

A Gendered Approach towards Transitional Justice in Nepal:  
Evaluating Mechanisms and Processes

A Dissertation

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### **Letter of Recommendation**

I certify that this dissertation entitled “A Gendered Approach towards Transitional Justice in Nepal: Evaluating Mechanisms and Processes” has been prepared by Sudiksha Tuladhar under my supervision. I hereby recommend this dissertation for final examination by the research committee at the Department of International Relations and Diplomacy, Faculty of Humanities and Social Sciences, Tribhuvan University in the fulfillment of the requirements for MIRD 526 Thesis for the Master’s Degree in International Relations and Diplomacy.

(Signature)

Shweta Karki

Date: \_\_\_\_\_

## **Declaration**

I hereby declare that the work has been done by myself and no portion of the work contained in this document has been published or submitted in support of any application for any other degree or qualification of this or any other university or institution of learning. In case of other authors' information, ideas or arguments, the sources have been duly cited and acknowledged as per the requirements. The copyright of this research work belongs to the author.

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## **Letter of Approval**

## **Abstract**

Women become more vulnerable during times of war. Their gender roles are often questioned and pushed more than their capacity during such difficult times. The armed conflict of Nepal (1996-2006) witnessed a large number of women participating in the conflict, but with little to no inclusion in the peace and justice process.

Women were often looked down upon post the conflict. Due to traditional societal constructs and norms, many women were forced to return to their traditional roles of caring, nurturing and household chores despite fighting for their rights in the conflict. Many victims of sexual violence also faced difficulties in reintegrating themselves back into the society.

Nepal is lagging behind in the transitional justice process. There has been little to no progress. In spite of being a part of numerous international and national instruments, Nepal has not been able to implement those instruments and investigate cases of sexual violence in a gender sensitive matter.

This research aims to identify and then fill the gaps that have been existing in the justice process for women. Cases of sexual violence against woman often remain unaddressed and unresolved. This research further aims to move forward in a manner that is gender sensitive and try to find out possible ways in which such cases can be addressed.

Key words: women, transitional justice, conflict

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## **List of Abbreviations**

AI: Amnesty International

AF: Advocacy Forum

CA: Constituent Assembly

CAT: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CDO: Chief District Officer

CEDAW: Convention on Elimination of Discrimination Against Women

CIEDP: Commission of Investigation on Enforced Disappeared Persons

CPA: Comprehensive Peace Accord

CRC: Convention on the Rights of Child

FIR: First Information Report

HRW: Human Rights Watch

ICC: International Criminal Court

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic Social and Cultural Rights

ICERD: International Convention on Elimination of All Forms of Racial Discrimination

ICJ: International Commission of Jurists

ICRC: International Committee of the Red Cross

ICTJ: International Center for Transitional Justice

IHRICON: Institute of Human Rights Communication Nepal

LPC: Local Peace Committee

NHRC: National Human Rights Commission



OHCHR: Office of the High Commissioner of Human Rights

RNA: Royal Nepal Army

TADA: Terrorist and Disruptive Activities (Control and Punishment) Act

TADO: Terrorist and Disruptive Activities (Control and Punishment) Ordinance

TRC: Truth and Reconciliation Committee

UN: United Nations

UNMIN: United Nations Mission in Nepal

UNSC: United Nations Security Council

UNSCR: United Nations Security Council Resolution

WOREC: Women's Rehabilitation Centre

## **Chapter One: Introduction**

### **1.1 Background**

Transitional justice is process adopted by countries to resolve post-conflict matters in a dignified manner. Transitional justice is a process of mechanisms applied in attempts to resolve gross abuses in the past (United Nations Security Council, 2004). The society seeks to transform and rehabilitate itself from the long-term abuses and violations of human rights. Therefore, they try and adopt certain mechanisms to ensure that accountability and justice is served to the victims. The transitional justice process may take place through judicial or non-judicial mechanisms (UNSC, 2004).

Transitional justice needs to be served when an elongated period of conflict takes place. The armed conflict of Nepal took place between 1996-2006 (Tiwari, 2013). More than 13,000 people were killed and many others became victims of other forms of human rights violations (Office of the High Commissioner of Human Rights, 2012).

Aims of transitional justice may vary from country to country and the context in which violations have taken place. Some of the aims of transitional justice as enlisted by ICTJ are- establishing accountable institutions and restoring confidence in them, making access to justice a reality for most of the vulnerable in the society in the aftermath of violations, ensuring that women and marginalized groups play an effective role in pursuit of a just society, respect for the rule of law, facilitating peace process and fostering durable resolution of conflicts, establishing a basis to address the underlying causes of conflict and marginalization and advancing the cause of reconciliation (International Center for Transitional Justice, 2021).

According to International Center for Transitional Justice (ICTJ), transitional justice has four pillars which can be elaborated as following: truth seeking, prosecution, reparation and institutional reform. Truth seeking is a component accompanied by truth commissions. This is a non-judicial component that looks into the causes and impacts that the conflict has made. The findings from the truth commissions can be used for reparation and addressing the sufferings of the victims (ICTJ, 2021).

Prosecution seeks to for the trial and punishment of the perpetrators. This is a judicial component of transitional justice. Many victims demand trials; therefore, this component is enabled to restore their dignity (ICTJ, 2021). The International Criminal Court (ICC) came into form in 2002 through the Rome Statute (International Committee of the Red Cross, 2021). The ICC trials people for war crimes, genocides and crimes against humanity (ICRC, 2021). Domestic courts are also used for trials whereas hybrid courts, that are a combination of domestic and international courts, were established in countries like Sierra Leone, Kosovo, Bosnia, Timor- Leste and Cambodia (ICTJ, 2021).

Further, reparations seek to repair the damages caused by the violations by a state or an individual. It is considered as a direct method of receiving justice as it may include material and symbolic benefits. Finally, the last pillar, institutional reforms seek to bring about changes in existing institutions so that they respect human rights and work according to the rule of law (ICTJ, 2021).

Gender and Human Rights are interrelated. Gender is the expected roles and behavior imposed on males and females as a society. Gendered approach in this research refers that the research will be conducted in a method familiar for women, along with being sensitive towards their cases during the armed conflict. Females are mostly become prime victims in times of war and

conflict. Women become victims to different kinds of crimes such as domestic violence, acid attack, rape, sexual assault etc. During times of war and conflict, women are mostly raped and exploited for household chores since most males are out for war.

According to International Humanitarian Law, there are two types of armed conflict- international armed conflict and non-international armed conflict (ICRC, 2008). The former occurs between two opposing states whereas the latter occurs between a government and non-government armed groups (ICRC, 2008). The armed conflict that occurred in Nepal was a non-international armed conflict, that occurred between the government forces and Maoist rebels (Khanal, 2010).

According to WHO, sexual violence is defined as “Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic or otherwise directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work” (World Health Organization, 2022). The then Royal Nepal Army and Maoists used rape as a common practice to punish women, particularly the female Maoist combatants (International Center for Transitional Justice and Advocacy Forum, 2010, p.46). The armed conflict of Nepal aimed to eliminate the caste system and other forms of discrimination against women. Dalit women were encouraged to participate in the war for their rights (ICTJ & AF, 2010, p. 41). Maoists did little for the women combatants to be reintegrated into the society. As initially the Maoists had pledged for equal rights and encouraged them to participate in the conflict. But post-conflict, Maoist women combatants were criticized for not following their gender roles therefore were given little encouragement for reintegration (Goswami, 2015, p. 10).

Many women are left displaced, disowned by families, disappeared or killed after being affected from times of conflict. Organizations such as UN Women and treaties such as Convention on Elimination of All forms of Discrimination against Women (CEDAW) etc have worked their paths in Nepal for the rights of women.

Nepal was in a continuous state of changes during the armed conflict that took place during 1996-2006. The Government of Nepal set up two commissions in 2015- The Truth and Reconciliation Commission (TRC) and Commission of Investigation on Enforced Disappeared Persons (CIEDP) (Thapa & Canyon, 2017). The victims who were subjected to sexual violence had to face mental trauma, stigmatization, depression and have suicidal tendencies (Thapa & Canyon, 2017). The exact number of cases of women violence went unrecorded as many women were reluctant to report their cases; although unofficial reports from TRC reveal cases are present of around 300 victims (ICTJ & MartinChautari, 2017).

Nepal is signatory to six human rights instruments which includes Convention on Elimination of All forms of Discrimination against Women (CEDAW) and Convention against Torture and Other Inhumane or Degrading Punishment (CAT), ICCPR, ICERD, CRC and ICESCR (Khatiwada, 2012). Amnesty International and Human Rights Watch reported gross violation of human rights as the Maoists launched the armed conflict in November 1995. (ICTJ & AF, 2010, p. 21) Many were raped, disappeared and executed. (ICTJ & AF, 2010, p. 21).

The United Nations Declaration on Human Rights (UDHR) was also formed after the Second World War, the Nuremberg Trials and the Tokyo Trials in 1948 (Hellsten, 2012). Nepal also signed and ratified UDHR. UDHR is also one of the crucial documents in human rights law. As gender-based violence also comes under human rights, this document is one of the important global instruments that shall be studied in this research.

## **1.2 Statement of Problem**

Women have largely been missing from the reintegration and peace process post armed conflict. While international instruments and even domestic instruments require women as a crucial part of the transitional justice process, Nepal has not been able to implement it.

The UNSCR 1325 advocates that women are to be considered as a homogenous group and not only by-standers as war victims (Goswami, 2015, p. 15). This part has been greatly missed during the post war peace negotiations, and Goswami recommends that the UNSCR 1325 mandate should be kept in mind and justice of women victims of war must be ensured (Goswami, 2015, p. 16).

The Comprehensive Peace Agreement (CPA) signed in 2006 was considered as a first step towards Nepal's transitional justice. Any act of violence against women was barred from the document. Women were referred to their gender roles of nurturing families instead of participating in the peace process. The participation in the peace meetings was considered a male's job (Goswami, 2015, p. 14).

Most victims post the armed conflict have not been able to file complaints or have not been able to get justice. Many were forced to take back complaints or made to refrain back due to societal pressures (HRW, 2014). Women pressure groups and local NGOs work for the victims but the slow justice process has made the victims lose faith in the justice system and mechanisms in the country. The Truth and Reconciliation Committee (TRC) and Commission of Investigation on Enforced Disappeared Persons (CIEDP) being established in 2015 demonstrated the slow transitional justice process in Nepal (Human Rights Watch, 2018). The mandates of the two commissions were extended by a year in 2018, for the second time (HRW, 2018). It was further extended in 2019 for a year (Jeffery, 2019).

