

Domestic Violence against Women in Nepal: Concept, History and Existing Laws

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1. General Background

For individuals all over the world, home is a safe haven, yet it is at home that many people, all over the world, are subjected to heinous crimes of terror and violence and even death at the hands of family members who are suppose to love and protect them. They are victimized physically, sexually and psychologically. However, when the abuse is inside the home, it is condoned by a large part of the society, State and law enforcement machinery.

Though domestic violence is a form of violence that occurs inside the home, in context with Nepal, like in almost all the South Asian countries domestic violence is one of the many forms of gender based violence. Gender based violence is present in every country, though there are variations to the patterns of violence. It cuts across boundaries of countries, class, caste, age, education, income, ethnicity and culture. Even though most countries have criminalized violence against women, domestic violence against women is still prevalent and sanctioned under the disguise of cultural practices or through the misinterpretation of religious texts. It not only needs to be eliminated because it is detrimental to the physical and mental health of women, but it also violates the basic fundamental human rights of women. Other reasons for eliminating domestic violence are the cost to society: directly through use of social services, police investigation and medical care; and also indirect cost because of decreased productivity level (economically) and decreased participation level (socially). It is also insidious because of its inter-generational effect, reducing enjoyment of life for the future generation and transmitting violence to the next generation.

The prevalence of domestic violence against women in the country is an open secret, however, Nepal does not have separate law addressing domestic violence against women. Therefore this research paper, after clarifying the domestic violence as a gender-based violence and looking into the historical development of law on domestic violence against women, had make an attempt to look briefly into the situation of domestic violence against women and the existing legal system in Nepal. This research paper has also looked at legal mechanism addressing domestic violence against women in some of the major Asian Countries. It has also attempted to identify the problems in the existing system and had made recommendation on the required intervention to protect women from domestic violence and to provide appropriate remedy to the victim.

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2. Conceptual Framework and Classification of Domestic Violence

Domestic Violence as a Crime

Before entering into the subject matter, it is necessary to understand that violence of any kinds against anyone is a crime. While purely looking it from the perspective of criminal law, crime is that act resulting from human conduct which is punishable by the state through its laws. Violence is the act, today the whole world is concerned about. Many efforts, nationally as well as internationally, are going on to combat the violence. Violence against someone carries the elements of crime, i.e. harm, brought about by human conduct, which state desires to prevent through different modes and fixes certain procedures to address it.

Violence does not only include beatings, rape or sexual abuse, it is anything which infringes on the rights of the person to be treated as human being. Those violence which occurs within the periphery of household is domestic violence.

In the recent development of criminal law around the world, domestic violence is being included in the definition of violence and various efforts are going on to control this crime by fixing certain legal proceedings. Nepal has also attempted to address this kind of violence, though it is yet to be materialized, I choose the subject matter **“Domestic Violence against Women and Relevancy of Law in Nepali Context”** as my internship topic because I believe that introduction of law to address any problem of the society need intensive research. This is important to enact the effective law which can be implemented in practice after its enactment. As the issue of domestic violence against women is new for our country and has not gain much attention of the researchers, I believe my small efforts will provide a baseline to introduce a law to control domestic violence.

2.1 Domestic Violence: A Universal Phenomenon

Likewise other forms of crime, domestic violence is not a problem of Nepal only, it is spread beyond the South Asian regions and is prevalent in all the part of the world. Also it is not a very new phenomenon, it was as old as the origin of the family, though its nature was changed according to place and period of time. As in the market, similarly in family the resourceful person dominate to the resourceless ones, which ultimately results into the violation of the rights of the weaker one and therefore a violence. However, due to the lack of reporting of these kinds of matters in the public and also it being considered from the very beginning as something that is “private” and “non-interferable matter” was not defined as crime and therefore was not address by the procedures of the law. Now a days with the increasing trend of reporting against the violence that occurs within the domain of domestic sphere it is clearly reflected that like other acts of crime, domestic violence is an universal phenomenon prevailing everywhere from the past till to date, may it be a developed countries or the developing one.

2.2 Domestic Violence: A Gender Based Violence

Gender-based violence is “any act of commission or omission by individuals or the state, in private or public life, which brings harm, suffering or threat to girls and women, and reflects systematic discrimination – including harmful traditional practices and denial of human rights because of gender.”¹

Gender based violence is an obstacle to the achievement of the objectives of equality, development and peace. It violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedom. Failure to protect and to promote women’s rights and freedom are a matter of great concern to all nations, and should be addressed effectively. In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture. Violence against women has been an effective tool in the hands of men through which they can exploit women and establish their supremacy.

Gender based violence is still a pervasive and prevalent problem, affecting the life cycle and all aspects of a woman’s life from the home to the workplace and to the street. “The discovery of gender based violence and its establishment as an important component of the women’s agenda took different paths in different parts of the world. In general it emerged as in the context of activism and research on issues related to the social status of women and their right to participation.”² Furthermore the convergence of issues pertaining to development and human rights and the momentum of the feminist movement fueled the call for priority action to combat gender violence. Strategies included among others, the need to establish interventionist support systems, structural changes including legal reform, legal literacy and public education programs.

At the intergovernmental level, one significant event was the United Nations meeting on violence in the family held in Vienna in 1986. The UN Publication, *Violence against Women in the Family* (United Nations, 1986) notes that approval by the UN General Assembly of Resolution 40/36 of 29 November 1985, recognizing the importance of violence in the home, was a milestone. The resolution advocated “concerted and multidisciplinary action” both within and outside the United Nations system, to deal with the problem. It also urged governments to adopt specific criminal legislation to obtain an equitable and human response from judicial systems regarding the victimization of women. The resolution marked the recognition by intergovernmental bodies that violence against women is an issue affecting all countries and all cultures and should be a priority for national and international action.³

In Asia, the recognition of gender based violence as a manifestation of patriarchy, subordination and women’s low social status and value was articulated at different stages of the women’s movement in each country. The United Nations Decade for Women (1975-

¹ Ruth Finney Hayward, *Breaking the Earthenware Jar* quoted from A Reference Kit on Violence Against Women and Girls in South Asia, UNICEF, Kathmandu, Nepal, 2001, p. 10.

² Schuler, M., *Freedom From Violence: Women’s Strategies From Around the World, Women , Law and Development* , OEF international, 1992.

³ Ibid.

1985), the World Conference on Women in Nairobi, through the International Conference on Human Rights (Vienna) to the Fourth World Conference on Women (Beijing) reaffirmed the principle that woman's subordination in the home and society cannot be combated through development programs that do not recognize and subvert the underpinnings of female subordination, including cultural, religious, legal economic and political structures. The expansion and inclusion of a human rights framework further brought home feminist insights that gender based violence is a human rights violation. Women's rights cannot be viewed in isolation and can only be promoted when the surrounding social, economic and political conditions are made conducive to their advancement.

Domestic violence derives from cultural, social and religious patterns, which enforce and justify lower status of women in the family and society at large. Domestic violence is aggravated by social pressures (i.e. shame in exposing certain abuses); women's lack of access to legal information; lack of effective laws, inadequate efforts by public authorities to promote awareness of and enforce existing laws; and absence of educational and other means to address the causes and consequences of violence. Images in the media of violence against women, in particular those that depict women as sex objects are all factors that contribute to the continued prevalence of such violence.

The Declaration on the Elimination of Violence against Women is the first international human rights instrument to exclusively and explicitly address the issue of violence against women. It affirms that the phenomenon violates, impairs or nullifies women's human rights and their exercise of fundamental freedoms. The Declaration provides a definition of gender-based abuse, calling it "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".⁴

This has been also reflected in the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention). CEDAW Convention provides a working forum for the process of eradicating gender-based violence and promoting gender equity in the international community and at every level of national life.

In its General Recommendation No. 19, the CEDAW Committee notes;

Tradition attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks, and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.

⁴ Article 2 of the Declaration on the Elimination of Violence against Women, 1993.

Hence states should take every legal measure necessary to protect women from all forms of abuse including domestic violence that inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.

