

RESEARCH REPORT

REDEFINING THE EARLY AND CHILD MARRIAGE AND RECONSIDERING ITS ELIMINATION IN NEPAL THROUGH ABSOLUTE CRIMINALIZATION



WOMEN'S REHABILITATION CENTER (WOREC)

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FOREWORD

Child marriage is a global phenomenon which affects the lives of millions of adolescents especially the girls. The Government of Nepal has shown its commitment to end child marriage in future in various global, international and regional human rights platforms. Accordingly, various laws and policies are devised and implemented across the country to eliminate the harmful practice of child marriage. Despite this, Nepal stand at second position in South Asia with recording second highest number of child marriage after Bangladesh.

There are various reasons that lead to marriage at an early age and it has compounded affect to the individual throughout the life cycle. So, a multi-sectoral approach is essential if Nepal government is to eliminate child marriage in Nepal by 2030 as promised in Sustainable Development Goal (SDG) Goal 5 target 3. Meanwhile, the legal intervention is one of the macro level intervention of the government which is essential to be critically reviewed.

Explicitly, the criminal law of Nepal has declared child marriage as crime and determined punished accordingly. Nevertheless, the existing trends and practice of child marriage in community shows that this practice has been continued in Nepalese community since generation with an impunity. Further it is significant to note that now the child marriage trend has been changing as many adolescents are tending to get married on their own initiation or parents are seeking permission of their children while arranging their marriage at an early age. Thus, it is required to review law and policies over the time.

This research report has adopted qualitative method of research and even did policy review of laws relating to child marriage. I hope that it will prove useful to policy makers and practitioners in their efforts to eliminate the practice of child marriage in Nepal. I do hope in future the laws and policies in the country to view child marriage will be reformed from adolescent's perspective and will soon recognize and strengthen adolescent's agency to consider their take on life altering decisions like marriage.



Lubha Raj Neupane

Executive Director

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ABBREVIATION

ASRH	Adolescents Sexual and Reproductive Health
CEDAW	Convention on Elimination of all forms of Discrimination against Women
CM	Child Marriage
CRC	Convention on the Rights of the Child
CSOs	Civil Society Organization
DC	District Coordinator
FIR	First Information Report
FIRE	Feminist Inquiries into Rights and Equality
FY	Fiscal Year
GBV	Gender Based Violence
INGOs	International Non-Governmental Organizations
IWRAP	International Women's Rights Action Watch
MOHP	Ministry of Health and Population
MOWCSW	Ministry of Women, Children and Social Welfare
NCRC	National Child Rights Council
NDHS	Nepal Demographic Health survey
NGOs	Non-Governmental Organizations
NHRC	National Human Rights Commission
NPC	National Planning Commission
NWC	National Women Commission
PLD	Partners in Law and Development
SDG	Sustainable Development Goals
SEE	Secondary Education Examination
SRHR	Sexual Reproductive Health Rights
UNFPA	United Nations Population Fund
UNICEF	United Nation's Children Emergency Fund
WHO	World Health Organization
WOREC	Women's Rehabilitation Center

EXECUTIVE SUMMARY

Child marriage is prevalent in South Asia, as it is estimated there are 285 million child brides. At present 59% of women aged 20–24 in Bangladesh were married under the age of 18, 40% in Nepal and 27 % in India. Child marriage is regarded as one of the harmful traditional practice existing in Nepal since time immemorial. Nepal aims to end child marriage by 2030 as part of its commitment to the UN Sustainable Development Goals. Moreover, the government of Nepal has already sanctioned a national strategy that provides an overarching framework to end child marriage. At the meantime, the criminal law of Nepal considers child marriage as a crime and punishes the person who perform or cause to perform child marriage.

This research is a part of this consortium project which was commissioned by Women Rehabilitation Center along with International Women’s Rights Action Watch – Asia Pacific (IWRAP) and other South Asian organizations for South Asian Initiative on FIRE from July 2019 to October 2020. Also, the data collection and the law review for the research report has been conducted from March 2020 to October 2020.

This report aims to find out the changing trend of child marriage like either forced or self-initiated or other forms. Further, it also endeavors to understand the deep-rooted causes of the child marriage and its interconnectedness with the impacts it create to the girls and boys at different levels of their livelihood, family relations, reproductive health and legal consequences from adolescent perspectives. Finally, this report focuses on to revisit the laws on absolute criminalization of the child marriage and its effectiveness on controlling the agencies, decision making and choice of adolescents regarding marriage.

This research report is based on qualitative methodology to conduct research, policy review and analysis. For this, the case studies were collected from 5 districts of the country namely, Morang, Dhanusha, Sunsari, Dang and Kailali. A total number of 21 cases studies were collected and analyzed during this study.

Major Findings:

- The practice of forced marriage is decreasing while the self-initiative marriages are increasing or even in case of child marriage the family are also taking consent of the child before arranging their marriage which is yet to be acknowledged by the law relating child marriage.
- The occurrence of child marriage has been increased with the increasing age of adolescent as it was high among the girls and boys above 16 to 18 years and 18 to 20 years.
- The case study shows that, the root causes of child marriage fundamentally intertwine with the structural inequalities of poverty, caste, class, gender norms, discrimination, lack of parental guidance,

violence and abuse including sexual abuse within family, harmful custom of child marriage, increasing trend of child marriage, effectiveness of legal system to interagency of the girls considering their age, education, family occupation and mostly the position of prospective groom.

- The case study further revealed that, child marriage has led to devastating effect and even determined one's life trajectory except in few cases. The impacts could be stated as discontinuity in education for boys and girls, problems in health ranging from physical health problem to sexual and reproductive health, pregnancy, engagement of adolescents in household chores and unpaid care work to performing job in market in unskilled and temporary low paid jobs or disproportionate criminalization of boys of lower caste or class or forceful separation, increasing possibility of violence to girl child from husband and in-laws, increasing in mental stress and in some cases even leading to suicide, lack of legal protection of marital and spousal relationship like marriage registration, citizenship, etc., including lack of legal protection to the dependents, such as birth registration certificate, etc.
- The Constitution of Nepal 2015 A.D has provided guarantee against child marriage. Accordingly, there are various acts which provides for punishing and responding to child marriage, i.e., State Criminal Code, 2017 (2074), the act relating to children, 2018 (2075), State criminal procedure code, 2017(2074), State civil code, 2017(2074) and others. They have mainly provided followings:
 - o The age of majority for marriage is 20 years of age. In child marriage, the consent of adolescent is disregarded and all form of child marriage are punished as they are deemed by law as "forced marriage".
 - o The marriage conducted between anyone of the person below 20 years is to be ipso facto void and the party to be marriage are to punished according to the law of the country
 - o The child marriage however, do not encroach the rights of children born out of child marriage in terms of their birth registration or property rights such as partition of property,
 - o The victims of child marriage are provided protection for the states, but it is for upto the children of 18 years of age.
- On analyzing the existing legislations against child marriage, it is thus understood that the state has intentionally laded adolescent's effort to direct his or her opportunities regarding marriage by placing costs, barriers, or prohibitions and mainly through absolute criminalization. This has led to various problems:
 1. Determination of age in marriage: There is a huge difference between marital relationship and being parents. Instead of delaying marriage through criminal law, the protection of adolescent girl's Sexual and reproductive health can still be done through delaying childbearing.
 2. Determination of consent: The policy makers has ignored the drivers, consequences and power dynamics between adolescents and parents, and related linkages of own-choice marriages. There needs to be clear distinctions made between love marriages, elopements and arranged marriage, and law makers needs to understand the nature and drivers of each separately.
 3. Child marriage and its inter-linkage with other criminal laws: The law is not able to determine the consequences of child marriage with child labor, statutory rape, human trafficking, domestic

violence, dowry related torture, hostage taking, bride kidnapping, etc. while in practice the cases of “child marriage” are being registered under these varieties of cases besides child marriage.

4. Inconsistency in the existing laws and inadequacy: State criminal code and the act relating to children on responding with the cases of child marriage as crime, the determination of age of minor, statute of limitation, and the rights to child victim are different and not consistent with each other.
5. Law is being used to break-up own choice relationship weakening adolescents agency: The law is used by parents for the forceful separation of married couples. Consequently, this phenomenon has disproportionately increased criminalization of certain “caste” and “class” population boys while the girls also undergo the pangs of separation.
6. Observation of marital obligation by the parties to child marriage despite the “void” status in law has increased vulnerability to abuse, exploitation and human rights violation of girl child: In the cases where child marriage is identified and there is the will to end it, annulment or divorce are not straightforward. Laws do not adequately protect child brides and child grooms, or those who seek annulments or divorces.
7. The law does not protect underage persons from continuum of harm to the survivor: The law is absolute on terming underage marriage as a criminal offence due to which those impacted by marriage do not receive the adequate protection of the State in terms of getting legal support or protection or rehabilitation in family or society or alternate care in society. The Act relating to children 2075(2018) is not adequate to meet the necessity of adolescents above 18 years of age involved in child marriage.
8. Weak enforcement or non-enforcement of law: While laws to punish those, who elope or choose own-choice marriages are enforced too strongly, other laws are not enforced strictly enough. The police personnel and other law enforcement agencies are often driven by their own beliefs about child marriage and thus, do not enforce penalties against parents who force children into marriage
9. Incoherent intervention by the government and stakeholders: On following the current law of Nepal which provides for absolute criminalization there is different interventions by the civil organizations, communities and governmental bodies which are mostly focused on the protective and punitive approach denying the rights-based approach of intervention to adolescent.

Recommendations

On the basis of the above findings, the following recommendations are put forwarded to major three actors:

A. Nepal government

1) Adopt preventive measures:

Nepal government should recognize child marriage as a fundamental rights violation. Keeping child as rights holder acknowledging the capacity and agencies of adolescents the State should develop preventive measures as follows:

- a) The government shall launch program on creating awareness and advocacy to address the root causes of child marriages such as (poverty, lack of guardianship - orphan, escaping from violence (physical, sexual) at their home, supporting the economic condition, problem of dowry, social stigma on talking to boys or having relationship, discouraging love marriage or inter caste marriage).
 - b) State shall develop adolescent targeted program relating to the continuity of education, or reducing the school drop rate of girl child, promoting the reproductive and sexual health education among adolescents, providing income generating skills and activities enhancing the employability of adolescents in the existing market, etc.
 - c) The policy makers shall work with adolescents and young people including boys to understand and build peer support on the idea of preventing all forms of child marriage in community.
- 2) **Initiate the legal Policy reform:**
- a) A comprehensive law on child marriage is to be enacted with following changes:
 - i) **Conditional criminalization:** A new law shall determine the forms of child marriage to be punished or not, like forced child marriage or arranged marriage or self-initiative marriage by children or adolescents, marriage between the minors, etc. Also, the relationship of child bride with the child groom and their relationship such as peer, friend, stranger, marriage of minor with adults, etc. should be determined on prescribing the punishment or consequences related to offence of child marriage in the criminal law of the country.
 - ii) **Child marriage and its linkage with criminal justice mechanism:** The criminal law of the country shall meticulously determine the other criminal offences linkages with the child marriage, such as child labor, dowry related violence, statutory rape, human trafficking, domestic violence, kidnapping and hostage taking, etc. and determine the procedure for criminal prosecution or litigation.
 - iii) **Legality of child marriage:** On the basis of form of child marriage, the law shall determine the status of such marriage as “void” or “voidable”.
 - iv) **Positive obligation to State:** Law shall also focus on creating awareness among the people, ensuring child development and welfare, adolescent sexual and reproductive health care etc., ensuring special rights to the victims of child marriage such as rehabilitation in society, protection of rights of adolescents married couple, etc., shall be provided the law and in case of violations of such rights, the grieved parties shall have access to the court of law claiming effecting remedy or compensation.
 - b) The existing civil laws to be amended to protect the victims of child marriage by recognizing the marital status of couple, the legal status of their children, the legal status of their marriage or dissolution, divorce, the issue relating to their property, citizenship should be specifically determined in the civil law of the country.

c) The legal policies should ensure equality within marriage, ensure prevention from domestic violence, child labor as such. There should be surveillance from national child rights council on such case of violence in child marriage.

3) Protect the rights of children involved in child marriage:

1. Ensure socio-economic rights of married adolescents through various schemes on education, employment, etc.
2. Ensure the sexual and reproductive health of married couple providing comprehensive sexual education, adolescent friendly health services, easy access to abortion service, family planning, overall delaying the age of motherhood of married girl child.
3. Protecting the rights of survivor of child marriage in case of violence in their house. Ensuring the adolescent friendly rehabilitation service, law enforcement, promoting reintegration in society, etc

4) Promote the rights of adolescents:

1. The various ministries like Office of Prime Minister and Council of Minister, Ministry of Health and Population, Ministry of Education, Science and Technology, Ministry of Finance, Ministry of women, children and senior citizen, Ministry of Education, Science and Technology in coordination with all three level of governments intensify their effort on curbing the negative consequences of child marriage and preventing marriage at an early age.
2. The Parliamentary Committee on Women, Children, Senior Citizens and Social Welfare, the constitutional bodies mainly, NHRC, NWC, Dalit commission, Muslim commission, etc. should independently and interdependently the incidences of child marriage and rights violations resulting from it and recommend actions for integrated effort of stakeholders to ensure accountability of concerned agencies for breach of law and protect the rights of victim.
3. The budget should be allocated by the three tiers of government on awareness raising and Civil Society Organization (CSOs) in community level on the issues of child marriage and intervention level. Also, the member of judicial committee shall be trained on dealing with the case of child marriage.
4. State should continue awareness and sensitization program on preventing marriage at an early age and conduct investigation on ensuring equal implementation of law irrespective of caste, class or social status of parties of the marriage.
5. There shall be development of statistics to record the nature and changing trends of child marriage among population. More research is to be done to unpack the subject of honor in marriage and on why youth are opting for marriage at an early age, and such.

B. Civil society organizations

- 1) To introduce awareness raising program through school education and extra-curricular activities, like establishing information corner, conducting edutainment mela, thematic competition on child marriage, gender-based violence, conducting street drama, encouraging formation of child club, etc.
- 2) To work with married adolescent couples on creating awareness about use of adolescents sexual and reproductive health, family planning, abortion services, reach out to the program for generating income, enhancing employability skills, continuity of education, comprehensive sexuality education, adolescent friendly health services, family counselling, awareness on their rights, etc.
- 3) To promote rights of adolescents through advocacy, lobby and facilitate policy change on the laws relating to child marriage,
- 4) To carry research on various aspects of child marriage, such as the juvenile offenders and the effect of laws of child marriage, ascertain the relationship between child marriage and other crimes, the consequences of child marriage among the “child brides” or “child groom”, effectiveness of law and policies of state, etc. on regulating child marriage.
- 5) To rescue the survivor of child marriage and ease the process of access to justice to them.
- 6) To provide the services to the survivors of child marriage according to their mandate or keep the survivor to the effective referral services,
- 7) To communicate and coordinate with similar objective holding organizations, government, national human rights commission, national women commission, regional organization to international agencies for consolidate effort on child marriage facilitating the national strategy on eliminating child marriage in Nepal.

C. Law enforcement agencies

- 1) The law enforcement agencies shall be updated on the existing laws on child marriage and shall develop sensitivity on dealing with the case of child marriage,
- 2) The law enforcement personnel and first responders shall be provided various refreshers and human rights training providing the knowledge on the international human rights, women rights and child rights instruments and mechanisms,
- 3) There shall be monitoring of evaluation of effective implementation of law and the decision of district court at the community level by the law enforcement agencies and local people including the parties involved in child marriage especially in the case of mediation by police officers or forceful separation or diversion of case of child marriage to other crime such as statutory rape, kidnapping or hostage taking, human trafficking, etc. through the use of law.
- 4) The law enforcement agencies shall be made adolescents friendly in terms of filing the case to investigation to prosecution in cases of child marriage, and
- 5) A proper system of referral shall be developed for protecting the survivors of child marriage to related agencies for protection.