Along with the mechanisms in transitional justice institutions, there remains a gap of women professionals working towards serving justice for women victims. The Truth and Reconciliation Committee (TRC) Act mentions that there should be at least one female commissioner present amongst the five members of the Commission (TRC Rules, 2016). The act also requires at least one woman to be present in the Recommendation committee (International Commission of Jurists, 2021). This research aims to find if the act is implemented effectively or not; whether or not the act has ways to guarantee justice for victims of sexual violence. As it would be easier for a female victim to reveal crucial information to a female official, it becomes important that the transitional justice institutions conduct such processes in a gender sensitive manner.

This research aims to find out the gaps that exist in the transitional justice process of Nepal, focusing on women. Reports of violations of sexual and reproductive rights of women violated during the armed conflict of Nepal, lack of women personnel in the institutions and lack of proper implementation of international and national instruments are the matters that will be researched upon. The post conflict transitional justice process started after the signing of the Comprehensive Peace Accord (CPA) of 2006. But many women are still awaiting justice or the mechanisms have not met the international standards and addresses their concerns. The researcher through this research aims to fill in those gaps and display the findings related to the transitional justice mechanisms in Nepal; through a gendered approach.

### **1.3 Research Questions**

The research questions for this research can be enlisted as follows:

- Have transitional justice institutions in Nepal followed the standards of the international transitional justice conventions that they are committed to?
- How does the mechanisms of transitional justice institutions in Nepal address the violations of sexual and reproductive rights of women during the armed conflict?
- Have the transitional justice institutions of Nepal formulated processes that investigate violation of women's sexual and reproductive rights during the armed conflict in a gender sensitive manner?

### **1.4 Research Objectives**

The general objective of this research is to find out if Nepal's transitional justice institutions have followed the standards of international mechanisms and conventions that Nepal is committed to.

#### **Specific objectives**

The specific objectives of the research are enlisted below:

- To find out if the mechanisms of transitional justice institutions in Nepal addresses the violations of women's sexual and reproductive rights during the armed conflict
- To find out if the transitional justice institutions in Nepal has formulated the investigations into the violations of women's sexual and reproductive rights in a gender sensitive manner



## **1.5 Significance**

This research aims to bring out issues of gender sensitivity at times of conflict. It will analyze the transitional justice process institutions and mechanisms in Nepal, and find out if those institutions have addressed violations of women's rights in a gender sensitive manner.

This research aims also touch upon the global mechanisms that addresses transitional justice from a gender perspective. The TRC and CIEDP in Nepal have been working towards transitional justice in Nepal (Truth and Reconciliation Commission, 2021). But this research aims to find if TRC have adopted processes that addresses the violations of the rights of women during the armed conflict and ensure that they receive justice in a gender sensitive manner. Transitional justice process in Nepal has been quite slow as the Truth and Reconciliation Commission (TRC) and Commission of Investigation on Enforced Disappeared Persons (CIEDP) have their mandates been extended by the government (Jeffery, 2019).

Although the topic is sensitive, this research is considered important to link the gender aspect to the transitional justice process in Nepal. This research through a gendered lens aims to explore the domestic transitional justice systems and if they are in line with global mechanisms. The existing operational measures of the domestic transitional justice institution will be analyzed to find solutions to the problem.

## **1.6 Chapter Organization**

This research is divided into five chapters. Their contents can be further elaborated as follows: The first chapter, chapter one consists of the introduction and background of the topic. Basic information, definitions and ideas surrounding the topic are presented in this chapter. Besides the background, the statement of problem, research questions and objectives are presented.

Furthermore, in the second chapter, literature reviews and conceptual framework are presented. Literatures related to the topic was researched upon and presented in the chapter. The researcher analyzed the literature and existing gaps so as to find out ways to solve the problem. A conceptual framework expressing the flow or progress of the research has been presented in this chapter. The conceptual framework will help the readers to get a fair idea how the initial plan was made and how did the research move forward. It will help the researcher to get hold of a proper track and make further steps for the research.

Chapter 3 will consist of the research methodology. Different research methods and methodologies for the research has been specified in this chapter. The researcher mentioned about the data collection methods, research type and research analysis methods. This chapter consists of ethical issues and considerations that the researcher should keep in mind while conducting the research. The limitations of the research have also been specified.

The fourth chapter consists of the findings and analysis of the research. The description of the study area, analysis and presentation of data and findings is presented in this chapter. The researcher presented the findings in a qualitative manner since it is qualitative research.

The last chapter of the research, chapter 5 presents the conclusion. Conclusion has presented the final ideas and represent the readers if the research was successful or not. The concluding remarks of the researcher has been presented. The findings and answers to the research questions which was presented in the previous chapter was reiterated if necessary.

## **Chapter Two: Review of Literature and Conceptual Framework**

### **2.1 Review of Literature**

#### **Women's Role in Armed Conflict**

Women are often mistreated and misbehaved during times of war. They are most vulnerable as men tend to punish them for defying their traditional roles by participating in wars. The roles of women are varied during times of conflict and war. Women during the Maoist armed conflict were required to perform household duties along with fighting the war (Baniya et al., 2017). Similarly, in the case of Nigeria, women not only were active participants but also donated food and money (Stewart, 2022). In Kashmir, women planted bombs, helped separatists to escape, provided combatants food and shelter (Stewart, 2022).

Women also supported in the First World War by working as police officers, railway personnel and factory workers. They also knitted uniforms and collected funds for newly founded Red Cross (HistoryPress, 2022). By the Second World War, women were running factories and even became pilots (HistoryPress, 2022). Women became victims of sexual violence in cases of the Rwandan genocide and Sierra Leone as well; many women were raped and made slaves (Kumar, 2001). In Cambodia, there were cases where some families sold their daughters off, as a result of the conflict (Kumar, 2001). While initially women were only participants of war, they went on to take up diverse roles which men used to take up. Women were not afraid to stand up and take up various occupations along with household roles.

Ethnicity, class, culture and age are some of the prime factors for involvement of women in war (Upreti, 2006). In war-torn countries, conflict situations created a sub-culture that considered violent behavior as normal (Kumar, 2001). This mindset becomes quite problematic, especially at times of war. Participants and parties to the war must be sensitive

and realize that women are also humans and should be treated as equally and properly as men want to be treated. The role of education and mental awareness also proves crucial in such situations.

The participation of militant women in the revolution of Paris Commune in 1971, women combatants' participation in Soviet Union during World War II and women militias in China being formed to fight against Japan shows that participation of women was revolutionary and helped to fight effectively against the enemies (Parvati, 2004). In the Paris Commune, proletariat women participated, whereas the World War II witnessed women fighting against the Nazis (Parvati, 2004). The Vietnam War was also marked by high women participation (K.C., 2019). The fact that high number of women participate in wars depict a common problem of class struggle. Class struggle and oppression from the elites forced women to come out and fight for their rights, which was in the case of Nepal as well.

Furthermore, inter-caste marriages were promoted during the times of conflict in Nepal. But acceptance from the society was different for men and women. If a Dalit man married a woman of another caste, she was accepted by the man's family, whereas if a Dalit woman married a man from another supposedly 'higher' caste, she was not accepted by the man's family (K.C., 2019). This demonstrates that there were problems in the societal structure that the armed movement aimed to break. It somewhat became successful during the conflict, but post conflict, many women were forced into their traditional roles. Many faced difficulties in reintegrating themselves into the society after the conflict as women were given less priority and inclusion in the peace process.

In a paper by Goswami, the author revealed that the Maoist movement attracted a large number of women because of the cause associated with it- gender equality, citizenship rights and access

to parental property (Goswami, 2015). The author further reveals that in cases of sexual violence faced by women, the Maoist women were hesitant to speak and file cases, as the society blamed victims rather than the perpetrators (Goswami, 2015). Such obstacles made it more difficult for women. Concerned organizations and agencies should tackle such sensitive cases with urgent priority and without negligence. However, there are many changes yet to be brought at the societal and community level.

### **Women in Nepal's Armed Conflict**

While women played different roles in wars at different countries, the case of Nepal is somewhat similar. Women participation was high in the armed conflict of Nepal that lasted from 1996-2006 (K.C., 2019). It is said that women comprised about 30-40% of the Maoist combatants (K.C., 2019).

Women's participation in the armed conflict was significantly high, remaining at 40-50% (ICTJ & AF, 2010). However, some data reveal that only 20% of the Maoist combatants were female (ICTJ & AF, 2010). Despite high participation in times of conflict, women are often considered as the weaker sex. They are often forced into sexual violence to be asked to give up if they are fighting in the war.

Often in times of conflict and war, women are used as a weapon of war. Both the then Royal Nepal Army (RNA) personnel and Maoist combatants have violated the rights of women and subjected them to sexual violence (HRW, 2014). Women of marginalized groups were more vulnerable to sexual violence. The Army personnel used to rape women cadres of Maoists to punish them (ICTJ & AF, 2010). They used rape as a punishment for women differing from their traditional roles of doing household chores (ICTJ & AF, 2010). An RNA personnel also set an entire Dalit community on fire and raped multiple women, while the locals were not

even allowed to put off the fire (ICTJ & AF, 2010, p. 48). Many women also faced the issue of 'false marriages' during the armed conflict and many were forced to establish sexual relations with consent (HRW, 2014). The RNA personnel used fake identities to marry women and leave them without any information (ICTJ & AF, 2010). There also have been reports of Maoist combatants raping women, who later had to undergo forceful abortions. There also has been cases of unidentified third parties who raped women during the times of conflict (ICTJ & AF, 2010).

Many women who faced sexual violence were forced to flee their villages post the conflict. According to Cottle and Thapa, many of the displaced women were forced into slums and turned to prostitution to survive (Cottle & Thapa, 2017). Many girls were forced into early marriage by their parents to be avoided to be taken as Maoist combatants (Cottle & Thapa, 2017). The reluctance of women to report cases of sexual violence reveal that there is a certain gap in providing justice in a gender sensitive manner, although other societal constructs may have stopped them from reporting their cases. According to Thapa, there are primarily three reasons why victims did not report violence during the armed conflict: due to fear of stigma and shame from the society, the people whom the victims had to report crimes to were perpetrators from both sides of the conflict and lastly, the 35-day limitation to report rapes (HRW, 2014).

Such cases of sexual violence have led to massive effects on women health. Many women haven't got any access to medical and counselling facilities. Nepal has not introduced a standard protocol for the medical and legal treatment of rape (HRW, 2014). Proper training for doctors treating such victims was not provided (OHCHR, 2012). Such delay in formulation of proper mechanisms will delay the accuracy in collection of evidences. Furthermore, there is

absence of psycho-social counselling for the victims. The government has largely failed to provide counseling to victims of sexual violence.

The physical, psychological and mental damage from the sexual abuse remains for a long term in the lives of those women. Transitional justice then becomes necessary so that these women receive some kind of compensation. Although the damage has already been done, the transitional justice mechanisms can serve justice to that violence affected women in an efficient and effective manner. According to Aguirre and Pietropaoli (2008) reparation and restoration process is inadequate in Nepal. They argue that systematic discrimination existed for victims of sexual violence. They refer to the ICTJ report where rape cases reported were near to one percent, reiterating the right to development in the transitional justice process in Nepal (Aguirre & Pietropaoli, 2008). People who were not directly victimized by the conflict were also affected due to the overall downfall of the country.

