

# CHAPTER ONE

## Background of the Study

### 1.1 An Introduction

**Modern people do not like to think about or talk about cancer and hate death and conflict. Being modern, we have banished conflict and aggression from polite society. And that is a tactical error, because conflict is just as basic element as sex in the mammalian and cultural nature of Man. We shall never banish conflict from our society. Therefore it is better to control it, and utilise it profitably. Conflict is useful. Society is impossible without conflict. Society will be worse than impossible without the control of conflict. The analogy of sex is relevant: society is impossible without regulating sexuality. But total repression leads to extinction; total lack of repression also leads to extinction. Total repression of conflict leads to anarchy just as surely as does total conflict (Paul Bohannan 1967: xi)**

Nepali people have experienced a decade-long internal political conflict recently, which took lives of more than ten thousand people, with a similar number of people physically disabled and more than two million people displaced from their homeland (INSEC 2006). The conflict between the Maoists and the government transitioned to a peace process after the People's Movement II of April 2006, and the mood is hopeful. However, a new situation of regional and ethnic conflicts is emerging. People of different cultural backgrounds who have been living together in a territory for more than a century are quarrelling and fighting each other for the establishment of autonomous federal states. This gives an impression to a student of conflict resolution that conflict is a regular social process, remaining constant even as it changes form. It may seem that "modern" people have a dislike of open conflict, and are generally dependent upon formal, state-based mechanisms for dispute resolution. But many non-"modernised", rural Nepalis of all castes and ethnic groups, have a different understanding of conflict and dispute, and they have developed and continued their own mechanisms and processes of dispute resolution.

This study focuses on the indigenous mechanisms and practices of dispute management of an endangered<sup>1</sup> ethnic group, the Kisans of Jhapa district. The Kisans

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<sup>1</sup> Government of Nepal has published an act in the Gazette in 2001 about establishment and functioning of National Foundation for Development of Indigenous Nationalities (NFDIN) which listed 59 indigenous nationalities. Nepal Federation of Indigenous Nationalities (NEFIN) has classified the 59 nationalities into 5 categories in 2004 in which the Kisan are placed in endangered group. The bases of classification were literacy rate, concrete housing, land holdings, occupation, language, population size and number of graduate in the group.

have a unique political organization that is structured like a state-based government mechanism - the king, ministers, community court, police, messengers, and so on.<sup>2</sup> The Kisans understand conflict as a universal social process occurring universally and constantly in the community. Therefore, they have developed advance mechanisms to deal with community conflict and re-establish peace within the community.

The Kisans are an indigenous group of the Tarai (plains land of southern Nepal), similar in outward appearance to other Tarai groups. In Nepali, *Kisan* means “farmer.” As an indigenous ethnic group, the Kisans are not well known, even to academics in Nepal. The Central Bureau of Statistics 2001 shows the Kisans populations in some hill<sup>3</sup> and Tarai districts (table 1.1) of Nepal as well, but the unique government mechanism which is the focus of this study is found among the Kisan of Jhapa district only. According to the 2001 census, a total of 2876 Kisan are spread in the different districts of Nepal. Altogether Kisans are 0.01 per cent of the total population of Nepal.

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<sup>2</sup> The King was known as *Baiga* traditionally and now *Mahato* or *Raja*, the minister is known as *Wakil* and the Police as *Sipahi* in Kisan language. Moreover, the court is known as *Kachchheri* in their language.

<sup>3</sup> The people who have identified as Kisan in the hill are low caste farmer like Sarki in the case of Baglung and Myagdi districts.

**Table 1.1 District-wise Distribution of the Kisans and their Population**

SN	Districts	Male	Female	Total	Per centage
1.	Jhapa	492	509	1001*	34.81
2.	Morang	21	25	46	1.56
3.	Sunsari	27	30	57	1.98
4.	Saptari	172	141	313	10.88
5.	Siraha	6	6	12	0.42
6.	Solukhumbu	1	0	1	0.04
7.	Udayapur	4	4	8	0.28
8.	Dhanusha	1	2	3	0.10
9.	Mahotari	10	16	26	0.90
10.	Sarlahi	17	12	29	1.01
11.	Bara	5	4	9	0.31
12.	Parsa	11	14	25	0.88
13.	Kathmandu	11	14	25	0.88
14.	Nawalparasi	1	3	4	0.14
15.	Tanahu	1	1	2	0.08
16.	Parbat	1	0	1	0.04
17.	Baglung	350	398	748	26.01
18.	Myagdi	228	290	518	18.01
19.	Mustang	2	2	4	0.14
20.	Bardiya	3	4	7	0.24
21.	Kailali	18	18	36	1.25
22.	Kanchanpur	1	0	1	0.04
<b>Total</b>		<b>1364</b>	<b>1512</b>	<b>2876</b>	<b>100.00</b>

Source: CBS 2008 (Caste and Ethnicity of Nepal)

\* During fieldwork I have found 773 populations of the Kisan in Jhapa district in 2008. But I came to know that Kanwar, Gwal and Rautiya (neighbouring communities of Kisan) were also used to identify as Kisan until 2004. Therefore, 2001 census shows 1001 population of Kisan in Jhapa district.

The government-like mechanism of the Kisans in the study area does not follow the formal, complicated procedures of state-based dispute resolution mechanisms. The Kisan authorities and their services are integrated with and easily accessible to community members. A community house is managed near the house of the *Mahato* and used it as an office. The authorities are elected by community members for a certain time frame, following democratic procedures. A Kisan goes to the authorities

with an oral petition to file a case, without a lawyer for legal support and payment of a registration fee. The first concerned authority, mainly village police, orally forwards the case to their minister, if the case is not settled at the village level. After consultation with the *Mahato*, the minister calls a bench of the court and summons the disputing parties through the help of police for a resolution session.

In both public and private life, Kisan authorities are similar to the general Kisan population. The *Mahato* (King or *Raja*), *Wokil* (minister) and *Sipahi* (police) appear, talk and behave similarly to members of the general population, and they too farm, fish, and hunt small game for subsistence. Without observing their role in special public functions like bench in the community court (*Kachchhari* in their language), public gatherings and rituals, an outsider would not be able to distinguish them. Power is attached to their authority but it is politically symbolic, rather than material.

The Kisans have created these authorities, which have served as a “unifying force of symbols”<sup>4</sup>, effectively controlling the activities and behaviours of community members, settling disputes, and maintaining peace and order in community. This political institution is superior to socio-cultural and economic institutions and other sub-institutions of the Kisans. It has defined the roles of each member of the community and given supreme authority to their *Raja*, who gives the final words in public functions, in private rituals in relation to ancestor worship, and in other village rituals. Thereafter the *Wokil*, *Sipahi*, messengers and general people hold authority in their respective roles, but the *Mahato* controls activities of community members, domestic rituals and village functions through the court.

Kisan settlements are either on the edge of the forests or the bank of rivers. Their cultural practices, food habits, dress pattern and religion and rituals are directly linked with their environment. The authorities, including the *Mahato*, are not only responsible for maintaining peace in the community but also for the protection and management of the surrounding natural resources. The *Mahato* is considered the living representative of the god and goddess, ancestors and natural powers, and the interlocutor between the community and those powers. The Kisan authorities regulate

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<sup>4</sup> Gluckman defines unifying force of symbol and says that only simple society creates such symbols to control the activities of their members (1973)

access to the surrounding forests and rivers twice a year, organises opening rituals and thanksgiving rituals, and the Kisan *Kachchheri* resolves all types of resource conflict.

The Kisan *Kachchheri* resolves all type of disputes among Kisans. None of the Kisans have gone to formal forums for dispute resolution at the time of my fieldwork, preferring their own, indigenous institutions. This research aims to investigate the indigenous institution of dispute management of the Kisans, its functions in maintaining peace and order in community, strength and weakness in relation to access to justice, people's participation and satisfaction of disputants, effectiveness in justice delivery and respect of human rights and its role in relation to justice delivery process at community level in rural Nepal. Moreover, the research also tries to examine the relationship of Kisan *Kachahari* with state-based forums, and changes experienced by the Kisans and their political organisation in the contemporary Nepali context.

### **Defining “Dispute” and “Conflict”**

It is not an easy task to distinguish dispute from conflict because both terms denote disruptions in social structure or organisation. English as a rich language has different words to express disruption in a social structure/organisation: competition, strife, disputes, quarrels, revolution, war, struggles, etc. “Conflict” is an ambiguous word that may encompass all levels of social disturbance resulting from antagonistic behaviours of individuals and groups. However, we can distinguish these terms on the basis of what kind of disruption in social organisation they connote (Gluckman 1973).

Sociologist Kent distinguishes the terms dispute and conflict quite interestingly. To him, most social situations involve some sort of conflict. Conflict as a word denotes a situation of dilemma in which one has to choose what is best, making it a psychological dilemma. When situation of conflict arises, when both/all parties either aim at the same possible outcome which can only be achieved by one of the parties, or, if they have preferences about different possible outcomes, which are incompatible, a dispute arises. “Dispute” indicates a conflict between different parties of a society, making it a social conflict. (Kent 199 cf. Graner 1997)

Upreti 2002 claims that “dispute” implies a social conflict arising from day to day interaction in society like economic transactions, family matters, sexual abuses,

religious clashes, harm caused of animals and children, use of resources, development intervention, caste and ethnic issues, public property and so on. A “dispute” is a short-term disagreement that is relatively easy to resolve, whereas conflict denotes a long-term and deep-rooted problem that involves seemingly non-negotiable issues and are more resistant to resolution. For an example, we can take a single example of caste or gender discrimination as a dispute that can be solved in the society easily, but may be representative of the longer standing societal conflict over these issues, which cannot be resolved easily.

Thus, both the term “dispute” and “conflict” denote problems in a society and social organisation. However, a dispute affects the social structure to a lesser extent than a conflict and local arrangements of a society can resolve such problems. For the purposes of this study, we shall take “dispute” to mean a small-scale social conflict occurring in day-to-day interactions between two or more individuals due to their different opinions and interests. “Conflict” is a broader term denoting a larger-scale disruption arising between two or more individuals or groups due to ideological or political differentiation.

### **Indigenous Dispute Management and Community Courts**

Every social group has its own system of laws and regulations, known as informal political systems (Gluckman 1973). Whether hunter-gatherers, pastoralists, agriculturists, or industrial societies, there are quarrels, competition and dispute within the group. To resolve such problems, dispute resolution practices become established, including the establishment of a given authority to adjudicate, generally associated with religious or political institutions.

We cannot say that political systems, adjudication of disputes, punishment of offenders, redress of damages, and maintenance of contractual relationships exist only in modern societies with advanced state mechanisms. Bohannan writes that “the highly developed state with its powerful law looms so large that perhaps we do not always see that within it are many little societies, each in some ways a little primitive society, enforcing its own special regulations with primitive law of its own” (1967: 6).

Legal authority is intertwined with politics in advanced societies or modern states (Pospisil 1978 cf Keesing and Strathern 1998). However, such systems and practices

exist and function effectively in many simple societies, generally submerged within the structures of kinship and the processes of everyday social life, but accomplishing their purposes as efficiently as the formal institution of a state (Keesing and Strathern 1998). In simple societies, people have created a unifying force of ritual symbol that deals with maintenance of law and order in society. The unifying force of symbol may be the chief of a band or kin group who settles earthly problems of band members such as disputes, and also maintains a relationship with ancestors and the supernatural power through worship and ritual performance. The community head makes legal decisions, his or her authority based on successfully mediating with the supernatural beings or maintaining internal or external peace. In Gluckman's words "in stateless societies, leaders depend so much on their traditional positions that they do not and cannot legislate in any formal sense, but they must take administrative decisions to regulate the group's affairs" (1973: 169). The unifying force of symbol settles social conflict through community or kin councils (Gluckman 1973). Community, kin or village court or council exist in simple societies of Asia and Africa (Moore 2001), including ethnic communities in Nepal although there may be no distinction between civil and criminal offences, there is an adjudication system encompassing both.

Relationships among the Kisans are based on blood and affinity, through which they are also tied to their political institutions, the King and the *Kachchheri*. The King is well accepted by the Kisans as a unifying force of symbol, and controls the socio-cultural and political life of the community through the *Kachchheri*. He is the chief of the *Kachchheri* and all Kisan households in Jhapa are members of the *Kachchheri*. The *Kachchheri* is systematic and specialised in dispute resolution: it maintains a list of crimes and fines, and has excellent court processes, immediate access, and it follows up on settled cases. Only a few Kisans have gone to formal, state-based forums with cases at the time of this study.

## **1.2 Problem and Research Questions**

**In many indigenous communities various activities like settlement of conflict, adjudication of disputes, punishment of offenders, redress to damage, maintenance of contractual relationship, etc. are accomplished within groups far more effectively than through formal [state-based] forums (Keesing and Strengthn 1998)**

In the present world, even in the advance/developed countries, such traditional systems and practices exist side by side with the state-based systems because of their accessibility and wide acceptance by the community. Nowadays, such dispute resolution mechanisms and practices often deal with civil cases only because of jurisdiction of state law.

The history of informal dispute resolution practices is sketchy in Nepal. Scholars believe that several such institutions and practices have continued from the beginning of group life. Among them, the known and widely accepted institutions and practices are *Panchali* from the *Licchvi* period, the *Pancha-Samuchchaya* from the Malla period, and, in the *Rana* and *Shaha* period, *Thari*, *Mukhiya*, *Jimmuwal*, and *Pancha* resolved disputes through a *Pancha-kachahari*.<sup>5</sup> To this day, village leaders, community heads, religious and political leaders, teachers, and other respected community member work as de facto dispute managers throughout the country.

Other indigenous practices of dispute management are practiced within several ethnic groups in Nepal, including the *Chumlung* among Limbus, *Guthiyar-Sabha* among Newars, *Barabasne* among Magante, *Majhihadam-Sabha* among Satars, *Shiruthaune* among Rais and some other groups, *Kachahari* among Kisans, and *Biddar-Pancheti* among Khang-Khatway. Such socio-cultural and political organizations have multiple functions for each group. However, Nepali society has been changing rapidly for the last few decades (Furer-Hamindorf 1960, Sharma 1977), and the socio-economic and cultural life of indigenous communities is influenced by modern changes though they continue some indigenous/traditional practices (Mikesell 1999, Blaikie et al 1982). Among such practices, dispute management among many caste/ethnic groups including the Kisans are interesting from an anthropological perspective (Chhetri and Kattel 2004).

The government, the institution responsible for making justice accessible to all its citizens, has established various legal institutions in Nepal, but the poor and marginalized people don't have access to such institutions for several reasons. Many rural people are either unaware of or cannot reach the formal court system; the lengthy process and high fees make the court system almost prohibited for many

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<sup>5</sup> Literally *Pancha-kachahari* means meeting of five respected people of a community. *Pancha* denotes five and *Kachahari* means bench of five respective people for justice.



groups/individuals. Less than 15 per cent of disputes reach the courts in Nepal (Nepal Law Society 2002). The rest of the disputes are settled within communities through informal practices of dispute management. Out of the registered/filed cases to the courts, on an average 28 per cent are resolved within the year. The remaining 72 per cent cases add a cumulative burden to the court every year, which lessens chances of disputants to have access to justice (Chhetri and Kattel 2004). Therefore, people prefer local dispute management practices for immediate and effective justice. While quarrelling, people usually say, “*Terogharma Mudda Paros*”. Literally, it means ‘may you have to file case in the formal courts and suffer’. Although most traditional dispute resolution mechanisms exist outside of human rights structures and the laws of the state, community members are satisfied with the procedures and practices applied in traditional dispute resolution mechanisms. There are no formal provisions for appealing, but, generally, decisions go uncontested informally.

Increased “modernisation” has, by some accounts, increased and changed the nature of common disputes within communities, but these disputes are still resolved largely through traditional mechanisms, although some development and ethnic organizations are trying to improve practices by providing basic paralegal training. However, the institutions are still functioning effectively and providing the services to community people. Hence, the researcher is curious to seek the answers of the following simple questions:

**1. Questions Regarding the Genesis and Structure of Dispute Resolution Institutions / Mechanisms of the Kisans**

- What conditions prompted the Kisans community to set up such dispute resolution mechanisms?
- What is the structure or organisation of traditional dispute resolution body? How does the Kisans community select the dispute resolution authority: the King, minister and the police?
- How has the Kisans community been able to maintain such a system until the present time?