Furthermore, it holds states responsible for redressing private acts of domestic violence and asks states to acknowledge this is reviewing their laws and policies. It urges states to take appropriate and effective measures to overcome all forms of gender-based violence whether private or public, including adopting legislation embodying criminal and civil remedies that would remove the defense of honor in the assault or murder of a female family member. States are also urged to report on the extent of domestic violence in their country and on the preventive and remedial measures in place to deal with such violence.

a. Domestic Violence against Women

To define domestic violence is also as difficult as to define the crime, it does not always involve physical contact it may take the form of emotional as well as physical and sexual abuse, as such it includes; punching, hitting, slapping, throwing object, pulling hair, twisting limbs, choking and other forms of physical assault, using weapons, threatening to injure or otherwise harm the victim or the children, damaging property for example, furniture or pets to frighten the partner, sexual abuse or assault and depriving a partner of basic needs – food, money, outside contact with friends or relatives, putting her down in public, humiliating her and making her feel worthless.⁵

In conclusion, it may be defined as an action or an absence of legitimate action, committed against member(s) of the family by the member(s) of the same family, which gives rise to torture, pain, stress, suffering and discrimination. As it is the form of violence which occurs within the family, it may also be called as family violence.

b. Nature of Domestic Violence against Women

Domestic violence has distinct character as opposed to other types of violent crime. It can be characterized by at least five features:

- It is perpetuated by someone close to the victim, usually her partner or ex-partner;
- It happens in intimate settings which are presumed by society to be sites of support and care;
- It is a recurring form of abuse generally characterized by a cycle of violence: the abuse is followed by a period of respite after which tensions build up again and eventually explode into another violent episode;

⁵ Department of Family Service and Aboriginal & Affairs, 1990, p.1.

- The abuser uses domestic violence to control and coerce the victim;
- The abuse has profound emotional and psychological effects on the victim, who often believes (and is often told by the abuser) that she is to blame for the violence.

Another distinctive aspect of domestic violence is that women who seek outside help to end the domestic violence usually do not come at the first instance of abuse. Often they have endured sustained abuse of years, and have reached a point where the violence has escalated or become intolerable. It must therefore be recognized that the attempt to obtain external assistance may place the victim in grave danger of extremely violence repercussions. As abuser may become even more irate at any independent action by the victim, and many women have been savagely beaten upon attempting to leave the abusive situation.

For these reasons, the point of contact with outside authorities is an absolutely critical period. Government bears a heavy responsibility to respond to the needs of the domestic violence victim quickly and effectively. This responsibility is heightened by the fact that the woman may have come forward for assistance based on the reasonable expectation that she is entitled to legal protection.

2.3 Types of Domestic Violence against Women

In simple words, domestic violence against women can be defined as any kinds of gender based violence that occurs within the domain of house. As mentioned below, it may be of categorised into five types:⁶

1. **Physical abuse:** Abuse committed with an objective of giving physical pain is known as physical abuse. This includes slapping, beating, arm-twisting, stabbing, strangling, burning, choking, kicking, threats with a weapon, murder, traditional harmful practices like female genital mutilation and widowhood abuse.
- 1 **Sexual abuse:** Those abuse which occurs due to women's incompetency (may be due to unwillingness or any other reasons) in fulfilling the sexual desires of men. This includes coerced sex through threats, intimidation or physical force, forced prostitution, or any unwanted sexual act.
- 2 **Psychological abuse:** Psychological abuse includes all intimidating and threatening behaviour, persecution, abandonment or threats of abandonment, confinement, surveillance, verbal abuse and mental torture.
- 3 **Emotional abuse:** Emotional abuse includes causing fear, shame, public embarrassment, continued threats and taunts, isolation and humiliation.

⁶ A Reference Kit on Violence Against Women and Girls in South Asia, UNICEF, Kathmandu, Nepal, 2001, p. 11.

- 4 **Economic abuse:** Economic abuse includes acts such as denial of funds, exploitation, controlling access to healthcare, food, basic necessities and denial of rightful income.

2.4 Forms of Domestic Violence against Women

Domestic violence is undoubtedly the most prevalent form of violence against women and girls. If domestic violence is seen broadly as any act of violence within the house – it includes differential treatment of girls, wife beating and abuse, torture of daughters-in-law and neglect and torment of widowed women in the family. The various forms of domestic violence against women can be categorized as below:

- **Son preference leading to female foeticide**

Son preference is universal and not unique to Nepal only. It is transcultural phenomenon historically rooted in the patriarchal system. Son preference is playing a major role in the low valuation and neglect of female children. A son is considered to be a family pillar, who ensures continuity and protection of the workforce and will bring an extra pairs of hands, once he will get married. Sons are the source of family income and have to provide for parents in their old age. They are also the interpreters and the performers of rituals, especially on the death of the parents. Therefore the birth of the son is welcomed with celebration as an asset to the family, whereas girls are seen as liability. Consequently, the sex bias or son preference places the female child in the disadvantageous position not from the birth but from the foetus itself. Abortion, even though was illegal in Nepal and has been legalized few months back only, there are many parents who have conducted abortion in the private clinics only because it is the female fetus. In this manner the female fetuses are killed brutally. Further, abortion performed by unskilled birth attendants, under poor sanitary conditions led to increased maternal mortality.

- **Battering of mother during pregnancy**

Pregnancy is generally perceived as a very normal situation as of a sick person and mostly no proper care was provided to women during the pregnancy period, which directly affect their health in the old age. Rather, after the delivery many other kinds of violence takes place against women justifying it through traditional practices like *cheupadi*, which is still prevalent in the society. Son preference also plays a crucial role for violence against women during the period of pregnancy. The continuous pressure from the family and the society to be a mother of a male child keeps reminds a woman of a torture if she will give birth to a girl child. Further, if the girl child born, the trend of continuous violence through defamation and sometimes through physical handling get added to other kinds of mental torture.

- **Neglect and marginal treatment to girls**

In our society girls are generally discriminated with regard to food, nutrition, education, health care services and other necessary belongings, which is utmost important for their normal upbringings and growth. Women and girls are supposed to eat less and usually after the man and boys of the family had eaten. With regard to education and health care facilities, priority always goes for boy child. This has a direct impact on the poor health status and career of girls and women, in the future.

- **Child sexual abuse**

The sexual vulnerability of the girl child in and around her home is increasing day by day. In most of the cases, sexual abuses are subjected by their own near and dear ones, they may be neighbour, brother, uncle or even father. Though many of the cases of sexual abuse i.e. paedophilia, rape and molestation, incest of children, go unreported the number of those that are reported is enough to unnerve our society. Not unexpectedly, family rarely talk about the rape of their young daughter; when the rapist is father or a brother, the chances of reporting is even lower. A mother would often suppress and wash away the event, not only because of a sense of shame and outrage, but also out of fear of reprisals from her husband, son or other relatives. And if a mother mustered enough courage to approach a police to lodge complaint against rapist of her daughter, if it is her own father no one will be ready to believe that a father could sexually assault his own daughter, it will further increase a threat to the life of mother and the daughter.

- **Confinement within household**

As entire family works towards transmitting its cultural and social capital, which underline the subordination of women to its younger members. Family as an institution plays an important role in oppression and exploitation of women. Hierarchic gender relations confine girls and women to definite roles and obligations i.e. stereotype works, confining girls within the household chores in the name of physical chastisement etc. This lead to the devaluation and discrimination against women.

- **Child marriage**

In Nepal, marriage continues to be universally regarded as essential for a girl, irrespective of class, caste, religion and ethnicity. Control of her sexuality and its safe transference into the hands of the husband is of primary importance for the parents. Due to the sexual vulnerabilities of girls and increasing rate of dowry demands by the time is an important cause of early marriage. Child marriage robs a girl of her childhood, time necessary to develop physically, emotionally and psychologically. In fact, early marriages inflicts great emotional stress as the young woman is removed from her parent's home to that of her husband and in-laws. Her husband who will invariably be many years her senior, will have little in common with a young teenager. It is with this strange man she has to develop an intimate emotional and physical

relationship. Health complication that results from early marriages include the risk of operative delivery, low weight and malnutrition resulting from frequent pregnancies.

- **Dowry related abuses and deaths**

Dowry demand and dowry related crimes i.e. abuses and even deaths, are increasing day by day in our society, especially in the *terai* region of the country. Our social stigmas have taught women to bear up with every humiliation, beating, molestation and even be burnt but not speak out because the **honour** of the family will be put in jeopardy. And thus the women becomes very vulnerable to violence within the four walls of their homes and if she dare to leave that home and returns to her parent's house she would 'endanger' the chance of her younger sister's suitable marriage (presumably because other eligible boy's parents would then fear that the girl would not fulfill their dowry demands). So the parents of the woman, who suffers from the physical and mental torture seldom stand by her or save her from this prosecution; consideration of social prestige deter them from interfering in the exercise of rights conferred by the ideal of *pativartya*.