The Maoists put forward their 40-point agreement to the government, point 19 highlighted upon the rights of women (Sthapit & Philippe, 2017). 'Dry laws' were introduced to punish alcoholic husbands and inter-caste marriages were also promoted (Sthapit & Philippe, 2017). Legitimacy, distributive justice and stability are important factors towards the path of transitional justice in Nepal (Aguirre & Pietropaoli, 2008). Evaluation of all human rights violations remains crucial, especially for women. Women participation was high in the case of Nepal as they were promised for women empowerment. On the onset of conflict, women were promised for equal rights (Parvati, 2004). While initially women were promised for equality, after the end of the conflict, most women were left by their husbands after abandoning their marriage or left awaiting justice after facing sexual violence.

Army personnel from the government has raped women while in search for Maoist combatants, including cases of sexual violence in custody (OHCHR, 2012). The report also reveals that a seven-eight-month pregnant Maoist cadre was chased and killed (OHCHR, 2012). There were violations from the Maoist side as well. Maoists raped women when they were alone at their homes (HRW, 2014). Further, Maoists themselves punished the perpetrators in some cases. The perpetrators were beaten publicly and expelled from their ranks (HRW, 2014). Many other case studies are presented in the report which presents the brutality of the crimes committed. As the perpetrators are out free, the victims and their families feel immense pain with the slow justice system. The transitional justice institutions must keep track of the cases and aim to provide justice as soon as possible.

According to the OHCHR Nepal Conflict Report, 2012, compared to government security forces, the Maoist cadres have been involved in lesser cases of sexual violence (OHCHR, 2012). However, it could not be confirmed as many army personnel sometimes came dressed as Maoists and vice versa (OHCHR, 2012). In either case, women were exposed to sexual violence and due to unclear identity, many of such cases remain unsolved.



## **Responsibilities from Global Instruments and Domestic Mechanisms for Transitional Justice**

From the perspective of International Humanitarian Law, the four Geneva Conventions also hold certain provisions on the basis of principles. Principle of humane treatment and principle of distinction are two crucial principles which are mentioned in the general protection (Lindsey, 2001). For the specific protection of women, Article 14 of the Third Geneva Convention mentions that women should be treated as same as that to men while they are present as prisoners of war (POW) (GenevaConvention, 1949). Women should have access to clean sanitation facilities (Lindsey, 2001). Similarly, fourth Geneva Convention also requires expectant mothers to be treated with respect (GenevaConvention, 1949).

Article 27 of the Fourth Geneva Convention also mentions, “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any other form of indecent assault” (GenevaConvention, 1949).

In the same manner, Article 32 of the Fourth Geneva Convention bars the parties to the conflict cannot cause any physical suffering to the protected person (GenevaConvention, 1949). These articles mention about certain provisions that state parties should abide by.

Nepal has ratified all the four Geneva conventions. Domestic transitional justice institutions such as TRC and CIEPD must incorporate the above-mentioned articles in their transitional justice processes so that justice is served to women who were affected by the armed conflict.

Women who were victims of rape or other sexual violence experience a lot of health problems and psychological trauma (Thapa & Canyon, 2017). They must be provided with access to proper healthcare and counselling (Thapa & Canyon, 2017). Transitional justice institutions should hire female personnel so that it is easier for the victims to share their trauma and other

reproductive health issues. Although TRC has included such provisions in their act, it has not been implemented properly in the grassroot level (HRW & AF, 2020).

Right to good health for women during times of conflict is also an important component of International Human Rights Law and International Humanitarian Law (Hellsten, 2012). Pressure from families and societal stigma post conflict pushed women to risk their lives. Many women who became pregnant during the times of conflict often used unsafe methods to terminate the pregnancies due to lack of access to health facilities (ICTJ & AF, 2010). Such unsafe practices resulted in death of some women as well (ICTJ & AF, 2010).

The UN Security Council Resolution 1820 also calls against the use of rape as a tool in times of conflict. It also identifies “rape and other forms of sexual violence can constitute war crimes, crimes against humanity or a constitutive act with respect to genocide” (ICJ, 2021). The Convention against Torture (CAT) also mentions that victims of torture must have their right to fair and adequate compensation including means for full rehabilitation (ICTJ & AF, 2010). Nepal’s performance in accordance to abiding by CEDAW, UNSCR 1325 and 1820 has made certain progress as Nepal has made certain National Action Plan (NAP) according to international requirements (UPR, 2020). While the first NAP was planned for 2011-16, a preliminary draft for NAP II was released in 2020 (Sathi, 2018). The action plans addressed the issue of gender based sexual violence during the conflict. A local organization, ‘Sathi’ has released a desk report on the implementation of NAP (Sathi, 2018). The organization has stated that there exist certain gaps for addressing concerns of the victims. The report also incorporates the need of awareness at the ground level and implementation of decisions made by the Supreme Court of Nepal (Sathi, 2018). They have highlighted that the relief and reparation packaged must be according to the needs of the victims (Sathi, 2018). As the issue is gender

sensitive, there is lack of support from the concerned agencies, along with lack of knowledge and awareness at the community level.

Another important document is UDHR. Nepal is also party to the document and has signed and ratified it. Article two of the document states that no discrimination will be made on the basis of color, sex, language, religion or gender. Everyone will be entitled to the rights whatever their political, jurisdictional or international status of their country (Universal Declaration of Human Rights, 1948).

Similarly, Article 5 states that no person should be subjected to any form of torture or inhumane treatment. Article 25(1) and (2) states,

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.” (UDHR, 1948, p. 7)

According to Article 4 of the United Nations Conventions against Torture (UNCAT), it states that all acts of torture shall be punished under criminal law, including those who are participated in the act (Convention Against Torture, 2021). The perpetrators will be punished with applicable penalties (CAT, 2021). Although Nepal is a part of the convention, it has not been able to address the torture that women had to go through during and after the war during the justice process.

From the above articles, this research can focus upon the fact that as Nepal is part of the declaration, such rights should be implemented in the country while working on the transitional justice process. The transitional justice process must be equal whether male or female. As many women were victims of sexual violence during the armed conflict of Nepal, such international documents must be analyzed so that the transitional justice institutions in Nepal can follow them.

The Constitution of Nepal (2015) also ensures rights for everyone including women (Constitution of Nepal, 2015). The preamble of the Constitution of Nepal (2015) states that there should not exist any form of discrimination on the basis of caste, religion, region, language or gender. An egalitarian society must be formed through principles of participation, economic equality and social justice (Constitution of Nepal, 2015, p. 1). The article of non-discrimination allows space for Nepal's commitments towards UDHR. Although it is not a binding declaration, it is crucial as it acts as a guiding document in Nepal's constitution and for many human rights organizations working in Nepal.

Similarly, the fundamental rights under equality in the Constitution of Nepal, 2015 also states, "No discrimination shall be made in the application of general laws on grounds of origin, religion, race, caste, tribe, sex, physical condition, condition of health, marital status, pregnancy, economic condition, language or region, ideology or on similar other grounds. The State shall not discriminate citizens on grounds of origin, religion, race, caste, tribe, sex, economic condition, language, region, ideology or on similar other grounds." (Constitution of Nepal, 2015, p. 12)

The above fundamental rights are mentioned in point number (2) and (3) in the preamble of the Nepali constitution. The fundamental rights also bar any people to discriminated on the basis of race, caste, marital status, ideology or on similar other grounds. These fundamental rights have also been highlighted in UDHR and ICESCR (UDHR, 1948). Despite taking

reference from international documents, Nepal has demonstrated a weak performance in implementing both domestic and international mechanisms.

The Comprehensive Peace Accord (CPA) was signed between the Government of Nepal and the Communist Party of Nepal (Maoist) on 21 November 2006 (Comprehensive Peace Agreement, 2006). The document also addressed women's rights. The document mentioned, "Both sides fully agree to special protection of the rights of women and children, to immediately stop all types of violence against women and children including child labor as well as sexual exploitation and abuse, and not to conscript or use children who are aged 18 or below in the armed force." (CPA, Comprehensive Peace Agreement(CPA), 2006, p. 11)

The annex also mentions that after the agreement, no acts of gender-based violence shall be conducted after the placement of Nepal Army in barracks and Maoists Army in cantonments (CPA, 2006).

According to the CPA, both sides agreed to end violence against women (CPA, 2006). Gender based violence also was ordered to be stopped immediately from both Nepal Army and Maoist Army (K.C., 2019). The accord addresses the issues of women and children in a gender sensitive manner (Baniya et al., 2017). But, implementation of the document through the transitional justice institutions in Nepal still is a slow process.

The government acknowledged the fact that women faced sexual violence during the conflict only after the National Action Plan (NAP) was introduced for UNSC 1325 and 1820 (HRW, 2014). This took place five years after the CPA was signed, which reveals the delay in transitional justice process.

Article 1 under the CEDAW also states that there shall not be discrimination against women on the basis of their sex (CEDAW, 1979). Their human rights also must not be violated in the field of political, economic, cultural or any other field (CEDAW, 1979).

Women activism against gender-based violence in Nepal started in 1991 when a six-year-old girl was raped (Daurer, 2017). This incident outraged women's organizations which led to the formation of Women's Security Pressure Group (WSPG) (Daurer, 2017). Sahana Pradhan was the chairperson and the group went on to unite women from all background towards women rights (Daurer, 2017).

Nepal should provide proper reparation and rehabilitation facilities along with physical and mental healthcare to those women who were victims of sexual violence under CEDAW. Nepal should investigate and prosecute the perpetrators whether they were state or other actors involved in the act of violence (ICTJ & AF, 2010).

Large number of women participations was seen in the armed conflict from the Maoists. The Maoists even put forward a 40-point demand to the government in 1996, which also consisted of providing property rights to women and ending patriarchy (Daurer, 2017). During the conflict, women of lower class were also promised equal pay (ICTJ & AF, 2010). They also addressed the sexual vulnerability of lower-class women (Parvati, 2004). The Maoists showed a path of courage and discrimination-free society for the people, but have remained largely unsuccessful in fulfilling their promises.

## **Transitional Justice Institutions: Extended mandates and Flawed Acts**

The TRC and CIEDP was established in the year 2015 with a two-year mandate (TRC, 2021). Both institutions were established to provide transitional justice to the victims of the armed conflict of 1996-2006 (TRC, 2021).

The two commissions were established under the Enforced Disappearances Inquiry, Truth and Reconciliation Commission Act, 2014 (Jeffery, 2019). Both the commissions being established many years post the signing of the CPA speaks volumes on how flawed and slow is the transitional justice process in Nepal.