**2. Questions Regarding Process of Dispute Resolution**

- What is the overall process of dispute settlement?
- What is the nature and extent of community members’ (men, women, young, old, etc.) participation in the process?

**3. Question regarding the Roles of the Kisan Dispute Resolution body and Its Strength and Weakness**

- What are the roles of the Kisans dispute resolution body in maintaining peace and order in community?
- What are the functions of such institutions in socio-cultural and political life of community?
- What are the strengths and weaknesses of the Kisans dispute resolution institutions and mechanisms?

**4. Questions Regarding Inter-relationship between Informal and Formal Forums**

- Do the Kisan's dispute resolution mechanisms and VDCs or other formal forums have a mutual case referral system?
- What kind of relationship do they have?
- How do the Kisans deal with a case if a dispute comes to their court between a Kisan and his non-Kisan neighbour?

**5. Questions Regarding Human Rights and Justice**

- Are the Kisans dispute resolution authorities / mechanisms sensitive to human rights and gender issues – torture free dispute settlement, equal participation, etc?
- What are the functions of this mechanism to maintain peace and order in community and make justice accessible to all?

**6. Questions regarding Change and its impacts in their political organization**

- What changes have been realized by the Kisans in their socio-cultural, economic and political life?
- What are the impacts of the changes in the political organization of the Kisans?

**1.3 Objectives**

The general objective of this research is to study indigenous practices of dispute resolution, their organizational structure, processes of dispute settlement, gender participation in dispute resolution and decision making and effectiveness and

weaknesses of the practices of the Kisans community of east Nepal. The specific objectives are:

- To understand the genesis, structure and functions of traditional dispute management organisation of the Kisans, and its importance to maintain peace and order in the community;
- To find out the strength and weaknesses of the dispute resolution mechanism of the Kisans in terms of overall processes of dispute management, participation of common people in the process and their access to justice;
- To examine the role of such dispute management organisation / mechanism in the justice delivery process in Nepal.
- To find out the relationship between the traditional institutions and the modern formal institutions in the context of dispute resolution, and
- To highlight the changes experienced in the community and its impacts in their political organization.

#### **1.4 Conceptual Framework**

Following the political anthropological and legal anthropological perspectives this study attempts to describe cultural systems of the Kisans. Political anthropology and legal anthropology are two sub-disciplines of anthropology. Until the late 1960s, the sub-disciplines were not specialized in separate fields of study. Community law, power relations, and influences of power over resources, political process, dispute and disputing process and justice systems were the subject matters of both the sub-disciplines. However, the sub-field of anthropology was emerged as a sub-discipline of anthropology by the contribution of legal scholars who studied the socio-political culture of simple non-Western societies (Nader 1965). In this regard, contributions of Maine (1861), Morgan (1877) and their followers who studied political structure, law and law enforcing mechanisms and practices of tribal societies (Llewellyn and Hoebel 1941) are significant. The discipline was enriched by the contributions of Malinowski (1926), Hoebel (1940), Leach (1954), Barth (1959), Nader (1965), Guliver (1978, 1979), Pospisil (1971, 1973), Gluckman (1971, 1973) Vincenet (1990), Caplan (1995), Keesing and Strathern (1998) and their followers. As a result, there are two separate disciplines now with special fields of studies. However, both the disciplines

focused on socio-cultural norms and ideology, power, rhetoric and oratory, personhood and agency, morality, meaning and interpretation in relation to conflict and dispute resolution systems and laws. More precisely, political anthropology studies power relations and structures, conflict over resources, jurisprudences and so on (Vincent 1990) whereas the anthropology of law studies legal structures and systems, practice of dispute resolution or community justice and obligatory norms of a community (social laws) to human rights, democracy and national and international legal matters (Moore 2001).

The beginning of the disciplines was heavily influenced by evolutionary perspectives. According to Maine, primitive society was organized under the leadership of kinship head (patriarchal or matriarchal). Kinship is the primary socio-political structure of a society (cf Nader 1965). According to Morgan, society has to be understood in stages on the basis of modes of subsistence, which he called "savagery", "barbarism" and "civilization" (cf *ibid*). British sociologist Herbert Spencer also presented a general law of evolution that asserted a tendency for all societies to change from a state of incoherent homogeneity to a state of coherent heterogeneity (Barfield 1997). Tylor (1871), White (1943) Sahlins (1972), Harris (1974) and many other thinkers have also based their theories on an evolutionary principle.

Some European anthropologists did not agree with the evolutionary perspective. Durkheim (1858-1917) proposed "social fact" as a main object of study for anthropology. Social fact denotes an individual's social context, external to him or herself, composed of norms and structures, influencing the individual's behavior. Levi-Strauss's (1908 - ) cultural structuralism argued that anthropology has to study the structure of society with reference to the understanding of individuals in that society.

Following Durkheim, the British scholar Malinowski (1922) argued for functionalism in his study of Trobrianders in New Guinea. According to him, there was clear distinction between magic, religion and science. Science was empirical, rational knowledge, while magic was reasoning from false premises, and both had instrumental purpose. Such cultural elements maintain the socio-cultural system (Barfield 1997). On the contrary, following Levi-Strauss, another British

anthropologist Radcliff Brown (1952) argued for structuralism in his study of Andaman islanders in India. According to him, anthropologists have to study social structures such as kinship, marriage system, and social organizations. Radcliff-Brown writes “a society is an equilibrium system in which each part functions to the maintenance of the whole” (Cf Lewellen 1983:6). Many scholars consider Malinowski and Radcliff Brown (structuralism and functionalism) as two sides of the same coin, and combine them into structural-functionalism. Structural-functionalism focuses on the study of the relations of each element of a society to one another and their functions in maintaining the whole system.

Study of social laws, political organizations and practices from the structural-functionalist perspective was introduced to political anthropology or legal anthropology after the 1930s. *African Political Systems* (1940), by Evans-Pritchard and Fortes, was the first book of political anthropology written from the structural-functional perspective. The book presents a comparative analysis of centralized, modern authorities with judicial institutions and simple societies without such defined authorities and institutions. The modern, administrative organizations unite different groups of people under the centralized authority, whereas in simple societies, the community head and court are the unifying force. This theoretical principle was elaborated upon by the contributions of Hoebel (1994), Smith and Robert (1954), Leach (1955), Bohannan (1957), Pospisil (1958), Brandt (1962), Guliver, (1963), Gluckman (1971, 1973), Barth (1983), Keesing and Strathern (1998), Vincent (1998), and others.

The Kisans of Jhapa are organized under their own political organization which is composed of the community assembly, court, government like structure, and community laws under the authorities of the *Baiga* (now *Mahato*), *Wakil*, and *Sipahi*. All of the actors of the political organization have meaningful functions in maintaining the socio-cultural and political systems of the Kisans. Some individuals of the community have been given special roles in these organizations. They lead the community members, control their activities, settle disputes and disagreements and maintain peace and order in the community. The organization, not only controls the community members through the maintenance of law, but also reinforces the roles and responsibilities of individuals to maintain the socio-cultural system. This study

attempts to analyse the structures and functions of the Kisans political organization through the structural-functional perspective. Moreover, the political processes, power relations, disputing process and justice delivery process as well as process of reintegration for restoring peace and harmony in the community are described following processual approach applied in political / legal anthropology.

Societies are comprised of interwoven networks of relations so that a change in one element will affect the others (Lewellen 1983: xi). The Kisan community and their political and socio-cultural systems are parts of the broader Nepali society and its political and socio-cultural systems, including the formal organizations of the government of Nepal, such as the Village Development Committee (VDC) / Municipality (local government bodies), District Court, and District Administration Office, and so on. The Kisans and their political organization are influenced by the formal organizations of the state. A Kisan has to participate in local development activities together with non-Kisans, go to VDC / Municipality for vital registrations and administrative tasks, and Police Office and other offices for services. This parallel set of structures exposes the Kisan community to formal, state-based administrative mechanisms and is a force the community members for modernisation and change.

Thus, at micro level, the Kisans are organised under their own political system but are directly influenced by macro (state) level political, economic and socio-cultural systems. Hence, the Kisans and their socio-political systems have to be understood within the community and in relations to broader Nepali society. To conceptualize the situation of the Kisan community and their political organization including the community court, assembly, government like mechanisms, and community laws from structural functional perspective a framework of analysis is presented in figure 1.1.

**Figure 1.1: Justice Delivery System among the Kisans**

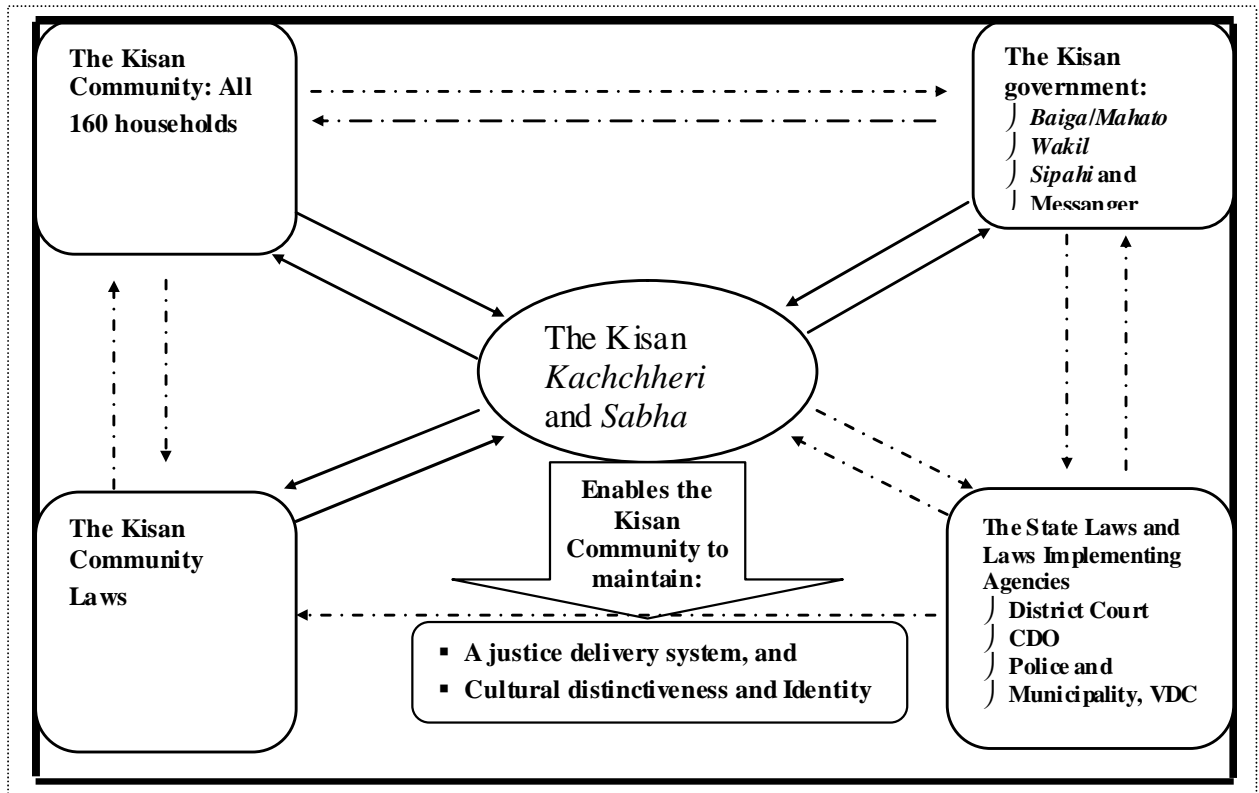


Figure 1 presents the essential elements of a system in relation to the Kisan *Kachchheri* and *Sabha* which make it possible for the Kisans to maintain their justice delivery system as well as their cultural distinctiveness even while maintaining regular interactions with the state and other communities around them. As shown in the figure, the community members form a supreme political body for the decision of community socio-cultural and political issues which is known as *Sabha* (Community Assembly). The *Sabha* is the supreme political body of the Kisans justice delivery system. All 160 households are members of the *Sabha* which makes new laws and amends old laws, elects the *Kachchheri* authorities, forms the Kisan government, and *Kachchheri* and resolves all types of community problems.

All community members in the 160 households are members of the *Sabha* and have access to the *Kachchheri*. Therefore, any member of a particular household may represent it in the *Sabha* deliberations. The *Sabha* influences the community members and the authorities (of the government and *Kachchheri*) and the community laws directly. Similarly, opinions and decisions of community members, the authorities and the jurisdictions of community laws also influenced the *Sabha* directly. Moreover, the Kisan *Kachchheri* and *Sabha* is also influenced by the state laws and law

implementing agencies such as the District Court, Chief District Office, Police Offices and Village Development Committee (VDC) and Municipality. Hence, the *Sabha* and *Kachchheri* have to also take into consideration the jurisdictions of state laws and the law implementing agencies during decision making. The *Kachchheri* and *Sabha* do not have direct formal relation and link with formal forums and state laws though they forward criminal cases and cases against the state to formal forums.<sup>6</sup>

The Kisan community, just as any other peoples must have felt a need for a stable mechanism in order to manage or deal with conflicts, disputes and struggles occurring within the community. The Kisan *Sabha* and the *Kachchheri* appear to be the solutions devised by them in order to address the need. The Kisan government mechanism and *Kachchheri* from time to time feel a need for new laws and changes in the existing laws and such issues are brought to the notice of the *Sabha*. The *Sabha* identifies new laws and modifies the existing ones and authorises their government and *Kachchheri* to implement them. The government executes the laws and maintains order in the community. The *Kachchheri* helps the government and *Sabha* for maintaining law and order by resolving community disputes. Thus, these community organisations are interrelated. Although not everyone in the community is directly linked to the Kisan government, they tend to be linked with it through the *Sabha* and *Kachchheri*. The *Kachchheri* and *Sabha* are the main public forums of the community. Hence, the community members have direct link to the *Sabha* and the *Kachchheri*.

The laws of the country also impinge on the community members and their institutions because all citizens of the country are under the control of the state law. However, the state laws and law implementing agencies do not have direct links with Kisan community members, their laws and other institutions. It is a recent phenomenon that the Kisan *Kachchheri* and *Sabha* are aware of the jurisdictions of the law implementing agencies of the country. Therefore, today they forward criminal and state related cases to the formal forums.

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<sup>6</sup> Human Rights Organizations and advocates have conducted paralegal training to the Kisans authorities time to time. Hence, they know the jurisdictions of law and therefore advise the disputing parties of criminal cases to go to formal forums.



## 1.5 Organisation of the Study

The study has been divided into nine chapters. This first chapter is an introduction of the study and presents the research problems, objectives of the study and conceptual framework. The second chapter is the review of literature. It defines political anthropology and legal anthropology, the meaning and characteristics of law, study of law; the study of political organisation and community justice in Asia; and the study of community law and social conflict in Nepal, including resource-related conflict. The third chapter describes the research methodologies, the research sites and reasons for their selection, data generation techniques, and personal experiences of data collection.

The fourth chapter is the overview of the Kisan Community. It describes the settlement patterns of the Kisans, household structure, demographics, and their myth of origin and their arrival history; their caste, kinship and marriage patterns; and the socio-political organisation, economy and education of the community. The fifth chapter describes genesis, structure and functions of the political organisation of the Kisans. It describes the genesis of the *Baiga* System, its structure and functions in maintaining social order in the community and role in preserving their socio-cultural and political practices. The sixth chapter is about the dispute settlement process, and the participation of their members and their access to the Kisan community court. The chapter describes the Kisans' understanding of disputes, types of disputes, the steps and process of dispute settlement, and status of the participation of people and access to the community court of the Kisans.

