and address of the accused persons, if known, and evidence of the commission of the offence if any.85 The law provides that such information may be given orally and it is the duty of the police office to write it down.

The law requires that if a police personnel comes to know about the commission of an offence of child marriage, he/she has to take immediate action to protect evidence and catch the persons involved in the commission of the offence.86 The police has to investigate the offence and it has power to arrest the accused persons as per necessity and it has to record the statement of the accused persons so arrested.87

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85. Section 3 of the State Cases Act, 1992.
86. Section 4 of the State Cases Act, 1992.
87. Section 9 of the State Cases Act, 1992.
g) **Government Attorneys:** Under the State Cases Act, 1992, the government attorney has power to decide whether or not to prosecute a case on behalf of the state. Once the investigation of the offence is completed, the police has to send its report along with its opinion as prosecution to the government attorney for filing the case.\(^88\) The government attorney has to study the report and take decision whether or not to file the prosecution.\(^89\) Upon study of the police report, the government attorney may direct the police to conduct further investigation in the matter or collect more evidence.\(^90\) The government attorney has the power to decide which particular claim has to be made under which provision of the law and against whom.

Prevention of child marriage and effective enforcement of laws in case of its violation depends largely on the attitude, style, and assertiveness of the police and government attorneys in responding to child marriage.

h) **Judiciary:** Judiciary plays key roles in the enforcement of laws. In Nepal, the constitutional status of the judiciary is very high as its decisions are regarded to be the pronouncement of law. The decisions of courts are a mirror to gauge the effectiveness, credibility, and predictability of the legal system. The need of the hour is making the members and staff of judiciary more sensitive towards child rights violation and its impact on the future of the child.

The cases of child marriage have to be filed at the concerned district court having territorial jurisdiction over the matter and the government attorney pleads the case there. The victim or the first informer has the role of government witness at the court.

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88. Section 17(1) of the State Cases Act, 1992.
89. Section 17(2) of the State Cases Act, 1992.
90. Section 17(3) of the State Cases Act, 1992.
The victim does not have any role or say in the proceedings of the case and even in appealing the case to appellate court in case of acquittal by the trial court. There is no provision of interim relief to the victim during the pendency of the case.

| Imprisonment for Three Days and Fine of Rs. 25/- in Case of Child Marriage |

In *Government of Nepal v. Kaluman Rai*, the only case found to have been decided by the Supreme Court as reported in the law journal, the attitude of the judiciary reflected in child marriage is not encouraging. In that case, the father of a 13-year girl married her off and not only did he confess his guilt but also tried to defend himself upon the basis of cultural practices. The Supreme Court upheld the decision of his conviction with the punishment of three days of imprisonment and a fine of just Rs. 25/-. The judgment did not bother to deal with compensation to the victim. Such lenient approach of the court in child marriage cases only encourages the commission of the offence than to deter it.

i) **Civil Society Organizations**: Child marriage being more of a social problem than a legal one, the efforts for its solution must be concentrated on societal factors that cultivate this practice rather than on law books and courtrooms. Accordingly, the non-governmental sector has a greater role to play to raise awareness and develop a culture to say no to child marriage.

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Upka Nepal, a local NGO based in Biratnagar in the Morang district has formed several children's groups for protection of rights and interests of children. They came to know that child marriages were going to be solemnized in Morang. Upka intervened and was successful in preventing three child marriages. The NGO feels that child marriages prevail in Nepal even today chiefly because the law is very weak and punishment is so lenient. They said that people have to pay additional dowry if the girl "crosses" her age. The parents feel that it is pointless spending a lot on a girl therefore they get their daughters married off early. They also stated that child marriage is a culture in Nepal and hence, most communities are not aware of its repercussions. They said that most people confidently increase their age and create birth certificates to mislead and prove that they are of the marriageable age. They view that in order to raise awareness; topics on child marriages should be a part of the curriculums in schools and colleges.