When the two-year mandate ended in 2019, the mandate was further extended by one year (HRW & AF, 2020). The TRC had received 60,298 complaints of human rights violations and CIEDP had received 3,093 complaints of enforced disappearance until February 2018 (Amnesty International, International Commission of Jurists & TRIAL International, 2018). The commissions submitted names of commissioners in November 2019 and new commissioners were appointed in 2020 without the completion of any legal framework (HRW & AF, 2020). This shows that even years after signing the CPA, justice seems a long-lost dream for the victims of the conflict.

International Organizations such as Amnesty International, ICJ and TRIAL International called on to the Government of Nepal on the draft bill to amend the Act on Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2014 (AI, ICJ, & TRIALInternational, 2018). They said that the draft bill did not meet the international standards.

They said,

“There are critical flaws in the amendment related to accountability for crimes under international law, including crimes against humanity; in relation to sentencing, ... and in relation to the overall architecture of the transitional justice process, which must strike a balance between the four pillars of truth, justice, reparations, and measures to avoid repetition of past crime” (AI, ICJ, & TRIALInternational, 2018)

The three international institutions expressed grave concerns regarding the bill and drew the attention of the government that it needed major changes. The bill did not address the crimes against humanity in relation to sentencing or in relation to the four pillars of transitional justice (AI, ICJ, & TRIALInternational, 2018). Such concern from international institutions reveals that the transitional justice institutions in Nepal are flawed and needs to bring changes in their system and structure so that justice is served to the victims.

According to a HRW Report published in 2014 entitled ‘Silenced and Forgotten: Survivors of Nepal’s Conflict-Era Sexual Violence’, when the Supreme Court ordered for the changes to be made in the TRC bill, TRC just copied the first one into the second bill (HRW, 2014).

The CEDAW Committee had advised TRC to pay attention to social security dimension of victims of sexual violence and work in a gender sensitive manner (HRW, 2014). However, the recommendations remain yet to be implemented.



The TRC and CIEDP have largely failed in segregating the data. Authentic data on women victims of sexual violence remain largely unclear (HRW, 2014). The reintegration process for the ex-female combatants of the Maoists proved to be disadvantageous to women as many were rejected by the Nepal Army on grounds of inadequate capacity (Thapa & Canyon, 2017). The amount provided to them was also minimal for those women to start a new life (Thapa & Canyon, 2017). Such discrimination towards women due to the patriarchal societal norms have made a negative impact towards the transitional justice process for women.

According to Thapa and Cottle, 6R's are recommended to the TRC namely, reparation, reconciliation, rehabilitation, reforms in policies, reinforcement of recommendations and rest of the society working in transitional justice (Cottle & Thapa, 2017). Their paper further argued that besides the first three, the latter three are also equally important. He highlighted the role of civil society, I/NGOs and diaspora to influence the TRC to work towards reforming policies (Cottle & Thapa, 2017).

### **Gendered Considerations in the Commissions**

Section three of the TRC Act identifies rape and sexual violence as grave human rights violation. The act also recommends for legal action to be taken for those involved in those kinds of violence. Section 13(a) and (e) allow the for prosecution upon investigation (ICJ, 2021). Section 29(4) allows to try those prosecuted in the special court (ICJ, 2021). The act consists of provisions that give special priority to the complaints of the elderly, disabled and victims of sexual violence. The act also requires at least one female commissioner amongst the five members of the commission (ICJ, 2021). Although the testimony of women victims should have been taken by female staff, the TRC was silent on recruiting women during its five-year term.

The Local Peace Committees (LPCs) also had negligible number of female staff posing obstacles for women who want to register their complaints (ICJ, 2021). Additionally, women victims felt uncomfortable to reveal the details of the gruesome crimes. This shows that justice process for women has been unfair and discriminatory. At present, there is two women members at the commission (TRC, 2021). The absence of women from the commissions for such a large time depicts the mindset of societies in Nepal; revealing that the need and importance of women for serving justice for victims of sexual violence was not considered necessary.

Women participation in transitional justice institutions therefore remain crucial as victims of sexual violence were mostly women during the armed conflict. The absence of women further delays the justice process. Women official may understand and empathize with the female victims, which could help in bringing out details which could help solve the case. Maximum presence of male officials could make the female victim uncomfortable or even withdraw her case.

The Interim Report of TRC of 2012 has revealed that a separate branch that will be for disabled and victims (TRC, 2016). The report has further explained that the branch will provide a gender sensitive environment so that victims can safely record their statements (TRC, 2016). The branch is expected to provide basic food and shelter facilities to the victims along with special hearing of cases for victims of sexual violence (TRC, 2016). While TRC is expected to work with women's organizations to provide justice to women, their real work on the ground is yet to be seen.

Victims of sexual violence will be provided with appropriate psycho-social counselling has been mentioned in the report (TRC, 2016). The staff will also use proper language to address

the gender-sensitivity of the issue (TRC, 2016). The commission has also enlisted victims of rape and sexual violence as their topmost priority, but many women still are not able to get justice. If a women victim of sexual violence visits TRC to record her statement, then a female staff is required to take the statement, along with keeping her details discreet (OHCHR, 2012). If the women victim wishes a person near to her-relative or friend to be present while her statement is recorded, then it shall be facilitated (TRC, 2016). The real situation on the ground seems to be quite different as mentioned in the report, as not even one case is solved and nobody knows if a female or male staff speaks with the victim.

As mentioned in point 10.4.8 in the report, if a child is born from rape and the father remains unknown, the commission will file an application for the upbringing and education of the child (TRC, 2016). This is a very crucial point in the report but for implementation, it seems quite difficult. Identity cards with process of obtaining rehabilitation is to be provided to the victims (Baniya et al., 2017). But it is unsure if women victims were provided with identity cards. The victims are also recommended for education, employment and other facilities such as career development (Baniya et al., 2017). The TRC report also mentions that victims of disadvantaged and minority groups will be given priority, women from such groups also face the most difficulties in filing their complaints (TRC, 2016). According to a report from Accord in 2017, Dalit women have revealed that they faced many difficulties in the post conflict period for rehabilitation and reintegration (Baniya et al., 2017).

Hearing of cases of rape and sexual violence will be done through in-camera hearing (TRC, 2016). The names of the victims will be changed and details of the case will not be made public until permission is granted by the victim (TRC, 2016). Revealing names could pose more difficulties for the victim for reintegrating themselves into the society. As Nepal is mostly a

male-dominated society, it often shames women for falling prey of sexual violence, which poses more obstacles for them to start a new life.

The TRC Rules also mentions that the Investigating Officer should submit a report of the investigation after the case is completed (TRC Rules, 2016). The officer is also allowed to give opinions (TRC Rules, 2016). For cases related to sexual violence, this right of the investigating officer could prove to be uncomfortable. If the officer is a male and the victim is a female, the suggestions and opinions he might give might not yield intended results for the victim.

According to TRC Rules Chapter 5 point 31, a victim will be rescued immediately if the commission finds it necessary in due course of investigation (TRC Rules, 2016). Many women victims in rural Nepal still do not have access to such kinds of institutions. While the report elaborates that the commission can take help of the government and concerned institutions, many women are far from getting rescued. In chapter 4, point 30 (6) reveals that regarding protection of victim, witness or complainant, if the person is a woman, differently abled, children, elderly or a victim of sexual violence, then they should be provided protection without any prejudice to their psychology or dignity (TRC Rules, 2016). However, there has been instances where women have been treated inappropriately and denied to be provided with security in cases of rape and sexual violence.

As mentioned in the OHCHR Conflict Report for Nepal in 2012, police sought to mediate cases to avoid filing FIRs (OHCHR, 2012). The report also mentions that women victims and their families were harassed by the Maoists to not to file an FIR even if they had already filed one, offering compensation in return (OHCHR, 2012). While mediation and compensation are

some of the measures of reconciliation, it should not be forceful and imposing in cases of serious gender-based violence.

## **2.2 Conceptual Framework**

At first, the researcher will look at the transitional justice process in Nepal. Then various transitional justice institutions in Nepal shall be identified. Then, the researcher will seek to answer the research questions that are related to gender, global and national transitional justice mechanisms and whether the national institutions have been following a gender sensitive approach or not.

There are various international mechanisms and conventions for transitional justice. The research will find out if Nepal's transitional justice process have met the international standards or not.

The gendered approach will focus on the female gender only. The research aims to bring out the women's sexual and reproductive rights violations that took place during the armed conflict of Nepal (1996-2006). The research seeks to analyze and explore the transitional justice institutions in Nepal through a gendered approach. As this is a gendered study, information related to the male gender will not be represented.

Many women's sexual and reproductive rights were violated during the conflict. Both the then Royal Nepal Army personnel and Maoists' combatants violated those rights. Gross human rights violations took place during the conflict. Women became victims to different forms of sexual violence including rape, sexual assault and torture. This research will also look into the case studies and transitional justice processes in Nepal, trying to find out if those violations have been investigated in a gender sensitive manner.

Further, the researchers will contact key persons related to armed conflict and transitional justice including experts, ex-combatants, victim family and other officials to fill in the gaps that exist in the literature review. The researcher will primarily find gaps that exist in the implementation and adherence of various global and domestic mechanisms related to transitional justice.

## **Chapter Three: Research Methodology**

### **3.1 Research Design**

The research is exploratory in nature. Exploratory research is a type of research in which the researcher intends to explore the research questions and does not offer conclusive solutions (BRM, 2022). This type of research allows researcher to change direction according to revelation of new data (BRM, 2022).

According to the title, the research highlights upon the transitional justice mechanisms in Nepal and tried to find out the gaps that are existing in the justice mechanisms from a gender perspective. The research has adopted a qualitative approach.

### **3.2 Data Collection Methods**

Both primary and secondary data collection methods were used in the research. Primary data were collected through interviews whereas secondary data was collected through journals, articles, official documents and videos. Some grey literature was also used as a secondary source of data. The grey literature was retrieved from reputed media sites. Interviews were taken in-person or through email. They were selected through convenient sampling method. The respondents were selected according to their connection to the research topic. The respondents consisted of academicians, legal experts and victims of the armed conflict. The respondents were reached through connections of the supervisor and the researcher. As the topic was sensitive, some of the respondents were difficult to reach out.

### **3.3 Data Analysis Methods**

The data analysis was done through review and analysis of various documents and secondary sources. The information from the interviews had been analyzed and presented. The data from the interviews were cross analyzed and co-related with the gender perspective. Some case studies were also analyzed to provide an in-depth insight on the topic.

### **3.4 Ethical issues**

The researcher has followed the rules of research. The researcher has avoided any form of plagiarism. Interviews for the research were conducted through informed consent and no one was harmed at the time of the research. As transitional justice from a gender perspective was a sensitive topic, researcher addressed the possible risks and maintained confidentiality and anonymity if the respondent requested for the same.