Chapter seven presents the role of the Kisan Court in the context of the justice delivery system in Nepal and examines the strength and weaknesses of the community court. It compares the contributions of the community court and formal forums such as VDC / Municipality, Police Office, District Administration Office, and District Court in justice delivery process in Nepal. It also examines the strengths and weakness of the Kisan community court in detail from the researchers' perspectives. Chapter eight presents the changes in the Kisan community and their political organisations due to modernisation and development. Finally, chapter nine presents the summary and conclusions of the study.

## CHAPTER TWO

### Review of Literature

This chapter presents a review of the literatures related to political organizations and dispute resolution practices in simple or indigenous communities. It also reviews the history of dispute resolution practices in Nepal and the practices existing in some communities. Dispute resolution is a legal issue but it is related to other aspects of social interaction, including the cultural, economic, and religious. Socio-cultural practices are complex and vary but meaningful to the group because cultural practices are developed to cope with the particular situation of a group. As a subfield of anthropology, study of law, community justice, political practices, and power relation became common under the rubric of legal anthropology and political anthropology (synonymously) during 1940 to 1960s. Along with the maturity of the discipline, legal anthropology and political anthropology specialized in different fields of study after 1960s. Study of dispute resolution became the hallmark of legal anthropology during 1963 - 1973 (Vincent 1990:380). Thereafter, its subject matter has been sifted to legal pluralism, law's relation to power structure and so on (ibid: 381, 429). The study of power, conflict over scarce resources, historical jurisprudence, politics in contemporary societies and state are the subject matter of political anthropology (ibid: 314). Hence, this study attempts to understand **political culture and community justice system of an indigenous community** through political anthropological perspective and legal anthropological perspective. Political culture includes political organizations, mechanisms and political processes whereas justice system includes community law, dispute resolution and access to justice of the community members.

Since the Second World War, local socio-cultural practices have been influenced by an increasing rate of penetration of knowledge, technology, and the market economy through local, national, and international social and economic networks; this has been characterized as “modernization at large” (Appadurai 1998). Despite the global changes wrought about by modernization, some communities strive to preserve their own traditional socio-cultural practices and political institution. However, such community practices and institutions are not isolated from the practices of the nation-states in which the communities are located or those of the rest of the globe. For instance, the political and legal institutions and practices of the Kisans are influenced

by Nepali state-based institutions and political processes. However, state-based structures are perceived to be ineffectual and undesirable, and Kisan community members prefer to access their own traditional mechanisms for dispute resolution.

Anthropology as a branch of social sciences for cultural study, several attempts have been made by anthropologists to search the meaning of culture of different groups (Geertz 1973). Culture, whether it is defined as a holistic legacy acquired totally from the group (Tylor 1871), a historically system of symbolic meaning (Geertz 1973), or as a system of localized knowledge (Goodenough cf Keesing and Strathern 1998), it is the means by which sense is made of the world around us. Dispute resolution institutions and practices of a group is an essential part of that group's culture. Using a combining perspective of legal anthropology and political anthropology, this study seeks to understand the meaning of and the role played by, the traditional political institutions and dispute resolution practices of the Kisan community of eastern Nepal.

## **2.1 Legal Anthropology and Political Anthropology**

The study of social structures, law and order, and leadership of simple societies is not new in sociology and anthropology. Some anthropologists since the end of the 19th century and in the beginning of the 20th century have been interested in the study of social structure, political process, social laws, and leaderships of a traditional society. Some anthropologists, such as Maine (1861), Morgan (1877), McLennan (1965 cf Moore 2001), who were lawyers by training, paid much specific attention to the study of political structure, law and law enforcing mechanisms and practices. These studies contributed to the establishment of "Legal anthropology" as well as "political anthropology" as sub-disciplines of social anthropology. The disciplines were developed during the colonial period, with a focus on the political processes and dispute resolution practices and procedures within a society, and grew significantly after the Second World War, when the paradigm shifted to inter- as well as intra-societal political organizations, structures, processes and legal pluralism. The discipline was enriched by the contributions of Llewellyn and Hoebel (1941), Nader (1965), Leech (1956), Barth (1965), Gluckman (1971 1973), Guliver (1978, 1979), Vincent (1990), Keesing (1998), and so many others.

### **2.1.1 Initial Arguments and Debates**

Anthropology was dominated by Darwin's theory of evolution until the end of the 19th century. Government and politics were understood to be the function of the degree to which a community was "civilized". In the arguments of Maine (1861) primitive society was organized under the leadership of kinship head (patriarchal or matriarchal), and kinship was the primary socio-political structure of a primitive society. Following the argument of Maine, Morgan, in his study of the Iroquois, argued that development of human society has to be understood on the basis of mode of subsistence; the stages of which he termed "savagery", "barbarism" and "civilization". In his view, social organization began with the "promiscuous horde," which developed into kin-based units, organized along sexual lines, specifically, cross-cousin marriage. Socio-political structure at this level was egalitarian, and based on inter-personal relations (Nader 1965). This means that there were no "formal" political organizations in society until the domestication of plants and animals and production of surplus foods brought about larger settlements that required ways of structuring social interactions outside of the familial or strictly inter-personal social unit.

However, some anthropologists were not satisfied with the evolutionary schemas, and brought different perspectives and arguments to bear in the attempt to describe social reality. In Europe, Durkheim (1858-1917) tried to analyze social reality under the concept of "social fact". Social fact denotes a phenomenon in which members of a society follow certain socio-cultural values unconsciously. Similarly, Levi-Strauss (1908 - ) argued that anthropologists need a systematic method to uncover the underlying structure of cultural forms, which are equally systematic. This method relies on a binary mode of description through distinctive features and redundancy, as is most completely developed in information theory. Its force lies on the unconscious level of social facts in the Durkheim sense.

American anthropology was also in the process of bucking the evolutionary paradigm. Franz Boas, the founding father of anthropology in the USA, stressed the concept of "historical particularism". Hence, a society has to be understood through the study of a particular culture (Lewellen 1983). After Boas, anthropologists of the USA specialized in different fields of society and culture. American Anthropologist Robert Lowie, in his book, *The Origin of the State* (1927), argues that there is no evidence of

a society which passes through different stages of development. He rejected Maine and Morgan's theories that primitive political order is maintained by kinship relations. In his view, territorial bond was a universal mechanism, which formed a bridge between primitive political organization and the state.

At this time, two British scholars developed the arguments of structuralism and functionalism. Malinowski (1922), in a study of Trobrianders in New Guinea, argued for functionalism, whereas Radcliff Brown (1952), in his study of Andaman islanders in India, argued for structuralism. Some followers of each theory understood the structural and functional views as similar and interrelated, because structure has no existence without function and function is impossible without structure. Therefore, structural-functionalism became accepted as a coherent perspective by which to study functional unity of the constituent parts of a society. Hence, the perspective highlights the importance of each component part of a society to the maintaining of the whole. Both Legal and Political Anthropologies were influenced by structural-functional perspective from its inception.

### **2.1.2 Modern Perspectives**

The study of political organizations and practices, power structure, and dispute over the scarce resources and its resolution practices from the structural-functional perspective were considered the subject matters of Political Anthropology and Legal Anthropologies from its beginning. In this theoretical vein, Evans-Pritchard alone published a book *The Nuer* in 1940 and with Fortes, *African Political System* in 1940. The books describe both the centralized authority of judicial institutions in modern states, and stateless societies without such institutions. The perspectives continued by Howell (1994), Smith and Robert (1954), Gluckman (1955), Leach (1954), Bohannan (1957), Pospisil (1958), Brandt (1962), Guliver (1963) and others (cf Moore 2001). However, both the disciplines got matured and specialized gradually since the 1960s and subject matters of both the disciplines shifted from simple kinship based societies and tributary state's political organization to capitalist state's power structures and legal pluralism (Vincent 1990, Moore 2001). In the modern capitalist states, administrative organizations were described as uniting different groups of people on a permanent basis of a formal, centralized political structure. The stateless society unites its members through a local political organization, authority, and community

court. Thus, modern legal anthropology and Political anthropology begin from the analysis of legal pluralism, law's relation to power, political structures and functions of a modern state since the 1960s.

### **2.1.3 Present Trends in Legal Anthropology and Political Anthropology**

The study of dispute management mechanisms and practices of simple societies including social norms, ideology, power, rhetoric and oratory, personhood and agency, and cultural system became old fashion in legal anthropology. In the post colonial world, legal anthropology studies cultural pluralism, western legal institutions, law-related control of intellectual property, situation human rights in law, accountability of persons for the policies of regimes, violence and so on (Moore 2001). The legal anthropology seeks the answer of the following question: is law universally present in all societies? How is the law related to other aspects of culture and social organization? Why does law change through time? What happens when the legal systems of different cultural groups come into contact? What is the effect of a multiplicity of legal systems within one society? And under what conditions and how is the comparison of legal systems possible?

The contemporary political anthropology is moving beyond the study of political organizations and social laws of a simple society to relations between political organizations and their relations to economy, social system and laws of modern states, and power structure and its interplay and so on (Vincent 1998). The central questions of contemporary political anthropology include: What is power? How is the structure of power? How power generates conflict or resolves it? How conflict occurs in society? What are the situations of political violence? What are the relations between political organizations? How community members split into different groups and fuse into one in different issues? What are the political processes in simple and in complex societies?

Thus, contemporary legal anthropologists and political anthropologists have expanded the scope of the discipline from local to national and trans-national matters. "the scope includes international power relations, treaties, the legal underpinnings of trans-national commerce, the field of human rights, diasporas and migrants, refugees and prisoners, and other situations not easily captured in the earlier community-grounded

conception of anthropology, though the rich tradition of local studies continues along a separate and parallel track" (Moore 2001:95).

#### **2.1.4 Meaning and Characteristics of Law**

Currently, there are two commonly accepted definition of law. The first opinion emphasizes that law is a strong mechanism of social control exercised in an advanced society through a state apparatus. However, this definition encompasses only formal law established by nation-states. A second definition describes law as a commonly accepted means of social control, whether that is associated with simple or advanced society, mandated formally by the states or operating outside of state structures (Nader 1965). In other words, "law has teeth ... that can be used to bite someone if required... but it must be legitimated biting" (Seagle of Gluckman 1971). In deed, law is a part of culture that contains legal and political aspects. Legal aspect of law is used to control civil, criminal and private interactions whereas the political aspect of law is used to control political regime (Ackerman 2004).

Thus, anthropologists have defined law as culture, law as domination and law as problem solver existing in all societies (Moor 2001). Political anthropologists Hoebel (1940), Nader (1965), Guliver (1965, 1969 cf Caplan 1995), Gluckman (1971, 1973), Pospisil (1978), and their followers argue that certain social values, religious beliefs and practices of totem and taboos are exercised in all societies for social control. In the words of Pospisil, "...law does not mean some isolated things from other social controlling systems. State law is an advanced form of social law, which also applies for social control like community law. Law as a component of culture it is the subjectmatter of anthropology" (Pospisil 1978: 284).

Lawyers and judges of a modern state are not often ready to accept social customs as law. An American Judge Jerome Frank writes, "...the English word 'law' will not have a single precise meaning. It is misleading to try to discuss tribal law in the principle concepts of western jurisprudence" (1971: 180). However, Gluckman (1973) argues that law is the means of social control existing in all forms and types of society. Anthropologists summarise the main characteristics of law as (i) Regularity, (ii) Official authority, (iii) Sanction or legitimacy, and (iv) Universal application. The main features of law are court decisions, predictability, developed by the necessity of

people, and required for social justice. These characteristics may be present in informal systems of law in simple societies, as well as formal, state-based system of law (Llewellyn and Hoebel 1941, Pospsil 1971).

## **2.2 Studies of Law, Political Organization and Community Justice in Asia**

Hindu texts, the Veda, Ramayana, and Mahabharata were written in the Gangetic plains between 1200 and 800 BC, documenting the presence of advanced law, political organisation and justice systems in ancient Indian societies (Rijal 2004). However, the modern anthropological study of law, politics and justice systems in South Asia began from the colonial era.

Barth (1959) studied political leadership among the Swat Pathans in Pakistan. He describes the political system of Pathans with special reference to the sources of political authority, and the form of organisation within which this authority is exercised. He describes relations of authority between each community member as producing a series of choices or opportunities. Pathans live in a multi-caste society. The males of all caste groups live together in the man's house, where Pathan leaders hear and settle the cases of dispute within the community. The political system of Swat state of Pakistan is based on the principle of individual captaincy. There are two types of leaders; political and religious in the Swat society. The political leaders are Pathans who organise political clients, whereas the religious leaders are Saints who organise religious people. However, both of them organise and command their respective followers, and appear similar in many respects. However, Pathans control their clients with their power domination and warfare capacity, whereas the Saints influence their followers with moderation, reasonableness and meekness. The priests resolve religious disputes only. Like the Pathans, there are strong dispute resolution mechanisms in most of the communities in Pakistan, which are more influential than formal forums. Therefore, the government of Pakistan has given certain rights of dispute resolution to local communities.

According to Berreman (1997), "dispute resolution mechanisms and practices exist in different communities in India. In Sirkandapur village of Uttaranchal, the dispute resolution mechanism is known as *Panchayat* (elders' council)... [its] membership varies according to circumstances, but it is traditionally confined to the high caste



males only. The *Panchayat* is formed as per requirement. There is no hard and fast rule about the number of the council members; it is decided by the nature of a case” (281).

The council members are heavily influenced by caste, clique, and kin-group loyalties and can be easily persuaded by money and favours. Local people settle their disagreements through the council, although there are common understandings of the council as "whoever treats the council to the best feast wins the case". Low caste people distrust councils, because in disputes among themselves as well as those between themselves and high castes they are often victimised by the councils (282). Berreman presents a case:

**A blacksmith girl of a neighbouring village was married to an old blacksmith man. She was unhappy with this arrangement and soon returned to her parents. From there she later eloped with a blacksmith boy. None of the parties involved were concerned enough to try to alter the situation. However, Rajputs of the village found out about it. They knew (according to blacksmith) that the boy involved had Rs 600 in his possession. They therefore called a council meeting of Rajputs and went to the girl's father and extracted from him, by threat and promises, a complaint in the case. They then caught the boy, brought him before the council, and fined him Rs 600. The terrified boy paid this sum willingly, glad to escape without a beating. Two hundred rupees of the fine went to the girl's father, and the remainder was 'swallowed up' by the council (1997: 282).**

This type of situation may happen in the case when council formed by limited caste or cultural groups has the authority to settle cases for all members of a heterogeneous society. In the case of caste-based societies common in South Asia, such councils may be highly influenced by high caste or powerful groups and justice is influenced accordingly. People may wish to settle disputes related to sex, property and prestige, even to their disadvantage, to avert the worse threat (for example a beating), resulting from the perception of moral insult. "In the case of community council or court of a homogenous society, there is less chance of corruption and bribery" (282-283).

Anthropologist Srinivas has presented dispute resolution practices of Rampura village of South India in his ethnographic book *The Remembered Village* (1999). In his opinion, "disputes are rich mine of data to understand social relationship of people. Dispute means a public outburst where the disputants argue and shout at each other, casting aside normal restraints (40)".

The government of India has recognised the Rampuran *Lok-Adalat* system, and given the village councils jurisdiction to resolve all types of civil cases locally. In Rampuran dispute resolution practices, the chief of the village forms an ad hoc council to hear and settle village cases. Some cases that the head cannot resolve in the village, such as criminal or state-related cases, go to the District Court, in which cases the village head may assist the disputants. In Rampura villages, civil cases are usually related to partition of ancestral property, extra-marital relationships and transactions of money and/or grains. The village head may easily resolve cases related to property if disputants have enough supporting documents and witnesses. Cases related to extra-marital relationships are difficult to resolve due to lack of proof and witnesses. In monetary transactions, a moneylender may file a pittance to the village council when the borrower does not repay the loan on time, although these disputes may also be difficult to resolve due to lack of documentation. However, villagers have easy access to justice through village head and council compared to the District Court. "The District Court is a complicated and half-understood game which litigants play by hiring lawyers. The service provided by village head and council is better in many ways than the District Court" (Srinivas 1999:114).