Some community based child clubs and parents' clubs have been involved in awareness raising campaign and have been effective in preventing few cases of child marriage. Civil society organizations also play a vital role in law reform and policy advocacy. For an example, a case filed at the initiative of FWLD to eliminate discriminatory marriage law was decided with a directive to the government to amend differential age requirement for man and woman to register their marriage.  

92. Writ No. 98 of the year 2062 (2005). The Case decided by the Supreme Court on 29 of Ashar, 2063 (July 13, 2006).
Pro Public, an NGO for protection of public interests, has recently filed a case for declaring child marriage void on the ground that the element of free consent, on the basis of which marital relationships are created, is lacking in child marriage. The law recognizing child marriage only voidable has, the petitioners have argued, validated a marriage without full and free consent. The petitioners have also requested the court to issue an order on the basis of provisions of international human rights instruments relating to minimum age for marriage, full and free consent and the impact of child marriage on the children, the family and entire society.\(^9\)

However, it is submitted that the petitioner has failed to analyze the long term implications of declaring a child marriage void, as in most of the cases, it would be men, and not the women, who benefit by this declaration. In a majority of cases, a child marriage happens involving the husband with the age of majority and the wife of minor age. If such marriages are declared *ipsa facto* void the marriage would come to an end and it would be difficult for the girl to remarry. In this sense, such declaration would create a situation of double victimization in case of the girl child.

\(j\) **Weakness in Institutional Mechanism:** No plan and policy of the government has any specific mention of measures to combat child marriage. The only measure talked about in plans and policies is awareness raising activities. The high dropout rate of girl children was not linked with the issue of child marriage and early marriage and the country’s ambitious goal of achieving education for all by the year 2015. Similarly, the high target of reducing maternal mortality rate by one third by the year 2010, and by three fourths of the rate by 2015\(^9\), seem to be unrealistic given the inadequate policies and programs.

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93. Writ No. 128 of the year 2063 (2006); filed on 2063-3-11 (June 25, 2006)
Due to social tolerance and other reasons, the cases of child marriage are least reported in comparison to other offences. Even if it is reported, the police pays least attention in investigation of such cases. The investigation techniques of the police are very traditional. The Women and Children Cells within the police are confined only in 22 districts and has inadequate human resources and they are less equipped.

The government attorneys solely rely on the statute book and do not refer to the international human rights instruments to substantiate their arguments in court. They do not link the issue of compensation to the victim as a remedy against violation of various human rights due to the commission of the offence of child marriage.

The judiciary has also paid least attention in the cases relating to child marriage. Not even in camera hearing procedures are used in trying these offences. The victim has to repeatedly tell the story of the commission of the offence before the bench and even a slight deviation in telling the 'story' amounts to defeat of the case. The punishments imposed by the courts are lenient and wide discretionary power is not exercised having considered the impact of the offence to the victims.

The initiatives taken by the civil society organizations are marred by lacking coordination and duplication of works. Some of the organizations established in the name of child rights protection and child welfare are combined with getting the orphaned child adopted by foreigners. Programs are not directed to the real target groups. There are no common strategies developed to fight together and there is an obvious lack of coordination. The case filed by Pro-Public demanding to declare the child marriage as void is an example of lacking coordination.
3.1 Conclusion

Despite criminalization for years, child marriage is a harsh reality in Nepal. Being a party to a host of international human rights instruments in the forms of Conventions and Declarations, the country has an international obligation to eliminate child marriage, while in the national context, it is a constitutional and legal duty of the state to protect the rights and the best interests of children. However, implementation of laws and government policies relating to child marriage is very weak.

The law against child marriage is found to be very weak in terms of degree of punishment and wide discretionary power left to correct its sentencing. The discretionary power has not been rationalized with the mention of aggravating circumstances or grounds for leniency. Compensation clause is also weak as it is based on the amount of fine imposed on the offences, which is very low. There is no provision of counseling and interim relief to the victims.