### **3.5 Limitations**

There were some limitations to this research. It can be explained in terms of gender aspect, pandemic restrictions and sensitivity of the issue.

From the gender aspect, this research focuses on women only. The male gender affected by the transitional justice process and its mechanisms in Nepal are not addressed in this research. Additionally, there were pandemic restrictions during the initial stages of this research. Therefore, adequate number of people could not be reached for interviews.

Further, considering the sensitivity of the issue, some of the respondents were reluctant to answer the questions. One of the targeted respondents from TRC could not be reached due to reluctance to disclose such sensitive information of the armed conflict.



## **Chapter Four: Data analysis and Findings**

### **The Need for Justice**

The armed conflict ended in 2006 caused massive life damage. Amongst the records, it reveals that 1,013 women were killed, while 2,087 were abducted (Sthapit & Philippe, 2017). There is few verified records of crimes of sexual crimes and violence that were committed during the insurgency (Sthapit & Philippe, 2017).

While the Comprehensive Peace Accord (CPA) was signed on 21<sup>st</sup> November 2006 with the Seven Party Alliance and the Maoists, women participation remained negligible during the peace process (Sthapit & Philippe, 2017). The UNSCR 1325 required women to be a part of the peace process. But there was no women participation in the 12-point understanding that was signed in 2005 in Delhi, nor in the 8-point understanding in 2006 (Shrestha & Upreti, 2017). Not a single woman was present while signing the Comprehensive Peace Accord (CPA) as well (Shrestha & Upreti, 2017). During the ceasefire in 2003, only one woman, Anuradha Koirala was present in a nine-member committee (Sthapit & Philippe, 2017). Similarly, for the agreement for 25-point Code of Conduct in 2005, only one woman was present. During the formation of the Interim Constitution in 2007, only four women were present in a 16-member team (Sthapit & Philippe, 2017).

The poor number of women participating in the peace process has been found to be a major backlash for delayed justice for women who were victims of sexual violence. Women have been largely marginalized and left out during the peace and reintegration process. As women were more exposed towards sexual violence during the conflict, their voice must have been heard to implement gender friendly policies and justice mechanisms. But higher participation

from men have delayed the justice process, making justice institutions more out of reach for women.

The findings also include case studies and recommendations so as to give an insight into the cases of sexual violence that took place in the time of the armed conflict. It is also presented to highlight the brutality and extent of crime that was conducted; to bring to light the urgency that transitional justice institutions must demonstrate to provide justice to the victims.

### **International Organizations have highlighted flaws in domestic transitional justice institutions**

Organizations such as Advocacy Forum-Nepal, Trial International and REDRESS in 2014 expressed their deep concern towards the transitional justice process in Nepal. They pointed out the flaws in the TRC Act and immediately advised them to make changes. One of the recommendations is as follows:

“Remove Section 22 of the TRC Act that grants power to the commission to mediate between victims and perpetrators even in cases of crimes under international law and gross human rights violations.

Remove Section 25 (2) of the TRC Act that bars the commissions from making any recommendation for prosecution in cases where reconciliation is undertaken.”

Another recommendation was to amend Section 26 of the TRC Act. Section 26(2) does not allow commission to grant amnesty in cases of rape and other crimes of serious nature; whereas section 26(4) allows commission to grant amnesty in cases of gross human rights violation committed during the armed conflict, where the perpetrator commits to not repeat such actions in the future (OHCHR, 2014). The sub-sections with one single section have contradictions within itself. It has to be amended to prevent crimes under international law and human rights violations. Criteria for which acts qualify for amnesty should be clearly specified. These

changes were submitted in a report to UN by the aforementioned organizations. But the concerned institutions seem less concerned about these crucial changes.

Removing those sections and making amendments is important to ensure full justice for the victims. As section 22 allows mediation in gross human rights violations, it could act as a barrier for the victims. In a similar light, another section, section 25 bars the commission to make any recommendation for prosecution where reconciliation is taken. If any victim is going under the process of reconciliation, then the victim also should be allowed for process of prosecution as well. The commission must be allowed for allowing multiple processes for justice. Such barriers only refrain victims from attaining full justice.

According to Rukmanee Maharjan, the OHCHR has requested Nepal to make changes in the TRC Act, through a technical note (Rukmanee Maharjan, personal communication, March 4, 2022). They have said that the act does not comply with the international standards. There was a possibility of blanket amnesty in the act (Rukmanee Maharjan, personal communication, March 4, 2022). Blanket amnesty refers to the abolition of any offense committed by the government, resulting in wiping out the criminals charged with the crime (LegalDictionary, 2022). The flawed act gave power to the commission, rather than to the victims and their consent. The Supreme Court of Nepal has also ordered the changes. There is lack of transparency in the progress of TRC. TRC tried to amend the laws(act), but no significant changes were made. The victims voiced their concern in changes in the act before appointing any commissioners, but the TRC sidelined their voice and appointed officials without any amendment in the act.

The changes in the act are even more important for women victims. As there exists chances of impunity, it is crucial that the act is amended. Further, Laxmi Pokhrel adds, during second time

when the commission was formed, there was a chance for the government to change the processes and staff (Laxmi Pokhrel, personal communication, March 23, 2022). If they had done so, they would have won the hearts of international community and victims. But they just changed the staff and the process remained the same. She added that the staff lacks the qualifications and competence. Lack of victim centric mechanism at the TRC has made the whole process even more difficult (Laxmi Pokhrel, personal communication, March 23, 2022). The case of Purna Maya vs Nepal was taken to the UN Human Rights Committee in 2012 (REDRESS, 2012). Previously, Purna Maya had reported her case of rape at a local police station at Dailekh (HRW, 2014). She did so during the time of conflict, but there was no progress (HRW, 2014).

She along with Advocacy Forum went to register a FIR in the police station in the year 2011, where the police denied saying that the 35-day limit has already been crossed (REDRESS, 2012). When complained with the Chief District Officer (CDO), the person also denied verbally without any written order (HRW, 2014).

The case was then taken to the Supreme Court, where the court gave the decision that the party came to court without following legal procedures (HRW, 2014). Purna Maya was asked to “do as provided by the law” (HRW, 2014). Finally, after all domestic measures were exhausted, she sought help of UN Human Rights Committee.

The Human Rights Committee gave its decision in 2017, stating that Nepal should criminalize torture and remove other barriers to justice for rape victims (AF, 2019). The Committee also ordered Nepal to properly investigate the case of Purna Maya and provide her with adequate compensation, including her medical expenses (AF, 2019).

Following the decision from the Human Rights Committee, Nepal did criminalize torture in its criminal code, but still lacked in terms of professionals investigating into cases of sexual violence (REDRESS, 2012). There was lack of trainings provided to police and other authorities. Victim protection was also a matter of low concern. Increased impunity took place as a result.

The Special Rapporteur of the Human Rights Committee was informed regarding poor progress of the case in 2019 (AF, 2019). The committee suggested for proper investigation into the facts of the case along with punishment for the perpetrators (REDRESS, 2012). The suggestions also included to include qualified professionals in the course of investigation along with contacting Purna Maya for adequate compensation (AF, 2019). Furthermore, the 35-day limitation to report cases of rape was considered too short (AF, 2019).

During the 37<sup>th</sup> session of the UPR Working Group, Nepal was questioned on why Nepal has not still amended the TRC Act as suggested by the Supreme Court (Giri, 2021). The then foreign minister Pradeep Gyawali replied that the Nepal government is steadfast in the process and that there will be no blanket amnesty in cases of gross human rights violations (Giri, 2021). International organizations have repeatedly expressed their concerns but it seems that politics and power game has become more powerful than the need for justice. The concerned actors seem concerned for their own issues only while ignoring concerns of the state. While victims await justice, they cling on to hope that maybe one day, truth will prevail.

### **Flawed legal system**

The Civil Code of Nepal from 1963 was amended in 2002. After many protests and voices raised and after many years, changes were made (Daurer, 2017). This slow development reveals that there are many gaps in the justice system of the country and maybe justice for the

women victims could be served later than expected. The kin of women who were raped, killed or disappeared sought answers from the government. But the perpetrators are linked to powerful politicians and the parties did not address the issue to show solidarity (Upadhyaya & Miklian, 2017).

After the conflict, many women fled their villages as they were victims of sexual violence. Many took shelter in slums of Kathmandu. It is said that more than 70,000 women, aged between 15 and 30 years of age opted for prostitution to earn their livelihood (Thapa S. &., 2017).

The UNSCR 1820 considers the act of rape and sexual violence an act similar to that of genocide. It also mentions that amnesty provisions must be excluded from the justice process in such cases (ICJ, 2021). According to the CEDAW Committee General Recommendation, it requires to investigate and punish perpetrators in cases of sexual violence by state or non-state actors along with a policy of zero tolerance (ICJ, 2021). Despite being a part of such international conventions, the TRC has failed to implement gender friendly policies and conduct effective investigation. The information of medical reports and other crucial documents of the victims have not been properly acquired and stored over the period of time. The Criminal Code of Nepal, 2017 allows rape cases to be perpetrated against woman or minor girl that includes sexual intercourse and vaginal penetration. The previous mandate to report rape cases was a mere 35 days (ICJ, 2021). As the period of war has exceeded one year, the mandate of one year also seems ineffective.

Fulmati Nyaya was aged 14 when the armed conflict took place. She was tortured, raped and faced other forms of sexual violence while captured in barracks by the then Royal Nepal Army

in the year 2002. She was also subjected to forced labor and forced to sign documents declaring that she was involved in terrorist activities.

For her case, the Human Rights Commission (HRC) gave a landmark decision in her case on 20 May 2019. The HRC gave a decision against Nepal (TRIAL, 2019). The decision revealed that Nepal violated section 8(3) of ICCPR and ordered Nepal to remove any obstruction in the justice process for victims of sexual violence.

According to Madhavi Bhatt, the Constitution of Nepal 2062/63 and 2072 BS are crucial documents for Nepal (Madhavi Bhatt, personal communication, March 21, 2022). The TRC and CIEDP acts are formed on the basis of the Nepali constitution. But she believes the commissions and the government is lacking behind in their work; adding that Nepal is far from an equal society (Madhavi Bhatt, personal communication, March 21, 2022). The Maoist conflict was to make Nepal free from discrimination, which was achieved through state restructuring but full justice is not yet achieved (Madhavi Bhatt, personal communication, March 21, 2022).

The Supreme Court of Nepal had issued a ruling in 2014 should enact legislation against serious cases of human rights, which included cases of rape and sexual violence (ICJ, 2021). The Court also ordered to remove the statutory limitation for reporting the cases, but the institution has failed to implement it. The delay in investigation of such kinds of cases could give rise to more such cases. It could also increase the distrust of the public in such justice processes and institutions.