Community justice systems exist in other South Asian countries, as well. Leach (1954) analysed political systems of local people of high land Burma. In his opinion, political structures/systems form ground reality of a society. Therefore, an anthropologist has to study local political systems minutely, since it is these systems which structure the interaction of contradictory forces that produce change. Thus, at the time when anthropologists were focussing on equilibrium in society (functionalism), Leach emphasised on contradictions and change. In Kachin hills area of Burma, he found not one but three different types of political system of the *Gumlo* Kachin, an unstable and intermediate *Gumsa* system, and small scale centralised *Shan* state. "The Kachin and Shan were more or less distinct communities, which in turn were made up of many linguistic, cultural and political subgroups, all somehow forming an interrelated whole. The system was not supposed to be in equilibrium: *Gunsa* and *Gumlao* seemed to change into one another. In order to make sense out of all this, Leach felt it necessary to force these facts within the constraining mold of an as if system of ideas composed of concepts which are treated as if they are part of an

equilibrium system” (Leach 1954:ix). However, each of them has its own justice delivery mechanism and practices.

Penal Reform International (PRI) in Bangladesh writes “*Shalish* is an age-old system of dispute resolution in rural villages of Bangladesh in which community members gather locally to mediate a conflict and arrive at a resolution agreeable to all involved parties. Historically, village elders and elites in the community were voluntary third-party mediators of local disputes. Over time, the authority to conduct *Shalish* was transferred from these elites to local government bodies such as the Union Council...*Shalish* is an effective means of dispute resolution in an amicable and cost effective manner whereby fractured relationships were restored. The government of Bangladesh realised the contribution of *Shalish* and therefore granted a certain legal authority to it after 1978. These days, *Shalsih* centres are vitalised throughout the country by governmental and non-governmental organisations. *Shalish* is formed by volunteer members of community under Union Council and it resolves local cases. *Salish* resolves 66% cases of the total cases, 8% are referred for litigation and 26% are dropped by disputants themselves” (PRI 2003: 5-6).

Peoples’ Courts in China and Mediation Centres in Sri Lanka are additional examples of existing local-level dispute resolution systems recognised and given limited jurisdictions by Asian national governments. However, there is very little literature on Nepal regarding these questions, although a few sociologists and anthropologists have presented examples of community justice systems in their ethnographic study.

### **2.3 Study of Community Law and Social Conflict in Nepal**

Anthropologists have documented some historical and contemporary intra-community dispute settlement forums, and dispute settlement functions of village, clan or ethnic leaders in the course of their broader ethnographic studies (Furer Haimendorf 1964, Macfarlane 1976, Pignede 1993, Sagant 1996). However, in-depth anthropological work dedicated solely to contemporary issues in traditional justice mechanisms in a changing Nepal has been largely neglected. Anthropologists who have studied conflict in Nepal have tended to focus more on inter-ethnic and inter-caste relations (Caplan 1970, Caplan 1972, Bhattachan and Pyakuryal 1996), and inter-regional

contradictions (Gaige 1975). Other disciplines have some insight that might inform research designed to fill the gap, but much work remains.

Socio-legal studies are virtually non-existent in Nepal, and legal studies have traditionally focused on the formal state-based legal system and a host of other mainstream legal issues such as the judiciary, human rights, legal aid, etc. (FREEDEAL 1995, Pro-Public 1999). Anthropologists have mostly focused on ethnographic studies of different groups (Furer Hemendorf 1964, 1975, Ortner 1978, Fisher 1985, Pignede 1993, Steven 1997), if occasionally covering dispute processing modes and forums as parts of the larger socio-cultural structures and systems. Historical accounts of Nepal have referred to the strong tradition of community level dispute settlement forums particularly in the pre-unification period (9th-18<sup>th</sup> centuries) and also during the 19 and early 20 century (Hodgson 1880, Stiller 1976, Regmi 1972, 1978, 2002, Hamilton 1990 cf FREEDEAL 1995).

Village level administrative units, Village Development Committees (VDCs)<sup>7</sup>, have been pr<sup>8</sup>ovided with statutory powers to act as quasi-judicial bodies since 1962, which has attracted some researchers on community level dispute settlement forums in Nepal (Chhetri and Kattel 2004). Interest in indigenous and traditional dispute settlement mechanisms and practices has recently increased, particularly among legal reformers and development researchers. The Nepal Human Development Report 1998 describes state- acknowledges the importance of customary laws and the local dispute settlement forums from the perspective of human development:

**Local communities are also active in domains of customary law and justice. Most local disputes are traditionally adjudicated locally with the help of kin, members of the community and local elders...Increasingly, ward committees and VDC members are included in the adjudication team. Increasingly also, disputes are, in the first instance, brought to the ward committee or the VDC for adjudication...Customary laws and local adjudicatory structures are important forms of social capital. The high level of comprehension of such laws among communities and sub-communities and the absence of bureaucratization of procedures means that most disputes are settled far more promptly than in formal courts of law. More directly, from the perspective of human development, they reinforce belongingness to a collectivity that is immediate, renew faith in the system one is part of and thus instil a sense of individual and collective self-worth and respect (NHRD 1998: 172).**

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<sup>7</sup> The local government body was known as Village Panchayat before the democracy of 1991 which is known as Village Development Community (VCDP) nowadays.

Community level dispute resolution forums play a significant role in resolving local dispute which has been highlighted by a number of researchers (Chhetri 1994, Upreti 2002, Oli 1998). Most communities still access to local resolution mechanisms, despite jurisdictional problems in resolving some state-related cases, wherein local leaders, shamans, and priests in the remote districts often bypass the state in resolving disputes, including criminal offences.

However, as in other South Asian countries (described above), community dispute resolution is not an entirely unproblematic solution to accessing justice in Nepal. A general perception, which is also supported by anthropological studies to some extent, is the dominance of village elite in all spheres of community life including dispute resolution. Anthropologists have written about how women have been dominated by men in many aspects including dispute settlement processes and daily decision making (Bennett 1983), ethnic groups by upper caste Hindus (Caplan 1970), lower castes by upper caste (Caplan 1972), and poor by the rich (Miller 1990) in village Nepal.

Because of the priority of studies which do not always specifically focus on community laws, politics and indigenous dispute processing organizations and practices many important assumptions remain unexamined, many questions unasked, many experiences undocumented, and much data uncollected and unanalyzed. This research tries to focus on such aspects especially community laws, court, and dispute resolution process of one indigenous group, the Kisans.

### **2.3.1 Historical Review of Community Court and Justice System in Nepal**

Community law, courts and justice delivery systems are understood to be an age-old practice in Nepal. Religious mythology suggests even the gods used the community courts. For example, in the *Mahabharata* Lord Krishna tried his best to settle the succession to the throne of Hastinapur between Kauravas and Pandavas in order to avert the most disastrous war in the human history (Rijal 2004). Most of the Hindu texts describe mediation as the ideal form of dispute resolution. *Manusmriti*, the code of Manu, understood as the basis of Hindu law and main source of Hindu orthodoxy, describes mediation as an integral part of the ancient state-based justice mechanism.

**At the lowest rung was the Kula that is a collective of persons belonging to the same extended family that would play the role of a mediating body. This was followed by Shreni, which was the corporation of persons following the same trade or vocation and functioned as mediating body. The Gana was the assembly of dignitaries of the same area but which followed different castes and vocations. Similarly, the famous Arthashastra of Kautilya speaks of rich mediation culture as part of social system. According to Kautilya, village assembly was the first dispute management body. This was followed by Panchayat, a group of selected members from the village (Rijal 2004: 3).**

There was no division between religion and law in ancient Hindu society, and no clear distinction between law and social customs. With changes over time in society, traditional customs became impractical and formal law was required to change them. The Muliki Ain (National Code 1854) was created to eliminate some customary practices, but it was also based on other customary law which continued to guide the Nepali justice system for a long time (Regmi 1972, Hodgson 1880, Hamilton 1986 cf FREEDEAL 1995). The following review presents a glimpse at the community law and justice delivery systems in Nepal over the course of the national history.

The first rulers of Nepal, the Kirant, had their own dispute resolution mechanisms and practices.<sup>9</sup> Kirant socio-political and cultural organisations were formed on the basis of their religious text, the *Mundhum* (Regmi 2004). The book was a guiding set of principles for their socio-cultural, economic and political activities, including their justice system. Most of the Kirant people were illiterate, and so familiarity with the *Mundhum* was largely a result of a received oral tradition. A leader was elected in each village who settled village problems following the *Mundhum*. The leader was responsible for hearing grievances of the people and settled their problems locally (Khanal 2003: 23).

After the Kiranti, the Lichhavi were the rulers of the country. The Lichhavi developed central and local level organizations and authorities for dispute resolution. The *Kuther*, *Suli*, *Ligwal* and *Mapchowk* were the central offices, and the *Panchali* or *Gram-Panchali* were the local offices. Sometimes disputes were also forwarded to the King when such organizations failed to provide justice (Khanal 2003).

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<sup>9</sup> Historically Nepal denotes Kathmandu valley only. However, the Kiranti, Lichhavi and Malla rulers had ruled the Kathmandu valley and its territory only. The present Nepal was came into existence after the unification of several segmental states during 1870s by the Shaha King Prithvi Narayan Saha and his successors.

After the Lichhavi, the Malla dynasty was established in Nepal, and ruled the country for about a thousand years. The Malla period was considered a golden age for law and justice in Nepal (Panday 1990). Jayasthiti Malla was a King famous for creating laws and regulations and redefining the caste system in Nepal. He also formed a Law Commission to develop a legal system. The commission controlled four types of laws: (i) laws on house construction, (ii) laws on farmland management, (iii) laws on the caste system, and (iv) laws on religion. The *Pancha-samucchaya* was the local and *Ita-pachali* and *Kotilinga* were the central level institutions responsible for implementing the laws and resolving disputes. The *Ita-pachali* was for criminal cases and the *Kotilinga* was for civil cases (Aacharya 1951).

The rule of the Shaha dynasty was established after the unification of Nepal by Prithvi Narayan Shaha. Pre-unification, Shaha dynasty ruled the Gorkha state, and Prithvi Narayan's predecessor, Ram Shaha (1606 to 1693), was famous even in neighbouring countries for establishing mechanisms for justice. Social laws identified and implemented by the King Ram Shaha in Gorkha about the use of public resources are still considered appropriate in the modern Nepal (Panday 1990).

After unification of the country, following in the Gorkhali tradition, King Prithvi Narayan Shaha created a local-level justice committee, *Dharmadhikar*, as a court to receive and resolve disputes. A disputant could appeal to the King directly, if he was not satisfied with the decision of *Dharmadhikar*. Moreover, the king could give certain jurisdiction to community justice delivery institutions of the Tharu, Danuwar, Sherpa, Gurung and other ethnic groups (Khanal 2003).

The king Rana Bahadur Shaha, grandson of P. N. Shaha, granted rights of dispute resolution to the *Kipat* owners in 1782. He appointed officials, *Amalidware* in the hill and *Subba / Chaudhari* in the Tarai, for local dispute resolution. Later, King Girban Uddha Bikram Shaha amended laws related to tax collection, extra-marital relationships, the caste system, and slavery. He had also published a guide for dispute managers in 1807. In the same year, he declared an order against cow slaughtering practices. He had appointed a judge in the palace as his assistant for hearing appeals of people with the aim of streamlining central justice delivery.

Prime Minister Janga Bahadur Rana is also known as a legal reformer in Shaha period. He had visited Europe in 1851 in order to study European laws and regulations (Khanal 2003). On his return, he enacted a national code (Muluki Ain) in 1854. The National Code was the basis for all dispute adjudication, and reinforced a rigid Hindu caste system in the country. In 1889, Prime Minister Bir Shamsheer amended some of the clauses of the Muluki Ain considered irrelevant in the changing social context. Prime Minister Chandra Shamsheer amended the National Code again in 1920, restricting the *Sati* (self-immolation by widows). The restriction of *Sati* system and abolition of slavery are the main contributions of Rana rulers to social reform (Hofer 2004).

Despite the establishment of a code of law, formal court system was not established until 1956. King Mahendra Bikram Shaha created the Supreme Court in 1951 and the District Court in 1956. The democratic government of Nepal announced a three-tiered justice system in Nepal in 1959: a District Court, a Regional Court and a Supreme Court. In 1962, King Mahendra replaced the Regional Courts with Appellate Courts in the fourteen new administrative Zones, and Nepal has continued to follow this three-tiered justice system model (Khanal 2003).

However, community-level, traditional justice forums operate externally to this model, and have existed side by side with formal, state-based mechanisms. It is reported that more than 80% disputes are settled through such informal practices (Chhetri and Kattel 2004). Hence, it is likely that community justice is more accessible and effective to its members, an assertion that will be explored further below, in the instance of the Kisans.

### **2.3.2 Politics, Conflict, and Justice Systems in Different Communities in Nepal**

Most of caste and ethnic communities have their own dispute resolution mechanisms and practices in Nepal. Some Nepali and foreign anthropologists have studied caste and ethnic institutions and their role in community justice. A few such studies are reviewed in this section.

Regarding the indigenous Sherpa justice system, Furer Haimendorf writes;



**A Sherpa village is a territorial, political and ritual unit. The village is a community of families, many of them interrelated by ties of kinship and affinity, which proves capable of acting in common for the preservation of natural resources, maintenance of peace and harmony in societies, and for the performance of ritual activities essential to the material and spiritual well-being of the village as a whole. In each village there are two men known as Osho-naua to control the use of the village land and Singo-naua to prevent the carelessness of individuals that may cause disturbance to others. The Shingo-naua has full rights to pronounce fines in cash or grain form the offenders. Such amount is used for the village monastery or for appointing workers for public works like street clearing or bridge reconstruction (1964: 100-115).**

As in the justice system of Sherpa, Pignede (1993) has documented the Gurung method of dispute resolution. The most common disputes that he noted in the Gurung village are chicken theft, assaults by a drunkard, theft of ground grass, and diversion of irrigation water to one's field in another's turn. In the community, disputes often emerged in the evening, when people returned home. Pignede observed that the volume of quarrelling gives message to the rest of the villagers that a dispute broakendown in the village. Some nearby people gathered to observe the proceeding, but would not generally take sides. Council members of the community would remain away from the location of the dispute, although they might overhear the quarrel from home, often with smiles or jokes about the habits of the disputants.

The village council in each Gurung village comes under the authority of the village head. The council settles only disputes internal to the community. In general, the council members and disputants would gather at the house of the village head for resolution proceedings. The council members facilitate the presentation of the disputants' arguments, but the head alone gives the final verdict and determines the sanction. If the offence is small, the council may give time for the offender to remedy the offence without other punitive action. If the offence is serious, the council determines a fine, which the offender must pay immediately to the victim. At the end of the session, the disputants greet each other, publicly acknowledge their offences and promise to not repeat them in the future. Thus, peace in the community is restored. Finally, Pignede concludes that Gurung village council is essential to maintaining peace and order in the community because the District Court and other formal forums are located in the district headquarters, and are not immediately accessible.

Subba (1999) discusses the Kirant political organization, called the *Chumlung* (council), which consists of friends or like-minded persons. The *Chumlung* is an

integral part of the Limbu culture and history. It is organised frequently to decide on any important matter of a village, and nobody makes any vital decisions without first consulting the *Chumlung*. The *Chumlung* does not permit disputants to go to District Court or formal forums without attempting to resolve a case first in the *Chumlung*.

The discussion above outlines several examples of caste or ethnic communities' traditional dispute resolution mechanisms. However, these institutions are unable to resolve inter-caste or ethnic disputes. Therefore, senior and respected members of a mixed community may attempt to resolve a heterogeneous community's' disputes. Miller (1990) has studied a mixed community in western Nepal in which he analyzed causes of disputes and practices of dispute resolution. In his view disputes often occur in a mixed community due the one group's attribution of stereotypes to another. He writes:

**A Brahmin considers a "Magar" as persons prone to violence. Similarly, a Magar looks at a Brahmin as a crafty, a dangerous person capable of doing anything for their betterment. A similar thinking is found among other caste/ethnic groups. This type of feeling and expression of dislikes, sometimes, inspire people to break peace and order of a community. The broken peace creates tensions to all community members. Therefore, senior members of the community attempt to re-establish peace by resolving the tensions. In this process, people seek consensus "Sabaiko Sallah" (advice, opinion, counsel of community members). However, they consider prestige, caste centred and family centred morality during decision-making (Miller 1990: 102).**

However, despite the attempts of senior group members, there are divisions and frictions that often persist due to socio-cultural and political reasons.