- **Wife beating**

Wife beating or in more extremes cases wife battering is the most common form of abuse worldwide irrespective of class, caste, religion and community. The odd slap or blow was regarded as routine husband like behaviour, it was only if the beatings were very severe did women perceive of themselves is being abused. Wife sexual infidelities, her neglect to household duties and her disobedience of her husband's dictates are all considered legitimate cause for wife beating.

- **Marital rape**

Rape by anyone is a heinous form of violence against women, however rape within the relationship of marriage; by one's own husband, is one of the most traumatic violence against women. Husband is the one from whom, also due to social, traditional and cultural values, a wife expects love, care, affection and the most security, however marital rape does exist in many marital relationship. And to the fear of social ostracization and stigma women rarely comes out with reporting of such crimes against their body.

- **Control on the reproductive roles of women**

Women do not have right on their own body and reproduction. She has to be mother especially of a boy child. Woman is targeted for various types of family planning measures including abortions without her wishes.

2.6 Factors Contributing to Domestic Violence against Women

Violence against women in the family stems from the concept of male superiority and power. In most countries, the male has been historically and traditionally considered the provider and more powerful figure, and that is the basis for the exercise of control over the female.⁷ The failure to perform prescribed duties (male frustration at his inability to provide for his family or the inability of a woman to run the household efficiently) by both men and women is a common cause of domestic violence.

The prevalence of violence against women is the consequence of women's subordinate position in their family and society, and is indicative of their devalued status as a social group. It is critical that the subordinated status of women is seen as a common thread that runs through the lives of all women, and that it is not the experience of some women due to their unfortunate individual circumstances. Therefore, the factors that contribute to domestic violence against women is interrelated and interlinked to each other, however attempt has been made to clarify each issue for the sake of clarity.

- **Patriarchal society**

Nepal is a patriarchal society which always privilege male and legitimizes gender hierarchy within the family and the use of violence against women. The process of socialization further reinforces the norms and values of patriarchy. Even when there seems to be a close correlation between the abuse of alcohol and violence against women, it is useful to relate it to the social environment which grants such privilege to men that they can waste resources on alcohol.

- **Discriminatory laws**

Another mechanism which institutionalizes male privilege over females is the law. Not only are laws inadequate to protect women from male violence, but there are also many discriminatory provisions in the law which reflects society's values and intentions regarding the position of women and men. The study conducted by Forum for Women, Law and Development has revealed that there are 118 legal provisions, 67 schedules, spread in different laws and the Constitution that is discriminatory against women.⁸ A recent report of the high level committee formed by HMG/Nepal to review discriminatory laws against women pointed out 138 discriminatory provisions in various laws.

- **Social practices**

⁷ *A Life Free of Violence, UNIFEM, 1998* quoted from A Reference Kit on Violence Against Women and Girls in South Asia, UNICEF, Kathmandu, Nepal, 2001, p.12.

⁸ *Discriminatory Laws against Women and Their Impact: A Review of the Current Situation and Proposals for Change*, Forum for Women, Law and Development (FWLD), Kathmandu, 2000.

There are also many other factors to be considered such as the social practices of early marriage and frequent pregnancy which inhibit the development of women and reduce options for education and skill development as well as the inherent health risks that these practices entails. Furthermore, cultural norms hold women responsible for keeping the family together. A traditional role expectation of wife is that she has to assume a subordinate position in the marital relationship. Husband wants to continue with his position of dominance, which is one of the most important causes of women's abused marital status.

- **Culture, religion and tradition**

Without exception, religion and culture have a great impact on the lives of women in this region. Although there are many positive aspects of religion and culture, many laws, policies and cultural practices are still influenced by patriarchal values that consider women as inferior to men; or which accord separate and discriminatory roles to men and women based on inflexible concepts of gender.

In the life cycle of a woman there still remain many cultural practices that accentuate and reaffirm the subordinate position of the girl child and the woman. Cultural values and norms that privilege the male child and men are still prevalent in many cultural and religious teachings and traditions, and become the base of societal conditioning.

Whether it is Buddhism, Islam, Christianity or Hinduism, the teachings and male interpretations are limiting and inhibiting to women. Increasingly there is a challenge to these so-called divine interpretations and cultural practices that sanction the pattern of gender power relations.

- **Portrayal of women by media**

The role of media in portraying women as either victims, or submissive objects at homes is also one of the major contributing factors that contribute to domestic violence against them. The tremendous impact of print media has both negative and positive sides. The problem is that these media publish all the information about the victim, including her picture. As a result of this, she is being identified in the locality and faces social problems. So she becomes victimized by the society for the second time. The media do not publish much about the perpetrator; therefore, he can live in his hideout without any fear for as long as he wants. Yet another contentious and remaining problem is the portrayal of women in film, drama and advertisements.

- **Economic dependency**

Women are economically dependent on men. This dependency causes them to tolerate the violence. Due to the dependency of women for economic support on men or their families, both natal as well as husband's house they have no other option

but to meekly follow men. Poverty entails a lack of option to women and that lack of option forced them to accept their inferior position in the family.

- **Lack of awareness**

Women due to illiteracy, lack of education and mobility is unaware of their rights and therefore do not voice against their sufferings rather they take it as their misfortune. Silence of women encourages men to maintain the dominance in every sphere.

- **Lack of skills**

Most of the women lack skills that could bring them with economic benefits and are not able to get a formal income generating opportunities. Because of the economic dependency of women on men, the life of women is controlled by men. It is men who control the apparatus of the society. Women are thus denied access to different opportunities that men are entitled to get. Thus they end up in life without any job getting skills or awareness as to their rights.

- **Traditional up-bringing**

Women are brought up in such a situation that they have belied that they are inferior to men. Women have a tendency to perceive the violence as a natural behaviours that happens every where. They have seen their mothers and sisters suffering from violence.

- **Vicious cycle of poverty**

The basic thing that was affected by poverty is a child's education. This is due to a combination of poverty and the girl's role in a household. On one hand, she has to look after her young brothers and sisters; on the other hand, her parents cannot afford to send her to school. Since she does not go to school, she is married off at a very young age. She would not be very mature and educated, and so is unable to adjust in her in-laws' family. Her in-laws would dominate her, which most of the time takes the forms of both physical and emotional violence. She has no chance of breaking free of this cycle of torture and oppression.

The fundamental factors for domestic violence against women is the prevalent patriarchal norms, values, traditions and customs that legitimize and maintain unequal power relations between men and women in all social structures.

3. Historical Development of Law on Domestic Violence against Women in Nepal

While looked from the social perspective, one cannot deny the existence of domestic violence against women in our society, however it is a very new concept in the horizon of criminal law. Rather, till now it is still not perceived and considered as a

matter which requires the attention of law. Domestic violence is considered as a matter within the family relationship where state cannot interfere as it will be the violation of individual's right to privacy. Therefore, to look back towards the history of development of law on domestic violence against women in Nepal is a very challenging task. However, attempt has been made to trace out the glimpses where this issue has been tried to dealt in the past.

Nepal has gone through various phase that is divided by historians into Ancient Nepal (*Kirata* and *Lichhavi* period), Medieval Nepal and Modern Nepal. Nepal emerged as an unified modern state in the later third quarter half of the eighteenth century.

In *Kirata* and *Lichhavi* period of ancient Nepal the history reflects that the rulers used to rule with the help of customary law, based on traditions, socio-cultural values and beliefs. In *Kirata* period, maintenance of peace and security was considered the primary function of the state. Violence was considered sin and as such those who created violence in the society were given harsh punishment. At that period the principle of “an eye for an eye, a tooth for a tooth, a life for a life” used to followed. The culprits responsible for causing death of another person or homicide were given death sentence.⁹ However, it is difficult to say whether the same principal does applied in the domestic relationship as well.