1

CHAPTER

CHAPTER 1

Introduction

1.1. Background

In recent decade, the countries at South Asia with higher rate of child marriage are experiencing decline in the incidence of child marriage, especially among the age group of girls below 15 years old. It is significantly evident in India where the marriage among young girls of age 20 to 24 shows that the first age of marriage before 18 years declined from 47.4 % to 26.7 % in 2016¹. Consequently, India went one step down from the second country having highest number of child marriage in South Asia to third country. Meanwhile, in Nepal and Bangladesh, the statistics also shows there is decline in number of child marriage but it is not as rapid as in India or the target taken by the government of the countries.

Child marriage is regarded as one of the harmful traditional practice existing in Nepal. Nepal aims to end child marriage by 2030 as part of its commitment to the UN Sustainable Development Goals. Further the government of Nepal has already sanctioned a national strategy that provides an overarching framework to end child marriage. At the meantime, the criminal law of Nepal considers child marriage as a crime and punishes the person who perform or cause to perform child marriage. However, the trend of child marriage is changing and the legal institution need review on their effectiveness.

Particularly in the issue of child marriage, WOREC has been conducting programs to draw attention to drivers of child marriage, including structural conditions that deny opportunities, quality education, support services and resources, all of which compel early onset of adulthood, including marriage. WOREC has been conducting various advocacy and lobby related activities relating to child marriage in its working districts. It has further provided various services the victims of child marriage such as rescue and rehabilitation, etc. WOREC adopts the strategies that can provide alternative such facilitating empowerment for young people from getting married.

WOREC has been working with South Asian Initiative - Feminist Inquires into Rights and Equality (FIRE) since July 2019. This research is a part of this project which was commissioned by Women Rehabilitation Center along with IWRAW and other South Asian organizations for South Asian Initiative on FIRE from March 2020 to May 2020. Meanwhile, the law review has been conducted from March 2020 to October 2020. This report thus attempts to find out the changing trend of child marriage like either forced or self-initiated or other forms. Meanwhile, it also endeavors to understand the deep-rooted causes of the child marriage and its interconnectedness with the impacts it creates to the girls and boys at different levels of their livelihood, family relations, reproductive health and legal

¹J. Leigh, et al., Child Marriage in Humanitarian Settings in South Asia: Study Results from Bangladesh and Nepal (UNFPA APRO and UNICEF ROSA, 2020), at 3, available at <https://uni.cf/36SM6t3>.

consequences. Finally, this report focuses on to revisit the laws on absolute criminalization of the child marriage and its effectiveness on controlling the behavior of adolescents. 1.2. Objectives

It aims to critically redefine the concept on child marriage with its root causes and consequences and review the effectiveness of criminal law on responding to it. There is major three specific objectives of this study. They are as follows:

- To identify the occurrence and changing forms of child marriage in community,
- To comprehend the underlying root causes and consequences of child marriage reflecting the views of adolescent girls,
- To critically review the repercussion of absolute criminalization of child marriage on the adolescent's agencies to preventing and prosecuting the child marriage.

1.3. Methodology

a) Scope of research

The case studies were collected from 5 districts of the country namely, Morang, Dhanusha, Sunsari, Dang and Kailali. Most of the districts are located in the Terai region. WOREC has selected these districts on the basis of child marriage incidents where rate of incident of child marriage is high while overlapping it with their working districts. The total number of 21 cases studies was collected and analyzed during this study.

b) Data Collection Methods

Data collection methods included an in-depth interview with local women at district which was semi-structured following the case study format. For that the details on the different areas like demographic information of the respondents including the basic information of their spouse, the circumstances leading to child marriage, the after effects of the marriage, the intervention mechanisms to prevent or the response towards marriages were covered in the format and this was asked to every respondent.

The study method adopted during the case study collection used the feminist research ethics of prioritizing the sharing of the narratives and the stories to capture the emotions and the true essence of the information as shared by the respondents. The researchers of WOREC are known to the local context and the respondents. The discussion with the District Coordinator (DC) and the local researcher were coordinated from center office of WOREC. Entire, interview and case study collection were done in Nepali language which was understood by the respondents and was later translated into English language by WOREC's staff at center office.

During data collection phase, the district researcher encountered some challenges in selecting appropriate days for organizing in depth interviews with women respondents, due to their household chores and role in family. Yet, the researcher took appropriate time with women and had brief conversations with them at the place chosen by the respondents. Also, the safety and security of the

respondents were also prioritized; most of the interviews were conducted in homes of the respondents. The interviews were conducted in a way, it was not heard by any other third person.

The self-selection bias among interviewers should be noted as limitations of the research – as in case study most of the cases of women who had bad experience through child marriage has been approached by WOREC team during their work in local community. There may also have been women with positive experiences after child marriage but didn't participate because they were reluctant to share their experiences with the researcher or because they were not approached by the researchers.

The individual interviews asked about women's experiences on child marriage and the details provided by the respondents were carefully listened by the researchers. During the in-depth interview, the environment was created to be non-hierarchical, where the power balance between both researcher and the respondent were maintained. Moreover, for collecting all the necessary details the researcher has time and again approached to the respondents as the respondents were not providing the necessary details in one sitting and also the interviewer had some limitation to record all the details of the information at one time. Besides, while the respondents were responding to the researchers, the researchers also could observe the situation of her house or the place she is living in which allowed the researcher to better understand women's feelings, values, attitudes and positions. Thus, through series of dialogues in individual in-depth interviews it was possible to collect information on the cause of child marriage, their consequences and its intersection with gender and other forms of advantage and disadvantage in the community.

In addition to this, for reviewing the legislation relating to child marriage in Nepal, WOREC had organized a series of online consultations and a validation national workshop. Particularly, province level program was organized i.e., Dang and Dhanusha 11 Oct, 2020 and 30 Dec, 2019 respectively. Altogether, 104 representatives from human right defenders' group, women human right defenders, child right defenders, Police authority, member of bar, government attorney, OCMC focal person, representatives of women children and senior citizens unit from metropolitan. In the course of finalizing the content, the research findings and draft recommendations were discussed with representatives from government and non-government agencies, civil society, NHRC, NWC, in a national workshop organized on 11th October 2020 through online. In this process, altogether, 42 representatives from government, national and district-level institutions, civil society organization, adolescents' groups from district outside Kathmandu valley, the legal community participated.

Further, WOREC has conducted workshop series on child marriage on various dates among FIRE consortium, on the theme of early and child marriage: field narratives, legal approaches and critical questions on 18 June 2020, Criminalization and victim-centric approaches (age of consent) on 25 June 2020, gender-based violence and submissions to the Special Rapporteur on violence against women on 2 July 2020, sharing of research findings amongst FIRE consortium on 9 July 2020 and submission of policy review on child marriage in Nepal in front CRC and CEDAW committee in private

briefing session on 14 September 2020. Above all, their recommendation and feedbacks in these webinars has been included and the raised issues has been addressed in this report.

c) Ethical Consideration

The ethical consideration part has been an integral part of this study. The consent form was well drafted in simple language for the respondents and their guardians. For the respondent below 18 years of age, the consent form was signed by their guardian and the respondents 18 and above signed them. The consent form included many details, so that the respondents were verbally informed about the research objectives, how interviews would be conducted, duration of interviews, and how the information was going to be used. They were also provided with the researcher's contact details in case they had concerns or questions about the research at a later stage.

The researcher had previous experience in interviewing community women regarding their personal problems and violence in the family and society. They had previously worked with or were engaged with the respondents. No pressure was put on the respondents to share their traumatic experiences, and all questions were asked in a supportive and non-judgmental way. When a negative experience was touched upon, the researcher was attentive to the interviewee's comfort level and allowed them to lead the discussion. Each woman interviewed was reassured that she could decline to discuss anything she was not comfortable with at any stage of interview.

Respondents were not obliged to share any identifying information; even when it was provided; it is camouflaged in this report to respect their privacy. Confidentiality is maintained as some interviews turned into confessions as women shared stories they had never told anyone before. More importantly, after the collection of data, only the researcher had access to the recorded material and field notes for further analysis. Overall, the data collection, store and its use has been done in accordance with the ethical principal of research.

1.4. Rationale of study

Nepal has experienced decline in child marriage in the last decade, however it is still at the second place in South Asia with high percentage of girls of 20 to 24 years age group getting married before the age of 18. Thus, the progress on eliminating the child marriage has not been satisfactory and it is not declining fast enough in comparison to other South Asian countries. In the recent decade the research on child marriage is evolving on understand the types and forms of child marriage as in the community level it has been noticed the adolescents and even their parents claim the child marriage is of various forms such as love marriages, elopements, customary practice, arranged marriages, etc². Yet, the studies or research have not distinguished these marriages. Thus, it is significant to discuss about these types of marriage and WOREC has attempted to discuss their differences from the reason of marriage to the responses of people towards the marriage and their different consequences to adolescents.

²Taveshi Gupta and Erin K. Fletcher, 'Child marriage in South Asia: An Evidence Review', UNFPA and UNICEF, Kathmandu, 2019, p.2.

There are various underlying root causes and consequences related to this phenomenon of child marriage but barely the voices of adolescents are reflected. It is significant to note that there is rippled effect of child marriage ranging from individual level to macro level, i.e. State. From macro-level perspective the studies have shown that high level of child marriage is directly related to high level of fertility among women and increasing population growth. Meanwhile, it is inversely proportional to the education and earning of people largely effecting the GDP of the country, macro-level health policies, economic policies and prosperity. Report of UNICEF on 2014 has estimated that the “cost of inaction” of child marriage for girls aged 15 to 18 years of age for over the next 36 years of time may cost Nepal government the 3.87% of its GDP³. However, this research has studied only the micro-level or the individual level of consequences, reflecting the adolescent’s views. Thus, this study attempts to raise the concern of adolescents in relating to child marriage.

In Nepal, the criminalization of marriage before 20 years of age is absolute in terms of defining it as “child marriage”. Accordingly, law has prescribed the punishment to all kind of child marriage without considering their forms or context. However, the recent statistics also shows that the law is not adequate on prevention and prosecution of child marriage. For instance, though the number of child marriage is high in Nepal, the media monitoring report of CCWB illustrates that a 137 cases of child marriage are reported in FY 2075/76, in which 196 children (137 girls and 59 boys) were affected. Among the media reporting, only 24 incidents of child marriage are stopped by child club and police as well. In matters of FIR registration in FY 2075/76, a total of 88 cases of child marriage have been registered in Nepal Police⁴. In this context, this study, thus focused on reframing the child marriage from the adolescent’s perspective on the rights of choice, consent and agency. Therefore, this study aims to fulfill the gaps on the policy on defining child marriage and its absolute criminalization by Nepal government. This study aims to do review on legal policies and suggest the measures for policy reform for recognizing the agency of adolescents and ending child marriage through their initiation and intervention. Eventually, it attempts to encourage the Nepal government to adopt preventive measures rather than punitive model to punish the adolescents involved in child marriage.

1.5. Limitation of study

It is found both genders i.e., boys and girls are found to be directly affected by child marriage. Also, during the interaction with stakeholders the issue of gender identity or gender diversity was raised, however, the exclusive version of girls have been only studied. In terms of geographical context, this study covers mostly the Terai – Southern part of the country so the generalization of the hilly or mountain region with child marriage can’t be done. The study covers the cases of 21 girls with their narration on the root causes and consequences of child marriage. Yet, the effect of child marriage to boys has been recorded to some extent through the statement of women respondent. Further, in

³Rabi, Amjad. 2014. Cost of Inaction: Child and Adolescent Marriage in Nepal. UNICEF Nepal Working Paper Series- WP/2014/001. UNICEF, p.3, available at: https://ams3.digitaloceanspaces.com/girlsnotbrides-org/www/documents/UNICEF-Nepal-Cost-of-Inaction_WPo1_2014.pdf

⁴J. Leigh, et al., Child Marriage in Humanitarian Settings in South Asia: Study Results from Bangladesh and Nepal (UNFPA APRO and UNICEF ROSA, 2020), at 3, available at <https://uni.cf/36SM6t3>.

the case study while recording and analyzing the statement of respondents it was done according to their statement at present context. It is expected with the span of time however, the consequences of child marriage may be different or even the legal intervention may be different as law relating to child marriage may also subject to change in future. Moreover, on studying legal provision related to child marriage only national laws or Acts are studied and analyzed though one can find and relate it to international human rights law and case law propounded by Supreme Court of Nepal.



2

CHAPTER

CHAPTER 2

Literature Review

2.1 Defining “child marriage”, “early marriage” and “forced marriage”

In 2015, the global community committed to end child marriage by 2030. Sustainable Development Goal (SDG) 5 on gender equality requires the elimination of all harmful practices, including child, early and forced marriage. The global community has accordingly accepted thus a certain concept on defining the concept of “child”, “early” and “forced” marriage.

The term “child marriage” is used within the UN to mean a marriage or union in which one or both spouses is under the age of 18. The UNCRC defines child, “every human being below the age of eighteen years”⁵. Further, on defining, “early marriage” UNCRC further provides that marriages those are happening later than age 18 but before attaining the age of marriage determined by the law of that country. It further provides, “While attaining the age of maturity under national law may give additional rights to the individual, it cannot take away the protection of the CRC for individuals below the age of 18 years”⁶. So, early marriage is to be understood as a related term with less concrete parameters and can include any marriage in which a spouse may not have gained the psychosocial maturity that enables them to freely and fully consent to the terms of marriage.⁷ However, in Nepal the marriage between the person of above 18 and below 20 years of age is also regarded as “child marriage.” Though, theoretically it can be termed as “early marriage” too.

Furthermore, “forced marriage” is “any marriage which occurs without the full and free consent of one or both of the parties and/or where one or both of the parties is/are unable to end or leave the marriage, including as a result of duress or intense social or family pressure”. In the meantime, the joint general recommendation of CRC and CEDAW, states that a child marriage is considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent⁸.

This definition of UN has been adopted by the Nepal government too. In fact in Nepal, child, early and forced marriages varies in different context. Some research studies has also found and analyzed

⁵Convention on the Rights of the Child (CRC), adopted on 20 November 1989, 3 United Nations Treaty Series (UNTS) 1577, art 1.

⁶UN Committee on the Rights of the Child (UNCRC). General comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, 2003, UN Doc. CRC/GC/2003/4, para.20.

⁷United Nations Population Fund (UNFPA) & United Nations Children’s Emergency Fund (UNICEF), Mapping of child marriage initiatives in South Asia, UNFPA, New York, 2016, p.5.

⁸United Nations, Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices. New York (NY), 2014, CEDAW/C/GC/31/CRC/C/GC/18, para.20.

various form of child marriage, i.e., arranged, gandharva, love and other persisting in society⁹. Similarly, the report of Human Rights Watch, “Our Time to Sing and Play: Child Marriage in Nepal” has defined child marriage as arranged marriage and love marriage.¹⁰

2.2 Trends and prevalence of child marriage in Nepal

Nepal has registered a substantial reduction in child marriage with a drop of more than 20 per cent in just five years, between 2006 and 2011¹¹. Yet, Nepal has the 16th highest prevalence rate of child marriage in the world and the 17th highest absolute number of child brides – 662,000. Around 40 % of Nepalese girls are married before 18 years of age while 7% are married before the age of 15¹². The median age at first marriage of women is 17.9 years and men is 21.7 years. Also, Nepal is one of the top 10 countries where there is a high prevalence of child marriage among boys¹³. The occurrence of child marriage has been increased with the increasing age of adolescent as it was high among the girls and boys above 16 to 18 years and 18 to 20 years.

The prevalence of child marriage varies significantly with the status of girls like living in urban/rural area, education, wealth, geography, ethnicity and such. It is found, urban women and men tend to marry about 1 year later than rural women and men. Likewise, women from the highest wealth quintile marry 2 years later than those from the lowest quintile, whereas men from the highest quintile marry 4 years later than those from the lowest quintile.¹⁴ Also, it has been observed, Women with an SLC or higher marry almost 5 years later than women with no education¹⁵.

