

# SUMMARY REPORT ON EARLY AND CHILD MARRIAGE

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 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.



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## **CURRENT CHILD AND EARLY MARRIAGE TREND:**

- 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 be 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 laden 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 mar-

ried 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.



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