In the Medieval period, the rulers of almost all kingdoms and principalities were *Arya* – Hindu. They governed their kingdoms on the basis of Hindu *Dharmasastra*. The people and rulers were much religious minded. They believe in the concept of hell and heaven as described by the Holy Hindu *Sastra*. So Hindu religion played a predominant role in the life of rulers and the people, both of whom believed that if any sin was committed they would suffer the agonies of hell. Crime and sin was jumbled up at that period and *Stribhatya* (killing of woman) is considered as heinous as *Brahmahatya* (killing of Brahmin), *Balhatya* (infanticide), *Gobhatya* (cow-slaughter), *Guruhatya* (killing of teacher) and *Gotra hatya* (killing of kin relative).¹⁰ This reflect that in the Medieval period women would had enjoy higher status and therefore would not have suffer much violence due to the fear of God. It seems that both rulers and people were more scared of sins than that of legal punishment as even if woman committed the crime liable to capital punishment, she was exempted from it and they were, according to Hindu *Dharmasastra*, shaven and banished from the country.¹¹

The history of Nepal entered into a new phase during the second half of the eighteenth century when almost all petty principalities and kingdoms were unified into a single Nepal. As before the unification Nepal was ruled by various rulers and there was various communities who came from different parts and had been ruled by

⁹ Dr. Rajit Bhakta Pradhananga, Homicide Law in Nepal; Concept, History and Judicial Practice, Ratna Pustak Bhandar, Kathmandu, 2001.

¹⁰ Ibid.

¹¹ Ibid.

their own culture, tradition and social system, after the unification the need of common law through out the kingdom has been realized. However, the unification of the legal and administrative systems had not achieved overnight. The creation, development and implementation of a uniformed code of law and centralized administrative system took many years to be completed. Earlier, the governments under the Shah dynasty and latter the Rana family oligarchy focused on the extension of the political control and development of revenue through the co-option of regional political elite, the manipulation of the land tenure systems, the institution of novel tax system, institution of social order on the caste system and concept of inheritance and acquisition or ownership based on kinship system..

As a result efforts to enact the common code to be applicable in whole kingdom has been began. And, an unified code of law, known as the Code of Country (*Muluki Ain*) was adopted during the reign of Rana Prime Minister Jung Bahadur in 1853. The *Muluki Ain* introduced a unified system of law despite the population being divided into more than a dozen ethnic and tribal communities.

Over the centuries, Nepal was ruled with a body of predominately Hindu customary rules. Such rules had widely divergent application in practice because of varying interpretations dependent on localized meaning of the custom. In many subjects, there were no adequately precise customary rules to provide guidance to the practice of people, and, in such a situation, the only option open was to resort to religious rules to be unfolded from ancient Hindu scriptures. However, since such scriptures were also vulnerable to contradictory interpretations dependent on the given facts, situation and the status of persons involved, the lack of uniformity in regulation of the citizens' conducts became a serious problem for the Government.¹²

Promulgation of *Muluki Ain*: The *Muluki Ain* (Code of the Country) was promulgated in 1853. It was a compilation of customary rules prevailing in Nepal over the centuries. The Nepalese society being predominantly governed by Hinduism, the provisions of the *Muluki Ain* largely comprised the Hindu religious dogmas. The Nepalese legal system is, therefore, generally defined as an offshoot of the Hindu Legal system that prevailed in Indian sub-continent. The Hindu Legal system, in course of evolution, developed into two different schools, namely the *Mitakshara* and *Dayabhaga*. The later was evolved in Bengal Province of India, and claimed having represented the new thoughts of Hindu legal system evolved out of progressive changes in the society.

The *Mitkashara* School prevailed mostly in northern and southern India. It was sub divided in to various schools. Of them, the Banaras School was dominant in Uttar Pradesh and Bihar provinces of India and Nepal. Being the oldest pedigree of Hindu law, *Mitakshara* School is considered relatively conservative to gender issues. According to original *Mitakshara* thought, women and children are considered as

¹² Preamble of Muliki Ain, 1853.

property of the father, and as such, the women and children have no rights or claim to the property owned by the father. The *Dayavaga* School refused to accept that idea, and urged that heirs--the wife or wives and sons--had independent personality in matters of property, and as such had been entitled to have share in the property of family.¹³ Yet, the *Dayavaga* School failed to recognize the equal status of daughter, and obviously denied defining daughters as heirs or co-parceners to the property of natal family.

The *Muluki Ain* followed the *Mitakshara* School, but the thought that the women and children deserved no claim to the family property was largely avoided. The wife or wives and sons had been defined as heirs to and co-parceners of the father. The Clause 1 of the Chapter on Partition of Property between Father and Sons of the *Muluki Ain* stated that the father is not obliged to affect partition of the property among his sons and himself during his lifetime. However, if he has more sons born out of more than one wives, and if he fails in his responsibility of providing equal treatment in matter of proper maintenance, he is obliged to make equal division of the property and give respective shares to all sons.¹⁴ Similarly, Clause 1 of the Chapter on Husband and Wife obliges the husband to execute the partition of the property and handover the share of wife or wives, provided that he commits physical assaults against them, or fails to provide proper maintenance to them.

Having incorporated the dogmas of Hinduism, the *Muluki Ain*, apparently made attempts to define legal relations of individuals in terms of *Kul* (Kin group), *Santan* (family lineage), *Jat* (caste) and *Linga* (sex). Thus, it made attempts to institutionalize the gender and caste systems as societal base. Status of individual was, therefore, defined in terms of his/her gender and caste.

Promulgation of New *Muluki Ain*: In 1949, a popular movement overthrew the Rana regime. Subsequently, the people vehemently opposed the customs that prevailed for centuries. In the new perspective, the *Muluki Ain* was replaced by a revised code--*New Muluki Ain*-- in 1963. The new code introduced a secular system, yet it continued to perpetuate the gender segregation and is discriminatory against women.

The New *Muluki Ain* still prevails as a general law in Nepal. The Section 4 of the Chapter on Preliminary Arrangement provides that the New *Muluki Ain* should prevail as a law if no special statute exists to govern the matter. Since no special statute is so far enacted by the Parliament in respect domestic violence against women thereof, the New *Muluki Ain* is enforced as a sole law in the matter of family and marital relationship. Since, the New *Muluki Ain* has not done away with the

¹³ Priya Nath Sen. General Principles of Hindu Jurisprudence (Concept of Patria Potestas in Chapter in Parental Relationship). Allahabad Law Agency, 1984. Page 122-266.

¹⁴ For detail also see Clause No. 2 & 2 of the Chapter on the Partition of the Property between Father and Sons, Main Text *Muluki Ain*, 1853; HMG/Ministry of Law and Justice, 1966 Edition.

concept of gender segregation as a societal base, the discrimination against women continues in many matters.

As mentioned above till now, there is no specific legislation in our country addressing domestic violence against women. However, due to the various efforts and pressure of women rights activists and civil societies the government has drafted Domestic Violence (Control) Bill, 2057. This Bill was later improved and reformed by the Domestic Violence (Crime and Punishment) Bill, 2058 which was registered in the Parliament in February 22, 2002. This Bill was presented in the Lower House of the Parliament on March 26, 2002. After general discussion, the Lower House of the Parliament passed the Bill on April 12, 2002. The Bill was under the consideration of Upper House when the Parliament was dissolved on May 21, 2002. Due to the dissolution of Parliament the Bill was lapsed and it needed to be introduced once again in the next session.

4. Existing Legal System on Domestic Violence against Women in Nepal

4.1 Laws, Policies and Initiatives to Address Domestic Violence against Women in Nepal

Nepal does not have separate legislation on domestic violence nor is domestic violence a separate crime under the general law. There are provisions spread in the Country Code, 1963 (the Civil and Criminal Code of Nepal) and various laws that deal with violence against women. These areas as below:

a. Assault

Physical violence is dealt under the Country Code, 1963; which incorporates physical assault as a crime. The Country Code includes both ordinary to serious physical injury as assault and institutes a fine up to Rs. 10,000 and imprisonment up to 10 years, as the punishment, depending on the nature of the assault, its effect and weapons used. The victims can also claim compensation.¹⁵ However, this Chapter on Assault does not have any provision regarding mental torture and verbal abuse.

b. Verbal abuse

Verbal abuse can be dealt under the Defamation Law.¹⁶ The State does not initiate the case; hence a victim has to go to the court by herself and follow the lengthy procedures. The role of police in these cases is limited only to the preparation of Case Report and the victim does not get any support from other government machinery

¹⁵ Chapter on Assault, the Country Code, 1963.