It is found that child marriage has traumatic effects on the victims, especially the girls’ higher risks of maternal mortality, poor physical as well as mental health, discontinuation of education and career building opportunities, still birth or poor health of the child, and violation of series of fundamental human rights including reproductive health rights. Though Child marriage leads to violation and deprivation of child right for both sexes, it is more so with regard to girls, as it also leads to their sexual abuse and exploitation.
In many cases, girls are taken away from their parent's house after marriage and are subject to the ways of their in-laws. As the case studies cited above show, the daughters-in-law are treated very poorly by families most of the time due to traditional social values. They are the first to complete almost all household chores, but are the last to eat, if anything is left worth eating, and left to sleep in hunger. The alarming anecdotes the victims shared with us during the study made us rather emotionally attached to their enduring struggles that are fought for years without any support from within or from outside. If no timely actions is taken, this ruthless and senseless tyranny against girl children and women will last for years to come.

As child marriage is very much associated with the social norms and values of the community there must now be a common goal and basic minimum understanding amongst civil societies organizations and government organizations towards making this social menace an unacceptable and intolerable practice in case of both girls and boys. In a sense, it is time to satisfy ourselves that laws and policies against child marriage are in place and that the state has an obligation to eliminate it.

The key informants viewed that social awareness (31 percent), compulsory education (24 percent), free education (21 percent), rigid sentence against those involved in child marriage (14 percent), and formation of a monitoring team (10 percent) were very important for controlling child marriage. They also opined that school education on reproductive health should be made compulsory for all. District administration should take the initiative for deputing supervisory teams to monitor the incidents of child marriage. Moreover, steps like social boycott of families who are involved in child marriage, mobilization of social organization, political parties and their sister organizations for legal awareness against child marriage, legal awareness to Pundit,
Sorcerer and Journalist, dissemination of negative impact of child marriage, and training for public awareness are thought to be necessary. When asked how child marriage could be prevented, they responded that early marriage should be avoided, the legal sanctions should be implemented more seriously, and general public must be awakened against child marriage. They also said that secondary school students should be made aware about child marriage, consent should be taken before marriages, and the dowry system should be abolished.

On the measures to be taken for effective enforcement of the law to prohibit child marriage, 28 percent of the key informants viewed that social awareness must be raised, 24 percent of them said supervisory teams must be deputed, 19 percent said the confidentiality of the informer must be protected, and 17 percent said girls must be provided free education.

3.2 Recommendations and Future Strategies:

The following recommendations and strategies have been based on the problems raised and suggestions given by the interviewees, including both the sample survey women and the key informants, the multiple victimization experiences gathered from the case studies, suggestions and comments given by the paralegal groups met and interacted with during the study, and the findings from the review and analysis of the relevant literature on child marriage. Different strategies have been proposed for the preventive measures, punishments and prosecution of offenses.

**Recommendation 1: Awareness Campaigns**

Awareness campaigns by developing ICE materials need to be launched with an aim of changing the mindset and values of the general public based on religious beliefs and cultural practices. Themes as follows can be taken up:
Girls are not a burden and obligation

Sons and daughters have equal rights

Nobody goes to heaven by performing kanyadan of girl children

Girls are human beings with equal rights

Campaign to include the laws related to child marriage and its impact on the lives of children right from secondary school

Inclusion of these issues in adult literacy classes

Awareness among policy makers and law enforcement officials

Involvement of local child rights clubs in raising awareness against child marriage

Audio visual programmes and advertisements

Radio/TV Talk programme on legal issues relating to child rights

Sensitization of parents and grandparents

Prepare advocacy packages linking them with gaps in laws and impact of child marriage

Activities should be initiated to work with social gatekeepers like religious leaders, policy maker, mothers groups, parents (steps could be taken to form parents groups in several schools to take this initiative forward), and grandparents. Majority of the respondents have said that the main cause of child marriage is the beliefs and rituals associated with religion, especially the Hinduism. So, in order to raise awareness against child marriage, Hindu religious leaders such as Pundits and priests must be mobilized.
NGOs with donor support should take up initiatives to work with the decision makers of the societies to understand the negative impact of child marriage and collectively come up with solutions to deal with it in a socially accepted way. For example, if the family head and village head make announcements that those who have child marriage will be shunned in the community people will take more heed of it.