In terms of geography and region, it is found, women in Province 1 and Province 3 marry about 3 years later than women in Province 2 and 2 years later than women in Province 5, Province 6, and Province 7. Similarly, men in Province 1 and Province 3 marry about 3 years later than men in Province 6 and Province 7, two years later than men in Province 2 and Province 5, and 1 year later than men in Province 4.¹⁶ Also, a 2012 study found that among the disadvantaged Dalit caste, the rate of marriage before the age of 19 is 87% in Nepal's Terai region, and 65% in the hilly region. A UNICEF discussion paper determined that 79.6% of Muslim girls in Nepal, 69.7% of girls living in hilly regions irrespective of religion, and 55.7% of girls living in other rural areas are married before the age of 15¹⁷.

⁹Plan Nepal, Save the children, World vision international Nepal, 'Child Marriage in Nepal', Plan Nepal, Lalitpur, 2012, available at: <https://www.wvi.org/sites/default/files/Child%20Marriage%20in%20Nepal-%20Report.pdf>

¹⁰Human Rights Watch, 'Our time to Sing and Play Child marriage in Nepal, 2016, 'https://www.hrw.org/report/2016/09/09/our-time-sing-and-play/child-marriage-nepal

¹¹United Nations Population Fund (UNFPA), Marrying too young end child marriage, UNFPA, New York, 2012, p.24.

¹²UNICEF Data, 'Percentage of women aged 20-24 years who were first married or are in union before age 18' (UNICEF, April 2020), available as a spreadsheet at <https://bit.ly/3mqxvvr>.

¹³UN Children's Fund (UNICEF), 'Press Release: Nepal among top 10 countries for prevalence of child marriage among boys' (7 June 2019), available at <https://uni.cf/3dJZDVE>. See note 3, at 8.1

¹⁴Ministry of Health, New Era and ICF, Nepal Demographic and Health Survey 2016 (2017), at 83, available at <https://bit.ly/2HkfcHM>.

¹⁵Ibid.

¹⁶Ibid.

¹⁷Plan International(n9) at p.22.

Meanwhile, the form of child marriages is changing while there is an increasing trend of marriage of own choice. For instance, Plan International study report of 2012 found that 25 % of marriages across 15 districts in 2012 were of their own choice. Likewise, in 2017, a study of government of Nepal found that there were occurrence of 35 % of own-choice marriages across five districts¹⁸.

2.3 Nepal government plan and policies on child marriage:

In the context, of child marriage, although it is conducted by private individuals and not directly by the state, the state can be held responsible for “lack of diligence in preventing through its executive, legislative, or judicial organs the private act of contracting child marriage. For that the joint committee of CEDAW and CRC has reiterated that legislation is not enough. It further requires, in accordance with the requirements of due diligence, legislation must therefore be supplemented with a comprehensive set of measures to facilitate its implementation, enforcement and follow-up and monitoring and evaluation of the results achieved. It further provides authoritative guidance on legislative, policy and other appropriate measures that must be taken to end harmful practices.

The government of Nepal has now adopted the National Strategy to End Child Marriage in Nepal, 2016, that provides an overarching policy framework to combat child marriage and promote legal accountability. It envisions Nepal free from child marriage and aims to end child marriage by 2030. Taking a multi-sectoral approach to end child marriage, the Strategy incorporates six pillars, namely:

- Empowerment of girls and adolescents;
- Quality education for girls and adolescents;
- Engaging boys, adolescents, and men;
- Mobilizing families and communities;
- Access to services; and
- Strengthening and implementing laws and policies.

Particularly in Nepal, the budget speech for FY 2076/77 includes awareness programs will be undertaken from three tiers of government, i.e. the federal, provincial and local levels for ending as child marriage¹⁹. The Provincial Government has prioritized the programs to end child marriage from their respective province. It has been found four out of seven provinces of Nepal have prioritized child marriage elimination or prevention in their plan. Firstly, Province no. 1 and Bagmati province have committed to declare child marriage free province by the year 2025 and 2022 respectively. Meanwhile, province no. 2 has committed to reduce child marriage through “Save the Girl: Educate the Girl” campaign. Similarly, Far Western Province is implementing “I am younger, let me grow: No marriage, Let me learn/study” slogan and program²⁰.

¹⁸Ministry of Health (n 14).

¹⁹Nepal government Ministry of Finance, Budget speech 2077/2078 dated 28 May 2020, point no. 86.

²⁰National Child Rights Council, Government of Nepal, ‘State of Children in Nepal’, 2019, at pp. 14-15, available at <https://bit.ly/3jRPacm>

The *Local Self Governance Act, 2055* (1999), obligates local-level governance bodies to adopt necessary programs for the protection of women and children. According to this, few local levels have adopted insurance policy to reduce child marriage or are declaring themselves as taking initiation to declare themselves as child marriage free local body as national strategy to end child marriage, 2015 has envisioned “Child marriage free local bodies”.

2.4 The legislations relating to child marriage

The legislation do not only provides a framework for legal protection, but also leadership, guidance and legitimacy for policy-makers and activists to tackle the financial, social and cultural drivers behind child marriage. Traditionally, legal regulation of marriage is thought to serve four state interests. They are promoting public morality, ensuring family stability, assuring support obligations, and assigning responsibility for the care of children.²¹ However, in modern era, the regulation of law in the domain of marriage have been intricately interwoven with the individual, social norms, public sphere and international realm to form a complex scheme of social regulation. The recommendations of United Nations Treaty Monitoring Bodies on legal aspects of child marriage and human rights standards relating to marriage has stated:

As with all forms of slavery, forced early marriages should be criminalized. They cannot be justified on traditional, religious, cultural or economic grounds. However, an approach which only focuses on criminalization cannot succeed in effectively combating forced early marriages. This should go hand in hand with public awareness raising campaigns to highlight the nature and harm caused by forced and early marriages and community programs to help detect, provide advice, rehabilitation and shelter where necessary.

Further, the joint recommendation of CRC and CEDAW on recognizing child marriage as harmful tradition Nepal has an obligation to set up legislation and its enforcement which ensures following:

- Send a clear message of condemnation of harmful practices,
- Provide legal protection for victims,
- Enable State and non-State actors to protect women and children at risk,
- Provide appropriate responses and care and
- Ensure the availability of redress and an end to impunity.

In Nepal there are legal provisions and the rights associated to children and also with the institution of marriage. The Constitution of Nepal 2072 (2015)²² has stated that no child shall be subjected to child marriage. The constitution has thus, protected the rights of children from child marriage. Accordingly, it has paved the way for the children to seek constitutional remedy in the court, in case of violation of these rights. Also, the constitutional law further provides for enacting new law for the implementation

²¹Lenore J. Weitzman, “Legal Regulation of Marriage: Tradition and Change: A Proposal for Individual Contracts and Contract in Lieu of Marriage”, Vol. 62, California Law Review, 1974, p.1243

²²Constitution of Nepal, 2072(2015), article 39 (5).

of constitution. In lack of any specific law relating to child marriage, the constitution has paved way for the enactment of specific law concerning the child marriage issues in future.

Likewise, there is the act relating to children, 2018 (2075) which provides various protection the victims of child marriage. The law provides for the temporary protection service (Section 69), Rescue, protection and health examination (Section 70), provision for rehabilitation center (Section 71) and compensation to victim (Section 74). Further this law has also provided for the special procedure at court such as confidentiality to be maintained (Section 78), Probation officer to be appointed (Section 79), The mandatory of presence of legal representative for case investigation and prosecution (Section 80) and priority to be given to the case of children (section 82).

More importantly, there is State Criminal Code, 2017 (2074) which defines child marriage as criminal offense while there are other Acts which further supports it. For instance, State criminal procedure code, 2017(2074) and State civil code, 2017(2074). The major characteristics of these laws which recommend “absolute criminalization of child marriage” are as described below:

A. Condition for entering into valid marriage: The State civil code, 2017 states marriage can be only concluded between parties who has already attended the age of twenty years. Accordingly, the State criminal code, 2017 provides the punishment for the marriage where the parties to marriage are below twenty years of age as these law combined provides that the consent given by individual below twenty years in the context of marriage in not effective or it is void ab initio. On the other hand, other general law, the act relating to Children, 2018 (2075) on its section 2(j), defines “child”, as person who has not completed the age of 18 years. Yet, in the context of implementation of criminal law, on the case of child marriage, the law enforcement agencies consider the definition of “child” as below twenty years.

B. Absolute criminalization of child marriage and determined criminal procedures: There are two laws which prescribe punishment on the offences relating to child marriage. Firstly, the section 173 (1) of State Criminal Code, 2017 provides that, “No marriage shall be concluded or cause to be concluded unless parties to the marriage have attained twenty years of age.” Likewise, in Section 173(3) it provides that, in such offence such person shall be liable to a sentence of imprisonment for a term not exceeding three years and a fine not exceeding thirty thousand rupees.”

Likewise, Act relating to Children, 2018(2075), in section 66 (d2) (o) provides that - To fix marriage of any child, or marry, or cause to marry, him or her is regarded as the act of violence against the child under the offense of the child. In such case, accordingly, in section 72(3)(b) of it provides that, the perpetrators will be fined of up to seventy-five thousand rupees and imprisonment for up to three years.

Accordingly, law has provided major condition for criminal investigation and prosecution as described below:

- i. State Party Case: In State Criminal Procedure Code, 2017(2074), it provides in its Schedule – 1 that, child marriage is a state party case. So, it makes that FIR is to be registered against the case

of child marriage at police and the investigation will be done by police personnel. Accordingly, the case will be prosecuted in the district court by the government attorney following the general principle of Criminal Justice System.

Meanwhile, if any of the parties who are minor in child marriage is regarded as offender, the case will be investigated and prosecuted in accordance to the Act relating to children, 2018(2075) as juvenile offense. The whole process of prosecution will be initiated on Juvenile Bench at district courts following the principle of Juvenile Justice System.

- ii. Limitation: According to section 176 of State Criminal Code, 2017 (2074), the statute of limitations on reporting child marriage is three months from the date of knowledge of the commission of the offence.

According to Section 74(1) of Act relating to children, 2018(2075), statute of limitations on reporting child marriage is “ if any, specified in the prevailing law, and, if not so specified, within one year of the date of the commission of that offence. “ It further provides in 74(2) that, “In cases where no case has been filed pursuant to sub-section (1), notwithstanding anything contained in the prevailing law, the statute of limitation for filing the case with respect to the offence against the child shall continue to exist until one year after such a child has attained the age of eighteen years.”

- C. State determining the legal consequences of child marriages to married couples or their marital relationship and their children:** The law has denied the recognition of marital relationship between the husband and wife at first instance. i.e. in Section 173(2) State Criminal Code, 2017 provides that child marriage is ipso facto be void. Likewise in Section 72(2) of State Civil Code 2017(2074) also provides child marriage is void.

Yet, law has recognized and secured the basic rights of child born out of such relationship. For instance, in case of birth registration, Section 113 of State Civil Code 2017(2074) provides that children are entitled to get a birth registration certificate. Likewise, law also protects the inherent right of partition of property to child from both parents as Section 207 of State Civil Code 2017(2074) provides that a son and daughter born to a couple who cannot conclude a marriage or whose marriage cannot be considered valid or whose matrimonial relationship is dissolved according to law shall obtain their partition share from such a father and mother.

- D. The protection of victims of child marriage:** The act relating to children, 2018 (2075) provides various protection the victims of child marriage. The law provides for the temporary protection service (Section 69), Rescue, protection and health examination (Section 70), provision for rehabilitation center (Section 71) and compensation to victim (Section 74). Further this law has also provided for the special procedure at court such as confidentiality to be maintained (Section 78), Probation officer to be appointed (Section 79), The mandatory of presence of legal representative for case investigation and prosecution (Section 80) and priority to be given to the case of children (section 82).



3

CHAPTER

CHAPTER 3

Findings and Analysis

The details of the findings from the case studies and literature review along with the analysis are presented here below:

3.1. Demographic information:

It is proved from the literature review that the women at different context have different contextual situation, experiences and attitude towards child marriage. Thus, while analyzing the main root causes and consequences of child marriage to adolescents, the respondents' basic personal data were analyzed as below:

3.1.1 Geographical area:

The cases were collected from 5 districts namely Morang, Sunsari, Dang, Dhanusha and Kailali.

3.1.2 Gender:

Child marriage implies both male and female population. So, the studies of cases covered are of the binary genders and heterosexual marriages. Yet, in this study the in-depth interview was taken with the women respondents only. So, the findings are shown through the point view and facts narrated by the girls. Nevertheless, the impacts of child marriage upon boys are also studied from the narration provided by the respondents.

3.1.3 Age:

The data shows there has been child marriage of both genders. Out of all the 21 cases, the total 20 case studies reflect that both the girls and boys at the time of their marriage were below the age of 20 years. The following phenomenon was further observed:

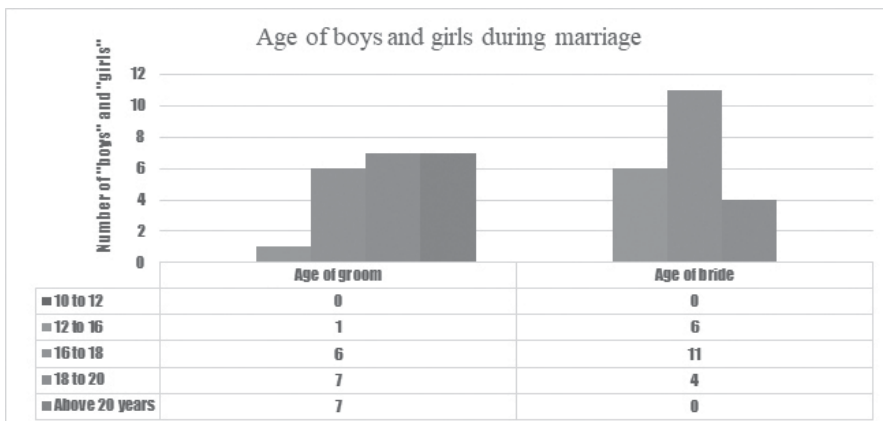


FIGURE 1 AGE OF BOYS AND GIRLS DURING MARRIAGE

- a) Age of girls during marriage: From the cases, it was found that the age of girls during marriage was as young as 13 to 19 years old. More than majority of girls got married were at the group of 16 to 18 years. Also, the girls from 18 to 20 years group were also nearly one fifth in number. There was only one girl who was 13 years old of age as the girls from 12 to 16 age were more than a quarter in number.
- b) Age of boys during marriage: The age of boys ranged from above 12 to over 20 years of age. One third of boys were above 20 years of age. This shows that the adult men are also like to marry to child bride though law has prohibited it with punishment. Like-wise, equal percentage of boys were of age 18 to 20 years while remaining one third were between the age of 12 to 18 years of age. However, in that group, the age bar of boys in between 16 to 18 years were significantly high. Only one child groom was found to be of age between 12 to 16 years.

3.1.4 Education

It was observed among the respondents that they were varied from illiterate to school drop out to the education below +2. On the other hand, in case of boys it was learnt some were found to be illiterate to have studied more than +2 also.