## **Gender in Amnesties, Reparations and Compensations**

In the TRC Act, Section 26 prohibits any amnesty towards cases of rape and sexual violence committed during the time of war (ICJ, 2021). However, Section 22 allows the TRC to act as a mediator between the perpetrator and victim (ICJ, 2021). This allows an upper hand for the perpetrator and seems to be unfair to the victim. The Supreme Court has also realized that the TRC has flawed in this part and has no right to mediate between the perpetrator and victims in such cases, therefore has ordered for changes in the act.

After the signing of the Comprehensive Peace Accord (CPA) in 2006, an Interim Relief Plan (IRP) was made. But it did not include cases of sexual and gender-based violence. The CEDAW Committee has also recommended the government to provide women victims with effective relief and reparation, that includes restitution, compensation and rehabilitation (ICJ, 2021). The Human Rights Committee has also called on the same. Despite these calls, the government has failed in implementing the required procedures through the institutions, causing delays in justice for the victims.

According to the TRC Rules Chapter 4, 14.2 (b) mentions that if there is a women victim, statement must be recorded by a woman employee as far as possible (TRC Rules, 2016). Similarly point 14.2 (c) elaborates that statement or testimony of the victim can be made to letters rogatory or through electronic medium through a nearby government office, whereas point (d) elaborates that if the victim cannot speak or write arrangements must be made to translate their statements accordingly (TRC Rules, 2016). Even though such rules are present in the commission, they are rarely followed in the ground.

Similarly, Chapter 5, 32.3 explains that if the investigation from the commission finds out that the victims need mental treatment or psycho-social counselling, then they will make



recommendations for the same (TRC Rules, 2016). However, while mentioning the criteria for compensations and concessions in further points, sexual violence is nowhere to be mentioned. Broad terms such as actual loss, torture, physical and mental pain have been mentioned that does not address the issue of gender based sexual violence.

Devi Maya Nepal was with her three-year-old daughter at home when she was raped by six Royal Nepal Army personnel. The incident took place in the year 2002, whereas her case was filed in the HRC in the year 2015 (TRIAL, 2021).

In the same year, Devi Maya had filed a case in the Supreme Court seeking relief. Her case is pending in the court and yielded no results. She then filed a case at the HRC, saying that she is a victim of violation of International Covenant on Civil and Political Rights (ICCPR).

The OHCHR gave decision for the case on 22 November 2021. The decision was in favor of Devi Maya. The decision had said that she had been a victim of rape and sexual violence and that Nepal has failed to conduct an impartial investigation of the case. Furthermore, it called upon Nepal for failing to implement laws that decreased the chances of impunity. It required Nepal to provide Devi Maya with effective remedy, punish those responsible for the crime and prevent future reoccurrences.

Rukmanee Maharjan elaborates that when the commission was being formed, sequencing of the process was set up, where it was decided that TRC would first conduct its investigations and then move forward with reparations (Rukmanee Maharjan, personal communication, March 4, 2022). This conditioning is wrong. She added that if cases of other states are considered all four pillars of transitional justice move parallelly (Rukmanee Maharjan, personal communication, March 4, 2022). TRC would be working and reparations would be given side by side, which did not take place in Nepal.

International transitional justice institutions have a ‘gender unit’ to address concerns of women victims. According to Rukmanee Maharjan, if there was presence of a gender unit in Nepal, then the transitional justice process would have been more effective (Rukmanee Maharjan, personal communication, March 4, 2022).

According to a research report by Global Network of Women Peacebuilders (2020), patriarchal values have found to be one of main reasons for women becoming victims during and post conflict (Rana & Rasaili, 2020). Further, lack of recognition of sexual violence as violation of human rights was considered as a major obstacle for women victims seeking justice (Rana & Rasaili, 2020). If the state seriously addressed cases of sexual violence and included women in the peace process, then most of the cases would have been solved. Proper mechanisms and channels if established, would have opened new avenues to resolve such sensitive issues. But the state is seen lacking in taking forward the process of transitional justice, which further delays justice for the victims.

### **Health and Counselling of victims**

The victims of sexual violence have received less in the health care and counselling sector. The government and transitional justice institutions should have considered that the aftermath of such kind of violence during war has a negative impact on the victims’ mental health.

The amount of mental torture and trauma that victims of sexual violence face are unimaginable. The failure of transitional justice institutions to realize such gaps has caused much delay in the justice process. Victims of rape and sexual assault and violence may suffer from depression and other mental health issues. They must be provided with proper counselling. However, little or no efforts have been made to provide psychosocial and other counselling to the victims.

According to Gita Rasaili, there has been little or no counselling for the victims of sexual violence (Gita Rasaili, personal communication, March 27, 2022). The victims have made groups and talk to each other to comfort themselves.

It is present that section 23(2)(a) of the TRC Act says that the victim and family should be provided with adequate health facilities, if the commission considers it appropriate. In the regulation of the TRC, Rule 33(1)(e) mentions that the commission can recommend the government to provide treatment to weak victims in government hospitals, but the fees should not exceed one hundred thousand rupees (ICJ, 2021). This all boils down to the fact that the government and transitional justice institutions have failed to address sexual violence during the time of armed conflict as a gender sensitive issue. The bracket of money to be spent on victims, the upper hand of the commission on the decision regarding whether or not a victim needs health care or not shows the patriarchal mindset being fueled up in the justice institutions. The commission needs to take a gender sensitive approach and fast track such cases so that the victims get justice.

Women need to be seen as more than just care-givers and support for the household. The role of women is much more which was seen as female combatants in the Maoists. They should not be considered as second-class citizens. At a time when the then Royal Nepal Army did not recruit female soldiers, the Maoist rebels accommodated female combatants (Shrestha & Upreti, 2017). But sadly, women had to face sexual and gender-based violence during the conflict as they opposed to their prescribed roles of being caregivers and house makers.

Training for the commissioners from the TRC also seem crucial for such issues. The TRC Act and Regulation does not have any provision for training (ICJ, 2021). While the training could

help in getting the right data and information from the victims, the presence of female staff could further help in extracting sensitive details of those gruesome incidents.

The armed conflict has posed difficulties from different angles for victims of sexual violence. According to a shadow report by Himalayan Human Rights Monitors (2011), a psychosocial counsellor was assigned to the District Women Development Offices, but they were inadequate in terms of area and lacked in strict implementation (HimRights, 2011). Additionally, the report adds that there is no provision from the Government of Nepal (GoN) to provide psychosocial counseling to victims, especially those of sexual violence (HimRights, 2011). This itself shows that the government completely ignored and turned a blind eye to cases of sexual violence. The government and concerned bodies remained silent during the period of immediate post conflict, when victims were in most need for counseling and assistance regarding healthcare.

### **Gender based sexual violence was used as a tool of war**

According to an article by Risal, women are often sexually assaulted and raped during times of war to bring their morale down physically and mentally (Risal, 2020). It is a strategy that is used to bring fear and terror along with establishing military masculinity (Risal, 2020). Male militants from both sides have abused both civilian and combatant women to spread fear. While military came searching for the male members of any household, they used to blindfold women and girls of the house and rape them (Risal, 2020). The article presents that sexual violence was used as a weapon of war. Many women were put down to guilt and shame, many were forced to marry their rapists; along with other forced marriages (Risal, 2020). Some women also did not complain due to the fear of naming and shaming by the society.

The government has set up community and district level service centers for victims of gender based sexual violence (UPR, 2020). However, the gender-based violence cases that were committed during the armed conflict was handed over to the TRC and CIEDP (UPR, 2020). Subhadra Chaulagain was seventeen when she was killed by then government forces. A group of then RNA broke in her house, identifying them as brothers. While the soldiers identified her as 'Asmita', her family supported her and said that she was Subhadra and not Asmita (HRW, 2004). But the soldiers disagreed and pulled her hair and brought her outside the house, where she was interrogated if she was a Maoist. While she explained that she was with the Maoists a year before, but now she is not a Maoist, she was killed accusing her that she was trying to escape (HRW, 2004). Further, the soldiers also harmed her father to the point of unconsciousness (HRW, 2004).

This case shows extrajudicial killing by the government soldiers but there is no information if she was just killed or was sexually assaulted and then killed.

Women who faced sexual violence had lack of support from the state. They suffered physically and mentally. Their daily lives were affected and many women also suffered from prolonged health illnesses such as swollen uterus, urethral discharge and tumor in uterus (Risal, 2020). This shows that the government and concerned institutions have not been considering the issue as a sensitive one. Victims of sexual violence should have received immediate medical and psychological attention. But the response has been slower and disappointed the victims. The UPR report of 2020 reveals provisions of safe and confidential environment for women and girls to report their cases (Universal Periodic Report, 2020). Provisions for protecting the privacy of victims also have been made, but little of it is seen in implementation.

A 24-hour helpline named “*Khabar Garau 1145*” (Let’s Inform 1145) was established by the National Women’s Commission (NWC) for victims of gender-based violence (UPR, 2020). It provided women with shelter, psychological services among others (UPR, 2020). Such helplines should include the victims of the armed conflict as well. Fully relying on the commissions would be a burden to them. Mobilizing and distributing responsibilities is a must to make justice and services around it accessible to all.

### **Lack of commitment from the government and concerned institutions to solve cases of gender based sexual violence**

Lack of political will from the parties and government has revealed that gender equality is far-fetched dream and that sexual violence during conflict was a matter of less concern to them.

Risal (2020) in her article has revealed that there is less co-ordination between the ministries and commissions and they have not moved forward with their work. Had they solved the cases related to sexual violence, then maybe more women could have come forward and expressed their trust with the commissions. In section 7.1.3 of the CPA, it says that the government orders for an impartial investigations and lawful actions against the perpetrators along with encouraging impunity (CPA, 2006). It also allows for relief for families of victims of torture, conflict and enforced disappearance (Risal, 2020). However, the state and the institutions have largely failed in establishing truth and providing justice to the victims.

According to Rukmanee Maharjan, she said that Nepal has not ratified the CAT Commissions and not a part of ICC, therefore is far from those mechanisms (Rukmanee Maharjan, personal communication, March 4, 2022). Nepal lacks in access to international avenues. Nepal mostly relies on domestic mechanisms as they do not have the competence and jurisdiction for such mechanisms. She further added that Nepal had issues in forming commissions post the signing

of CPA. First the act was formulated and then the commissions (Rukmanee Maharjan, personal communication, March 4, 2022). After the formulation of the acts, it got criticisms from the victims and society as it had provisions of amnesty. Then, the CA was dissolved, resulting in nullification of the acts. After the second CA, another similar act was made and released in 2014 and commissions was formed in 2015(Rukmanee Maharjan, personal communication, March 4, 2022).

The OHCHR in 2011 made a press release stating dissatisfaction for the appointment of Agni Sapkota as a CA member along with another member Suryaman Dong, both whom are involved in the murder case of Arjun Lama (OHCHR, 2011). Durj Kumar Rai and Victor Rana was also promoted in their respective police and army positions despite Rai being involved in killing of demonstrators in 2006 and Rana being involved in detention, torture and disappearances at the Maharajgunj barracks in 2003/4 (OHCHR, 2011). Agni Sapkota was appointed the speaker of the House of Representatives (HoR) unanimously on 26 January 2020 (OHCHR, 2011). With all these violators being in crucial political positions, justice is likely to be denied for males on the ground, making it more difficult for females.