Caplan (1970) has also discussed about dispute resolution practices of the Limbu of East Nepal, including the process of dispute resolution between a Limbu and non-Limbu. There is an elected individual head (*Subba*) in a Limbu settlement. The head conducts hearings as required and settles community cases. The majority of the disputes in the community are related to marriage (abduction of wives of other men). Such *Jari* marriages create crisis in three aspects of social life. They (i) create tension in the community; (ii) break existing links between an affinal group; and (iii) require the settlement of compensation claims and so have economic consequences to the involved parties. He writes:

**At first, lineage head tries to resolve a case. If it fails, then the victim goes to the village head with a bottle of liquor. The head hears his problem and then invites the second party of the dispute and some respected people (bhaladmi) a few days later to attempt to resolve the case. Other senior members of the**

**community also attend the session. It is believed that without strong supporters one cannot receive sufficient compensation in a dispute. It is believed that supporters can play crucial roles in compensation claim (Caplan 1970: 131).**

In a dispute between Limbus and non-Limbus, senior members of both groups gather in a public place to settle cases. If they are unable to settle a case in the community, they forward the case to local government body.<sup>10</sup> Sometimes, disputants go to District Court to settle their disagreement.

Similarly, Caplan (1972) in her study “Priests and Cobblers” presents cleavage within the Brahmin community and between high and low caste groups in a mixed community of Far Western Nepal. She identified the main causes of disputes among Brahmins as power politics, economic transactions, and stealing of wives. The main conflicts between Brahmin and cobbler are about economic transactions, land and tenancy rights. However, the conflict between high caste and low caste groups is hidden and structural, and not resolved through public justice mechanisms. She has pointed out exploitation of the cobblers by Brahmins in every aspects of life. Inter-caste conflict between high caste and low caste groups was common in the *Panchayat* period in Nepal.

Similarly, Fisher (1986) has discussed the dispute resolution practices of Tarangpur, a rural village of the Northwest Nepal. The village head, or *Mukhiya*, was known as *Thalu* (a powerful and prestigious person) among the villagers, and is responsible for settling village disputes. The main principle that the *Thalu* follows and repeats in each session is "dishes are cleaned by washing and problems are solved by discussions". A powerful *Thalu* may be elected in local government body and settle disputes with government authority as well, but most of the *Thalus* settle dispute informally in the village (1986:168-171).

The above discussion shows examples of informal dispute resolution institutions and practices in a variety of communities in Nepal. The government of Nepal has not recognised such informal mechanisms and practices by law. However, the Supreme Court of Nepal has introduced Court Annex mediation in 2007 which legalises resolution of dispute by the presence of a neutral third party instead of formal process.

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<sup>10</sup> Before the democracy of 1990, the local government body was known as *Village Panchayat* and has been known as *Village Development Committee* (VDC) since. It has given quasi-judicial authority by law to resolve local cases.

## **2.4 Resource Related Disputes and Resolution Practices in Nepal**

Some Nepali and foreign law professionals and anthropologists working in the field of natural resources management have studied natural resource conflict and the conflict resolution mechanisms and practices in Nepal. Such studies are relevant and important to consider, as 80% of the population in Nepal is involved in agriculture as their primary livelihood activity, which is directly related to forest and water resources. Some of such studies are reviewed here briefly.

### **2.4.1 Water Resource Conflict and Management Practices**

Water is an essential natural resource for living beings, and the development of civilization. Conflict over water resources is common throughout the world. Regarding water resource conflict in Nepal, Khadka (2000) presents a case about the repeated damage of canals and related infrastructure by floods. The repair often involves selection of a new intake site, which frequently causes grievances and protest among concerned people. Sometimes such grievance escalates into a serious dispute, in which a disputant claims a right to compensation, and which then must be resolved through formal or informal mechanisms. However, both formal and informal resolution mechanisms can be problematic.

There are multiple choices of dispute settlement in a village ("forum shopping" in the opinion of Benda-Beckmann cf Khadka 2000). One can go to the village head, a political leader, local user group committees or Village Development Committee (VDC). The VDC, District Court, and Police Office are the authorized formal bodies to hear a case but people do not prefer them. In the opinion of Khadka, decision of formal bodies may "settle" the dispute officially but the disputing parties may not accept their decisions. Therefore, traditional dispute resolution institutions and practices have been functional in several communities in Nepal.

Uphoff (1986) highlights four main roles or duties of an institution designed to manage common resources. Such components are decision-making and planning, resource mobilization, communication and coordination and conflict management. Coward (1990) claims conflict management is, in fact, the main role of an institution involved in common resource management. These institutions are not fair for all these

days because of the affiliation of its members to different political parties and interest groups.

Power politics is the main cause of conflict in the use of water and other natural resources. Power politics is related to local leaders' ability to establish a water tank or construct a canal in their own or their supporters' area by exerting his own or his political party's power. Power politics plays a role in the dispute resolution process as well. In this regard, Upreti (1998) writes:

**The new users attempt to resolve their problem based on the customary rule which accorded priority for drinking water over irrigation. They also approach the District Development Committee (DDC) for negotiation as the DDC is involved in the project. However, the DDC shows disinterest to get involved in the case and suggests them to go to VDC. The VDC also may not be interested to resolve the case. The main reason for the unwillingness of the DDC and VDC is political, as the majority of the new users are the followers of different political party. The VDC and DDC chairs are from the same party (1998: 256).**

Some Nepali and foreign scholars consider water resource conflict in relation to other rights. In this regard, Pun (2000) writes;

**Water right is associated with land right, so usufruct rights of water cannot be detached from land ownership. A landowner has to follow rules and regulations strictly and he has to contribute labour or money to secure water rights. The male headed households secure water rights by participating in construction and maintenance works. On the other hand, female headed households secure their water rights by paying water fees (211).**

Institutions in a rural society are often based on traditional socio-cultural norms and values. The traditional socio-cultural norms and values are male dominated, therefore the females feel discriminated against in the decisions of such institutions. Schaaf (2000)'s study of Rupakot village of Tanahu district's informal dispute resolution concludes that the process is not gender equitable. She writes;

**The acquisition and maintenance of different aspects of rights to the natural resources are gendered. Traditional patri-lineal law enhances men's access to land rights that ultimately increases their access to water rights also. The women are restricted in the performance and obligations regarding the actual irrigation and maintenance activities due to social norms and values, which define the traditional roles of men and women. Therefore, women have lower position and power in a family and community. They are weak in decision making over utilization of resources. If a dispute between a man and a woman regarding usufruct rights of resource or anything emerges then the authorities resolve it. The authorities might be fair and just but there is no representative of women (Schaaf 2000: 191).**

However, in the view of Upreti (2005) the traditional or informal institutions involved in common resource management are still strong and effective. He has studied *Sora*

and *Chhattis-Mauja* farmer-managed irrigation system of Rupandehi district. The users of this irrigation system have their own mechanisms to manage the common resources. According to him, most of the water resource conflicts are resolved through such mechanisms, and only a few cases go to formal forums. The inter-systemic and inter-*Mauja* conflicts are managed by a joint management meeting. Conflict among the users are heard and resolved by the Irrigation Management Committee. Sometimes, the chief, with executive committee members, makes on-site observation, hears the arguments of disputants and witnesses, and on this basis renders his decision. Sometimes, a case goes to mass meeting.

#### **2.4.2 Forest Resource Conflict and Management Practices**

The forest is considered a major livelihood resource of rural villagers in Nepal. Nepali agricultural lifestyle and rural economy is dependent on the forest and forest-based resources, which supply fuel, agricultural equipments, timber, fodder, fruits, vegetables, and herbal medicines. The forests can be the only means of subsistence for rural farmers during the monsoon rains.

Recognizing the contribution of forests, the government of Nepal has various protection programs, including community forestry, conservation and protected areas, national parks, and leasehold forestry. As a source of livelihood, the forest also provides grounds for conflict. Some available literatures related to community forest conflict are reviewed here briefly.

In the opinion of Graner (1997), conflict in community forestry has to be studied as (i) conflict within community forest user groups, (ii) between user groups and (iii) between forest user groups and district forest office. Conflict is a social phenomenon therefore it arises in community forestry because of “contradictory ideas and interests of users and concerned people regarding decision making and benefit sharing” (250-254).

Gilmour and Fisher (1999) analysed success and failure of a community forest in Nepal. In their view, the “tragedy of the commons” is not relevant in Nepal. There is no competition in the use of natural resources. In their view, the anthropological notion of embeddedness is essential to understand the success of community forests. Economic activities are ‘embedded’ in social relationships, religious beliefs and ritual

behaviours. Therefore, success of a community forest is related to socio-cultural practices of the users. In most of the cases, socio-cultural practices unite people, creating social capital. Success of community forestry is an example of such embeddedness because users always consider social ties instead of economic benefits. If economic benefits are considered mainly in resource management then it creates social disunity, tension and conflict (Upreti 2002).

However, this notion of embeddedness is inherently maintained by power relations (class, caste and gender) and domination in rural society. The traditional power relations have been changed now after the political change of 1990 and especially after 2006, and disagreement, tensions, kidnapping and killing are common in the society. The users of a community forest are the members of society. Therefore, embedded-ness in community forest users is undermined by political fear and terror.

In the view of Luintel and Bhattarai (2006) and Rai Paudel et al (2006), the main issues of conflict in community forestry are unequal distribution of forest products, exploitation of better products by powerful people based on caste, class and gender domination, and access to decision-making roles.

Scholars involved in the study of forest resources present instances of conflict related to equal access of people, participation in plantation and management activities, involvement of women and marginal groups, endangered species conservation, and so on (Dahal 1994, Chhetri 1999, Gurung 1999).

A common problem in community forests<sup>11</sup> is inappropriate identification of users (Pandey 1999). This type of problem emerges specifically in conditions where: (1) forest is handed over to community forest user groups before resolving previous disputes of ownership; (2) large patches of forest are handed over to households from scattered settlements; (3) the forests most convenient to the locality are not handed over, and users without interest are included in the community forest user group; and (4) some users are deliberately excluded without assessing their interest (240-241).

Chhetri and Pandey (1992) studied community forests in the Far Western Region of Nepal. They have found some common issues of conflict in community forests including the theft of forest products, encroachment by outsiders, rule violations,

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<sup>11</sup> Community forest denotes user group managed forest which is handed over by the government to local community for protection, management and utilization.

inter-caste conflicts regarding the use of land and forest resources, use of forest products by the people of nearest settlement, amount of penalty decided by executive committee. These are common issues of conflict in the early stage of the formation of community forest.

Upreti (2002) adds some common issues of conflicts in community forests. They include ownership issues between individuals and the local community or government, identification of users and access to forest products, amount of royalty, illegal exploitation, export of NTFPs, hunting and poaching of wild animals and animal products from the forest.

In most of the community forests, the community forest user group executive committee members are able to resolve internal conflict among users. Village seniors resolve a conflict between users and non-users. If both, the executive committee members and village seniors are unable to settle a case then such case goes to District Forest Office (DFO) or District Court. However, most of the issues of community forests are settled locally (Pandey 1999, Upreti 2003, Oli 1998). The executive committee members and village seniors resolve most disputes locally. Sometimes, the executive committee of community forest settles cases in coordination with village chief / *Mukhiya*. If there is jurisdictional problem, such as the illegal logging of restricted trees, then the executive committee may forward such cases to DFO or formal forums. It is said that DFO or formal forums are not preferable for locals because they are time consuming and expensive, a lengthy, formal interplay of power and politics.

The following study of indigenous practices of dispute resolution among the Kisans in Jhapa is theoretically based on political / legal anthropological perspectives described above. This study highlights the Kisan government, community court and law in relation to dispute resolutions and maintaining peace and order in the community. It compares the contribution of the Kisan court in resolving disputes with formal institutions and practices. Moreover, this study highlights the history of origin of the Kisan government and their community court of the Kisans, and the changes appeared in the Kisan government and their community court in the modern changing contexts.



## **CHAPTER THREE**

### **Methodology of the Study**

The present study applies anthropological methodology, i.e. participant observation, as well as other qualitative and quantitative data collection methods to collect detailed ethnographic information about the political organizations of the Kisans, including their government, community court and justice system. First, I have presented the discussion of site selection, then the nature and sources of data, sampling for qualitative data, tools and techniques of data collection and method of data analysis and presentation. Finally, I discuss the use of triangulation for validity and reliability of data and personal experience of fieldwork.

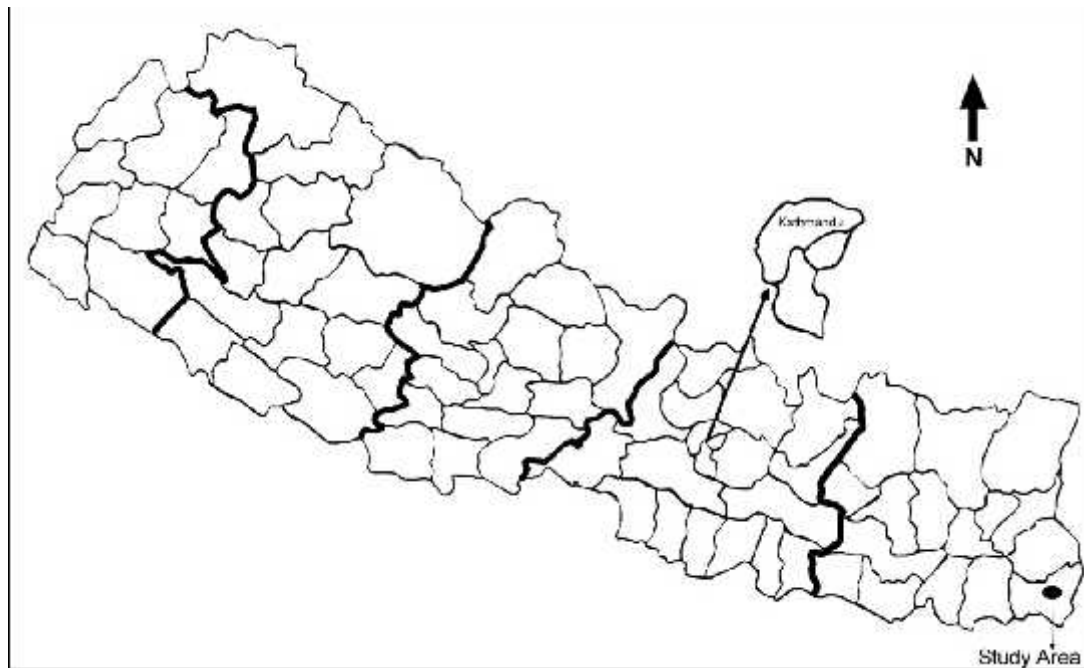
#### **3.1 Research Site and Reason for Selection**

The Kisan settlements of Jhapa district are located on the eastern boarder of Nepal and India, scattered over about 50 square kms. The communities of Mechinanagr municipality and Jyamirgadhi, Anarmani, Dhaijan, Bahundagi and Shantinagar VDCs were selected for study, representing the concentration of 160 households of Kisans in the district (Map 3.1). There are also a number of Kisans villages across the boarder in India. The nearby Kisan<sup>12</sup> settlements in India were also visited three times during fieldwork with a Kisan government official, Soma Kisa.

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<sup>12</sup> The Kisan are known as Nagasia in India. Nagasia are often tea labourers in West Bengal.

**Map 3.1: Map of Nepal Showing the Study Area**



Jhapa district is advanced in terms of infra-structural development including blacktop roads, hospitals, schools, collage, and communication. In comparison to other districts of the Tarai, educational status of the inhabitants of Jhapa is higher (67.1%)<sup>13</sup>. However, among the Kisans, only four (three male and one female) individuals have completed the school leaving certificate (SLC) through June 2009. Their socio-cultural and political organizations are not substantially affected by modernization. The traditional socio-cultural practices including dispute management through community court are carried out through their own political organizations. There is no such dispute resolution mechanism and practice existed among the Kisan communities outside Jhapa district. The community members are organized under the *Baiga* political system. As the head of the *Baiga* system, the *Mahato* leads the community. Other authorities identified by the community as *Wakil* and *Sipahi* assist the *Mahato* in administration and dispute resolution.