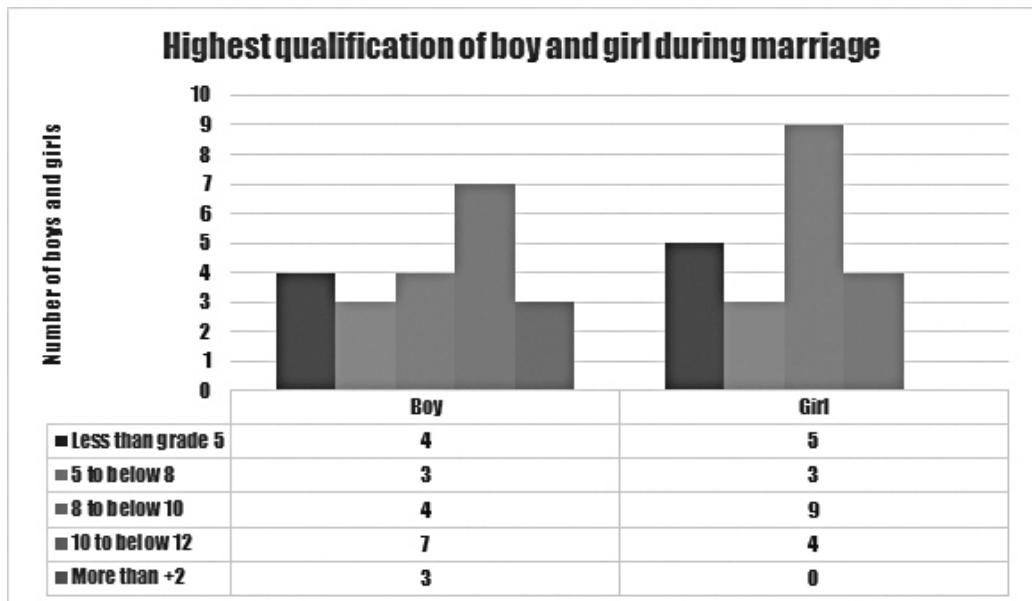


FIGURE 2 HIGHEST QUALIFICATION OF BOY AND GIRL DURING MARRIAGE

3.1.5 Occupation of the family / economic status

Most of the case studies revealed they were from low-income class families where majorities of families were involved in daily wages, agriculture, service, formal employment to foreign employment which is shown below.

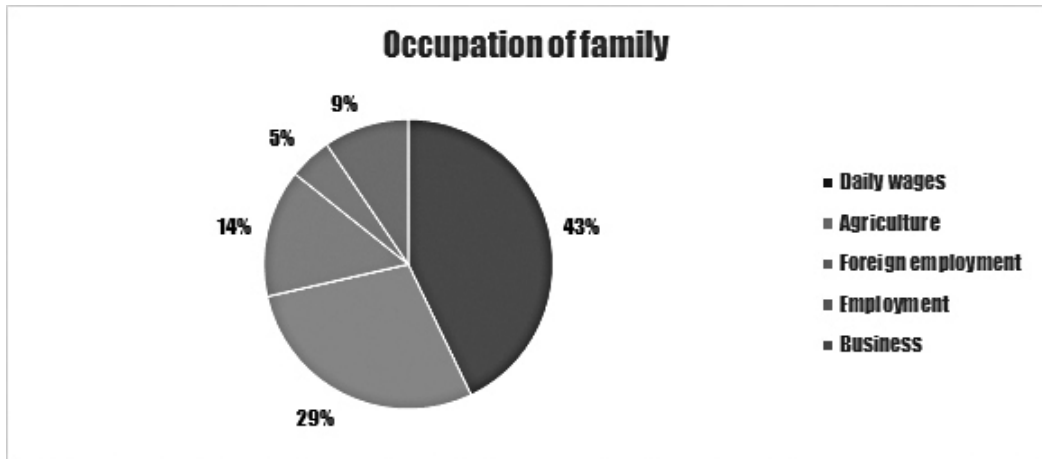


FIGURE 3 OCCUPATION OF GIRL'S FAMILY DURING THEIR MARRIAGE

The majority of the girl's family were found to be involved in daily wages and agriculture. During in-depth interview it was found that the girls belonging to family at business, foreign employment and employment had stable financial status than family engaged in agriculture and daily wages.

3.1.6 Caste and Ethnicity

It is found the female respondents who got married were from other community which do not fall under caste system. Following it there were high number of girls from Dalit and indigenous community. The number of girls from Brahmin family was significantly low. While, in case of caste of the boys they married to similar phenomenon were observed in terms of less number of boys from Brahmin family. The number of boys getting married were from Dalit community followed by other communities and indigenous group. It is to be noted there were no respondents from Chettri community. Also, the groom were also not from Chettri community. It can be seen in below bar chart:

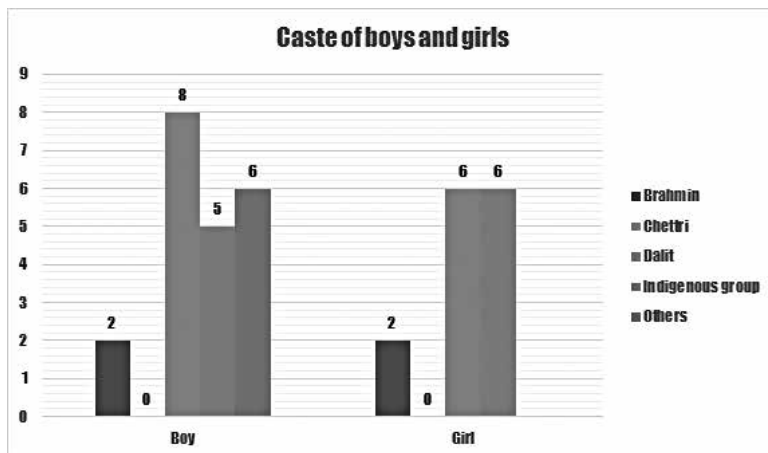


FIGURE 4 CASTE OF BOYS AND GIRLS DURING MARRIAGE

Further on in-depth analysis of caste of boy and girls during marriage, there are phenomenon of same caste and inter-caste marriage while to some respondents the caste system does not apply as their family caste do not fall onto caste system. The phenomenon is illustrated in the chart below:

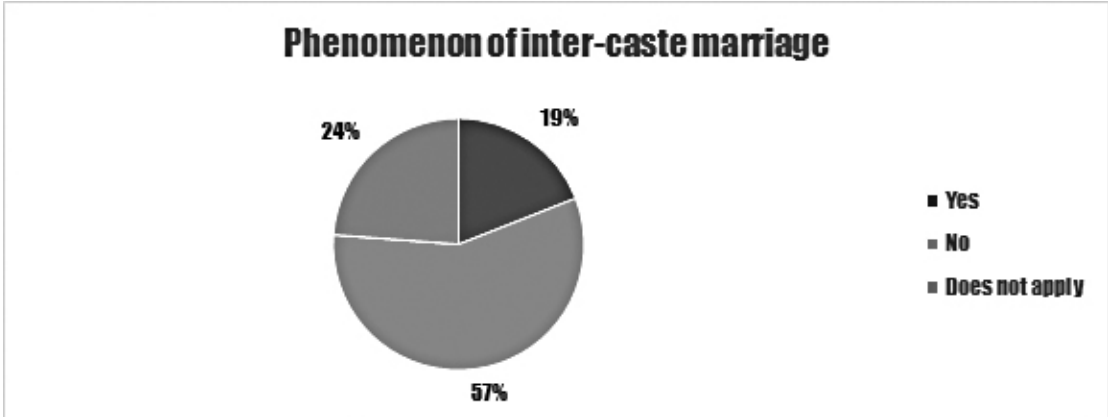


FIGURE 5 PHENOMENON OF INTER-CASTE MARRIAGE

3.1.7 Religion

All the respondents were following Hindu religion. It was also found; the boys were also from Hindu religion. No any case of interreligious marriage was recorded in 21 case studies though the girls and boys were from various caste and ethnicity.

3.2 Types of child marriage:

Nepalese law had firmly stated that all kinds of child marriage are forced marriage as the “consent” given by an individual below the legal age for marriage is counted void ab initio. This study had tried to review this concept of law from the adolescent’s perspective. The respondents were asked on the use of decision-making power to get married and it was found the answers were largely divided into three groups, self-initiative and forced or other. Meanwhile, there was also few numbers of respondents who stated early marriage was part of their tradition and there was not much issue of decision-making power on marriage. The forms of marriage with their numbers are shown in the following chart:

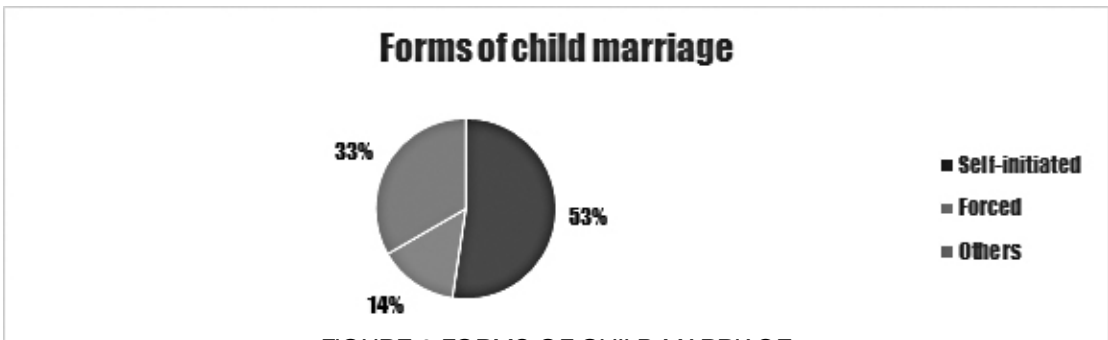


FIGURE 6 FORMS OF CHILD MARRIAGE

As shown in above chart more than majority of child marriage are seen to occur voluntarily as self-initiate marriage. Following it, there are other forms of marriage like arranged marriage or eloping according to tradition. On the other hand, only 3 marriages or 14% child marriages were found to be happened forcefully. This shows the changing trend of child marriage in the Nepalese society.

3.2.1 Self-initiative child marriage:

The self-initiative marriage is found to be prevalent among all kind of respondents ranging from having less education to respondents studying +2. Also, it was found the respondents age were from 12 years to below 20 years. The girl's family's financial condition also ranged from lower to average class family and it was prevailed among girls of all castes categorized under the study. Importantly, the self-initiative marriage indicates increasing number of inter-caste marriage occurring across the country.

On recalling their love relationships, the respondents stated that they met each other in their schools as both of them were studying in same schools while some of them were even classmates, or they met through their common friend or relatives or some of them were working together. Further on the decision of marriage almost all of the respondents stated there was sheer case of love, affection, hope for brighter future or financial stability between the couples before marriage and these were the major factors leading them to marriage at an early age. While in few self-initiative marriage, the respondents have tried to escape from the abuse at their family. Also, the respondents stated they knew the law prohibits child marriage but yet they opted for it- as they believe they were already earning for their living or they were convinced their husband will surely earn for their living.

The respondents firmly stated that during the time of marriage they were sure about the disapproval of their relationship by their families reasoning the difference in caste, economic condition or their age being below 20 years of age. On the other hand, in some cases, the respondents stated they opted for self-initiative marriage as their parent threatened to arrange the marriage of girl elsewhere. However, in some of this marriage also the respondents admitted they felt some sort of pressure from their partner. In one cases the respondents stated their partner threatened them with the promise of death in case of rejection for marriage and they got married. In one case the girl admitted she forced the boy to get married when the love relationship got public. This shows even self-initiative marriage, in some cases there is some invisible force such as mental or psychological threat used by the parties. However, it was between the two people involved in the marriage and no other external control, so we have also counted that marriage in self-initiative marriage. In all of this marriage, the couples got secretly married and later went to the groom's house.

Particularly, in self-initiative marriage, there were found to be intervention from family if it was done inter-caste (especially when girl is of high caste and boy is of lower caste); and in case of reverse it was found in some cases the marital relationship were not accepted by the boy's family and in one case even the girl was returned to her parent's home. Typically, in self-initiative marriage when girl and boys run away, the families were found to lodge the complaint for search of lost child or the case

of child marriage. It was found; however, in no case any legal action was taken. Yet, the police were tending to do mediation at local level and in some cases the married couple was separated with the promise of marrying them after attending the age of maturity, i.e. 20 years of age. Meanwhile, in majority of cases, the marriage was later accepted in the society and the married couples started their marital relationship living in the family. One of such case study is given below:

Case study 1: Durga's story:

Escaping stigmatization of abuse in society

Durga is resident of Sunsari district. She had family of seven members including herself with father, mother, three sisters and one brother. Her parents used to earn money by doing daily wage work but it was not sufficient to meet the basic need of family as her father is alcoholic. So, she used to work as domestic worker and support expenses at her house. One day her relative came to her house and suggested them to send her Kathmandu for job where she can earn Rs.10, 000.00 per month and even continue her education. Her parents insisted her to go Kathmandu with him. However, on the way, he took her to hotel and raped her. Yet, she managed to escape from there and filed complaint to police. He was then convicted of rape and imprisoned for 11 years. Meanwhile, in her village and among relatives she was threatened and stigmatized. She could not stay at her home and came to WOREC's safe house. After three months of stay at safe house she went to live at her married sister's house and started to work in factory. Meanwhile, at the age of 18, she met her husband who is tractor driver. Both, liked each other and decided to marry.

3.2.2 Forced child marriage:

On analyzing the extent of existence of force, coercion, duress or threat on child marriage, the respondents said the decision making power solely was on the third parties. They stated during the time of decision of marriage they were mainly pressurized for marriage by their family members or guardians or relatives. The forced marriage is found to be prevalent among all kind of respondents ranging from illiterate to respondents studying below +2. The typical age group of respondents in this marriage is from 13 to below 18 years of age. The girl's family's financial condition also ranged from lower to average class family and it was prevailed among girls of all castes categorized under this study. One of the case studies of forced child marriage is discussed below:

Case study 2 : Rakhi's story:

Guardian's pressure

Rakhi is resident of Kailali district. She had lost her mother when she was 8 years old and her father later did second marriage. The step mother however, used to mistreat her and her siblings and they started to live with her uncle and aunt. While she was studying in grade 12 at the age of 19, she got proposal for marriage from a Nepali man who was living in India. She denied the proposal in front of her relatives and even promised if provided time, she will later marry him after reaching certain age or completing her study. But her uncle, aunt and father pressurized her to get married.

This case study depicts there were various complex interrelated reasons for this forced child marriage as expressed by respondents which includes the school drop out of girls from school, poverty in family, family dispute or violence in family, family expecting better life to girls in matter of finance, the influence of prospective groom and his family, etc. It illustrates the patriarchal structure of the family where the opinion of the girls however, was not considered significant because their decision was undervalued and they lack choice and agency even in case of own marriage.

Importantly, the forced marriage showed all of them were within in the same caste marriage in the community. Meanwhile, there were instances of no intervention from community to attempt to stop child marriage by other people. In one case of forced marriage though it was uninterrupted the respondent has recalled it was performed at night and in secrecy. Still, in two instances of the forced child marriage the intervention was found to be done by child club and women human rights defenders and other community members. In one case the child club and women human rights defenders had filed case of child marriage against the guardian of the girl at local police station. However, the case was settled through mediation and even the police threatened the guardian not to officiate the marriage of girl without attending 20 years of age. However, due financial condition of marriage and looking at the prospective groom the family of girl married her secretly. After which, however, there was no intervention by other people. Since, this marriage was done in the consent of families of both parties at marriage; the respondents said their marriage was easily accepted in the family and society.

3.2.3 Other forms of child marriage:

The forced marriage is found to be prevalent among all kind of respondents ranging from having education below grade 5 to below +2. The typical age group of respondents in this marriage is from 16 to below 20 while in one case it was below 16 but above 12. The girls family's financial condition also ranged from lower to average class family and it was prevailed among girls of all castes categorized under this study. Importantly, the forced marriage showed all of them were within in the same caste marriage in the community.

The respondents during the in-depth interview denied some sort of decision making power used by either themselves or by their parents. Some of the respondents stated they got married by elopement as it was their tradition and they do not feel using their decision making power. One of such case studies is discussed below:

Case study 3: Gita's story

Family rattle

Gita is resident of Kailali district. She is from poor family with low economical status while her elder brother used to quarrel with her father and mistreat every family member. Her family could not support her study due to poor financial condition and she was school drop-out. Meanwhile, at the age of 15 her parents got marriage proposal from her relative and they agreed while she was also convinced for marriage.

In this case, the respondents clearly stated her parents did not forcefully her. There were some severe condition of the family like poor economic condition, school drop out of girl child, marriage proposal from good prospective groom, the possibility of better financial condition after marriage which their family considered to be important for securing the future of girl child and made their family decision to get her married about which she also consented. The respondents said during arranged marriage their family already knew some details about the boy and his family while in some cases even the girls was also known to the groom before marriage. In this instance, the respondents has expressed during this time, they were mentally prepared to get married and eventually got married.