Creating awareness among pundits and local traditional marriage makers about informing the local authorities about every such event they conduct may be a solution. But in this case an incentive should be attached with their information, which can be given by the local authority together with maintaining their anonymity.

Nepal has a unique fabric of linguistic and cultural diversity. There are people in rural areas who can not understand the Nepali language. However, most of the media campaigns are in Nepali. There is an urgent need to develop publicity materials in alternate languages for this purpose.

**Recommendation 2: Reforming law**

The government should initiate law reform process focusing on:

- Bringing consistent age definition of child
- Motivating reporting of child marriage cases with the scheme of reward for every true reporting
- Paying compensation and interim relief to the victims even during the pendency of the case and creating emergency relief fund in each district to assist the victims; shifting the burden of proof on the accused implicated on child marriage
Increasing penalties both in terms of imprisonment and fines

Narrowing down the judicial discretion in imposing punishment by prescribing minimum and maximum limits of punishment

Maintaining confidentiality of informer of child marriage cases

Making state mechanisms non-action accountable

For amending the laws, the following strategies have to be adopted:

- **Consultation with Law makers:** In order to sensitize the Parliamentarians and political parties on the urgency of enacting more effective laws to prohibit child marriage, interaction and consultation programs must be organized with them from time to time. All relevant stakeholders must come together to sensitize them for immediate reform of laws and for introducing concrete programs against child marriage.

- **Launch social mobilization campaigns for law reform:** Social mobilization campaigns must be launched at different levels to make the government realize the need of law reform. In order to initiate and facilitate the process of law reform, civil society organizations have to draft separate Bills or bring alternate/amendment proposals on the government Bill for public dissemination and discussion on the proposed drafts to pressurize government to assess the law for effective purpose.

- **Basic elements to be incorporated in the law:** There is a need to have recognition of rights with strict laws to restrict child marriage with minimum age of marriage without
exception made on the basis of religious and ethnicity. Adequate sanction with compensation to be provided in cases of crimes committed. Need to create infrastructure for exercising the rights and if rights are violated, mechanism must be created to redress violence with separate mechanism to protect and redress the violation of rights.

**Recommendation 3: Promote birth registration and marriage registration**

The vital registration system, especially birth registration, is very poorly implemented in Nepal. The registration of birth is very important to establish the cases of child marriage because no age of the child married could formally be determined without registration of birth. For this purpose, there must be special programs targeting promotion of birth registration. Local government bodies such as VDCs and Municipalities must be mobilized for this purpose.

Similarly, marriage registration should be made compulsory; however, information of compulsory marriage registration and facilitation for the process to be made adequately by the state.

**Recommendation 4: Collaboration with concerned government agencies**

Civil society organizations, especially those working in the areas of child rights and combating trafficking need to work in collaboration with government agencies, especially the relevant Ministries and Departments, the police, government attorneys in controlling child marriage and trafficking in the guise of child marriage.

**Recommendation 5: Conduct Research**

There have been very few studies on the causes and effects of child marriage in Nepal, especially by linking it to a child rights perspective. So, there is a need to conduct research on these specific issues.
**Recommendation 6: Free education to girls**

Innumerable girls in Nepal have to forgo education because of their early marriages. The concerned authorities should take radical steps to make provisions for free education, especially for those girls who have dropped their schoolings when marriage collided. They will be offered better job opportunities once they acquire formal education and they won’t have to be forced to do only the household chores, for which they are not paid. This will not only help them build their confidence but will help them learn about the negative impacts of early marriages. Their status and respect in their husband’s home will also improve.