According to Pun, the transitional justice process has largely ignored women, as many cases of women were not given priority (Laxmi Pun, personal communication, March 27, 2022). Women were more vulnerable during the time of conflict and faced a lot of torture and exploitation.

She added “If we look at the case of martyr families as well, they were compensated in installments. People who became differently abled were also compensated in installments with small amounts. The victims were categorized, but victims of sexual violence never got their share in compensation. Lack of state responsibility comes out clearly in this kind of issue”

(Laxmi Pun, personal communication, March 27, 2022). She further revealed that women victims were never provided with counselling facilities. As many women faced violence, counselling and mental health was important. Overall, the victims suffered a lot. Many were illiterate, so they could not come forward to file a complaint (Laxmi Pun, personal communication, March 27, 2022). Those who came forward also got no justice (Laxmi Pun, personal communication, March 27, 2022). Pun suggested that the state should have provided a means to run an independent life through economic and financial support.

Reena Rasaili, a 17-year-old Dalit girl from Kavre was gang raped and killed by ten soldiers in 2004. Ten plain-clothed soldiers came at Rasaili's home at midnight and forcefully took Reena out of the house. They raped her for five hours. Her body was found the next morning at the backyard of their house. According to an article in The Kathmandu Post, it is said that she was shot thrice- on her head, breast and eye (Chauhan, 2017).

Gita Rasaili, Reena's sister has been advocating for the issue since a long time. She has been advocating for many victims like her sister and has called upon various transitional justice institutions to provide justice for her sister (Chauhan, 2017). It has been a long time that Reena's family has been fighting for justice.

Furthermore, Gita Rasaili added that there were inefficiencies in the way the TRC carried out the investigation (Gita Rasaili, personal communication, March 27, 2022). Quoting her from an interview, "The TRC has said that "they have" conducted investigations for about 1000 cases. But the officials haven't reached to us. Even if they have done some investigation, it wasn't even of that level that you're asking. They used to ask to victims "Did it really happen to you?" (Gita Rasaili, personal communication, March 27, 2022). As most of the officials were from the party and the investigating room was big, where everyone could hear, there was



a danger of the perpetrator or the party associated being alerted. In this way, the process is not gender sensitive and unjust for victims of sexual violence” (Gita Rasaili, personal communication, March 27, 2022).

In the same light, Madhavi Bhatt expressed that the government should address the plight of the victims so that all the victims can get justice (Madhavi Bhatt, personal communication, March 21, 2022). There are still many that haven’t received compensation, government and concerned parties must pay attention to their demands (Madhavi Bhatt, personal communication, March 21, 2022).

It is definitely not an easy task as a long span of time has gone past the armed conflict. Especially for victims of gender based sexual violence, it is more difficult. But transitional justice process must carry on and progress. Thus, the government, concerned parties, authorities, civil society, commissions and the I/NGOs must work together to achieve a peaceful environment where all victims have received justice.

### **Lack of proper records and reports**

Most cases of rapes and sexual violence during the time of conflict were either under-reported. Many women did not report their cases due to fear of being stigmatized by the society and community (HimRights, 2011).

In a study by the International Center for Transitional Justice (ICTJ) in Nepal, it has revealed that only 3% of people thought that punishing the perpetrators should be made a priority (Aguirre & Pietropaoli, 2008). Other priorities included compensation (24%), education (17%), basic needs such as food and shelter (16%), health and medical facilities (12%) and employment (8%) (Aguirre & Pietropaoli, 2008). The least priority being given to punishing

the perpetrators shows gender discrimination. Women who suffered from sexual violence will have no voice if such cases are given less priority.

According to Laxmi Pokhrel, social stigma and blaming for women for acts of sexual violence are widespread (Laxmi Pokhrel, personal communication, March 23, 2022). The initial time period for reporting rape, i.e., 35 days also acted as a major obstacle, which has been changed recently. The appointment of officials at the commissions such as TRC are also from the members or cadres of the political parties (Laxmi Pokhrel, personal communication, March 23, 2022). Therefore, the commissions haven't been able to gain public trust and carry out their activities in a transparent manner.

The government security forces have been responsible for the extrajudicial killings of approximately 2,000 people since 2001, as reported by NHRC and other human rights organizations (HRW, 2004). There is no clear data available on sexual violence and rapes that destroyed lives of many women during the time of conflict.

There were reportedly 322 cases of sexual violence identified amongst more than sixty thousand cases registered in the TRC (Rana & Rasaili, 2020). The then Ministry of Peace and Reconstruction did not include cases of sexual violence in its second quarterly report in the fiscal year 2010/11 (HimRights, 2011). Such failure from a government body to acknowledge the issue of sexual violence comes as a major barrier for women seeking justice. If government bodies are not interested in keeping proper and right records, then there is no question of victims coming to report their cases. Therefore, recorded cases presumably remain much lower than the real number of cases.

Jayakali and Hitkala Dangee were sleeping when the RNA came knocking into their makeshift accommodation. The armed soldiers woke them up and accused them of being Maoists. While

upon asked to cook food for them, Hitkala went on to cook food. After they ate, they told the women that they were searching for Maoists in a nearby training center and asked her to show them the way (HRW, 2004).

Hitkala asked one of the other women to look after her son and took Jayakali with her so that she would not be alone with the soldiers on the way. The bodies of the two women were found seventeen days later stuffed in a grave (HRW, 2004). There were no bullets on their bodies but their faces had bruises. Due to lapse in time and lack of forensic evidence, it could not be established if they were raped and killed; although locals had said that they were raped and strangled to death (HRW, 2004).

These kinds of cases show that women were treated as mere things, as if they can be used and thrown. A young son never got to see her mother again, with a pain so unbearable and a scar so deep. The slow transitional justice process has failed to give justice to such innocent women, while the guilty soldiers are out free. If the evidences were collected on time and the concerned agencies worked towards providing justice to these women, maybe their families could live at peace. Delayed transitional justice for victims of sexual violence has only made the lives of the victims and family more difficult.

A study by IHRICON has revealed that there was any real investigation done for cases related to rape and sexual violence (OHCHR, 2012). People who filed a complaint were given small amounts of money to keep quiet, which included a rape case of a thirteen-year-old girl. (OHCHR, 2012). The CEDAW Committee also urged the government to take action and provide justice to victims of sexual violence. The official statement had revealed that women were having difficulties in filing complaints and that no investigations have been progressed in the right directions. It has caused many difficulties for women including post-traumatic

stress disorders and other psychological problems (OHCHR, 2012). But even after sending an official and concerning statement to the government, women victims await justice till date.

Additionally, according to Laxmi Pokhrel, women who sought to report their cases with the local authorities registered their cases in an improper manner (Laxmi Pokhrel, personal communication, March 23, 2022). Officials registering the cases asked irrelevant questions and completing the process in a hurry (Laxmi Pokhrel, personal communication, March 23, 2022). No proper environment was present for the victims to put forward their concerns.

### **Lack of Accountability**

Along with the transitional justice institutions, the police and the judicial system also must work hand in hand to provide justice to the victims. A victim can file a First Information Report (FIR) at the nearest police station. (OHCHR, 2012). According to the OHCHR Conflict Report for Nepal, 2012, police have denied to register an FIR for the victims, citing reasons that there were poor evidences and that the cases would be taken up by the TRC (OHCHR, 2012). The report also reveals that many victims and their families refused to file and FIR due to failed co-operations by the police (OHCHR, 2012). The weak justice system of the country has been exposed in such circumstances.

Sima's case is one of the 60,000 cases registered at the TRC (Manandhar, 2020). She was 12 when three government soldiers raped her (Manandhar, 2020). Her family married her when she was 16 as society would see her in bad light if they came to know the truth (Manandhar, 2020). Although the government promised financial relief to the victims, victims of sexual assault faced more difficulties than others.

Sima could not get her case registered in the first post-conflict relief program as the government did not acknowledge sexual violence in the conflict until 2014 (Manandhar, 2020).

The government passed a law in the same year i.e., eight years after the conflict, so that victims of sexual violence could get justice. This shows that even the peace process was favored by powerful people and mindsets that did not consider sexual violence during the conflict as a grave violation of human rights. Sima was able to file her case only in 2018 (Manandhar, 2020).

It is said that the TRC is lacking in human resource and logistics (Rana & Rasaili, 2020). The employees have said that they have not got proper data and legal framework that aligns with the decision of the Supreme Court (Manandhar, 2020). Some experts have also revealed that the government should work together with the officials and the stakeholders so that they can win back the trust of people. The trust of people has been shattered as the justice process has remained dormant and highly ineffective (Rana & Rasaili, 2020).

Trust holds an important place when victims move forward to seek justice. According to a research report by Global Network of Women Peacebuilders, Nepal's justice and administrative system is mostly helmed by men, who deny to acknowledge their cases (Rana & Rasaili, 2020). Further, the report reveals that women's access to justice is further hampered by their lack of access towards resources (Rana & Rasaili, 2020).

The Police Act, Armed Police Act and Army Acts grant the personnel immunity from certain activities conducted during their course of duty, although there is no immunity for rape, torture and other such offences in the act (OHCHR, 2012). However, any act that was conducted in good faith during the armed conflict by the security personnel were granted immunity (OHCHR, 2012). This was granted under the TADA [Terrorist and Disruptive Activities (Control and Punishment) Act] and TADO [Terrorist and Disruptive Activities (Control and Punishment) Ordinance] (OHCHR, 2012).

The inquiry commissions are required to make their reports public. But the commissions have failed to do so. With political parties withdrawing the cases and protecting their people, the general public is far away from receiving justice.

According to Gita Rasaili, Nepal signed the documents of international instruments just to show to the international community (Gita Rasaili, personal communication, March 27, 2022). She further adds, “International instruments itself have faults in them. The international instruments that you mentioned doesn’t have any provisions for countries who don’t implement it properly. There is no provision of punishment for countries not abiding by those instruments. Since there is no punishment, there is no fear from the leaders.” (Gita Rasaili, personal communication, March 27, 2022). She said that there is no use of the international mechanisms if the state itself is unaccountable. The matters of ex-combatants and victims was not addressed and government should be answerable, but they have just taken a back seat (Gita Rasaili, personal communication, March 27, 2022).

The Court Martial proceeding for the army was conducted behind closed doors until 2006. The closed-door practice is still prevalent, until cases are transferred as Special Court Martial (OHCHR, 2012).