In this type of marriage also the respondents claimed the parties to marriage and their family were also aware of the marriage but still they performed it as their relationship would be accepted by society and family. The respondents claimed they did not experience any kind of intervention from society or community. So, the fear of criminalization of child marriage or legal consequences created by state was nonexistent to them while taking decision to marry.

3.2.4 Differences between different types of child marriage:

The Nepalese law has only imagined "child marriage" as "forced marriage". However, while defining the child marriage from adolescents' perspective, it is found, like other marriages it also has different forms, i.e., self-initiative, forced and other forms. The stark differences between these marriages:

SN	Issues	Self-initiative CM	Forced CM	Other forms of CM
1	Root causes	Feeling of love, fear of separation, fear of stigmatization of love relationship, pre-marital sex, confidence on psychology to be ready for marriage, etc.	Family pressure for marriage, customary practice, family clatter, lack of guardian's protection, societal pressure, for less dowry, etc.	Family is pressurized to arrange marriage, the adolescents also agree upon the decision of family, influence of prospective groom, etc.
2	Consent and choice of adolescents	The parties to marriage have enthusiastically expressed their consent. They had chosen their partner for marriage (However, within them also one might pressurize other to get married instantly).	The parties to marriage has denied for marriage. But, the third party had chosen the partner to them irrespective of their consent.	The parties have accepted their reality of marriage. There is consensus on the choice of partner who are chosen either by themselves or by their parents or third parties too.
3	Knowledge about prospective groom	The girl child has knowledge and is acquaintance to the groom.	The girl might not have knowledge but their family, relatives or other community members have information about the groom.	The girl child marriage may not know about groom but has confidence on other's knowledge.
4	Decision for marriage	The parties to marriage solely take the decision.	The family, relatives or community take the decision for parties to marriage without the approval of adolescents.	There is mutual practice of taking decision on marriage and the partner for marriage.
5	Actors intervening the child marriage	In many cases, the family of marrying parties seem to intervene feverishly.	In some cases, the community members, human rights activists, child club, even the parties to marriage, police, etc. intervene the marriage.	There is no opposition from any one.

6	Intention behind prosecution	<p>From State perspective “crime” as determined by law</p> <p>From parents view it is part of revenge and retaliation against the parties to marriage.</p> <p>In societal structure, the caste based system marriage also encourage for prosecution on self-initiative inter-caste marriage</p>	Child marriage as “harmful traditional practice” and “crime” as determined by law.	Easy acceptance of marriage in the society and there is reluctance for prosecution.
7	Prosecution	The marriage is found to be prosecuted under “child marriage’ or in severe cases other cases of statutory rape, kidnapping, case for searching lost child might be filed against the parties to marriage – especially against boys.	The case of “child marriage” is to be prosecuted against the person who arrange the marriage – especially the parents of child bride or their relatives.	The cases of child marriage are not filed by anyone. So, there is no likelihood of prosecution.
8	Validity or acceptance of marriage	There is conditional social validity. The family of parties tend to reject the marriage at first instance and acceptance is often influenced by the caste, class of the parties to marriage.	Eventually, there is social validity.	There is social validity from starting.
9	Cohabitation after marriage	In some cases the parties to marriage are forcefully separated by family with support of fear of police or law enforcement agencies.	The couple live together instantly after marriage.	The couple live together instantly after marriage.

Table 1 Differences between self-initiative, forced and other forms of child marriage

3.3. Root causes of marriage:

There are various multiple factors leading to prevalence of child marriage in society. During the in-depth interview also, the respondents had put forwarded multiple reasons for their marriage or decision to marriage. Specifically, the following reasons were expressed by the respondents for the occurrence of child marriage. They are:

- 1) **Age:** Age is determining influencing the child marriage. The growing age indicates the stage of human development, rapid brain development and physical growth, the skills, abilities to perform roles and responsibilities from dependency to greater autonomy. The starting year of older adolescent age, already captures this development process. During the case study it was found the girls took the decision of marriage as they thought it was appropriate age to get married. On the other hand, when the parents married of their girl child it was found they also considered the age of girl child was suitable to get married. Though law has determined the age for marriage, it found in the case study yet the girl child got married in young age relating to other complex phenomenon in family too which will be discussed in following points.
- 2) **Education:** The majority of the girls in the case studies were found to be attending school until they get married. From the case studies it has been found the young girls who get dropout from the school or had no interest or little interest on study or had to discontinue education due to poverty or far distance of school are less likely to get married at an early age. Further, the discontinuity of the education and staying at family shifted the household chores and unpaid work to girls or in some cases the burden of earning also fall upon the girls. While in this course, they recalled they and their family shifted their focus towards marriage and love- relationship rather than the education and career. It has further been observed, in case of girls going to school before marriage, the age of respondents getting married and the level of education were also related, i.e. higher the education of the girl higher is the age for marriage.
- 3) **Agency of girl child on decision making for their marriage:** It was observed in all of the cases studies of forced marriage or other form of marriage, that the girl child were either convinced by family members or forced to marry against their will. The experiences of the respondents getting forcefully married illustrates that at their parental home they had relatively no any decision taking role due to their age and gender. This status even affected their freedom to choose their partners. Meanwhile, the girls in self-initiative marriage stated through they had also experienced hardship at their parental home and were discriminated amongst son or other siblings in the matter of marriage they took their own decision. However this does not mean that girls were subject to greater decision making position for the marriage in the case of self-initiated because in few cases, the girls were convinced by their boyfriends or there were adverse social conditions which left out no room for them to escape from marriage. So, it is found the decision making for the marriage was influenced or directed either by third party or in increasing cases it has been taken by the girls; yet they get influenced by their prospective groom's influence too.

- 4) **Psychological idea of marriage among adolescents:** In all case studies the respondents had stated that either they or their family were convinced that girls would be getting good life after marriage - which they could never get at their parents' home. Some of the respondents said due to poor economic conditions of family they were being burden at their parents' home and marriage was only way through which it could be shifted to another house. This psychology of respondents when analyzed through the family structure, economy or occupation, education and other circumstances shows that the respondents had chosen marriage to be an ultimate solution for a better future. Many of the respondents chose early marriage over education and other choices thinking that the life after marriage will be better than existing state. Also additionally in the self-initiated marriage, the psychological aspects of happiness, the thoughts of being and spending life with the one they chose were also part of their action towards getting married.
- 5) **Love relationship among couples:** In the teenage period, most of the young people develop attraction towards another person. During this time, young teenage mostly experience reproductive changes and hormonal growth in body. The young adolescent people who have just stepped to new form of their physical and bodily growth get engage in attraction to another person leaving behind all their educational achievement and other social status. This attraction and relationship among couple is found in all of the self-initiated marriage. It is found, in this love relationship the simple attraction was first occurred during the time of schooling days as they were on the same school or on same class. The respondents further stated they were afraid to lose their partner or of forceful separation from family and shaming in society or community on being exposed of love relationship or case of pre-marital relationship- which led them to get married. Further, in case of working young couple when they started to earn, they met their future husband at work and took decision to marry at an early marriage.
- 6) **Family economic condition:** Almost fourth fifth of the respondents do not have good financial condition in the family. The financial status of family was also the driving factor for adolescents to get married at an early age. In the in-depth interview, many respondents recalled their status of not getting enough food in family and working hard in either family or outside to earn the subsistence living for their family. So, the respondents stated they did not want to become more burden to their parents' home and when they met the boys they liked or when parent proposed the marriage relationship with boys with higher education and age than them, they simply got married. Overall, it is observed in eighty percentage of the marriage was conducted in hope of having better future security or economic condition or financial stability at the groom's house. On the contrary in case of inter-caste marriage or when the family of groom has low economic status the girls had still chose to marriage choosing the quality of prospective groom over his financial status.
- 7) **Family conflict and discrimination within family:** The family structure and bonding in family had also influenced the early marriage among the respondents. Many of the respondents proclaimed that the family connection, behavior of parents, siblings and bonding inside the family was not

favorable towards them. In some cases, respondents recalled gender-based discrimination in the family where they felt they were neglected compared to the sons in the family and the basic food, clothing and other necessities in daily life.

In one of the cases, the respondent mentioned that the multiple marriage of her father has led to weaker family relationship in family and leading her to opt for early marriage in hope for better family relations. Likewise, the other respondents stated the abusive behavior of her father who gets drunken most of the time and get involved in frequent assault and domestic violence in the household have led the respondent to choose marry at an early age. Likewise, there were some cases of lack of lovable guardianship at home towards the girls. For example, one of the respondents claimed she was pressurized from uncle and aunt for early marriage. Meanwhile the other respondent stated the death of her mother and mistreatment of her stepmother compelled her to get married at an early age.

- 8) **Child Labor at home or outside:** Many of these respondents have worked as child labors in different places before getting married. The most common reason for this was that the respondents were drop out of the school or they were not attending school was that they had to work for living. It has been observed in some case when the girls were dropped out of the school at home, they had to work on daily household chores and unpaid care work like a laborer either supporting her mother or take the responsibilities of mother. In this situation both the parents or guardian and girl child felt marriage was better for her secured future. It has also been observed, after being employed at one of the jobs such as domestic worker or daily wage laborers, majority of the respondents did self-initiative marriage. In one case when the parents of girl forced her to apply for jobs in urban area, they sent her with a distant relative who later raped her while later she was stigmatized in the society. So, in order to flee from her family and community she chose to marry. Also, in the house of groom also, there was necessity of women to take the responsibility of household chores and unpaid care work, which directed them to send proposal to the minor girls for marriage.
- 9) **Caste and ethnicity of the girl child and groom:** It was observed that the caste played an important role in the performance of child marriage. The respondents have recalled that, in the enforced marriages, the marriage was conducted within the similar caste and class group. There was less contrast in the social status of the families of boys' and girls'. More likely the marriage occurred to maintain the "caste purity" of the family legacy. On the other hand, the respondents recalled that, in the cases of the self-initiated marriages, when the caste of girls and boys were different, they developed fear of separation and rejection from family and society and soon opted for marriage. There were respondents from certain caste and community who stated the existence of child marriage has been practice in their community since the generations and was continued in their case, without any intervention from society or from State.

- 10) **Underage marriage trend in the society:** Underage marriage trend in society stems not only from the traditional practices and beliefs of the society but also there are practices in the modern generation opting towards marriage at young age. When in a society child marriage practice is prevalent either through enforced or self – initiated way the underage marriage is easily accepted while the children get aspiration for marriage from the days of their childhood. This feeling on importance of getting married has been expressed by the respondents who has conducted self-initiative marriage or elopement or arranged marriage. According to respondents, still today the child marriage persists as it is still acceptable in the society when the both parties to the marriage has same caste or had no family conflict regarding the marriage. Also, some of the respondents further stated that there is a societal pressure and misconception that, when the daughter develops the early signs of physical and hormonal changes in the body or starts to menstruate; the change is regarded as being suitable for marriage and start a family. So, when some of respondents were dropout of the school and works at home or outside for living family and even the community incite them to get married. In one case, in order to save family reputation from children and adolescent kids to engage in pre-marital sexual relationship, parents choose to get their children married off early. Also, when some of the respondents were working outside the house and earning living when they find a suitable groom they got married.
- 11) **Child marriage as traditional practice:** One of the reasons for forced marriage was “traditional practice “of child marriage in society which has been practiced in the family of respondents since generations. All the respondents on the case study were following Hindu religion and they said they have been hearing from their childhood from their parents and grandparents that marrying off their daughter early releases them for not only economic responsibility but also social responsibility and secure safe place for them at heaven – after life. For that reason, when their family receive marriage proposal from the boy’s family having better economic condition or social status then them, the respondents were either convinced or forcefully got married. Besides, two of the respondents stated that the practice of dowry system in the community and less burden of dowry on marrying off the young girl child also led their child marriage and the marriage of their siblings too. Some of the respondent had expressed there are still rampant cases of child marriage in their indigenous community as a part of their tradition. In such community the underage marriage is treated simply as one of the forms of marriage and the negative consequences of child marriage are rarely discussed. There respondents has stressed out that in such communities there are problem of general public awareness and sensitivity on the adverse effect of child marriage or the agency of adolescents. Even, in some cases the child marriages are conducted with the support of highly reputed members of the community - who are responsible for enforcing and regulating laws in the community. So, since the time immemorial child marriage has been practiced with utmost impunity.

- 12) **Weak enforcement and non-enforcement of law:** The respondents expressed that even though Nepalese legal system has absolutely criminalized the child marriage, they are not strictly implemented in society as in many of the cases the complaint was not filed in police station for prevention of child marriage or aftermath of marriage within the time limitation provided by law. For instance, one of the respondents stated that in her village, when child marriage occurred only threats were made to file police report; however no active actions were taken. Meanwhile, in one of the cases, respondent stated that when police complaint was made against the married couple, the police took no action as they fled to India after marriage and returned when girl was pregnant. Likewise, in one case of the respondents shared that her father filed case against the couple in the police but police took the couples and imprisoned them only for a day and later released them without taking any legal action. Indeed, this weak enforcement of law is unable to create deterrence effect on general people not to conduct underage marriage. The fear of punishment is outweighed by the dominant effects of social capital, incentives to conform, financial incentives and more at family level. As a result, it is found that the practice of child marriage continued in community sparingly with impunity.
- 13) **Prospective groom's status:** The child marriage of girl child is also directly related to the status of prospective groom. In all of the case studies the girls have stated that either they or their parents have felt the groom were better off than them in education or were mature or were had stable financial condition – which convinced them to get married to their husband. Also, in case of forced marriage, the caste of the groom also played vital role and family members were more concerned about marrying off their daughter in same caste and were seeking social acceptance or attempting to continue the community tradition of marriage. Meanwhile, in self-initiative marriage some of the respondents claimed their love, attraction and promises to the boys led towards them to married child marriage though they were aware that the boy is younger than them or is poor or is of lower caste or of different ethnicity.
- 14) **Disaster and crisis situation:** In time of corona induced lockdown one respondent stated she felt the uncontrollable urge to meet her boyfriend and eloped with him. There were other respondents who also stated they were married off by their parents to cope with the financial difficulties in their family arisen by various crisis including the incidence of disaster at their home.

3.4. Consequences of child marriage:

The respondents have shared in aftermath of marriage they have live with their husband, his parents, male siblings and their wives, children, and unwed sisters. Power and authority in the household is usually held by men and older women, and this can place new brides, especially if they are young, at greater risk of abuse and violence. Meanwhile, in some cases of self-initiative marriage there was forceful separation from family members or non-acceptance of marriage. Thus, different respondents had undergone different experiences after child marriage and those were noted in the in-depth interview too.

In overall, many of the respondents have shared they felt more problem after marriage while some of the respondents even expressed, they were living their life much better than before. When, the respondents recalled their bad experiences or suffering it consisted of mixed problems ranging from not having access to education to violence at family to non-registration of marriage at village to attempt to suicide.

However, in some case, the respondents have expressed in aftermath of child marriage they have felt their life has been better as their expectation were met after marriage or they felt financial stability or personal security. A typical case study among the respondents expressing this view is given below:

Case study 4: Khusi's story

Leading to settled life

Khusi is an illiterate girl who was married at the age of 16. She was married to her husband with the consent of her parents. Her marriage was also accepted by the society and community as they have tradition of marrying girls at the age of 16 or 17. She states her husband's family is quiet better off than her parents as her father in-law is in foreign employment. She is loved by her mother in- law as they needed daughter in law to support household chores. At present, after one year of marriage she is living at her husband's home. Her husband is now working as laborer in Kathmandu. She however, states she could not register her marriage as law does not allow them.