**Recommendation 7: Strong inspection and monitoring team**

Most of the respondents suggested forming inspection and monitoring teams in each district where cases of child marriage are highly prevalent. Some of them also suggested that such teams must be mobilized by the District Administration Office. Such teams must comprise of government representatives and local NGOs.

**Recommendation 8: Capacity building of law enforcers**

Developing capacity of officials engaged in law enforcement agencies such as the line ministry, police, government attorneys and courts is highly required for effective enforcement of the laws. Such officials must be sensitized and trained in child rights and reproductive health rights issues and violation of these rights by the practice of child marriage.

**Recommendation 9: Formation of anti-child marriage children’s groups**

An exemplary action has been taken by Upka Nepal, a local NGO based in Biratnagar. It has formed several children’s groups for protection of rights and interests of children. These groups manage to prevent child marriage in the district. It shows that involving children’s groups in preventing child marriage is useful for creating an anti-child marriage atmosphere.
Recommendation 10: Impart trainings to paralegal groups

Paralegal groups working in different parts of the country are increasingly becoming social agents for change. Since these groups work from communities to court rooms, imparting training to these groups on causes and impacts of child marriage and other forms of violence against children, especially girls, and the violation of human rights and fundamental rights due to this practice is very important. They must also be encouraged to develop networks at district and regional levels for sharing information and establish better coordination for preventing child marriage.

Recommendation 11: Expand services of Women and Children Cells

Within Nepal, the Police Force must be expanded in all 75 districts and flying squads must be created within the Women and Children Cells in every police office, especially to look after the cases of violence against women child abuses including child marriage.

Recommendation 12: Bringing focused programs against child marriage

The government policies and programs till now do not have any focused program against child marriage. It has been thought that only raising awareness would suffice for its control. However, this is not the case. The government must first choose the areas where child marriage is most prevalent; identify the root causes and accordingly, must bring focused programs such as adult literacy, school enrollment drive and so on. A system of taking records of unregistered marriages in villages and towns must be developed as most marriages in Nepal are conducted in a traditional manner.

Recommendation 13:

Ratify as soon as possible the Convention on Marriage, Minimum Age for Marriage, and Registration of Marriage.
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40. Nepal Kanoon Patrika (Nepal Law Reports) Supreme Court, Nepal (various
   issues)
41. Committee on the Elimination of Discrimination against Women (Thirtieth
   session, 12-30 January 2004; Concluding Comments: Nepal CEDAW /C/
   SR.630 and 631)
### ANNEX