The Maoists also had their own “People’s Courts” during the time of the conflict, but adequate punishments were not given (OHCHR, 2012). Records of the cases were not kept properly and biasness was shown if the cadre belonged to the Maoists (OHCHR, 2012). Victims of serious crimes such as sexual violence and torture will not get proper justice in presence of such kinds of justice system. As everyone is equal in the eyes of laws, every victim must be treated equally without any form of bias.

### **Political connections**

The changing governments have been withdrawing cases time and again citing clause 5.2.7 of the CPA. Since 2008, over 300 cases have been withdrawn by the changing governments (OHCHR, 2012). The cabinet of then CPN-UML government in October 2009 ordered withdrawal of 24 cases and further 282 cases in November 2009 (OHCHR, 2012). The then Maoist government in March 2012 withdrew 34 cases against 300 individuals (OHCHR, 2012). These data reveal that “political connections” play an important role in granting immunity to criminals as well. The withdrawal of these political cases could be a huge loss to the victims, further pushing them away from justice.

The political leaders were not been able to implement the agreements of the CPA in an efficient manner. The politicization of the governing system is one of the concerning aspects of peace not being able to be restored in Nepal (Upreti, 2012). Many perpetrators have been in political protection and have been used for party benefits by different political parties, time and again. The monitoring aspect was extremely crucial for the transitional justice process in Nepal (Upreti, 2012). But no proper mechanisms were established to carry out the process. The Parliament took the initiative to monitor the peace process at one point, but became unsuccessful as it contrasted with its traditional role (Upreti, 2012). Further, the role of UNMIN was considered crucial. But it largely failed to monitor the armies of both the sides (Upreti, 2012). Until and unless the political parties and their leaders keep their differences and vested interests aside, the transitional justice process will continue to suffer.

According to a report by Global Network of Women Peacebuilders, the justice process is found to be “elite friendly” and not “victim friendly”, that is those with position and power only get access to justice (Rana & Rasaili, 2020). This is found true as many police personnel refused

to register cases against people of powerful positions (Rana & Rasaili, 2020). The inclination of concerned agencies towards people of power and position poses difficulties and threats on the path of victims to get justice.

Maina Sunuwar was severely tortured and killed in the army barracks in 2004 (AF, 2010). A group of RNA soldiers arrested her, then detained her and subjected her to torture (AF, 2010). After the case gained international attention, OHCHR and Advocacy Forum helped Sunuwar's family get justice for their daughter (OHCHR, 2006). After much pressure, the perpetrators were sentenced for a mere six months (OHCHR, 2006).

The body of Sunuwar was unburied by the NHRC and UN High Commission on Human Rights in the Panchkhal barrack premises in 2007 (AF, 2010). OHCHR officials had to face various difficulties while entering the barracks. The staff from the barracks did not co-operate with the staff of OHCHR (OHCHR, 2006).

The case was reopened in 2015, after which the four perpetrators from the Nepal Army- then Colonel Bobi Khatri, Captain Amit Pun, Captain Sunil Adhikari and Captain Niranjan Basnet were issued arrest warrants (AF, 2010). All of them worked at Birendra Peace Operations Training Centre at Panchkhal (AF, 2010). Three of them were given life imprisonment by the Supreme Court in 2017 (TKP, 2017). Then Major Niranjan Basnet was acquitted citing that he was only following orders (TKP, 2017).

The fact that it took thirteen long years for Sunuwar's family to provide her with justice shows the lacking in the judicial system and the transitional justice mechanisms in Nepal.

Laxmi Pokhrel elaborates that the commission are formed according to the interest of the political parties. As the staff are also political appointees, they will work in the interest of the parties and not the victims, which doesn't match with the commission's norms. The



commission lacks upon qualified personnel, she adds (Laxmi Pokhrel, personal communication, March 23, 2022).

According to Gita Rasaili, issues of transitional justice have been highly politicized (Gita Rasaili, personal communication, March 27, 2022). Every party that is concerned with the justice process seem to be scared because all parties were involved in the conflict one way or another. She said, “They are scared that if one political party member will get punished then it could call for another member of another party as well. Further, the major political parties involved in the conflict are one now in the coalition government. So, the process is going to be difficult ahead” (Gita Rasaili, personal communication, March 27, 2022).

Furthermore, corruption by the leaders also play an important role in delayed justice. The cases of sexual violence take almost 5-6 years to be considered in the court (Rana & Rasaili, 2020). Such long periods exhaust all resources which makes the process more difficult for the victims. There have been cases of bribes being asked by officials to take forward the case of sexual violence (Rana & Rasaili, 2020). Such incidents prove that there is lack of transparent methods in which justice is served. People of position misused their power, resulting in increased impunity. Such practices must be stopped and disregarded so that the accessibility and faith in justice mechanisms can be restored.

### **Lack of education and awareness**

There is lack of education and awareness surrounding the topic of gender based sexual violence. The acts of violence that were committed against the females were largely under-reported due to societal stigma and illiteracy of the female victims.

Risal (2020) has argued that sexual violence was considered as an expected consequence of war rather than a criminal offense. The author has also presented case studies and informants

from focused group discussion that reveal their pain and anguish. Many victims who recognized the perpetrators were also denied from justice as the perpetrators were not punished. Even though there is no provision of amnesty for the perpetrators of rape and sexual violence according to the CPA, the criminals have been walking out freely and women are awaiting justice. This is due to the denial of state and patriarchal system that is deep-rooted in societies and country.

According to Gita Rasaili, there are few books in Nepal's education system that mentions about the armed conflict (Gita Rasaili, personal communication, March 27, 2022). She added that students are educated on kings, but not on the armed conflict (Gita Rasaili, personal communication, March 27, 2022). She highlighted on the importance of educating the upcoming generation regarding the armed conflict of Nepal. Gita Rasaili said, "We have certainly made a network and working towards lobbying in national and international organizations, along with pressing this issue into the education system. We are especially working towards the next generation and young people, so that we could act as a connector in this process. We are also working as a pressure group for the government so that they work towards making stronger policies" (Gita Rasaili, personal communication, March 27, 2022).

Moreover, Gita Rasaili said that she and the organization she is working with pressed such kinds of matters to the UN (Gita Rasaili, personal communication, March 27, 2022). Quoting her, "We sometimes request the UN to speak on Nepal and its performance on transitional justice process. The state might not be accountable but we as citizens must be accountable ourselves. We are raising our voice not only for our families but for everyone, so that such incidents never occur again" (Gita Rasaili, personal communication, March 27, 2022).

It is certain that education could play a crucial role in spreading awareness. As the transitional justice process consuming a lot of time, it has become a tiring process for the current generation. The next generation might be able to continue the fight and could help bring justice to the victims; after education and awareness being provided to them.

## **Recommendations**

There still remains many issues to be resolved for victims of sexual violence. The armed conflict was not from other dimensions such as religion, ethnicity or separatist movements (Upreti, 2006). It was a political movement where the Maoists demanded an equal and discrimination-free society (Upreti, 2006). Post the armed conflict, Nepal saw various changes including reservations for women. The interim Constitution of 2007 reserved 33% seats for women (Yadav, 2021). Then, women found their places in the parliament and first Constituent Assembly (Yadav, 2021).

But, despite the changes, women who faced sexual violence haven't been able to pave their way through to receive justice. Multiple obstacles still exist for women victims. Loopholes in mechanisms, processes, institutions and government platforms and actors still exist. Therefore, the issues that arose from the armed conflict could be resolved if the concerned actors are willing to take the required steps. Firstly, the government and the parties that were involved in the conflict should take upon firm commitment to resolve cases of the armed conflict, including those of sexual violence. Then the transitional justice institutions should bring changes in their acts. The changes should be ordered to be implemented immediately, so that the process becomes convenient and accessible to all, especially victims of sexual violence.

The state must be ready to acknowledge that there have been grave violations of human rights through gender based sexual violence. The resistance for acceptance has proved that there could be hidden interests and intention of people at powers. Additionally, a long period after the conflict has passed. Many victims do not want to recall their cases and many evidences could have been destroyed.

Therefore, the researcher's main recommendation is to bring out a mid-way solution to put an end to the transitional justice process in Nepal. Such a way should be put forward in which both the victim and perpetrator can reach to solution with adjustments from both sides. It may not seem to be the perfect solution, but justice could be served in some manner. It would be a much need closure for the victims. If some mid-way solutions could be worked out by the government and concerned parties, then the transitional justice process in Nepal could conclude. Justice served late with possible ways is better than never being able to come up with a solution.

Additionally, the researcher recommends that women should be included in positions of power, such as Supreme Court Judges, Politicians and Legal Experts and Advisors to leaders. Until and unless women are not included in such decision-making positions, cases related to gender based sexual violence will remain unsolved. While men only might acknowledge the pain and agony women victims went through, women could understand and empathize with the same victims. Therefore, involvement and inclusion of women as experts, politicians, academicians and advisors seems necessary and need of the hour to resolve such kind of cases.

## **Chapter Five: Conclusion**

Women are the primary victims of war. They suffer and bear the consequences of war. While men can easily reintegrate into the society, women and their rights are left far behind. With the transitional justice process being weak in Nepal, women who faced sexual violence during the armed conflict are far from receiving justice. The concerned parties must look forward and commit towards appropriate mechanisms and procedures.

For women to receive justice, it is found crucial that women remain in the justice process and in the commissions. This research found that the number of women staffs was less than required in the concerned institutions. Inadequate number of women staffs prove to be a major drawback for women hesitant for filing cases against the perpetrators.

Political instability is one of the major reasons that the transitional justice process is in such a slow pace in Nepal. Even after voices raised by the civil, victim, I/NGOs and international institutions, it seems that the government and the commissions have turned deaf towards them. All the concerned commissions, political parties and the government should demonstrate a strong commitment towards solving cases related to sexual violence. No political protections or connections should stop any victim from voicing their complaints. The INGOs and NGOs working in Nepal must continuously act as a lobbying figure to push pressure towards the concerned institutions. Further, burden must not be put upon a single entity only. All the concerned parties must take up the responsibility so that justice is served at the earliest.

Gender sensitive approaches must be encouraged while investigating cases of sexual violence. Education and awareness remain crucial. The staff of the commission, health, security personnel involved in investigation of such cases must be educated and provided with necessary trainings.

Health and counseling are a necessary part for revival of victims to their normal life. The state must provide psycho-social counselling to the victims who suffered sexual violence during the conflict, so that they can re-integrate and restart their lives in the society. Societal blaming and shaming should be discouraged. Women victims must be encouraged to forget the trauma and motivated to move forward and fight for justice.

Hence, Nepal is significantly slow in the transitional justice process post the armed conflict. The concerned commissions and parties seem to give less importance to such sensitive matters. The patriarchy and structural inequality seem to have an upper hand in resolving such issues. Despite such issues, it is commendable that the president of Nepal is a female and 33% seats in parliament are reserved for females. Therefore, Nepal just needs to properly implement national and international instruments that they are a part of and track their progress accordingly.

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