Yet, in all of these cases at least one of the consequences of child marriage could be found. They are discussed below:

- 1) **Discontinuity of education after the marriage:** The school dropout either before the marriage and post marriage was observed in all the cases after the marriage. The poor economic condition of the family, the household chores as the primary duty of the girls, early pregnancy and the birth of a child are the major factors for their discontinuation of their education. However, only one of the respondents, have mentioned that the family of her husband is supporting to continue her education after the marriage. It was found from the respondent that to stay in school she constantly gains trust of their natal family to receive access education in the first place and then to prove that their education will help them be a better daughter in law and wife. It was further observed that even boys had discontinued their education and had engaged in the income generating activities as gendered role of being responsible to take care of the family and support them financially.
- 2) **Poor economic condition:** The occupations of respondents after marriage were mostly housewife managing the household chores and care giving roles. The marital relationship brought new responsibilities to both boys and girl and in some cases added new mouths to feed i.e., when new baby was born. Particularly, among these respondents after marriage the dependency on the family

for financial support and expenses made them more vulnerable. In case of women working outside the home, the inadequate education qualification and bodily weakness have made them work in low paying jobs and equipped in a unsafe work environment that further have led to low health and economic standards. Meanwhile, in case of boys also, there were either jobless or some were working as daily wage labors and some were seeking foreign employment work. To make things worse, the employment is often linked with the education of the people. The respondents claimed that, after marriage they felt that the education level that they had was not enough to secure them any formal or reputed jobs in society. The regular means of income was an issue to many respondents except for very few of them who were from better off or middle-class family. Some of the respondents even claimed the poor financial status of the boys' family and practice of dowry in society was also one of the reasons the newly wedded girls were tortured to bring additional dowry after marriage making the sufferings of the girls more severe. Meanwhile, in some cases of respondents who had faced violence, abuse in husband's home stated they could not even claim for food and maintenance from such family as law do not recognize their marriage as valid. In such circumstances, the poor girls even became poor and, in some cases, it even extended to the living of new generation – the newborn baby, continuing the poverty to other generation.

- 3) **Health problem and weaknesses:** Aftermath of the child marriage, some of the respondents had experienced direct adverse impacts on their health. The impacts on health ranged from physical, mental, emotional or psychological, reproductive and sexual health and well-being. The respondents have stated that particularly after marriage they have experienced physical weakness such as lower abdominal pain, nausea, headache, etc. Also, some of the respondents stated they have developed anxiety, stress and other mental health problems as they had to go through forceful separation or were neglected by parental home or were being abused at husband's home. During the interview, some respondents even shared their incidence of attempt to suicide due to family conflict issues and difficulty after marriage. They revealed they were shocked due to the false promises and hopes given by their husband and parents while convincing them for marriage.

After the marriage, most of the respondents stated they were directly or indirectly pressurized by either their husband or in laws and even their parent to deliver a child. However, on the contrary, some of the women stated they have faced lack of support, care and access to nutritious foods during maternity period and pregnancy and absence of adequate medicine and health service worsening their health condition. Likewise, some of the respondents even shared their painful experience of miscarriage during this situation.

Meanwhile, the respondents were also found to be unaware about the importance of reproductive and sexual health rights. For instance, one of the respondents who married at the age of fifteen years have now 4 kids. This alone incidence is sufficient to draw the picture on the capacity of women to decide the number of pregnancies or gap between the pregnancies or the use of the family planning measures in marital relationship.

- 4) **Weakening the agency of girl:** The respondents stated that they had very less decision-making power after the marriage. It was because they were new in the husband's household. Further, it was also related with the position of her husband in the family. In case the husband is minor, they had little voice on the household decisions. Overall, all the respondents had agreed that the behavior of in-laws, husband, the etiquettes of relationship, additional new role and patriarchal custom and tradition weakened their decision-making power. Ultimately, they felt they have lost their freedom and strength of taking independent decision. For instance, one of the respondents stated that when their husbands were in workplace or in abroad for the job the money used to be sent to her in-laws and she had to depend on them to take care of herself and their child. Almost all of the respondents stated they were barely asked on the decision of household matters; rather they were indirectly or directly controlled by the family members and husband in terms of their mobility, making friends, attending school or getting to job.

- 5) **Violence, ill treatment and exploitation at boys' home:** Many of the respondents expressed that at one instance or more they had been subjected to at least one form of violence - among physical, sexual and mental. On revealing the account of violence, the respondents stated it was perpetrated by either her husband or in-laws or both. Some of the respondents claimed the dowry related issues were also raised after marriage by in-laws. Moreover, in some of the cases after some times of marriage the respondent shared their husband started drinking alcohol or had other love affairs and started to torture them physically and mentally. In lack of legal recognition of marital obligation, the respondents were unable to seek the civil legal remedy. In some cases, the respondents had to leave her husband's home and stay with their parental home. Much worse, in some cases, even the parents of respondents also did not welcome them warmly after marriage.

- 6) **Forceful separation or non-acceptance of marriage:** In three cases the respondents have shared that after their marriage still their parents separated them showing threat of legal consequences. This is mostly found on the cases of inter-caste marriage where the girl's caste is higher than that of boys. On the other hand, when the girl is of lower caste, the family of boy has disowned her and their relationship. Eventually, she was then returned to her parents' home. In all of these cases, the adolescents have felt their decision to marriage has been suppressed by their families while the law has further legitimized such suppression of adolescents and ignored their capacity to take decision of marriage.

3.5 Intervening the vicious cycle of root causes and consequences of child marriage through prevention:

Child marriage creates vicious and intergenerational cycles of poverty, discrimination and exploitation among the married couples especially the girls. This is elaborated in one of the case studies as:

Case study 5: Urvashi's story

The vicious cycle of child marriage

Urvashi's parents had low economical condition. When she was studying in grade six, her mother fell ill and she dropped out of school. Further, her father went to India in search of job and later returned to Nepal to work as daily wage laborer. When she was 16 there came marriage proposal for her while her father had been alcoholic and used to give mental torture to every member at the house. She was then convinced for marriage and at night her parents married off her to her husband.

After few months of marriage, however her husband started giving physical torture to her. She is now full time engaged as household chores while she could not get opportunity to come out of house and earn living. Recently, she has moved out of her husband's house and is seeking refuge at her parents' house.

This case study vividly illustrates that the girl from poor family is more likelihood to get married at an early age. Further, the abuse and violence in the family leads girls to choose to marry seeking better life. However, the girls are in face, married to the family which has slight better condition than them and there is also chance of facing ill-treatment if the husband do not support her. In this case study also, in lack of support from husband and indeed to protect oneself from physical harm and torture from her husband the respondent has moved out of his house and taken refuge to her parents' home. In lack of legal recognition of such marriage, her problem on sustaining her livelihood has been exacerbated.

3.6 Intervention on child marriage

It is essential to seek multi-dimensional approach to intervene child marriage where multiple stakeholders should develop strategy to intervene on prevention of child marriage or intervene during child marriage or intervene after child marriage.

During the in-depth interview it was found, in majority of the cases the respondents have experienced some sort of intervention during their marriage. While in nearly in fifty percent of child marriage there has been no intervention from any of the stakeholders. It is shown in the following chart:

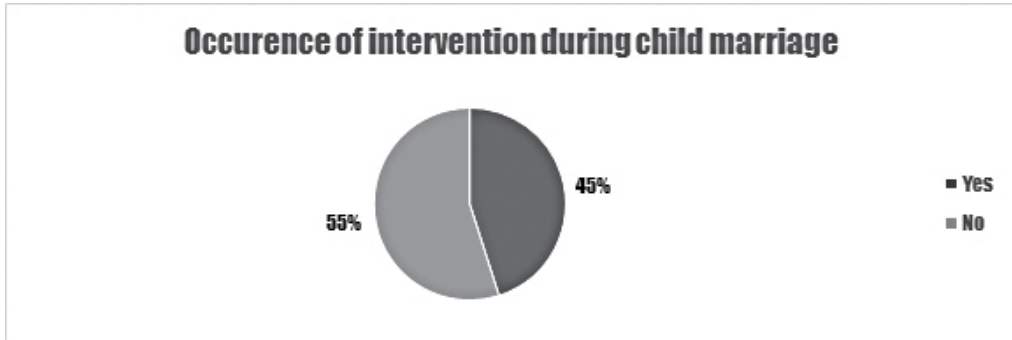


FIGURE 7 OCCURRENCE OF INTERVENTION DURING CHILD MARRIAGE

The respondents who said they faced intervention in marriage asked to recall the intervention and the respondents stated the intervening authorities acted in incongruent manner. The key players for all the cases of this study could be observed as family of both parties at marriage, police, local government – judicial committee and the WOREC.

It was observed the intervention during child marriage was different on the basis of type of child marriage, i.e. self-initiative marriage, forced marriage or others. Also, in such marriage different actors have intervened differently. For example, in case of inter-caste, self-initiative the respondent had faced major intervention from the family. The detailed account is given below:

Case study 6: Rani's story

Family intervention as revenge and retaliation

Rani aged 14, high caste girl did love marriage to Kabir aged 18, Dalit boy. She got married during COVID induced lockdown where she states she had forced her husband to marry her. As per her request her husband took her to his relative's home. Meanwhile, her father filed complaint at police station. She also stayed at prison for one day while her husband was kept in custody for further investigation. Her parents however, now disowned her and she was sent to WOREC's safe house, where she is provided psycho counseling.

However, in case of forced marriage or arrange marriage there has been intervention from community members, women human rights defenders' group, child club, police etc. In one the case study the following account was observed:

Case study 7: Jamila's story

Mediation at police station could not prevent forced child marriage

Jamila aged 13 was resident of Dhanusha district. While she was studying in class 6 her relatives falsely stated her of older age and fixed marriage with a boy of who was also under 20 years but was seeking bride as there was no one to look after his household responsibility. Few people in her community were against this marriage and reported to Women human rights activists group and child club too, who later reported about the upcoming marriage to police. The police then did mediation with family for not getting her married before age of twenty. However, her parents conducted her marriage in secrecy.

So, on analyzing the key actors on intervention, the roles of these actors are briefly discussed below:

- a) **Family:** Among the cases that faced intervention, there is highest number, ie, in eight cases the respondents has recalled the intervention from family. The family members played negative role in case of self-initiative marriage. In some cases, it has been found the family members had filed FIR cases on the lost child or child marriage to local police station. The respondents have recalled during this time they have observed their parents have high social status than them and can influence the law also. So, after marriage, in some cases there has been forceful separation by family members through mediation at local police station or judicial committee. The respondents claimed these acts of family were actually guided by the retaliation or revenge than protection the rights of children.
- b) **Law enforcement agencies - Police:** In most of the cases, the child marriage was accepted by the underage couples or their parents or even the community. So despite, the occurrence of child marriage very few cases were filed for criminal investigation. Among the 11 case which has faced intervention only in four cases, i.e. in more than a third of cases; the respondents had recalled the legal complaint was filed against the child marriage.

In one of the case, the police arrested both the girl and groom and held mediation in the presence of local organization. Though law do not allow for mediation, in reality the police acted according to their personal whim and experience rather than law to settle the dispute immediately. According to respondents, this act of police however helped to solve the dispute and both the girls and boys felt they were relieved as no criminal case was charged against them. However, the police still threatened them of possible criminal prosecution in future which was supported by their parents and in some cases eventually they were forcefully separated by the parents.

Likewise, in one of the cases of forced child marriage when FIR was registered against the guardian of girl child in case of child marriage, the police called the parents to police station and

threatened to arrest them in the offense of child marriage. However, later child marriage was held in secrecy which was however never challenged by other people. In all of these 21 cases there was absence of police intervention during marriage as determined in the State criminal code. This may be because the marriages were held in secrecy and very few cases were filed. These practice shows there is no implementation or ineffective implementation of criminal law by the law enforcement agencies in practice.

- c) **Judicial committee:** In case of self-initiative marriage, the married couple was also taken to Judicial committee who counseled them against child marriage and criminal law. They also held mediation in their office and warned the couple not to live together. However, they did not do any intervention legally. One of the respondents recalled this intervention was done by her parents to show off their power to the couples and indirectly made them feel that they did wrong and could be punished.
- d) **Other actors:** The other parties who intervene during and after the child marriage are civil society organization, local women group, child club and the NGOs like WOREC. These actors were however acting independently to each other as they have their own principle or stand on dealing with child marriage. The child clubs and women human rights defenders were more interested on filing FIR to police. However, in case of WOREC, different level of intervention was noted. One of the respondents stated she has received psycho counseling after the child marriage while her parents had forcefully separated her from her husband. Likewise, the other respondent stated WOREC even played a role as mediator to reconcile the disputes between couples after child marriage or the families of boys and girls after child marriage. Also, in one of the cases, when the boy was sent to custody for child marriage the respondent was sent to the WOREC shelter for temporary protection.

Overall, all the key players are working to address the problems of child marriage while the underlying root causes for it need to be recognized and focused from adolescents' perspectives. It is found, though there is only one law; these actors on the other hand, are working in many directions according to their own understanding of child marriage and law. Eventually, the engagement of these key players in the field are highly contextual, interest based and are not uniform for the cases of child marriages. Further, the intervening actors did not have any consolidated effort to deal with specific case of child marriage in accordance to the existing legislation of the country. Finally, to end this cycle of causes and consequences of child marriage we need to intervene this phenomenon strategically.

3.7 Critical assessment on application of criminal law on the case of child marriage:

At present, the laws of Nepal have criminalized the child marriage while these cases are found to be dealt by the law enforcement officers from punitive model. The law is now used by Nepal government as a powerful preventative mechanism for child marriage and as a tool which allows victim recourse to justice.

One of the important aspects of these laws is that, they have acted as a deterrent to family members from arranging marriages of their children prematurely and it also encourages them to delay marriage to beyond the age of majority. It has increased awareness and sensitization among general people about the negative consequences of child marriage and local governments are formulating supportive plans and policies to address the prevalence of child marriage. Further, the victims of such child marriage are provided services and protection from the state as children in need of special protection, such as: provision of alternative care, establishment of operation of children care home, family reunion, liability relating to rehabilitation and social reintegration and monitoring and reporting by State as under the Act relating to children 2075(2018). Above all, the legal rights of the child born out of child marriage are not affected by legal consequences to the child marriage.

On the other hand, in in-depth analysis of the laws, it is found, they have some problem in both, principle and practice on prevention and prosecution of child marriage. The problem on prevention of child marriage is already discussed on the root causes of child marriage as weak enforcement of law where the case studies have proved that, though during the time of marriage the either the respondents or their family members were aware about the laws regarding child marriage, yet opted for it. On analyzing the existing laws related to child marriage in Nepal following phenomenon has been observed:

- a) **Problem on determination of age of for marriage:** The age for determining child marriage is more for the individual in Nepal as it has determined the age of marriage to be of 20 years of age. It is higher than the internationally accepted human rights standard. The research has shown the decision for marriage by adolescents is at least affected by the law of the country rather it is influenced by the religious and cultural norms around the marriage, their aspiration for love and marriage and such. Thus, increasing the age bar of marriage has not in any way delayed the child marriage in Nepal. It is seen from the research most fertility happens within first few years of marriage while the absolute criminalization had rather hamper the adolescents sexual and reproductive health rights on accessing the basic health facilities and services like family planning, abortion, regular health check-up of pregnant women to legal rights of children. So, if Nepal government aims to curb maternal and child mortality rate, happening due to child marriage, it should rather provide the comprehensive sex education from the school and provide special adolescents sexual health education to married adolescents and encourage them to delay the age of child bearing.
- b) **Determination of consent in marriage:** In Nepalese law all sort of child marriage is kept under same basket and consent of adolescents are knowingly disregarded. The presence of consent in the self-initiated marriage is not recognized under the law. In case of criminal prosecution, it is thus found, the boys are who are also adolescents are often criminalized. The element of "consent" on marrying the peer group or know person to the marriage with unknown person, arranged by family members or forcefully married should be segregated. The law makers rather shall require to examine and inspect the underlying causes, consequences and power dynamics between adolescents and their family members particularly in the cases of self-initiated marriages.

The law hence needs to distinguish between the self-initiated marriage, arranged marriage, forced marriage or other forms of marriage.