The nature of society of the study area is heterogeneous. A number of caste groups such as high caste (Brahmin and Chhetris), Untouchables (Kami, Damain and Sarki)

<sup>13</sup> Out of the 75 districts of Nepal, Jhapa is in the 5<sup>th</sup> position in educational status. The first is Kathmandu district (77.2%) followed by Lalitpur (70.9%), Bhaktapur (70.6%) and Chitwan districts (70.1%).

and hill ethnic groups (Rais, Limbus, Magars and Sunuwars) as well as Tarai ethnic groups (Rajbansi, Dhimals, Meche, and Satar) live together in the study area. However, the Kisans are organized under their own political organizations and follow the traditional cultural practices. Their cultural practices are not much influenced by the presence of other groups and the available modern facilities.<sup>14</sup> As an ethnic group, the Kisans are still unknown to many Nepalis, including academics. The word “Kisan” literally means farmers, and the Kisans are known as farmers instead of as an ethnic group with a distinct cultural tradition. There are some literatures regarding the Nagasia ethnic group in India which do not mention the Kisans of Nepal. However, this small group with less than 1000 members in the study area claims themselves as Kisans, and have a unique political organization including the government structure, community court and laws. These are the main reasons to select the Kisan community of Jhapa district for the study of indigenous practices of dispute management.

### **3.2 Nature and Sources of Data**

Both qualitative and quantitative natures of data were collected by the researcher and used in the report. Data for this study were obtained from both primary and secondary sources. Some secondary data were also collected and used in the study. The sources of secondary data were published and unpublished articles, journals, books, reports and documents of various organizations and individuals. The primary data were collected by the researcher himself applying various anthropological tools and techniques. Ethnographic study requires an indepth insight about the collected information. It is not an easy task to become the insider of a simple community. However, I tried to become established as a member of the community and participated in several private and public functions. The following is the summary of my attempt to collect primary information in the field.

I first went to the field in September 2007 and spent about two months in Kisan communities. I spent substantial time on rapport building and basic information collection about the community and their culture. I was introduced to Kisan authorities, some senior members of the community, and the members and employees of the Kisan Club. This visit helped me to understand the Kisan community in

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<sup>14</sup> Influence of non-Kisan hill migrants and modern facilities in the community is a new phenomenon in the study area. Some of the impacts of changes are described in the chapter eight.

general, their arrival history to Nepal, their relations to non-Kisans of the surrounding area, and to Nagasia of India, as well as the political organizations including the government mechanism and community court.

The second visit I made to the Kisan community was in January 2008 for one month with an observation checklist and interview questionnaire. This time I met most of the household heads of Magurmadi and Chyalnegaun, was introduced to the heads of all nine villages, and collected relevant information. I was able to observe the housing patterns, dress and ornaments of the Kisans and participate in two court meetings and benches. This visit helped me to collect additional information about the community, the government and community court, court meeting, disputing process and dispute resolution mechanism and practices. Moreover, the visit helped me for identifying key informants and a research assistant who assisted with the completion of the household survey after that point.

The third time I went to the Kisan community with revised checklist, interview questionnaire and household survey form was during March and April of 2008. I had the chance to observe three sessions of the Kisan court, conducted interviews and collected related information such as position of the *Mahato* in the community, government mechanism, court process and their relations to formal mechanisms and processes of dispute resolution. Moreover, disputing parties of 12 cases were met and interviewed.

I also visited the community in October 2008 for three weeks, December 2008 for one week and May and July 2009 for two weeks to cross check the collected information and collect some required information.

### **3.3 Tools and Techniques of Data Collection**

Cliford Geertz (1973) has emphasized “thick description” as the best method of acquiring, describing, presenting and analyzing ethnographic information for anthropological study. The method is also known as ethnographic study. This is an ethnographic study of the Kisans and their political organisation in Jhapa district. The researcher has tried to know the community fully from different points of view as part

of the community. The main tools and techniques applied for data collection in the field were presented below.

### **3.3.1 Household Census**

A household survey form was prepared to collect detailed socio-economic and demographic information of the study population. The first visit to the study area identified 160 Kisans households and after discussion with my research supervisor, I decided to collect basic information from all households. The household census identified total population, age, sex, marital status, occupation, wealth, landholding size, monthly income, sources of income, status of debt, life crisis rituals, fairs and festivals, status of male and female, dress, ornaments, language, religion and the areas of decision making by male and female members in a family. Moreover, the household census helped to identify the status of the *Mahato* in family rituals and the functions of the political organisations, especially the community assembly and court.

The aim of collecting socio-cultural information was to describe the traditional practices and changes realised in the community at present. The economic information is also required to compare the Kisans with non-Kisans of the surrounding areas. This is the study of indigenous dispute resolution mechanism and practices. Therefore, position of the political leaders (the *Mahato*, *Wakil*, and *Sipahi*) in family and community rituals and functions was also collected to describe the status of the leaders in different spheres of the community. Moreover, I tried to understand a detail process of a dispute (from beginning to end); how a dispute arises in a family or between two families / individuals and how it reaches the community court and resolves. Similarly, the census survey assisted me to know what the winner of a dispute offers to dispute managers at the end of the dispute and so on. In addition, there was a question regarding the satisfaction of the cases settled in the *Kachchheri* and appellation system. Majority of the respondents informed me that they are satisfied with the decisions of the *Kachchheri* and there is very less chances of appellation of the cases settled in their community court.

### **3.3.2 Observations**

Observation helps the researcher to understand the field reality, without asking a direct question. As this is the study of indigenous dispute management mechanism

and practices of the Kisans, the researcher observed nine disputes among adult males of the community members, six among females, and above dozens of fighting and quarrelling of children. Thus, observations assisted me to understand types of disputes and how the Kisans distinguish quarrel, fighting, dispute and conflict. In deed, the Kisans do not bother to resolve simple quarrels and fightings of their children but forward a dispute to their court immediately.

I got chance to observe five court meetings where disputing parties were brought by the Kisan authorities to resolve their disputes. Moreover, I got chance to observe community assembly and the general assembly of the Kisan Club. I also observed an event in which the court authorities gathered in the house of wrongdoer and terminated his community membership until resolving the issue. In addition, I have observed several public meetings and *Poojas* which helped me understand the community and their practices. All the information acquired from these observations are analyzed and presented to strengthen my arguments in the texts.

### **3.3.3 Group Discussions**

As I discussed above, I found Kisans with different interests. Some were involved in court process as authorities fully devoted for the protection and continuation of the traditional practices. A few influential leaders and educated youth were dedicated to the Kisan Club and social change through ethnic politics. Other young Kisans who have migrated to tea estates and cities for employment are not interested in their traditional occupation and cultural practices. The Kisans involved in wage labour, recently leaving the traditional occupation i.e. farming, are also not interested in ethnic politics. To know the opinions of different groups regarding their traditional culture, occupation, community court and justice system, ethnic politics, and relations to non-Kisans, nine group discussions were organised (including five focus group discussions).

The first focus group discussion was organised with court authorities to know their view regarding the overall political process of the community, change seen by them in the community, justice system in the court and formal forums, etc. The second discussion was with females involved in wage labour and farming, concerning the status of women in the home and in public places, especially in court meeting and

*Gram Pooja*, their access to the court and decision making. The third focus group discussion was organized with educated youth to know their opinions regarding the traditional political organisation, authorities, court process and the Club and identity politics. The fourth was with uneducated people about the importance of community justice delivery system, and its continuation. The fifth focus group discussions were with senior people to understand the myth of origin of the Kisans, arrival history, and traditional cultural practices as well as change seen by them in the last ten years. Similarly, nine teashop discussions and informal talks were organized to know the view of different groups of people about the effectiveness of community court of the Kisan, relationship of Kisans and non-Kisans, and changes in the community. The information collected from group discussions and focus group discussions have been presented in the thesis as and when needed as supporting arguments.

### **3.3.4 Key Informant Interviews**

As an outsider interested in the study of a closed community, I spent about two months for rapport building. Meanwhile, I identified some key informants in the community. Some key informants were identified after the household census. The key informants were people knowledgeable about the community. Nineteen individuals were identified as key informants. Six senior ages Kisans were interviewed about the traditional culture of the Kisans, their myth of origin and arrival history in Nepal, their justice system, the belief in shamanism and witchcraft, the position of the *Mahato* in the community and political process. Another six young, literate, and educated Kisans were found interviewed about identity politics through their Club, relations to non-Kisans, multiparty politics, modernisation and change. Similarly, two women key informants were identified and interviewed at the end of the fieldwork. Most of the Kisan women were found unable to express their feelings in front of the strangers. However, both the female key informants were able to express their status in the family, community and court, and access to court and decision making process. Moreover, five illiterate youth involved in traditional occupations and favouring traditional cultural practices were selected to understand their views regarding their political organisation, court process, identity politics, relation of Kisans to non-Kisans and impact of modernisation and change in the community.

The key informants not only provided me the valuable information but also verified the information collected from household census, group discussion and observations. On the basis of the information of key informant interviews, I have been able to present the story of their origin, relations to Nagasia and Nagbanshi Raja of India, arrival history to Nepal and so on. Information from key informant interviews provides me the main flesh of this report. Out of the 19 key informants, 12 were the disputants settled cases in the community court who have made me aware on types of disputes in the community, settlement process, satisfaction in the cases settled in the Kachchheri and practice of appellation.

### **3.3.5 Case Studies**

In this research, I have presented 20 case studies with 38 examples that reflect the circumstances of Kisans and the community in the past as well as in the present. The cases show the court process, position of the *Mahato*, *Wakil* and *Sipahi*, satisfaction of disputing parties in the community court and formal forums, relation of Kisans to non-Kisans, land-grabbing process of the Kisans by non-Kisans, modernization and change.

Collection of case studies was the most difficult task in the fieldwork because the cases presented to show the relationship of Kisans with non-Kisans depict the positions of Kisans marginalized and weakened, which informants found upsetting to recount. In many circumstances, I have raised the arguments based on the case studies.

## **3.4 Data Analysis and Presentation**

The Kisan political structure is composed of leadership roles, the community assembly and a court system for dispute resolution. The political system has been developed to maintain social order and harmony in the community. The Kisan community is interlinked with non-Kisans of the surrounding areas, and broader Nepali society. Therefore, the Kisan political organizations will be examined at various levels – within the Kisan community, as well as its interaction with the non-Kisan community, with the local government body (VDC), and with other formal forums of dispute management and other systems of the Nepali state. This study also examines the position of the *Mahato* in various aspects of society and asks why a



small community gives a higher socio-cultural and political position to an individual (the *Mahato or King*) and why the same symbol is felt unnecessary in the process of democratic advancement of a country. Is the meaning of the central symbol (the *Mahato*) of the community degrading among the Kisan also in the present changing contexts?

Keeping in mind the fact that an aggregate of individuals forms a society (Durkheim 1912), and that each society requires peace and harmony for its progress. Hence, this study also analyzes cases on an individual level to substantiate trends and patterns in society, including how the Kisan community creates compliance of the individual in following community norms and values.

The genesis, structure and function of the Kisan political organization, especially the court, the relationship of disputants before and after the resolution of cases, the choice of disputants to go to community court or formal forums, the relationship between the Kisan court and formal forums (VDC, Police Office and District Court), etc. will be presented in detail to show the overall patterns of change in the Kisan's political organizations.

Ethnographic information will be used to contextualize the trends and patterns suggested by the quantitative presentations. The qualitative information collected through observations, interviews and case studies will be used to substantiate my arguments in order to present the ethnographic details of the Kisan's dispute management mechanism and practices. Moreover, it will also be used to elaborate and clarify the quantitative data by explaining the cultural meaning and explanation of dispute management mechanism and practices of the Kisan community. The quantitative data is analyzed through the SPSS computer program and presented in various tables that provide evidences to the case studies and qualitative statements made on the basis of ethnographic information. In the overall presentation, I have tried to show linkages and interrelationships among a complex set of variables which influence the political organizations of the Kisans.

### **3.5 Triangulation for Validity and Reliability of Data**

Triangulation methods means cross check of the collected information applying different methods with different groups of people. In other words it denotes the field

reality understood by the researcher according to the understanding of different groups of people such as women, poor, illiterate and literate and so on. Triangulation of methods and techniques enhances strength of a research. Therefore, the data collected from one method were crosschecked with other methods in the field. This helped the researcher check the validity of information on the one hand and also reduced chances of missing sequential order of information on the other.

In the case of Kisans, many community members prefer to live in isolation from the broader Nepali society and politics. They do not prefer to go to formal forums for justice and other administrative apparatus. However, some younger Kisans have become affiliated with party politics these days and go to formal forums for justice and administrative dealings. They are attracted to ethnic politics and modernity and formed a Club that involves in awareness raising program and community politics. This does not mean that younger and older Kisans are divided into two groups and the younger are disinterested in traditional cultural practices. All are consensus for the protection and promotion of their traditions and cultural practices but most of the older are attached to traditional institutions and younger are attached to the Club.

Hence, different theoretical perspectives, methods and techniques of data capturing were found relevant for the study of the Kisans. Therefore, different perspectives, methods and techniques were applied to understand the multiple choices of the community members. However, political organizations and process of the Kisans including the government mechanism and community court and disputing process as well as dispute resolution process were studied through political anthropological and legal anthropological perspectives.

Both qualitative and quantitative data were essential to know a community in detail from anthropological perspective. "Systematically conducting census to provide data for calculating means of the occurrence of demographic events was as important as collecting information on other aspects of behaviors" (Lauro 1979 cf Chhetri 1990). Combination of qualitative and quantitative tools increases accuracy and reliability of information. "A combination of qualitative and quantitative tools and techniques at the data collection stage can provide a better body of data than either of these would yield without the other" (Chhetri 1990: 44). I employed both qualitative and quantitative methods, as described above.

The Kisans were found united through their political organization; the government and the community court. The community chief and head of the government and the community court was the *Mahato* who occupied the central position in socio-cultural, political and religious life of the community. Therefore, to know the Kisan community properly, role of the *Mahato* in socio-cultural, economic and political life have to be understood. The *Mahato* was found above individuals, as an institution. The role of *Mahato*, their government and community court were interrelated and integrated in the community life. Hence, integrated research design (i.e. exploratory and descriptive) was considered essential and applied in the research.

### **3.6 Personal Experience of Fieldwork**

“It is quite possible for two or more people to have similar field research experiences in different socio-cultural contexts or populations while it is also possible for people to share different viewpoints with regard to their research experiences in one and the same population at the same time” (Chhetri 1990: 62). As a doctoral student, with a Masters Degree in Sociology and a Masters of Philosophy degree in Anthropology, I have written two dissertations for those degrees on the basis of field information, carried out dozens of social research projects, and published several articles and co-authored two books. In each fieldwork experience, I have gained different insights and knowledge. The fieldwork for doctoral degree has also given me some insights. Therefore, I would like to share some of my field experiences here as a Nepali hill origin anthropologist among the Tarai people of Nepal which would add methodological knowledge in anthropological researcher, I believe.

I think a number of factors influence the experiences of a researcher. I would also classify such factors into two broad categories as other anthropologists do. The first is related to the researcher’s positionality, and the second is related to the cultural context of the field site. A researcher is also an individual raised in a different society with a different cultural background, and carries his society, religion, culture, politics, knowledge of academic training and other personality which influence the field or people under study. In the beginning, the Kisans understood me as a non-Kisan hill migrant of the surrounding which constrained me for a long time for rapport building. I was introduced to them by one of my ex-students as his relative. Despite my endeavor to be a part of the community, the Kisans of study area treated me as a local

non-Kisan for a long time during rapport building. The other factor is related to the research field, especially socio-cultural factors. Mainly, cultural characteristics, socio-economic conditions and perception about others and acceptance of outsiders, etc. are such factors of fieldwork which directly affect a researcher. Whatever the diversity in research field or socio-cultural contexts and personality of researcher, there can be some common experiences of the researchers. Similarly, if two or more researchers conducted fieldwork in the same place at a same time, they would have quite different experiences.