**Name List of the Key Informants**

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Designation</th>
<th>Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Nepali Shah</td>
<td>Program Coordinator</td>
<td>Save the Children Sweden</td>
</tr>
<tr>
<td>2.</td>
<td>Bhanu Pathak</td>
<td>ADO</td>
<td>UNICEF</td>
</tr>
<tr>
<td>3.</td>
<td>Madhu Tuladhar</td>
<td>Coordinator</td>
<td>Plan Nepal</td>
</tr>
<tr>
<td>4.</td>
<td>Krishna Ram Koirala</td>
<td>Under Secretary</td>
<td>Kathmandu District Court</td>
</tr>
<tr>
<td>5.</td>
<td>Surendra Bd. Thapa</td>
<td>Judge</td>
<td>Kathmandu District Court</td>
</tr>
<tr>
<td>6.</td>
<td>Bachchuram Rimal</td>
<td>Local Registrar</td>
<td>Kathmandu Metro Politian City, Kathmandu</td>
</tr>
<tr>
<td>7.</td>
<td>Madhav Pradhan</td>
<td>Program Coordinator</td>
<td>CWIN</td>
</tr>
<tr>
<td>8.</td>
<td>Buddhi Maya Lama</td>
<td>Asst. Inspector</td>
<td>Kalimati Women Cell, Kalimati</td>
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<tr>
<td>9.</td>
<td>Sarad Kumar Oli</td>
<td>DSP</td>
<td>District Police Office, Kathmandu</td>
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<tr>
<td>10.</td>
<td>Krishna Adhikari</td>
<td></td>
<td>Kathmandu Metropolitan City</td>
</tr>
<tr>
<td>11.</td>
<td>Basanta Acharya</td>
<td>Legal Officer</td>
<td>Kathmandu Metropolitan City</td>
</tr>
<tr>
<td>12.</td>
<td>Ganesh Shrestha</td>
<td>Training Manager</td>
<td>TCIC/FHD</td>
</tr>
<tr>
<td>13.</td>
<td>Dr. Lata Bajracharya</td>
<td>Doctor</td>
<td>Maternity Hospital, Thapathali</td>
</tr>
<tr>
<td>14.</td>
<td>Dr. Sudha Thapa</td>
<td>Asst. Director</td>
<td>Maternity Hospital, Thapathali</td>
</tr>
<tr>
<td>15.</td>
<td>Binod Prasad Sharma</td>
<td>Judge</td>
<td>Bhaktapur District Court</td>
</tr>
<tr>
<td>16.</td>
<td>Padma Raj Bhatta</td>
<td>Judge</td>
<td>Bhaktapur District Court</td>
</tr>
<tr>
<td>17.</td>
<td>Dr. Bharat Pradhan</td>
<td>Director</td>
<td>Model Hospital, Bagbazar</td>
</tr>
<tr>
<td>18.</td>
<td>Laxmi Paudel</td>
<td>Advocate</td>
<td>District Bar Women Cell, Nepalgunj</td>
</tr>
<tr>
<td>SN</td>
<td>Name</td>
<td>Designation</td>
<td>Organization</td>
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<tr>
<td>1</td>
<td>Pramesh Poudel</td>
<td>Child Right Prot. Off.</td>
<td>NHRC</td>
</tr>
<tr>
<td>2</td>
<td>Prakash Paudel</td>
<td>Social worker</td>
<td>CWIN, Helpline</td>
</tr>
<tr>
<td>3</td>
<td>Lokendra Shakya</td>
<td>Social Worker</td>
<td>CWIN</td>
</tr>
<tr>
<td>4</td>
<td>Bhanu Bhakta Kafle</td>
<td>District Attorney</td>
<td>District Public Attorney Office, Morang</td>
</tr>
<tr>
<td>5</td>
<td>Nirmala Niraula</td>
<td>Coordinator</td>
<td>District Bar, Women Cell, Morang</td>
</tr>
<tr>
<td>6</td>
<td>Rajesh Nuraula</td>
<td>Officer</td>
<td>Human Right Project, Nepal Bar</td>
</tr>
<tr>
<td>7</td>
<td>Shekhar P Upadhaya</td>
<td>Local Registrar</td>
<td>Biratnagar Sub-Metropolitan city</td>
</tr>
<tr>
<td>8</td>
<td>Bhagawati Neupane</td>
<td>Police</td>
<td>District Police Office, Morang</td>
</tr>
<tr>
<td>9</td>
<td>Megha Raj Magar</td>
<td>Program Coordinator</td>
<td>Forum for Human Right and Environment, Biratnagar</td>
</tr>
<tr>
<td>10</td>
<td>Jaya Ram Yadav</td>
<td>Staff</td>
<td>District Administration Office, Biratnagar</td>
</tr>
<tr>
<td>11</td>
<td>Prajwal R. Bajracharya</td>
<td>Director</td>
<td>UNICEF</td>
</tr>
<tr>
<td>12</td>
<td>Shiva N.M. Rajbasni</td>
<td>Former Chairperson</td>
<td>Tanki Sinwari VDC, Morang</td>
</tr>
</tbody>
</table>
13. Om Prakash Misra  Judge  Appellate Court, Biratnagar
14. Surendra Sing Basnyat  Judge  Appellate Court, Biratnagar
15. Usha Bista  Field Manager  Nari Bikash
16. Bashu Dev Paudel  Tahasildar  District Court, Morang
17. Yes Prasad Subba  Field Coordinator  Upka Nepal
18. Yalam Rai  President  Forum for Joint Child
19. Shiva Pratap Malla  Member  
20. Punam Kumari Shah  President  
21. Bishal Bantawa  Advisor  
22. Indira Phuyal  Program Coordinator  Plan Nepal