¹⁶ Section 3, Defamation and Libel Act, 1959, reads as "anyone with the intention of causing damage to the reputation of another person or knowing that his actions are likely to cause damage to the reputation or with reasons for believing such actions, accuses the person by writing, word of mouth or signs or symbols by communicating a meaning or publishing such matters, he is considered to have defamed person."

while initiating the case.¹⁷ Hence, very few cases of family violence are initiated under this law.

c. Incest

Incest has been defined as a crime involving sexual intercourse between persons who are relatives within seven generations. Incest is strictly prohibited in Nepal. Marriage within the incest relation except under the customary practice is void. The punishment varies according to the distance of relation between the people involved in incest.¹⁸ Incest within the following relation is punished as follows:

- Having sexual intercourse with mother is punishable with life imprisonment.
- The crime of having sexual intercourse with sister of the same parents or with daughter is punishable with 10 years imprisonment.
- The crime of having sexual intercourse with women in the relation of father's ancestral lineage is punishable with six years imprisonment.
- The crime of sexual intercourse with other women of relation within seven generations of father or mother's ancestral lineage, other than those mentioned above is punishable with an imprisonment of two years.

Incest law can be invoked only when there is intercourse between two people, however mostly, in this kind of offences it is women who get victimized by the law and society.

When a girl filed a case of incest against her uncle, the Supreme Court defined that the Country Code, 1963 had repeatedly made a mistake of not including an uncle's daughter's daughter under the definition of incest. In this situation they could not define the law which had been mistakenly enacted. The law, which was enacted 20 years before and has been amended from time to time, is the basis of the rule of law. Hence, any person outside such criteria is not justifiably considered as an offender.¹⁹

d. Child marriage

Child marriage is prohibited under the Nepali law. According to the Chapter on Marriage of the Country Code both sexes have to be 20 years old to marry without parental consent. Men and women can marry at age 18 with the consent of their parents.²⁰ If the marriage is contracted contrary to this provision, the principal

¹⁷ No. 20, Chapter on Assault, the Country Code, 1963.

¹⁸ Section 1-3, Chapter on Incest, the Country Code, 1963.

¹⁹ Ram Prasad Rai vs. Bahadur Rai, NLB, 2052 B.S., p. 269.

²⁰ "No.2, Chapter on Marriage of the Country Code, 1963 reads as "No marriage shall be contracted or got contracted if the man and woman are not of 18 years of age where the consent of guardian is available and not of 20 years of age where such consent is not available."

offenders having attained majority, out of those committing the offense, shall be liable to the following punishment²¹:-

- (i) Where the marriage of a girl below 10 years of age is contracted/procured, punishment of imprisonment for a term from six months to three years and a fine of one thousand to ten thousand rupees.
- (ii) Where the marriage of a girl over 10 years and below fourteen years of age is contracted/procured, punishment of imprisonment for a term from three months to one year and a fine of up to five thousand rupees
- (iii) Where the marriage of a woman over fourteen years and below eighteen years of age is contracted/procured, punishment of imprisonment for a term not exceeding six months or a fine of up to ten thousand rupees or both
- (iv) Where the marriage of a woman or man below twenty years of age is contracted/procured, punishment of imprisonment for a term not exceeding six months or a fine of up to ten thousand rupees or both
- (v) Out of the priest, matchmaker and other abettors who knowingly performs the acts of marriage prohibited under the above-mentioned provisions, one having attained majority shall be punished with imprisonment for a term of up to one month and a fine of up to one thousand rupees
- (vi) In case where marriage has not yet been contracted but it has already been set after performing the rites and rituals, the principal who has arranged it shall be punished with a fine of up to five hundred rupees and the marriage set shall be invalidated.

However, the person who contracts or arranges marriage without knowledge that marriage is arranged or contracted lying that it is within the limitation of law is not liable to punishment.

In case the marriage has been contracted before the man or woman has attained the age of eighteen years and no offspring is born to them, the man or woman who has so got married before his or her age of eighteen years may, if he or she does not accept the marriage after he or she has attained the age of eighteen years, such marriage will be void.²²

e. Bigamy

Bigamy is punishable by law in Nepal, however law itself in certain circumstances allow men to commit bigamy.²³ The recent amendment to the Country Code has

²¹ No.2 (1-7), Chapter on Marriage of the Country Code, 1963.

²² No. 2 (9), Chapter on Marriage of the Country Code, 1963

²³ No. 9, Chapter on Marriage of the Country Code, 1963 reads as “No male shall, except in the following circumstances, marry another female or keep a woman as an additional wife during the life time of his wife or where the conjugal relation with his first wife has not been dissolved under the law.

If his wife has any contagious venereal disease and it has become incurable.....1

increases the provisions of punishment for committing bigamy law. It has made provisions of imprisonment for a term from one year to three years and a fine of five thousand rupees to twenty-five thousand rupees, as well.²⁴

f. Assault and bigamy; grounds for wife to seek divorce

Domestic violence against women has been given as a ground for women to seek divorce from her husband. If the husband marries another woman, or if the husband throws his wife out of their house, or if the husband assaults his wife causing grievous bodily harm women can ask for divorce.²⁵ Further, if woman is not capable of earning her livelihood, she can claim alimony for the period of five years or until she remarries.²⁶

g. Laws relating to sexual abuse against women

Chapter on Indecent Assault of the Country Code, 1963 incorporate certain aspects of physical sexual abuse against women within and outside the domestic sphere. It prohibits touching any organ from head to foot of a woman above the age of 11 years except one's own wife with the intention to have sexual intercourse and prescribes a punishment with a fine up to five hundred rupees or imprisonment of up to one year.²⁷ However, this law is not pragmatic as not a single case has yet been filed using the same provision.

h. Measures to control dowry related crime

In the context of increasing rate of crime relating to dowry, the Social Practice (Reform) Act, 1986 has attempted to prohibit dowry related crime by limiting the

If his wife has become incurably insane.....	1
If it is proved by the medical board recognized by His Majesty's Government that no offspring has been born because of the wife.....	1
If his wife has become lame and unable to walk.....	1
If his wife has become blind of both eyes.....	1
If his wife has lived separately after obtaining her partition share under No. 10 of the Chapter on Partition.....	1

²⁴ No. 10, Chapter on Marriage of the Country Code, 1963.

²⁵ No.1 (1), Chapter on Husband and Wife of the Country Code, 1963 read as “A woman can seek divorce from her husband in the following grounds²⁵:

- If the husband marries another woman
- If the husband throws his wife out of their house
- If the husband and wife live separately continuously for more than the period of three years
- If husband becomes impotent
- If the husband assaults his wife causing grievous bodily harm.”

²⁶ No.4 A, Chapter on Husband and Wife of the Country Code, 1963 reads as “women having divorced according to paragraph 2 of No.1 of this Chapter may claim alimony from the divorced husband if she is not capable to earn her livelihood, the husband shall have to provide alimony for the maintenance of the divorced wife as decided by the court considering the living standard of such husband. Such alimony is to be provided for a period of five years from the date of divorce or until she is married to next husband or whichever is earlier.”

²⁷ No. 1, Chapter on Intention to Sexual Intercourse of Country Code, 1963.

cash and jewelry to be given to women in their marriage. It also prohibits the unnecessary expenses on marriage.²⁸

i. Women can ask for her share if ill-treated

A wife shall be entitled to get her share of property from the share obtained by the husband if she is abandoned without providing any maintenance by the husband alone or together with his parents, or if she is treated cruelly or if the husband has brought or kept a second wife. She should be given maintenance if she has been abandoned only by the parents of her husband.²⁹

j. Marital rape interpreted as crime

Recently in **Meera Dhungana** for *FWLD vs. HMG/Nepal*³⁰, the Supreme Court has interpreted **marital rape** as rape. This interpretation by the Court has recognized the right of wife to deny sexual intercourse to her husband.