My first meeting place with Kisan leaders and key informants was the house yard of the earlier *Mahato*, Dhodi Kisan.<sup>15</sup> Some Kisan elders, leaders, literate people, Kisan Club, and court members knew me previously, since I had managed the human rights training<sup>16</sup> (in March 2006) for them. One day, when I was going to the Kisan Club a group of Kisan women were preparing for rice planting. One of the elderly women made a comment in Kisan language to me, asking “why do rich, hill Nepalis come to know about our culture? I do not know what they do for us.” This made me aware of my positionality as a researcher among the Kisans and especially among the women. Since then, I have introduced myself as a teacher of sociology/anthropology at Tribhuvan University (T. U.) and came to know Kisan culture with the objective to write it systematically which would be helpful for teaching as well as for reading. Many Kisans weren’t initially interested in talking to me, and directed me to the Kisan Club or previous research for information on the Kisans. However, after I started visiting Kisan households with senior members of the community and community leaders, they discovered that I was genuinely interested in their culture, and were very cooperative.

The second hurdle arose during the Household Census was the senior Kisans who accompanied me during discussions and interviews were illiterate. Therefore, I wanted to have educated Kisans (at least SLC graduate) to help fill in Household Census forms. There were two undergraduate and a graduate males and one SLC-passed female Kisans in the community during the time. These educated individuals

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<sup>15</sup> This is the only biggest (two storey) and tallest house of Kisan. The second floor of the house is used for the office of the Kisan Club and the Kisan court.

<sup>16</sup> Basic human rights awareness training was organised in coordination with Nepal Community Development Centre, Jhapa for the Kisan authorities and seniors.

were employed in projects run by the Kisan Club with support from Action Aid Nepal. The only graduate agreed to assist me and I agreed to offer him Rs 10,000. I left the form to him and returned Kathmandu for teaching. After one month, I heard that he had been told that if his employer were Action Aid Nepal he would earn more than Rs 50,000 for the same task. I understood that expectations have been raised among the educated people of Janajatis and indigenous nationalities after the democracy in Nepal and increased presence of INGOs/NGO employers. I could not offer such a big amount to him. Finally, a non-Kisan local graduate was hired as an assistant. Most of the community members of Kisans knew him well, but I also visited three villages with him and we completed 24 forms together, which helped familiarize him with the pertinent issues.

A few months later, Khim Kisan came to Kathmandu and expressed his interest in the further study in Linguistics. I helped him gain admission to the Linguistics Department for a Masters Degree, and talked to the then general secretary of NEFIN and managed some funding for his accommodation in Kathmandu. I also talked to my seniors for his support from National Foundation for Development of Indigenous Nationalities (NFDIN) who managed a monthly academic scholarship for him. Then, Silho Kisan of age 58 (wife of the previous *Mahato*) was brought to Kathmandu for three months by Linguistic Department, T.U. for the study of Kisan language. In coordination with Khim Kisan I managed her accommodation near my apartment. On the one hand, I found a woman key informant to cross check and verify the collected information from the field. On the other hand, I have been established among the family of the Kisan *Mahato* and collected some relevant information. During her stay in Kathmandu, I talked to her almost everyday in the morning, verified the information collected from the field and even widened my knowledge. As a Masters candidate, Khim Kisan also read most of the chapters of my writing, corrected the errors related to their culture and practices and provided required information throughout the writings.

Since then, I found full support from the family of *Mahato*, Kisan authorities and Khim's family and relatives. Thus, after a long time and effort, I found myself inside the boundary of the Kisans in Magurmadi village (Mechinagar 4). I am offered local brew and tea in most of the houses; people have invited me to marriages and feasts

and taken me to Kisan villages for court functions, village rituals and so on. Moreover, many elderly Kisans sought to be out to tell their stories about the loss of their land to settlers. The elderly Kisans took me to participate in mourning rituals, purification ritual of an inter-caste marriage, *Gram pooja* and ancestor worshipping rituals and told me the detail meaning of each ritual and *Pooja*. I have noted down all the stories and meaning of their rituals and *Pooja* that they have described. I had participated in such rituals and *Poojas* earlier also but none of them told me the meaning of such rituals. At that time, their common answer was “I do not know the actual meaning of your question, please ask someone else or go to the Kisan Club”.

Thus, I became established among the Kisans of Magurmadi village at first and then in other villages. When I found full support of the community members, I shifted my accommodation from a non-Kisan to a Kisan house. This helped me to be familiar with children and women of the village who helped introduce me to the Kisans of other villages. Moreover, school children accompanied me to visit Kisan villages when the schools were closed. On the other hand, the non-Kisans of the surrounding asked me frequently whether I would study Kisans community only or come to the non-Kisans.

As I mentioned earlier, I used various tools for data collection. A frequently raised query from my respondents was what I wanted to do with so much detailed information about cultural practices and opinions of different individuals. I used to say, “I have to write a book that shows similarities and differences of cultural practices of different villages, and sub-caste groups of the Kisans”.

I kept writing field notes throughout the period during my visit and living in the community. I recorded the events I observed and participated in, as well as any other information available during conversation or formal questioning. This information would not have come from household census and review of literatures. Talking to the members in the Club, playing drums and singing in the evening, walking together in the jungles and villages, participation in shaman’s performance, rituals, and chatting with elderly Kisans in tea shop in Khuttidangi Chowk and Kisan Club and cycling to Dhulabari bazaar for marketing, will not only stay behind in my memory but also remain an opportunity by which I got to understand a distinct community of Tarai.

Finally, I would like to state that there are many aspects of Kisan community and their cultural practices unstudied because of my own theoretical and methodological orientation and interest. As I mentioned before, I have focused on political organization of the Kisans, such as the government-like mechanisms, community court, disputation and court processes and the related political culture of the community only. I have not studied economic, ecological and many other aspects of the community and culture in detail, and I would say that life-ways of the Kisans, their perceptions / cosmologies and positions in the broader Nepali politics are unique and interesting, but constantly changing. Therefore, it can be an interest field of study of an anthropologist in the future.

## CHAPTER FOUR

### **Kisan Community: An Overview**

This chapter presents an introduction of Kisans and their community in terms of settlement patterns, demographics, origin, history and arrival in Nepal, caste, kinship and marriage practices, economy and education. In part due to their distinct cultural practices, the Kisans continue to identify as an ethnic group in the rapidly changing society of Nepal. The governance systems of a society always affect, maintain and perpetuate other structures of society (Blustain 1978). Hence, the political system of the Kisans plays a role in maintaining socio-cultural, economic and religious practices of the Kisan community. Keeping this in mind, the socio-cultural, religious and economic aspects of the Kisan community will be overviewed in this chapter. This description serves as background to the questions of how and why the Kisans have developed certain political institutions, especially their government, community court and laws, and how they have been able to preserve such practices in a changing context.

Existing literatures do not make clear whether the Kisans are among the 43 caste origin Tarai Hindu groups (including Tarai Dalits) or other unidentified 4 Tarai ethnic groups of Nepal (Dahal 2003). Central Bureau of Statistics in Nepal lacked the population of the Kisans until the 1991 Census Report, and from the 2001 Census Report it has not distinguished among low-caste Cobbler of western Nepal, including those who used to identify themselves as Kisans<sup>17</sup>. Information gathered from the Kisan community indicates that they are living in Jhapa district for more than eight generations. Here, I am going to present an overview of the Kisans especially the settlement pattern, population, family size, age and sex structure, caste and kinship, original history, and political organizations of the Kisans.

#### **4.1 Settlement Patterns**

The Kisans have been living along the north-eastern boarder of Jhapa district for the last eight generations.<sup>18</sup> The household census identified a population of 773 Kisans

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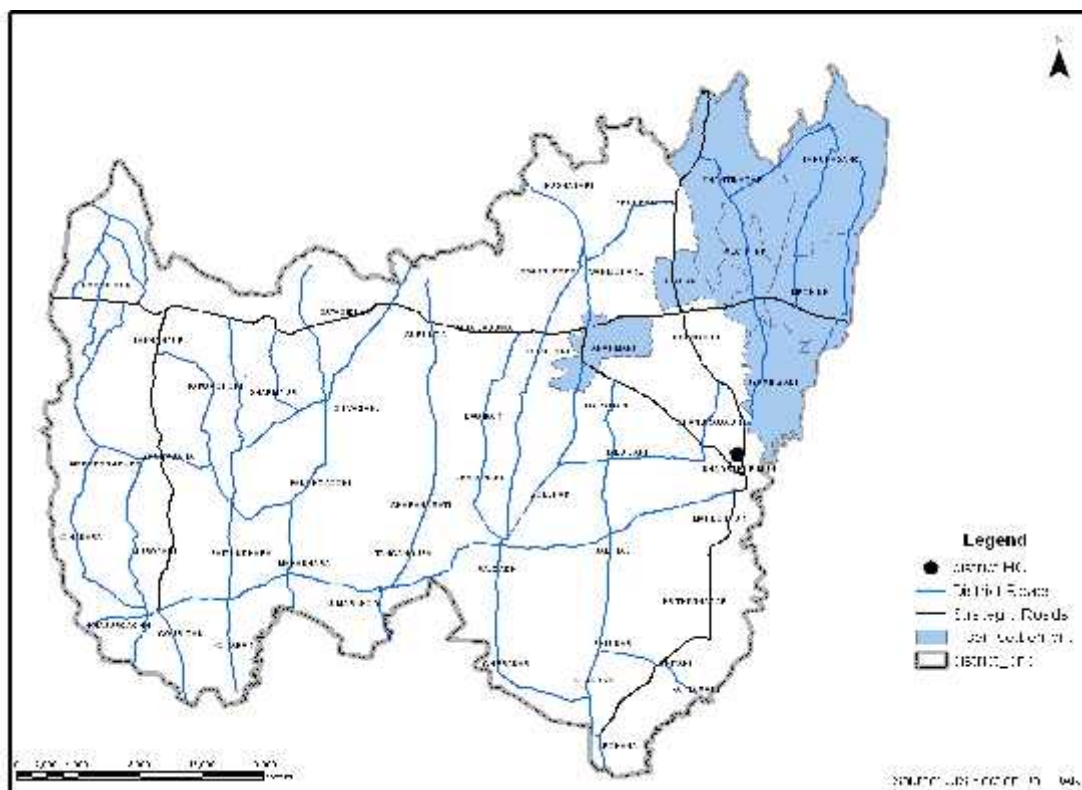
<sup>17</sup> Some *Sarki* of Dhaulagiri zone of Nepal have identified themselves as Kisan which denotes farmer in Nepali language.

<sup>18</sup> Two elderly community members traced out their ancestry up to 8 generations in Nepal.



in Jhapa district divided into 160 households<sup>19</sup>. There are nine main villages of Kisans scattered in five VDCs and one municipality (see Map 4.1). The table 4.1 shows the population of the Kisans in each Municipality/VDC of the study area.

**Map 4.1: Jhapa District Showing the Kisan Settlements**



**Table 4.1: Municipality/VDC-wise Household and Population of the Kisans in Jhapa**

Name of VDC / Municipality	Total households	Total population	Male	Female	Average family size per household
Mechinagar Muni.	98	484	236	248	4.94
Shantinagar VDC	22	106	49	57	4.82
Dhaijan VDC	19	95	47	48	5.00
Bahundagi VDC	16	71	39	32	4.44
Anarmani VDC	4	13	6	7	3.25
Jyamirgadi VDC	1	4	3	1	4.00
<b>Total</b>	<b>160</b>	<b>773</b>	<b>380</b>	<b>393</b>	<b>4.83</b>

Source: Household Census 2008

<sup>19</sup> In the case of Kisan it is found that a family has constructed a house. Therefore, household and family in the case of Kisan is same.

The Kisan settlement area covers about 50 square km, from the lower belt of Anarmani VDC to the upper area of Shantinagar VDC. A VDC is divided into 9 wards and Mechingar municipality is divided into 13 wards. The VDC and municipality are the formal local government bodies in Nepal. The Kisans of Jhapa follows the formal political divisions, although they have their own divisions, into nine villages, to organise the community in a systematic way. These are (I) Semairdanga (Mechinagar 4), (II) Majhargaun (Mechinagar-5), (III) Nindabasti (Mechinagar-6), (IV) Kalakhutta (Mechinagar-2), (V) Bagribadi (Mechinagar 7), (VI) Bansaun (Dhaijan VDC - 8), (VII) Barnegaun (Shantinaar VDC 1), (VIII) Bamandangi (Bahundangi VDC 3 & 9), and (IX) Butabari (Anarmani VDC 1).

Kisan settlements are located at some distance from non-Kisan settlements, and almost all Kisan villages are by the roadsides, river banks, and near the forests. There are five to nine houses in the Kisan settlement, and to them this constitutes a village, or *Gaam* (hereafter, village). A Kisan house lacks adequate space and is not divided into rooms. In general, one house in each Kisan village is bigger than other houses. This bigger house has a yard where children gather and play. The bigger house has a separate room or a house for meeting where children could play in the day and adults could gather in the evening for meetings. The same meeting room was also the place where the Kisan authorities gathered to discuss village problems. A small trail linked the houses to each other and other villages (see photograph 4. 1 and 4.2).

An interesting feature of the settlements, especially near the roadsides, was that houses did not face the roads, as the roads are understood to be used by spirits and those bearing ill will, as well as for everyday travel. With the intention of protecting



**Photograph 4.1: A meeting house of Kisan**



**Photograph 4.2: Houses of the Kisan facing opposite of the Road**

themselves and their children from the evil eye, Kisan houses are built away from the road. In addition, the houses are fenced with netted material of bamboo and straw. Some young Kisans, however, did not agree with this traditional point of view. To them, the foremost reason for the phenomenon was the introverted nature of the Kisans and an unwillingness to contact and talk with outsiders (during fieldwork, I did have initial problems, due to the communities' unwillingness to engage with strangers). This divergence represents the varying understanding of two generations Kisan in the study area. The old generations Kisan (as well as many young, but illiterate Kisans) are strong believers in the evil eye, witchcraft and shamanism, compared to the young and educated generations.

One can determine the economic status of a household based on the size of a house, its maintenance, colour, roof and sometimes number of houses, space of yard, etc. Most of the houses are single-storied, made of bamboo and roofed with mud and thatch. The walls of most of the houses were made up of split bamboo and smeared with mud and cow-dung. Most of the houses of poor Kisans have no windows and chimney holes, in part because of the belief that such openings allow bad luck and evil spirits to enter. Rich Kisans construct separate houses for the kitchen, guests, grain store and for cattle (see photographs 4.3 and 4.4). Out of 160 households, only seven households have two or three storied houses, roofed with corrugated iron. In addition, there are 15 two-story houses where ground floors are very low ceiling (less than one meter) and difficult to enter. The two or three story houses are owned by the *Mahato's* family, ministers, and police. These houses are quite similar to those of non-Kisans in the area. The rooms in these houses are furnished with chairs, cupboards and tables. Tall houses are higher prestige, and so rich Kisans emulate their non-Kisans neighbours by building higher status. Most Kisans either migrate to abroad (for earning money) or sell their land for the construction of a two-story house.



**Photograph 4.3: A house without windows**



**Photograph 4.4: A house of rich Kisan with a Separate Kichen and animal house**

## **4.2 Households, Population and Family Size**

The Kisans household size varies. It is observed that the older generations have more children than the younger generations. Key informants told me that this was due in part to lack of access to and knowledge of family planning and contraception, and in part to religious belief. An older woman cited a Hindi proverb regarding their belief about the children: “*Jiska Lathi Uska Bhais*”. Literally, it means that those who have the stick own the buffalo. To a certain generation of Kisans, children were the sources of earning by which they could accumulate and maintain property or livelihood, and so larger families were considered preferable.

Younger Kisans have knowledge of contraception and birth control. Because of birth control, the average family size among the Kisans has declined. The table 4.2 shows the family size of the Kisans in Jhapa. Non-permanent methods of birth control are preferred to permanent methods construed as leading to weakness and inability of an individual to perform physically demanding tasks.