Also, in Nepal, the age of the consent for sex is lower than the age of marriage. In Nepalese legal system, the execution of “valid consent” for enjoying rights and duties starts with the attainment of legal age which is “eighteen or more years” while for marriage is above 20 years. This has caused problem for law enforcement agencies to deal with the cases of people of aged 18 to 20. There are less reluctant to file the cases by the police if the girl is above 18 but below 20 years. It is also found, due to this requirement, the parties of case tend to lie the age of bride or groom during forced marriage and when case is filed on child marriage more than the rights violation the age, the parties to case mainly contest on the age of “bride” and “groom” than the circumstances.

- c) **Child marriage and its inter-linkage with other criminal laws:** The law is not able to determine the consequences of child marriage with child labor, statutory rape, human trafficking, domestic violence, dowry related torture, hostage taking, bride kidnapping, etc. while in practice the cases of “child marriage” are being registered under these varieties of cases besides child marriage. Indeed, the law is used more as a part of revenge and retaliation rather than enforcement of child marriage related law to protect the rights and best interest of children. Consequently, the use of other cases in the incidence of child marriage has exacerbated the harm of child marriage to the adolescents through the use of law.

Further, the case studies shows that due to absolute criminalization of child marriage the girl child are more at risk for violence at the home of their in-laws. It is observed from case studies that ending child marriage through absolute criminalization does not substantially reduce the girls from the domestic violence as it is prevailed in the Nepalese society since the time immemorial as the normal acceptance of violence influenced by patriarchal norms within marriage. It is found, while the civil and criminal law of Nepal to some extent protect the women from violence at their husband’s home, the absolute criminalization of child marriage has excluded the child brides to seek for legal protection in case of physical abuse, violence at their husband’s home. It is found, due to the societal structure and legal complications the respondents suffering from violence aftermath of marriage are reluctant to seek help from their parents or relatives or siblings or other organizations for lodging complaint.

- d) **Inconsistency in the existing laws and inadequacy:** State criminal code and the act relating to children on dealing with the cases of child marriage and age of children, statute of limitation, and the rights to child victim are different. Also, in practice the police and prosecutor only refer to State criminal code. Further, it is found, though in law, the act relating to children, 2075(2018) provides various protection to adolescents they are not adequate to meet the necessity of the victims of child marriage which are above 18 years and below 20 years of age. In practice, the law enforcement agency only tends to refer to criminal code and does not endeavor to provide adequate protection to the victim of child marriage referring other legislations.

- e) **Law is being used to break-up own choice relationship weakening adolescent's agency:** The law is used by parents for the forceful separation of married couples. Consequently, this phenomenon has disproportionately increased criminalization of certain "caste" and "class" population boys while the girls also undergo the pangs of separation.

Case Study 8: Nandini's story

Inter-caste child marriage: Threat of prosecution and forceful separation

Nandini aged 18 of Brahmin caste did love marriage to Shyam aged 19 of Dalit. However, her parents left no stone unturned for their separation. At first when her parents learnt, she married to Dalit, her family filed a complaint in police station claiming she was an underage. On mediation with police, she was returned to her parent's home but she was treated in bad manner by her family members and relatives. She fled back forth to Shyam's house for three times. On day her parents assaulted her and she faced miscarriage. Her parents even took her to traditional healer Dhami, Jhakri for separating her from her husband. After that she became mentally depressed and attempted suicide for three times. She was then taken to WOREC where she was given psycho counseling where also she attempted suicide once. At present after several psychosocial session at WOREC, she is living with her family but she still want to marry Shyam after reaching 20 years of age.

In the above case study, the caste of boys is lower than that of girl; the girl's family had physically assaulted the boy or even files case of child marriage. The action of her parents was guided by retaliation and was for protecting the honor of the family. They were very much willing to suppress the family of the groom and ultimately separated their relationship. On the other hand, the respondents however, shared they extremely went through the self-cultivated guilt for separation and physical harm to boys, they feared from family and community and even attempted suicide during separation.

Likewise, in other similar case inter-caste self-initiative marriage, where the girls was of 14 years of old and boy of 18 years old, the boy was charged with statutory rape while girl was sent to rehabilitation center.

In this research also, it is found more than majority number of child marriage was occurred in Dalits, Janjati or poor household family. In case of inter-caste marriage, the family of girls has at first instance, tried to file case against boy on the account of child marriage. Thus, this situation vividly illustrates that the strict criminalization of child marriage has made these back warded groups adolescents mostly boys - more prone to criminal punishment in case of child marriage. Meanwhile, there is also hardship for girls as they were then looked down upon by the family and society and they blame themselves for the criminal prosecution of boys.

- f) **Observation of marital obligation by the parties to child marriage despite the “void” status in law has increased vulnerability to abuse, exploitation and human rights violation of girl child:** In the cases where child marriage is identified and there is the will to end it, annulment or divorce are not straightforward. Laws do not adequately protect child brides and child grooms, or those who seek annulments or divorces.

Case study 9: Janaki’s story

Fulfilling marital obligation amidst denial of marital rights

Janaki had an arranged marriage at the age of 16. She had good relation with her husband until she fell sick after six month of marriage. She became weak and was unable to do household chores. Following this, her in-laws incited her husband to not to talk to her. Accordingly, her husband also started to ignore her and even used to physical assault her and even gave mental stress. She was all alone in that house and once she attempted suicide by drinking poison. During this time, her father in-law quietly witnessed her suffering expecting her to die. Then, her sister went there and did treatment. Yet, her mother in-law scolded both sisters and exiled her from their house. She is now living with her parents. She is still trying to contact her husband for reconciling but he does not respond to her call. She has been listening from neighbors that he was planning to do second marriage. She stresses she could not seek any legal remedy as her marriage was not registered.

This case vividly points out that the nullity of marriage does not practically exclude both groom and bride from marriage obligation. In the above case also it is seen, though, the criminal law prohibits consensual sex with the minor below 18 years, in all of the cases, soon after the marriage, the couples were found to be cohabiting. Even, some of the respondents said they gave birth to their first child in the following year of marriage. Further, particularly the girl child had to bear all the roles and responsibilities at her in-laws and was totally engaged in household chores and care work. But when she could not perform her duties as per their expectation she was neglected and abuse but she did not get any recognition from law for regulating marital relationship or claiming her rights. Due to non-recognition of marriage, she has been further victimized.

g) Lack of access to legal services or protection at the marital relationship:

Case study 10: Karuna's story

Abuse and exploitation after marriage sans legal protection

Karuna had done love marriage at the age of 18 with her husband who was aged 17. For three months, she was happy at her in-laws while her husband used to work as daily wage worker. But soon, her husband got frustrated as their economic conditions did not improve and her husband started consuming alcohol. He even later started consuming marijuana and other cheap drugs too. He used to beat her even when she was pregnant. When her son was three months old, he started fight with her, burnt down her clothes and exiled her from his house. Further, he chased them and she left her son at bank of Rapti river and jumped into it. She was saved by other nearby spectators while her husband ran away with child and hide in village. She reported the incidence to police but police could not do anything and at least she got her son back. Still her husband threatens to kill her. She came to WOREC office for psycho-counseling and she states she wants divorce from her husband and keep the custody of her child.

All of the respondents shared they had gone through the state of non-registration of marriage. Also, the respondents having children claimed even the birth certificate of their children were not made by local authority though law provides for it. Similarly, in case of violence, abuse, exploitation and mistreatment at husband's home the girls couldn't claim her marital and spousal rights such as registration of marriage of legal separation or divorce, claiming of the alimony or custody of child or the expenses for daily maintenance etc. Some of the respondents further had shared they feared their husband may perform second marriage and in such case they cannot even file case on polygamy or for divorce. This provision of law has thus, further exposed the young women and their children to future uncertainty and without legal protection to their livelihood.

- h) **The law does not protect underage persons from continuum of harm to the survivor or re-victimization:** The law is rigid on terming underage marriage as a criminal offence due to which those impacted by marriage do not receive the adequate protection of the State in terms of getting legal support or protection or rehabilitation in family or society or alternate care in society. The Act relating to children 2075(2018) is not adequate to meet the necessity of adolescents above 18 years of age involved in child marriage. So in many cases, the children suffer more from other harm and there is likelihood that in escaping from one marriage, they might get married again or even attempt suicide. One of such, case study is given below:

Case study 11: Bhumari devi story

The never ending plight of abuse in women's life

Bhumari devi had done love marriage with the consent of her parents at the age of 16. But, her husband's family was unaware of it and they did not accept their marriage until they learnt she was also from same caste. After marriage she worked at other house as domestic worker to earn living. Her earnings were however, taken by her in-laws and her husband and they even used to physically hit her and accuse of her not bringing dowry during marriage. When she was pregnant she was not given adequate food and even not taken to hospital. Yet, she gave birth to her first child- son and after four months of her delivery her husband went to foreign employment. Her husband's earning was then sent to her in-laws and she was not given expenses to provide for her expenses and treatment of sick son. Her husband returned after 3 years and again she get pregnant with second baby. This time also, her husband's family ignored her and just before ten days of delivery left her to her mother's home. She delivered daughter at the hospital but her husband's family did not care. Yet, after ten days of delivery she returned to her husband's home by herself.



4

CHAPTER

CHAPTER 4

Conclusion and Recommendation

4.1 Conclusion

There is rampant prevalence of practice of child marriage in community despite the restriction from law. Likewise, despite the law has considered all cases of child marriage as “forced” marriage; in practice the adolescents are found to view it differently. It is found the practice of forced marriage is decreasing while the self-initiative marriages are increasing or even in case of child marriage the family are also taking consent of the child before arranging their marriage which is yet to be acknowledged by the law relating child marriage. Further, it has been observed the occurrence of child marriage has been increased with the increasing age of adolescent as it was high among the girls and boys above 16 to 18 years and 18 to 20 years. In this context, thus it is essential to differentiate criminalization of child marriage in the pretext of early marriage and forced marriage or self-initiative marriage or other forms of child marriage, i.e., arranged child marriage, elopements, etc.

From the case studies it was found, the decision for child marriage is not either their or their parents single decision, but in fact, the decisions for marriage of underage people is entangled with lots of underlying causes and it should be seen from the different angles of underlined structural factors. The case study shows the root causes of child marriage fundamentally intertwine with the structural inequalities of poverty, caste, class, gender norms, discrimination, lack of parental guidance, violence and abuse including sexual abuse within family, harmful custom of child marriage, increasing trend of child marriage, effectiveness of legal system to interagency of the girls considering their age, education, family occupation and mostly the position of prospective groom. Thus, to understand the phenomenon of child marriage a root causes approach is essential to study. Indeed, child marriage is a complex issue and understanding it, the law should be able to address the problem of child marriage beyond the determination of age.

Child marriage has different level of impacts to different people. However, in many cases it has led to devastating effect and even determined one's life trajectory. The impacts could be stated as discontinuity in education for boys and girls, problems in health ranging from physical health problem to sexual and reproductive health, pregnancy, engagement of adolescents in household chores and unpaid care work to performing job in market in unskilled and temporary low paid jobs or disproportionate criminalization of boys of lower caste or class or forceful separation, increasing possibility of violence to girl child from husband and in-laws, increasing in mental stress and in some cases even leading to suicide, lack of legal protection of marital and spousal relationship, lack of legal protection to the dependents, etc. So, it is necessary to understand, the boys and girls are both affected after marriage however the severity and impacts on girls is much higher due to the gender roles of both girls and boys in the society. Meanwhile, when there are cases of no such violation after child marriage still adolescents are face difficulties due to legal policy of the State. Thus, the overwhelming focus also in the criminalization has taken away

the key issues related to adolescent sexuality, empowerment into consideration and had posed threat to further victimization or re-victimization.

On analyzing, the existing legislations against child marriage, it is evident that the state has hampered adolescent's effort to direct his or her opportunities regarding marriage by placing costs, barriers, or prohibitions and mainly through absolute criminalization. Meanwhile, on following the current law of Nepal which provides for absolute criminalization there is different interventions by the civil organizations, communities and governmental bodies which are mostly focused on the protective and punitive approach denying the rights-based approach of intervention to adolescent's difficulties. So, the issues related to the intervention on child marriage at the community are found to focus on the immediate visible cause rather than underlying root causes.

To conclude, the present study thus shows that the state cannot eliminate the child marriage through the absolute criminalization. So, state should develop preventive measures while context-specific criminalization is to be done affectively regulate the child marriage in society - so that people will not misuse law rather will follow law willingly. It is thus, important to review the criminal legislation on child marriage which has strictly prescribed age as a single most determining tool to determine the consent on marriage and subsequently punish all or different forms of the child marriage. Indeed, absolute criminalization of child marriage needs to be stopped and rather, alternative ways to punitive measures should be sought and developed.

4.2 Recommendations:

On the basis of the above findings, the following recommendations are put forwarded to major three actors:

A. Nepal government

- 1) **Adopt preventive measures:** Nepal government should recognize child marriage as a fundamental rights violation. Keeping child as rights holder acknowledging the capacity and agencies of adolescents the State should develop preventive measures as follows:
 - a) The government shall launch program on creating awareness and advocacy to address the root causes of child marriages such as (poverty, lack of guardianship - orphan, escaping from violence (physical, sexual) at their home, supporting the economic condition, problem of dowry, social stigma on talking to boys or having relationship, discouraging love marriage or inter caste marriage).
 - b) State shall develop adolescent targeted program relating to the continuity of education, or reducing the school drop rate of girl child, promoting the reproductive and sexual health education among adolescents, providing income generating skills and activities enhancing the employability of adolescents in the existing market, etc.

- c) The policy makers shall work with adolescents and young people including boys to understand and build peer support on the idea of preventing all forms of child marriage in community.

2) Initiate the legal Policy reform:

- a) A comprehensive law on child marriage is to be enacted with following changes:
 - i) Conditional criminalization: A new law shall determine the forms of child marriage to be punished or not, like forced child marriage or arranged marriage or self-initiative marriage by children or adolescents, marriage between the minors, etc. Also, the relationship of child bride with the child groom and their relationship such as peer, friend, stranger, marriage of minor with adults, etc. should be determined on prescribing the punishment or consequences related to offence of child marriage in the criminal law of the country.
 - ii) Child marriage and its linkage with criminal justice mechanism: The criminal law of the country shall meticulously determine the other criminal offences linkages with the child marriage, such as child labor, dowry related violence, statutory rape, human trafficking, domestic violence, kidnapping and hostage taking, etc. and determine the procedure for criminal prosecution or litigation.
 - iii) Legality of child marriage: On the basis of form of child marriage, the law shall determine the status of such marriage as “void” or “voidable”.
 - iv) Positive obligation to State: Law shall also focus on creating awareness among the people, ensuring child development and welfare, adolescent sexual and reproductive health care etc., ensuring special rights to the victims of child marriage such as rehabilitation in society, protection of rights of adolescents married couple, etc., shall be provided the law and in case of violations of such rights, the grieved parties shall have access to the court of law claiming effecting remedy or compensation.
- b) The existing civil laws to be amended to protect the victims of child marriage by recognizing the marital status of couple, the legal status of their children, the legal status of their marriage or dissolution, divorce, the issue relating to their property, citizenship should be specifically determined in the civil law of the country.
- c) The legal policies should ensure equality within marriage, ensure prevention from domestic violence, child labor as such. There should be surveillance from national child rights council on such case of violence in child marriage.

3) Protect the rights of children involved in child marriage:

- a) Ensure socio-economic rights of married adolescents through various schemes on education, employment, etc.
- b) Ensure the sexual and reproductive health of married couple providing comprehensive sexual education, adolescent friendly health services, easy access to abortion service, family planning, overall delaying the age of motherhood of married girl child.

- c) Protecting the rights of survivor of child marriage in case of violence in their house. Ensuring the adolescent friendly rehabilitation service, law enforcement, promoting reintegration in society, etc.