Excerpt from Verdict of Supreme Court

Whereas, the main element of rape is use of force, threat and duress. It is called rape because force is used while it is committed. Forcible sexual intercourse by exercising force is inhuman, uncivilized and animal-like act. From the conceptual viewpoint of rape, it is the worst forms of criminal offence under the category of domestic violence against women. For the commission of a criminal offence, there needs guilty mind (*mens rea*) and such actions (*actus reus*), which may actually commit the offence. In rape, the act is forcibly and intentionally committed at the will of one person but against the will of other person irrespective of unwillingness or denial of other person. Unlike consensual sexual intercourse in which both persons have willingness for the intercourse, rape involves use of force, threat duress, fear by the rapist. Therefore, in each of civilized, human and well-cultured society, rape is taken as a heinous criminal offence without exception;

Whereas, from the viewpoint of literal interpretation theory of legal interpretation as well, No. 1 of the Chapter on Rape, the Country Code, does not categorically excluded marital rape from the definition of rape. A proviso clause of a law must be clear, categorical and doubtless. A law cannot be said to have proviso from a definition based on presumption against the basic tenet and elements of rape. If an odd sense comes out from an interpretation of a law, its meaning should be found from constructive interpretation. Even the literal interpretation of the words "other's wife whose husband is living" which is appearing in No. 1 of the Chapter on Rape does not mean that no rape shall be committed to one's own wife. In those words, the word "others" come before "no man whose husband is living". The word has not

²⁸ Section 5 (2), Social Practice (Reform) Act, 1976.

²⁹ No. 4, Chapter on Husband and Wife of the Country Code, 1963.

³⁰ Supreme Court Bulletin, 2059 B.S. Vol. 19, p.1.

been used as an exception but as an adjective to the words woman whose husband is living and the word gives a symbolic meaning. Such use of word can not be taken as a proviso. Having analyzed the content of No. 1 of the Chapter on Rape, it seems to have criminalized rape and it does not seem to have classified having excluded one's wife by way of a proviso. Therefore, the structure of the said law and the causes explained above there seems no justification and reasonable cause for treating marital rape as an exception;

k. Government Policy to Deal with Violence against Women

In Nepal, government policy and its commitment to the Beijing Platform for Action (BPFA) have placed a focus on eradicating discrimination between men and women and to provide with the equal rights. Among strategies adopted is the involvement of NGOs, GOs and local bodies in the process of preventing all forms of violence against women so that the protection of women's human rights could be possible. The Ministry of Women, Children and Social Welfare has also prepared a National Plan of Action for five years to deal with the gender-based violence, including the review of all discriminatory laws and the enactment of domestic violence legislation. As a result Domestic Violence (Crime and Punishment) Bill was drafted and introduced in the Parliament.

1. Domestic Violence (Crime and Punishment) Bill

The 'Domestic Violence (Control) Bill, 2057' has been drafted with the establishment of the Ministry of Women and Social Welfare of Nepal. This Bill was later improved and reformed by the Domestic Violence (Crime and Punishment) Bill, 2058 which has incorporated various positive concepts to protect domestic violence against women, which are as below:

- **Definition of domestic violence includes physical and psychological violence:** The bill has comprehensively defined domestic violence. It had incorporated physical and psychological violence within the definition of domestic violence.
- **Provision relating to reporting:** The Bill is liberal with regard to reporting of the crime. It accepts both verbal and in writing reporting of the crime. If the case does not get resolved through quasi-judicial bodies or mutual understanding, victim can file a case direct to the Court. Furthermore, third party also can make a report on behalf of women victim.
- **Interim relief:** The Bill has also made provisions for the interim relief to the victim of the domestic violence. The court can issue the order of interim protective measure for the period of case proceedings.

- **Compensation:** The Bill has made provision for compensation for the victim. The amount of compensation shall depend on the nature and extent of act of violence.
- **Rehabilitation:** The Bill has made the provisions which obligate HMG to establish rehabilitation home for the victims of domestic violence.
- **In camera court:** The concept of in camera court has been introduced by this Bill. Court can hear the case in camera in request of victim.
- **Priority to domestic violence case:** For a speedy trial the Bill has include special provisions of giving priority to hearing of the domestic violence cases.

5. Conclusion and Suggestions

6.1 Conclusion

Violence against women, like all other historical phenomenon of violence, has to be seen in the socio-economic and political context of power relations. It is produced within class, caste and patriarchal social relations in which male power dominates. A narrow view of domestic violence does not go beyond an act of illegal, criminal use of physical force. But "violence" includes exploitation, discrimination, upholding of unequal economic and social structures, the creation of an atmosphere of terror, threat or reprisal and all forms of religio-cultural and political violence. While violence against women is part of general violence inherent in all social structures of class, caste, religion, ethnicity etc. and in the way the State control people, the specificity of violence against women underlies aspects of structural violence and forms of control and coercion exercised through a hierarchical and patriarchal gender relationship in the family and society.

Women specific violence has the function of keeping women where they are i.e. within the house in powerless position. Consequently, women become instruments through which the social system reproduces itself and through which systemic inequality is maintained. This is achieved through women's resourcelessness and economic and emotional dependence. Women are considered men's property, their sexuality, fertility and labour are systematically controlled. Violence against women and the consequent submission and subordination of women are further strengthened and maintained over time by the socialization process. Familial structures embody hierarchic gender relations that women have little or no independent social existence. These tend to establish the possessional rights over women which men have as husbands or fathers or older male relations. Such possessional rights appear as the exchange of promise of protection (whether actually fulfilled or not) in return for submission and exclusive use.

In the process of economic development, family violence has not been taken as a serious matter, hence provisions do not exist for prosecuting perpetrators of domestic violence such as wife batterers. This leads to the notion that domestic violence is invisible, and only occurs in the 'private sphere'. The majority of cases of domestic violence and especially rape go unreported because of the women's reluctance to compromise family relationships by going to the police.

However, now the situation is being changed. To achieve the gender equality, demand is raising to stop domestic violence against women as well. Being the party to various International Human Rights Instruments including UDHR, ICCPR, ICESCR and CEDAW, Nepal has also made the commitments in the international communities to protect rights of women in every sphere, either public or private. To combat this kind of crime, there should be an effective mechanism which can punish the perpetrator as well as can provide effective remedy to the victim. Besides the introduction of specific law to deal with these forms of violence state mechanism should also be make responsible to tackle these kinds of crime seriously. Due to the nature of violence which occurs within the intimate relations like husband and wife, father and daughter etc., it needed to be resolve very tactfully and should not be prosecuted as the case of homicide or theft.

Lack of separate law to address domestic violence against women is one of the major challenges for effective prevention and remedy to the victim. Therefore, in context of Nepal, enactment of the separate law with following provisions is one of the crucial interventions required at this moment:

- Reconciliation
- Victim protection
- Rehabilitation
- Compensation to the victim and reasonable imprisonment to the culprit
- Maintenance for the livelihood of the victim
- Burden of proof to be shifted on accused
- Provision of voluntary and compulsory counseling
- Priority to women for child custody
- Establishment of separate mechanism to execute the decision

Realizing the problem, the HMG has initiated the process of enacting separate laws by introducing the separate Domestic Violence (Control) Bill, 2057 B.S. on the domestic violence. The Bill was again introduced in 2058 B.S. incorporating many positive aspects for example definition of domestic violence includes physical and psychological violence, provide interim relief, victim friendly provisions such as compensation and in-camera hearing, special priority in the procedures including

reporting from anyone. However, the Bill was unable to cover various aspects and there were various lapses in the Bill which is as below:

- **Economic and sexual abuse not included in the definition of domestic violence:** Though the Bill has attempted to incorporate both physical and mental abuse in the definition of domestic violence, the definition is still narrow as it does not have incorporate the economic abuse which includes acts as denial of funds, exploitation, controlling access to health care, food, basic necessities and denial of rightful income etc is not included in the definition of domestic violence. Also sexual abuses and harassment that many women faced within the private sphere by their own relatives was excluded by the definition of domestic violence.
- **Lack of preventive interim relief:** It is possible and practical that victim can get the previous knowledge of violence that could take place against her. However, the Bill has though made provisions of interim protective measure for the period of case proceedings by the order of the court, it lacks the provisions like protective interim relief to the victim.
- **No preventive or long-term relief to victims:** The Bill has made provision for interim relief and compensation for the victim from the respondents. However, the Bill lacks the provisions regarding the long-term relief, after the completion of legal procedures, to the victims of domestic violence.
- **No minimum limitation of punishment:** The Bill has fixed the maximum amount of compensation and imprisonment to the respondents of the domestic violence, however by not fixing the minimum amount of punishment it has given a lot of discretionary power in the hands of judges.
- **Lack of effective mechanism to implement the court decision:** Though the Bill has made the provision of separate legal procedures in case of domestic violence, it does not have demand for separate machinery to implement the court decision in reality.
- **No provision on mandatory counseling:** Many times the dispute of domestic violence of minor level can be resolved through counseling, however, the Bill does not have made any kind of provisions which influence the victim and the respondent to seek counseling.
- **Provision for immediate action and government shelter are lacking:** The Bill does not provide for action to provide immediate relief like medical treatment, shelters etc.