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<table>
<thead>
<tr>
<th>S.N.</th>
<th>Name</th>
<th>Designation</th>
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<tbody>
<tr>
<td>1</td>
<td>Durga Bahadur Bhusal</td>
<td>Shrestedar</td>
<td>District Court, Dang</td>
</tr>
<tr>
<td>2</td>
<td>Thakur Prasad DC</td>
<td>President</td>
<td>District Court, Bar</td>
</tr>
<tr>
<td>3</td>
<td>Anita Devkota</td>
<td>Member</td>
<td>Nepali Congress, Dang</td>
</tr>
<tr>
<td>4</td>
<td>Sher Bhadur Basnet</td>
<td>DSP</td>
<td>District Police, Dang</td>
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<td>5</td>
<td>Ishwari P Dhakal</td>
<td>Asst. District Attorney</td>
<td>District Public Attorney Office, Dang</td>
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<tr>
<td>6</td>
<td>Sita Neupane</td>
<td>Secretary</td>
<td>CPN (UML) Dang</td>
</tr>
<tr>
<td>7</td>
<td>Bimala Yogi</td>
<td>President</td>
<td>Nepal Women Community Service Center, Dang</td>
</tr>
<tr>
<td>8</td>
<td>Punita Chaudhary</td>
<td>Program Coordinator</td>
<td>Backward Society</td>
</tr>
<tr>
<td>9</td>
<td>Pradip Kumar Dhital</td>
<td>President</td>
<td>Appellate Court Bar, Dang</td>
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<tr>
<td>10</td>
<td>Asmati Chaudhary</td>
<td>President</td>
<td>Rural Women Upliftment Center</td>
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<tr>
<td>11</td>
<td>Bimal Kumar Adhikari</td>
<td>Representative</td>
<td>INSEC</td>
</tr>
<tr>
<td>12</td>
<td>Himali Neupane</td>
<td>President</td>
<td>Paralegal Committee, Lamatiya, Dang</td>
</tr>
<tr>
<td>13</td>
<td>Krishna K. Chaudhari</td>
<td>President</td>
<td>Society Welfare (Action Nepal)</td>
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<tr>
<td>14</td>
<td>Anita Dahal</td>
<td>District Field Officer</td>
<td>UNICEF</td>
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<td>15</td>
<td>Padam P Chaudhari</td>
<td>Secretary</td>
<td>Bela VDC, Dang</td>
</tr>
<tr>
<td>16</td>
<td>Dhan Bahadur KC</td>
<td>Registrar</td>
<td>Tribhuwan Municipality, Dang</td>
</tr>
<tr>
<td>17</td>
<td>Hari Prasad Bagale</td>
<td>Judge</td>
<td>Dang District Court</td>
</tr>
</tbody>
</table>
Time and again we have seen the vicious cycle that families get trapped into as children are married off at an early age, depriving them of their right to education, and ruining their chances for better career opportunities. Making laws that condone child marriage is one step towards changing this deep-rooted cultural practice, yet there still exists a large gap between existing laws and actual implementation of anti-child marriage laws. This study strives to highlight the factors that perpetuate the custom of child marriage; at the same time it draws our attention to the repercussions of marrying children before they are physically, emotionally, and economically ready to transition into the responsibilities that come with marriage. While underage marriage for either gender is equally detrimental, not surprisingly, girl children are systematically subjected to getting married at younger ages due to the belief that young, unwed women are a burden to the family. It is our hope that this report will shed more light on this issue that is a day to day reality, and also encourage a positive change in socially constructed values. The report also provides suggestions on what measures can be taken to ameliorate the situation, and stresses that both civil society and law enforcement officials have an obligation to work together to resolve this multi-sectoral problem in ending violation of fundamental rights of children.

Available at

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