4) Promote the rights of adolescents:

- a) The various ministries like Office of Prime Minister and Council of Minister, Ministry of Health and Population, Ministry of Education, Science and Technology, Ministry of Finance, Ministry of women, children and senior citizen, Ministry of Education, Science and Technology in coordination with all three level of governments intensify their effort on curbing the negative consequences of child marriage and preventing marriage at an early age.
- b) The Parliamentary Committee on Women, Children, Senior Citizens and Social Welfare, the constitutional bodies mainly, NHRC, NWC, Dalit commission, Muslim commission, etc. should independently and interdependently the incidences of child marriage and rights violations resulting from it and recommend actions for integrated effort of stakeholders to ensure accountability of concerned agencies for breach of law and protect the rights of victim.
- c) The budget should be allocated by the three tiers of government on awareness raising and Civil Society Organization (CSOs) in community level on the issues of child marriage and intervention level. Also, the member of judicial committee shall be trained on dealing with the case of child marriage.
- d) State should continue awareness and sensitization program on preventing marriage at an early age and conduct investigation on ensuring equal implementation of law irrespective of caste, class or social status of parties of the marriage.
- e) There shall be development of statistics to record the nature and changing trends of child marriage among population. More research is to be done to unpack the subject of honor in marriage and on why youth are opting for marriage at an early age, and such.

B. Civil society organizations

- 1) To introduce awareness raising program through school education and extra-curricular activities, like establishing information corner, conducting edutainment mela, thematic competition on child marriage, gender-based violence, conducting street drama, encouraging formation of child club, etc.
- 2) To work with married adolescent couples on creating awareness about use of adolescents sexual and reproductive health, family planning, abortion services, reach out to the program for generating income, enhancing employability skills, continuity of education, comprehensive sexuality education, adolescent friendly health services, family counselling, awareness on their rights, etc.

- 3) To promote rights of adolescents through advocacy, lobby and facilitate policy change on the laws relating to child marriage,
- 4) To carry research on various aspects of child marriage, such as the juvenile offenders and the effect of laws of child marriage, ascertain the relationship between child marriage and other crimes, the consequences of child marriage among the “child brides” or “child groom”, effectiveness of law and policies of state, etc. on regulating child marriage.
- 5) To rescue the survivor of child marriage and ease the process of access to justice to them.
- 6) To provide the services to the survivors of child marriage according to their mandate or keep the survivor to the effective referral services,
- 7) To communicate and coordinate with similar objective holding organizations, government, national human rights commission, national women commission, regional organization to international agencies for consolidate effort on child marriage facilitating the national strategy on eliminating child marriage in Nepal.

C. Law enforcement agencies

- 1) The law enforcement agencies shall be updated on the existing laws on child marriage and shall develop sensitivity on dealing with the case of child marriage,
- 2) The law enforcement personnel and first responders shall be provided various refreshers and human rights training providing the knowledge on the international human rights, women rights and child rights instruments and mechanisms,
- 3) There shall be monitoring of evaluation of effective implementation of law and the decision of district court at the community level by the law enforcement agencies and local people including the parties involved in child marriage especially in the case of mediation by police officers or forceful separation or diversion of case of child marriage to other crime such as statutory rape, kidnapping or hostage taking, human trafficking, etc. through the use of law.
- 4) The law enforcement agencies shall be made adolescents friendly in terms of filing the case to investigation to prosecution in cases of child marriage, and
- 5) A proper system of referral shall be developed for protecting the survivors of child marriage to related agencies for protection.

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कम उमेरमा भएको विवाहको घटना संकलनका लागि किशोर किशोरी तथा परिवारको सुचित सहमति फारम

शिर्षक : “कम उमेरमा हुने विवाहका कारण र किशोर किशोरीहरूको समग्र विकाशमा परेको प्रभावको खोजी”

जिल्ला

मिति

यो सुचित सहमति ओरेकले काम गरिरहेका जिल्लाहरू दाङ्ग, कैलाली,सिराहा, सुनसरी,मोरंग,धनुषा जिल्लाको समुदायमा हुन लागेको “कम उमेरमा हुने विवाहका कारण र किशोर किशोरीहरूको समग्र विकाशमा परेको प्रभावको खोजी” एक अनुसन्धानमा तपाईंहरूलाई भाग लिन निमन्त्रित गर्दा एकदमै खुशि छौ ।

१. सहमतिको लागि प्रमाणपत्र (हस्ताक्षरको लागि यदी तपाईं यो अनुसन्धानमा भाग लिन इच्छुक हुनुहुन्छ ।

सहभागीहरूको चयन :-

क) आमन्त्रण : कम उमेरमा हुने विवाहबाट प्रभावित व्यक्तिहरूको पहिचान गरी तपाईंलाई यस अनुसन्धानमा भाग लिन निमन्त्रण गरिएको छ । किनभने हामी महसुस गर्छौं कि तपाईंको विचार र अनुभवको आधारमा वालविवाह तथा कम उमेरमा हुने विवाहले किशोर किशोरीहरूमा पारेको समग्र प्रभाव र कम उमेरमा हुने विवाहको कारण बारे बुझ्न निकै नै सहयोग पुग्ने छ ।

यदि १८ वर्षभन्दा कम उमेरका किशोर किशोरीहरूसंग जानकारी संकलन गरिएको खण्डमा अभिभावकको सुचित सहमति लिईनेछ ।

ख) स्वेच्छिक सहभागिता : यस अध्ययनमा सहभागिता लिने अथवा नलिने तपाईंको आफ्नो निर्णय हो । तपाईंले सहभागिता हुन चाहनुहुन्छ भने तपाईं अन्तिम पृष्ठमा सहमतिमा हस्ताक्षर गर्न सक्नुहुन्छ । तपाईंले पछि आफ्नो मन परिवर्तन गर्नुभयो भने तपाईं यसलाई रोक्न सक्नुहुन्छ । तपाईंले पहिले सहमती दिएपनि तपाईंलाई अफ्ठेरो वा असजिलो भयो भने तपाईं सहभागी हुन बाध्य हुनुहुन्न ।

संभावित फाईदाहरू :-

यस अध्ययनमा सहभागिहरूलाई तत्काल कुनै लाभ छैन तर सहभागीहरूबाट प्राप्त भएको अनुभव तथा सुझावले हामीलाई तपाईंको समुदायमा किशोर तथा किशोरीले किन कम उमेरमा विवाह गरिरहेका छन् र त्यसको प्रभाव स्वयं व्यक्ति, परिवार तथा समाजमा कस्तो परिरहेको छ भन्ने कुरा पत्ता लगाउन मद्दत पुर्याउँछ, । यसले सर कारलाई नीति, रणनीति र कानून तर्जुमा तथा परिवर्तन गर्न सहयोग गर्दछ ।

संभावित नोक्सान :-

यस अध्ययनबाट तपाईंलाई कुनै जोखिम हुने छैन तपाईंले आफ्नो व्यक्तिगत र गोप्य जानकारी भन्न सक्नुहुन्छ या तपाईंलाई केहि विषयको बारेमा कुरा गर्न असहज महसुस गर्न सक्नुहुन्छ । कहिलेकाँही प्रश्न धेरै नै ब्यक्तीगत हुन्छन वा प्रश्नहरूको कारणबाट तपाईंलाई असहजता महसुस हुन सक्छ ।

गोपनीयता :-

तपाईंको अवलोकन र अन्तरवार्ता मा तपाईंको सहभागिताहरु जस्ता कुरा सबै गोप्य राखिने छ । अन्तरवार्तामा गरिएका कुराहरु बाहिर अनुसन्धानकर्ताले अरुसँग भन्ने जोखिम हुने छैन । अध्ययनको क्रममा अन्तरवार्तामा सहभागिता जनाएका सहभागिहरुको कुनै पनि नामहरु प्रयोग गरिने छैन र सहभागीहरुलाई तपाईंको समुदायसँग पहिचान पनि गरिने छैन । तपाईंको कुनै पनि पहिचान परिवर्तन गरिनेछ, यो जानकारी केवल अनुसन्धान टो लिसँग मात्र रहनेछ ।

तथ्यांक भण्डारण :-

ओरेकका कर्मचारीहरुले घटना संकलनको क्रममा सहभागीहरुबाट तथ्यांक संकलन गर्नेछौं, उक्त तथ्यांक व्यक्तिगत रुपमा सुरक्षित पासवर्डको साथ बन्द गरि काठमान्डौंको महिला पुर्नस्थापना केन्द्र, ओरेकमा सुरक्षित राखिनेछ । संकलित कुनै पनि कागजी फायलहरु बन्द गरिएको दराजमा सुरक्षित राखिनेछ । यो जानकारी हाम्रो अनुसन्धान टोली बाहेक अरु कसैलाई पनि हुनेछैन । हामी यो जानकारी ५ वर्षको लागि राख्छौं र त्यसपछि, यो नष्ट गछौं ।

परिणामको प्रस्तुतीकरण :-

यो घटना संकलन भएपछि, यसका आधारमा हामी विश्लेषणात्मक प्रतिवेदन तयार गर्नेछौं । उक्त प्रतिवेदनमा जिल्ला खुलाईनेछ र घटनाको कारण र प्रभावको विश्लेषण गरिनेछ । कार्यक्रमसँग सम्बन्धित सुचना तथा जानकारी मात्र प्रतिवेदनमा समावेश हुनसक्छ । तर् तपाईंको नाम र पहिचान खुल्ने विवरणहरु भने कतैपनि समावेश हुनेछैन ।

परिणामको छलफल तथा जानकारी :-

हामीले तपाईंको गाँउपालिका, नगरपालिकामा यो रिपोर्ट प्रदान गर्नेछौं । हामीले यो अनुसन्धानबाट प्राप्त गरेको जानकारीलाई तपाईंको समुदायसँग छलफल गरेर सार्वजनिक रुपमा सवैलाई उपलब्ध गराउनेछौं ।

अन्तरवार्ताको विवाद :-

घटनासंकलनकर्ताले यस अध्ययनबाट कुनै पनि पैसा पाउने छैनन ।

यस सूचना पत्र फारमको प्रतिलिपि तपाईंको रेकर्डका लागि दिईनेछ ।

२. सहमतिको लागि प्रमाणपत्र

मलाई ओरेकले काम गरिरहेका जिल्लाहरु दाङ्ग, कैलाली,सिराहा, सुनसरी,मोरंग,धनुषा जिल्लाको समुदायमा हुन लागेको “कम उमेरमा हुने विवाहका कारण र किशोर किशोरीहरुको समग्र विकाशमा परेको प्रभावको खोजी बारेमा अनुसन्धानमा भाग लिन निम्तो गरिएको छ ।

मैले पढेर (वा मौखिक) रुपले अनुसन्धान परियोजना बारे जानकारी पएको छु र सहमति फारामको एक प्रतिलिपी प्राप्त गरेको छु । मलाई नबुझेको प्रश्नहरु सोध्न मौका दिएको छ । मेरो प्रश्नहरुको जवाफ सन्तुष्ट रुपमा दिएको छ । म यो अध्ययनमा सहभागी हुन स्वेच्छाले सहमती प्रदान गरेको छु ।

म यस अध्ययनका लागि घटना सेयरिग गर्न सहमत छु ।

वा

म परिवारको सदस्यको हैसियतले यस घटनालाई सेयर गर्ने कुरामा पुर्ण सहमत छु ।

सहभागीको नाम

सहभागीको हस्ताक्षर वा औठा छाप

अभिभावकको नाम.....

अभिभावकको हस्ताक्षर..... वा औठा छाप

मिति दिन/महिना/साल

शोधकर्ता/सहमति लिने व्यक्ति द्वारा विवरण

मैले यस खोजमा भाग लिनको लागि सहभागीलाई यस फराममा भएको जानकारी राम्ररी पढेर बुझाएको छु । मेरो क्षमता अनुसार सहभागीहरु समुह छलफलमा भाग लिनु पर्नेछ भनेर जानकारी गराएको छु । सहभागीलाई अध्ययन बारेमा प्रश्न सोध्न मौका दिइएको थियो र सहभागीहरुले सोधेको सबै प्रश्नहरु को सही र मेरो क्षमता अनुसार जवाफ दिइएको थियो ।

व्यक्तिगत सहमती दिनेमा कुनै बल प्रयोग गरिएको छैन भन्ने पुष्टी गर्दछु र सहमती खुलेर र स्वेच्छाले दिएको छु ।

यस सहमती फरामको एक प्रतिलिपी सहभागीलाई प्रदान गराएको छु ।

बालविवाहको घटना अध्ययन संकलन फारम

यस फर्म्याट बाट संकलन गरिएको बालविवाहको घटना अध्ययन हरु बालविवाहको विश्लेषणात्मक प्रतिवेदन तयार गर्नको लागि प्रयोग गरिनेछ ।

किशोर किशोरीको विस्तृत विवरण :

१. घटनाको कोड नं :

ठेगाना :

प्रदेश :

२. किशोर/किशोरीको पृष्ठभूमि : (यस प्रश्नावलीका उत्तरदाताहरु कम उमेरमा विवाह गरेका किशोर/किशोरीहरु हुन् । कृपया उनीहरुको पारिवारिक तथा सामाजिक पृष्ठभूमिलाई विवरणात्मक रुपमा खुल्ने गरी लेख्नुहोला ।)

३. कम उमेरमा भएको विवाहको प्रकार, यस पछाडीको कारण : (यस भाग घटनाको महत्वपूर्ण भाग हो त्यसैले यसलाई सतही रुपमा नलिई कम उमेरमा विवाह हुनु वा गर्नुका कारण खोतल्ने प्रयास गर्नुहोला जस्तै : बाल्यकालमा यौनशोषणमा परेको कारण, घरमा बाबुले अर्को श्रीमती विवाह गरी वेवास्ता गरेको, घरको अत्याधिक कामको बोझको कारण, परिवारबाट माया नपाएको, अभिभावकहरुले जबरजस्ती विवाह गरिदिने धम्कीका कारण, घरपरिवारबाट नै यौनहिंसा भएको, विवाह अघि गर्भ रहेको र जोडीहरुको विचमा सहमती भएका कारण) आदि ।)

१. स्वनिर्णयमा भएको विवाह (उनीहरु कसरी मायामा परे सो को विवरण)

२. जबरजस्ती विवाह

३. अन्य केही भए खुलाउनुहोस्

४. सामाजिक स्थिती : लिङ्ग

क) महिला

ख) पुरुष

ग) अन्य.....जातीयता : १) किशोर

२) किशोरी

जातीयता : १) किशोर

२) किशोरी

शैक्षिक स्थिती : १) किशोर

२) किशोरी

धर्म : १) किशोर २) किशोरी

उमेर : १) किशोर २) किशोरी

५) तपाईं को संग बस्नुहुन्छ ?

परिवार, एकलै, दाजुभाई, भाउजु, एकल आमा, अन्य खुलाउनुहोस्

६) आर्थिक स्थिती :

तपाईंको परिवारको मुख्य आय स्रोत के हो ?

- १) कृषिमा आधारित
- २) जागिर
- ३) शिक्षक पेशा
- ४) उद्योगधन्दा
- ५) व्यापार
- ६) वैदेशिक रोजगार
- ७) अन्य केही भए खुलाउनुहोस्.....

तपाईंको परिवारको वार्षिक आमदानी कति छ ?

७) हाम्रो समुदायमा बाल विवाह गर्न कुन तत्वले बढी प्रभाव पारेको छ ।

- १) सहकर्मी साथीको प्रभाव
- २) देखासिकी
- ३) अन्य तत्वहरु खुलाउनुहोस्

८) तपाईंहरुले विवाह गर्दा कसैले रोक्ने प्रयास गरेको थियो ? यदि थियो भने खुलाउनुहोस् ।

- १) बालक्लब/युवाक्लब
- २) प्रहरी प्रशासन
- ३) महिला समुह

- ४) परिवारका सदस्यहरु
- ५) नातेदार
- ६) अन्य भए खुलाउनुहोस्.....

१०) कम उमेरमा विवाह गर्दा दुवैजनालाई के असर पर्‍यो ?

- १) पढाइ छाड्नु परेको
- २) कानुनी रुपमा थुनामा परेको
- ३) घरपरिवारबाट वेवास्ता गरेको/अलग्याएको
- ४) सुरक्षा आवासमा वस्नु परेको
- ५) अन्य केही भए खुलाउनुहोस्हराएको, परिवारले जबरजस्ती छुट्याईदिएको, परिवारले स्विकार नगरेको अवस्था छ ।



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