The proposed bill focuses mainly on maintaining peace in the family rather than providing justice to the aggrieved victim in cases of domestic violence. It also focuses on civil liability rather than criminal liability and excessively focuses on conciliation, negotiation, mediation, treating domestic violence as just any general matter.

Besides the lack of separate law to address the problem, other problems and challenges for the combating and controlling domestic violence against women are as below:

a. Lack of research and studies on the issue

Due to the absence of scientific research on the situation, extent, nature and impact of domestic violence against women, there is no reliable data to argue for the need and kind of law that is required to address the problem in the Nepali context.

b. Discriminatory laws against women

Discriminatory laws against women are the major challenges that impede women's empowerment to voice against the violence. As mentioned earlier as well, the study conducted by Forum for Women, Law and Development has revealed that there are 118 legal provisions, 67 schedules, spread in different laws and the Constitution that is discriminatory against women.³¹ A recent report of the high level committee formed by HMG/Nepal to review discriminatory laws against women pointed out 138 discriminatory provisions in various laws. Most of these laws directly or indirectly make women more prone to bear with domestic violence. For example; guardianship laws discriminate in favour of men, making it impossible for women to break away from their relationship with men. Domicile laws relating to nationality and immigration also create women's dependency on men for economic resources and citizenship. Though the recent amendment to the Country Code has attempted to address various issues with regard to equality between men and women, it is not comprehensive in protecting all rights of women in equal footing.

c. Poor reporting of the cases

Due to the social, cultural norms and values domestic violence against women is considered as a family matter. Women themselves also do not perceive violence against them as a violent act and considered it as a result of their bad fate. Also, there are plenty of cases where women who make effort to raise their voice against the violence that occurs within the private domain, are not supported by their family and society and they were given the connotation of "deviant women". All these factors affect the reporting of the acts of domestic violence, which ultimately give the wrong interpretation of the crime not being prevalent in our society and therefore a challenge for the enactment of appropriate law to address the problem.

Discriminatory Laws against Women and Their Impact: A Review of the Current Situation and Proposals for Change, Forum for Women, Law and Development (FWLD), Kathmandu, 2000.

d. Lack of shelters for victim of domestic violence

There is a women's temporary shelter established by the Government under the Ministry of Women, Children and Social Welfare who are economically backward and women who have become the victims of trafficking. However there is no shelter for the victims of domestic violence. There is only one specific shelter for the victims of domestic violence run by SAATHI. A counseling centre for victims of family violence was also established by SAATHI. Besides these, there are other short-term shelters managed by NGOs i.e. Stri Shakti, WOREC, Maiti/Nepal and ABC Nepal for women victims, not specifically related only to family violence. However, the capacities of these shelters are not sufficient to cover the need and are not well equipped. Due to the lack of accessible shelters to accommodate victim of domestic violence women remain with no other options than to be in the same place where they face violence.

e. Political apathy

To break political apathy towards women's issue is another challenge to combat and control domestic violence against women. In the practice of multi-party political system during the last ten years, the national political parties have exhibited political apathy of highest order in translating their commitments for gender issues, made during the election, in reality. During election campaigns all political parties talk big and loud about gender equality and their total commitments to its realization but after then they overlook women's legitimate demands.

f. Gender stereotypes roles

The government seems to lack the necessary expertise to develop and implement strategies relating to domestic violence. Furthermore, government actors, especially criminal justice system, continue to hold on to outdated myths about the role of women in family and society. On the other hand, the gender stereotypes roles of men and women in family and society further reinforces the inferior position of women and hold women inside the domain of household chores. This influence women's capacity to raise their voice against their exploitation.

6.2 Recommendations

Even at the beginning of the twenty first century, women of Nepal are suffering from various forms of violence, which directly impede their enjoyment of human rights and fundamental freedoms. Nepal is a party to the CEDAW Convention, without any reservations; hence it has no loopholes to exploit to escape its obligations under this treaty. Nepal cannot use 'culture' as a justification to keep violating women's human rights and the definition provided by the CEDAW Convention cannot be ignored. Section 9 of the Nepal Treaty Act, 1991 states that the international treaties to which Nepal is a party, which are inconsistent with national laws, will supersede

national law when inconsistencies exist. The Constitution of Nepal promise equality and even special measures for the advancement of women. However, in reality we did not have any specific mechanism to address the domestic violence against women and to fulfill the international obligations for the advancement of society free from inequality. Women's right continues to be violated inside the home physically, emotionally and sexually, despite its resultant consequences to women's mental and physical health, and the economic cost to society and its intergeneration effect. Following are the recommendations that need to be taken up to address domestic violence against women:

a. Need for separate legislation to address domestic violence

The criminal laws do not take into account the intimate nature of a husband and wife relationship, and the web of dependency seen in such relationship. The psychology of a battered woman is such that it is not easy for her to leave the man or to file a civil or criminal case against him. To place the battered wife on the same footing as victims of common crimes would be to unduly disregard the obvious difference of circumstances between the two.

The prescriptive period provided for by the laws also may be detrimental to the cause of the victim. The 'learned helplessness' situation that has developed in victims of domestic violence has led women to suffer in isolation. Seldom would they seek help. Thus, when the victim finally gathers up the courage to report the incident and seek redress from the court, sometimes taking years, it may already be too late.

Furthermore, the publicity brought about by a criminal action also discourages the battered women from reporting the incident. Battered wives want to protect the reputation of their husbands or are afraid of the consequences of a criminal conviction, such as unemployment for the husband and financial instability for the family. Loyalty to the family would always take precedence over the woman's own safety. This overview refers not only to the inadequacy of the law in the protection of women from male violence. It also reflects social values and attitudes regarding the relative position of man and woman.

These ideology-based laws prohibit women's mobility in public places and social interaction. Women are denied access to public office and positions of power in public institutions such as the judiciary, the legislature, religious bodies and various other institutions of government. This sets the scene for male domination in the public sphere and in turn influences the nature of gender hierarchy in the private sphere. Hence, legal strategies have to be adopted to reform the law that pertains to family violence and to look at the underlying values.

The scattered laws do not provide adequate protection that a victim of domestic violence needs immediately after an incident, such as: (i) protection order; (ii) restraining order; (iii) broader definition of the law; (iv) immediate facilities for a

medical check-up; (v) environment for easy access for complaints; and (vi) legal counseling and legal aid, etc.

The United Nations Special Rapporteur on violence against women has argued that Domestic Violence Legislation which specifically prohibits violence against women is by far the most effective legal mechanism to address the issue of domestic violence. Remedies under this type of legislation include: protection from violence and threats of violence; safety and security of the woman, her dependents and property; and assistance in continuing her life without further disruption. Hence, specific legislation on domestic violence is needed to address the problem.

b. The lapsed Bill to be reviewed and introduce again in the Parliament

The Domestic Violence (Crime and Punishment) Bill, 2058 which was lapsed, as it needed to be reintroduced once again, it should be reviewed in the following aspects and reintroduced in the Parliament for its enactment:

- **Broaden the definition of family members:** Though the Bill has attempted to define family comprehensively, it doesn't have included step father, step mother, step son and step daughter within the arena of that definition. However, these relationships are more prone to the domestic violence therefore it needed to be included within the definition of domestic violence.
- **Inclusion of economic and sexual abuses as domestic violence:** The Bill has incorporated both physical and mental abuse in the definition of domestic violence, however the definition is still narrow as economic abuse, which includes acts as denial of funds, exploitation, controlling access to health care, food, basic necessities and denial of rightful income etc. and sexual abuse by the own family members are not covered by this definition.
- **Burden of proof to be shifted on accused:** Due to the nature of violence it is very difficult for the victim to prove the occurrence of violence against victim in court. Therefore to facilitate the victim of domestic violence from being further victimized, the general burden of proof should be shifted to the accused. The accused have to prove that he/she doesn't have committed the crime.
- **Provision of emergency monetary relief and preventive relief:** Being the victim of domestic violence, many times women remain with nothing in their hands, therefore emergency monetary relief should be provided to them for the time being. Also many times victim can get the previous knowledge of violence that could take place against her, therefore provisions for interim protective measure for the period of case proceedings should be added in the Bill.
- **Provision of voluntary and compulsory counseling:** Counseling is one of the very important tools, which can address the problem and also facilitates in

reintegration of the family members. Therefore provisions for voluntary and compulsory counseling should be incorporated in the Bill according to the nature and extent of the crime.

- **Establishment of separate mechanism to execute the decision:** The law plays an important role in the positive transformation of the society, as it defines vital social measures. It plays a critical role in sustaining and changing the attitudes and practices related to domestic violence and the dual role of reflecting fundamental social values and of defining them. Unless the implementation mechanism of the law is effective, however, legislation alone cannot address domestic violence. Therefore, for the effective execution of the decision of the cases with regard to domestic violence, a separate mechanism needs to be established that will deal with the implementation of the court orders.
- **Right to reside in home:** Many times women victim of domestic violence have no place to stay as they were thrown away from their matrimonial houses, therefore in those cases, provisions should be enacted through which a victim can reside in the same house after taking the interim order from the court.
- **Priority to women for child custody:** In cases of domestic violence against women, the priority should be given to women with regard to custody of their children.
- **Provide shelters:** Unless the victims of domestic violence are not provided better facilities and protection, the true goal can not be achieved. Government should be made liable to provide enough resources for the long term, including shelters and strategies for assistance through education and training.

c. Fulfillment of international commitments

Nepal is a party to 16 International Human Rights Instrument including the Convention on the Elimination of All forms of Discrimination against Women (CEDAW). Law-makers, policy-makers and law interpreters need to enact and interpret national legislation in consistency with the standards embodied in this Convention. Policy makers and lawmakers should always use the ratified international treaties as a guideline for making new policies or enacting laws.

d. Repeal discriminatory laws against women

There are various laws which affect the decision of women. To ensure equal status of women at home and outside existing discriminatory laws against women should be repealed as early as possible. Further, special measures should be taken in the legal provisions, in line with the CEDAW Convention, to provide enabling environment to women to sustain themselves.

e. Establish Family Courts

To enable women to report the cases of domestic violence and to deal these kinds of cases with better understanding and for the speedy settlement of the family disputes, Family courts should be established in every district of the country.

f. Gender sensitization trainings to law enforcers and interpreters

Training in gender sensitization for the legislative, judicial administration and law enforcing agencies to make them aware of the gravity of the problem must be encouraged. Judges and court staff should be given training or orientation sessions on gender-based violence. Courts should maintain a record of registered and decided cases related to violence against women.

g. Rehabilitation/shelters

Battered women are generally emotionally and financially dependent, and lack a sense of freedom and self confidence in their situation. Powerlessness is a common characteristic of battered women. Both physical and psychological injuries may require immediate care, counseling facilities and legal protection for the victim. Therefore, rehabilitation shelters/centers should be established to provide support to victims of domestic violence.

Moreover, counseling centres are needed, with trained counselors to provide psychological support to victims of family violence.

h. Monitoring mechanism

A monitoring team has to be formed comprising medical doctors, lawyers, counselors, and human rights advocates. Such a team should have the power to visit shelters and prisons, and to provide the necessary suggestions and support. This team should also monitor how the victims are treated by the police, lawyers, the Public Attorney's Office and the court.

i. Preventive approaches

There should be more focus on preventive approaches to protect the women before they become the casualties of domestic violence. Campaigns for raising awareness of the different issues are needed, with support from the media. Advocacy is necessary to inform the public (men and women), as well as the judiciary, executive and legislative agencies of the gravity of the problem.

However, domestic violence being socio-legal problem cannot be tackled by law alone as law is complex and is vested with state power and the authority to pronounce with family upon an issue. The process of defining in law is not limited to its black letter exterior to statutes and judicial pronouncements. It is much more

complex and includes within its scope the judgments participants in the legal process, such as the police, the lawyers, and the judges. It therefore encompasses the preliminary police complaints, the medico-legal reports, the investigation, the evidence (or lack of it), the arguments presented in the courts, all of which contribute to the construction of social-problem. Hence, a fundamental changes need to be made the social system and in the attitudes of people towards women to address the problem. Besides incorporating the specific law on domestic violence, a holistic approach is required to eradicate this heinous crime. Without considering the social context, no measures can be developed to curb domestic violence. Gender disparities exist in every walk of life. Unless efforts are made to address the fundamental gender disparities between men and women, nothing can be done to improve the situation regarding family violence. Therefore, besides the legal interventions following other measures are required to combat the domestic violence against women:

a. Increase economic opportunities for women

Women are very vulnerable to violent actions, because of their economic dependence on men. Stopping wife battering requires, among other things, improving women's economic situation. When their freedom is restricted and they have no options for escape, women are more likely to be abused by their husbands or male authorities. These victims are dependent on male relatives and often isolated from the society. Hence, improving a women's economic status is vital to combat domestic violence. If women remain financially powerless and economically dependent, it will be difficult for them to protect themselves from being victim of domestic violence. Hence, education and training opportunities in income generating activities should be increased and provided to women.

b. Establish community service systems

In cases of domestic violence, the legal system is generally utilized as a last resort, when other mechanisms have been exhausted or proved ineffective. Domestic violence is a problem beyond the criminal justice system; the problem relates to the health, legal, economic, social and educational conditions of women and their human rights. Victims seek assistance from family, friends, doctors, social workers, counselors or women's organizations. Community support services, therefore, play a vital role in improving the domestic violence situation.

c. Interventions for changing social values

Family violence is a problem that results from the unequal power balance between men and women. Because of the patriarchal structure of most societies, the men wield much more power than women. Obviously the relationship between men and women has been governed by the values and mores of the given society. The reality of unequal power has given rise to many traditions imposing on women a tolerance of discrimination and exploitation. Strategic actions should emphasize the need for

education about power-balance relationships and related cultural intervention, because gender violence is rooted in a patriarchal ideology. The chief instrument of women's oppression is the family; to large extent women internalize their own inferiority through a process of socialization, division of labour, customs, religious laws and rituals. Strategies for combating domestic violence need to inform by an understanding of the complexities of the underlying causes. The continuous efforts are necessary to change the value systems and cultural barriers that reinforce women's inferiority in comparison to men.

d. Education through media

Mass education through the media should be used to educate the public. Media outlets including videos, radio and television broadcasts on the issue, as well as street theater and newspapers, can raise awareness of domestic violence. Media should educate the public by defining domestic violence and the procedures for initiating action against the offender.

Within the patterns where family violence is found, a major thrust of the strategies must be towards changing the power structures. The media, therefore, must play a critical role in the campaign to eradicate family violence. There should be a monitoring body to check the effective implementation of the media directive and media campaign.

e. Coordination amongst various agencies

It is also necessary to forge linkages among police, NGOs and governmental bodies providing assistance to victims. Cooperation among the various players will improve the support system for assistance to victims and prevention of family violence cases. The need is of a strategic effort to begin the process of smooth coordination.

f. Political Commitment

Domestic violence must be given high priority on the national agenda. Strong political commitment at the highest level is necessary to address the problem of domestic violence. Most of the political parties include a manifesto in their platforms, declaring eradication of violence against women. Hence women should be able to use the political manifesto to challenge existing laws and attitudes.

g. Need for research

A national level study on the incidence of family violence must be undertaken to identify accurately the dimension and the magnitude of the problem. A study on the impact of the government and NGOs' initiatives to address the family violence problem should also be conducted. Most of the studies at the national level are currently focused on violence against women, and identified domestic violence as one

of the components. These studies may ignore the nature of violence and threats inside the house. There is a need to see the effectiveness of related legislation and mechanisms for implementation of policies and plans of action proposed by the government.

In conclusion, the need is to internalize domestic violence as gross human rights violation of women, which requires momentum from every sphere of the society including, legislative, judiciary, executives, civil societies and from the general people to take initiatives from their own level.