**Table 4.2: Distribution of Family Size and Percentage of the Kisans in Jhapa**

<b>Number of members</b>	<b>Total household</b>	<b>Per centage</b>
1	-	-
2	17	10.63
3	17	10.63
4	32	20.00
<b>5</b>	<b>40</b>	<b>25.00</b>
6	31	19.38
7	13	8.13
8	6	3.75
9	2	1.25
10+	2	1.25
<b>Total</b>	<b>160</b>	<b>100.00</b>

Source: Household Census 2008

The table shows that 25 per cent of Kisans have 5 members' family which is less than national family size (5.4) of the country (CBS 2003). The average family size of the Kisans is 4.8.

The Kisan household head is responsible for settling household disputes, managing socio-economic problems, providing security to household members, and mobilising members for livelihood activities. In general, a senior male of a family heads the household/family. Out of 160 households, 21 are headed by women. The female-headed households are under the control of a widow in cases where sons are too young to run the household. The most senior son of such a family would head the household as soon as he grows up and is able to do so.

Among the Kisans, two types of households were observed: nuclear families and joint families. A nuclear family, as understood here, consists of a married couple (or a widower/widow) with or without unmarried children at home. A joint family refers to a household that contains two or more married men, with or without their wives and unmarried children. The married men might be father and son (s) or a case of two or more married brothers living together. Table 4.3 shows types of family among the Kisans.

**Table 4.3: Types of Families among the Kisans in Jhapa**

<b>Types of Family</b>	<b>Total Number</b>	<b>Percentage</b>
Nuclear	100	62.50
Joint	60	37.50
<b>Total</b>	<b>160</b>	<b>100.00</b>

Source: Household Census 2008

The study revealed that more disputes in a nuclear family are settled internally, compared to those in joint families. According to the Kisan authorities, more than 90% family disputes in joint families are registered in the community Court (*Kachchheri* in Kisan language). Most of these disputes are over distribution of property and adultery. Only about 10% of *Kachchheri* cases from within nuclear families are cases of adultery.

As in Fricke (1993), this study shows that when a son from a nuclear family grows up, he gets married, creating a joint family for some years until the family is divided again into nuclear units. The main reason for the break down of joint families among the Kisans is the number of family members and the issue of their earning and contributions to the family income. The number of family members increases after the marriage of the son (s) of a nuclear family and birth of their children. For example, Losha Kisan, 75, of Bamandangi had been living with her two sons, and when they got married, two daughters-in-law joined the family, increasing household expenses. The wife of the elder son at one point could not participate in manual labour due to her pregnancy. The younger son together with his wife complained and this led to a family dispute. As a result, the family broke down into nuclear family. According to the key informants, every twenty years or so, a nuclear family changes into joint family, and the subsequently breaks down after a few years, following average life cycle events within the community.

### **4.3 Age, Sex and Marital Status**

Demographics, particularly age and sex ratios, have important impacts on a society. For an example, a proportionally male population may be a factor in the occurrence of polyandrous marriage and matrilocal families and a proportionally female population

in the occurrence of polygamous marriage and patrilocal families. The marital status of an individual also affects multiple aspects of a society. Marriage status also determines, in part, a person's rights and responsibilities within the community.

The economically active population is the part of the population that engages or attempts to engage in production (CBS 2003). All persons consume goods and services, but a limited group, which excludes the youngest (in Nepal, under the age of 10), and the physically and mentally incapacitated, involves in economic production in society. Table 4.4 shows the age distribution of the Kisans population in the study area.

**Table 4.4: Age and Sex-wise Distribution of the Study Population**

<b>Age group</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>	<b>Parentage</b>
0-4	37	38	75	9.70
5-9	36	41	77	9.96
10-14	48	45	93	12.03
15-19	45	46	91	11.78
20-24	37	43	80	10.36
25-29	35	31	66	8.54
30-34	27	29	56	7.25
35-39	22	21	43	5.56
40-44	17	24	41	5.30
45-49	17	22	39	5.04
50-54	17	23	40	5.18
55-59	21	16	37	4.78
60+	21	14	35	4.52
<b>Total</b>	<b>380</b>	<b>393</b>	<b>773</b>	<b>100.00</b>

Source: Household Census 2008

Gender is another characteristic that structures societal relations. In rural Nepal, people still prefer a male child, which may have multiple meanings in a society. For example, according to prevalent Hindu social value a son is considered permanent family member, a performer of mortuary rituals and other rituals connected with ancestor worship after the death of his father and a bread earner of the family. In

contrast to this, a female is believed as a temporary member of the family, goes her husband house and worship the ancestor of her husband and work for the same family after marriage. Furthermore, the sex ratio of male and female in the study population is similar, but the number of males is higher in 55-59 and above 60 groups. This indicates that life expectancy of female is lower than male in the Kisan community, which is the opposite of the national average.

#### **4.4 Myth of Origin and Arrival History**

*Although our birthplace is not the same, we should have the feeling that we have been born in the same place so that we may have good feelings when we gather (Cyogi Rhab cited in Fisher 2001: 1)*

Rappaport writes, “humanity is a species that lives and can only live in terms of meaning it itself must construct” (1994: 156). Anthropologists argue that the worlds in which humans live are not fully constituted by geological and organic process, but are also symbolically conceived and established by performative actions (Austin 1962). There is plenty of contradiction and ambiguity inherent in this ‘world making processes. People who narrate the history or myth of origin are influenced by the present and they always construct it to distinguish them from others’. Past history and myth of origin of a group play an important role in establishing and maintaining boundaries, the feelings of “us” vs “them”, based on caste or ethnic criteria.

The Kisans of the study area understand themselves to be different from the other Tarai peoples, and narrate different histories of origin, perceive and perform different socio-cultural practices, and interact with other groups accordingly. As with many ethnic groups of the Tarai, the Kisans trace their origin to India. A similar number of people in Jhapa district identify as Kanwar, Gwal, and Rautiya. Many non-Kisans treat them as Kisans, but the Kisans understand themselves as superior to these groups, tracing their history to the Nagasia of India. One of the key informants informed me that these other groups entered into Nepal as ally groups of the Kisans in the distant past. Most of the Kisan court authorities also have no knowledge of the Kisans myth of origin, except the *Mahato* and a few *Sipahi*. The younger generations, particularly educated individuals, have little interest in learning the history of their elders. One reasons cited is that these individuals don't wish to be isolated from other people in the Tarai. Only few elderly people know their myth of origin and trace it out



when someone asks them. I observed that the Kisans were not interested in interacting with non-Kisans. However, after much effort on my part, two elderly men agreed to narrate the myth of origin of the Kisans<sup>20</sup>. Below is a direct translation of their statements about their origin and arrival history in Nepal.

### Story one

Since our arrival in Nepal we have been known as Kisans. We preferred to introduce ourselves as Kisans and our neighbours also know us as the Kisans. We came to Nepal as farmers and therefore we became Kisans<sup>21</sup>. Our relatives in India still identify as Nagasia. Our relatives in India live in Bengal State, just across the boarder of Nepal<sup>22</sup>. Originally we came from Chhotanagpur in Ranchi, India. In the past, there were three main ethnic groups in Ranchi. They were the Nagasia, Uraun and Karwa. These three groups were under the control of their own religious leaders and occupied different territories of Ranchi. Lawad Nagasia, Chunni Uraun and Denda Karwa were the three leaders. Each leader would claim oneself powerful than the others. All these groups were the followers of the Hindu god and goddess; lord *Mahadev* and *Parvati*. They also worshiped natural objects like the sun, earth, sky and river. These three groups did not have a good relationship all the time, though they would unify with each other to fight outsiders to protect the sovereignty of their state. Indeed, these groups had to fight frequently with the neighboring states.

Once, with the aim to develop harmony among the people, the three leaders organised religious teaching together. However, before giving them a final *Mantra* (convocation) which could keep them together in the future, a dispute broke out among the groups. The situation became beyond the control of the leaders' ability to maintain peace and order in the state. Some time before, one of the Muslim neighbours attacked Ranchi to conquer it. In this critical moment, the three groups of Ranchi unified again and fought against the Muslim invaders bravely and chased them out, killing their soldiers. They believed that due to religious power of their leaders

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<sup>20</sup> After a long interaction, Puna Kisan 82 and Toyala Kisan 81 traced out the story.

<sup>21</sup> Kisan is a Nepali word that denotes farmer.

<sup>22</sup> During fieldwork I have visited Nagasia villages of West Bengal, about 20km from the Kisan villages in Jhapa, two times. The Kisan's relatives in Bengal are identified as Nagasia. The Nagasia and Kisan gather together for most of the ancestor worshipping rituals and *Poojas*. As in Nepal, there is a Neagasia *Mahato (Raja)* in West Bangal, and the two kings have a good relationship and consider each other of equal status.

nobody would be able to defeat them. The Muslim king had been defeated several times by the power of the religious leaders. The Muslim king realised their power and finally sent a spy to Ranchi. The spy became a pupil of the tribal leaders to understand their power, and once he did, informed the Muslim King of the trick to defeat them.

According to the trick, the Muslim king's warriors must put *Tika* on their foreheads with the blood of an unmarried pregnant woman during the attack. Using the trick the Muslim invaders took the tribal territories of Ranchi under their control immediately. Thus, the Nagasia, Uraun and Karwa leaders and their followers lost their state. In this event, the Karwa and Uraun leader were caught and put in prison, but the Nagasia escaped from the Muslim soldiers and ran away towards the mountains. The group settled in the eastern Nepal (the Kisan settlements in Jhapa district now) as farmers.<sup>23</sup> The Kisans of Jhapa still believe that they are the offspring of the Nagasia King of Ranchi. The eldest son of the leader's family is accepted as their king, perceived as the chief of socio-cultural, religious and political lives of the Kisans.

## **Second Story**

We Kisans were known as industrious farmers in Madhya-Pradesh and Ranchi. We came from Madhya-Pradesh to Ranchi searching for productive land. The British government of India, with the objective to modernise agriculture, introduced varieties of cereal and cash crops, modern agricultural technology and agro-bases industries in different parts of India. In the beginning, they established demonstration plots and then they provided the seeds, technology and knowledge to local people. The Kisans, as skilled farmers, were employed in the manifestation plots.

During agricultural modernisation, the British government had established Tea gardens throughout the hill area of Bengal.<sup>24</sup> Many young Kisans migrated to Bengal as Tea Estate labourers from Madhya-Pradesh and Ranchi.

We Kisans were not used to time-bound work but in Tea Estate we had to work from 9am to 5pm. Some of the Kisan found the time-bound job uncomfortable and left. The

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<sup>23</sup> Jiten Lakada also provides some facts regarding the arrival history of the Kisan to West Bengal and adjacent areas in his article *Mere Jharkhanda Yatra, Jharkhandi Bhasa, Sahitya Sanskriti Akhada*, Barsha 4, Anka7, January-March, 2007.

<sup>24</sup> According to Jiten Lakada (2007), the Kisan were brought to Tea Estates of West Bengal by R. Bukslemark in 1838 as chief laborers.

Kisans who left the job did not like to return their home to Madhya Pradesh and Ranchi and entered into Nepal searching for a new life.

Since then, we have been living in Jhapa. We have good relationship with our friends and relatives in the Tea Estates and surrounding areas of West Bengal but we have no contact with the Kisans of Madhya Pradesh and Ranchi. However, we are continuing our culture and tradition in both places (West Bengal of India and Jhapa of Nepal). We have our own political organisation, the *Baiga system* which is run by our own authorities; the *Mahato*, *Wakil* and *Sipahi*. The *Baiga system* is known as Kisan government (originally the *Baiga System* which is known as *Mahato* and *Raja System* and nowadays and the community court (*Kachchheri*). This political organisation of the Kisans controls socio-cultural and political life of the community. The Kisan *Mahato* of Jhapa and the Nagasia *Mahato* of West Bengal have a good relationship. As both of them hold equal status, they respect each other equally by offering a *Dhoti* (a cloth that covers from waist to feet) and a bottle of wine once a year.<sup>25</sup>

### **Third story**

We were known as Nagasia and our relatives are still known as Nagasia in India. There were no ethnic groups identified as Kisan in India. We are Negasia but we prefer to introduce ourselves as Kisans in Nepal. We came and established ourselves in Nepal as farmers and therefore our neighbours know us as Kisans (Kisan is the Nepali word for farmer). When we go to our relatives in India they recognise us as Nagasia but they also know that we identify as Kisans<sup>26</sup> in Nepal.

Nagasia has two meanings: a resident of Chhota-nagpur of Madhya Pradesh and an offspring of Nag (snake, worshipped by Hindus as the symbol of lord Vishnu). In the ancient history of India, Nagasia were the rulers of tribal state in Madhya Pradesh. Our ancestors were known among the tribal groups of India as *Nagbanshi Raja*. We believe that Chhota-nagpur is the original home of the Nagasia and remember the place during ancestor worshiping. It is believed that the Muslim king of a neighbouring state invaded our territory and killed the fighters of *Nagabanshi Raja*.

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<sup>25</sup> I have met both *Mahato* or *Rajas* (of Jhapa and West Bengal) during the fieldwork and talked with them and their ministers about socio-economic and political cultures

<sup>26</sup> The Nagbanshi people identify as Nagasia and Nagasia-Kisan means the Nagbanshi or Nagasia people involved in farming.

To escape from the Muslim king and his shoulders, Nagasia Raja with their followers moved towards the mountain regions. As a result, some of the Kisans might have arrived Nepal. The Nagasia originally were skilful hunters organised under the *Nagbanshi Raja*. The Uraun, Munda and some other tribal groups were under the leadership of *Nagbansi Raja*.

A group of Nagasia settled in Nepal (Jhapa district now) to farm and fish and hunt, turning barren land into productive farms. Thus, the hardworking Nagasia farmers were known as Kisans in Jhapa among the locals. Since then we have been introduced as Kisans in Nepal.

All these three stories trace out origin of the Kisans to India. Anthropologist Vidyarthi and Rai (1985) describe a political-culture of tribal groups in India in which they mention the original history of the Kisans and time period of their ruling as well as their cultural practices. According to the authors, Nagasia, Uraun and Kharwar were the main tribal groups of Madhya-Pradesh in medieval period. These tribal groups maintained their society through *Baiga system*. “*Baiga* simply denotes the chief of the society but it is a system that controls and maintains socio-cultural, religious and political lives of the tribal groups” (1985: 51-53). The Kisans, originally, referred to their political system as the *Baiga system*. The *Baiga system* of the Kisans implies control of socio-cultural life of the community by the *Baiga* (or, the *Mahato*, or *Raja*). However, the word *Baiga* also denotes a priest or shaman. In the view of elderly Kisans, a *Baiga* was promoted to *Mahato* as well as to *Raja*. Therefore, the *Raja* is still known as *Baiga* and performs family and community rituals and *Pooja*. All these practices existed in the community are evidences of the Kisans to proof their original history to Nagasia as well as Madhya-Pradesh of India.

Moreover, Vidyarthi and Rai (1985) suggest that Nagasia are the offspring of the Nagbanshi Raja of Chhota-nagpur of Madhya-Pradesh. Their arguments match with the third story about the origin of the Kisans mentioned above. According to them, “... tribals until the beginning of the medieval period were enjoying autonomy. But the end of the 16<sup>th</sup> century they were harassed by the Mohammedan rulers and gradually lost their territory... In middle India the *Nagbansi Raja* of Chotanagpur, who was the head of the Uraun and the Mundas, was reduced to a Malguzar or

tributary (1585). Then the Nagbanshi Raja moved towards Hindu Rajas' territories in northern India" (1985: 33-34).

Two senior Kisans have visited Nagasia villages in Chhotanagpur in India and traced out some similar features of Nagasia and Kisan settlements. According to them, both groups preferred to live in cluster settlements. Their settlements are far from the settlements of other groups and normally do not interact with them. Both communities are closed to outsiders and organise under their own political leaders. The community members of both groups are socialised as a politically organised group under the community chief, the *Mahato* or *Raja*. Due to their strong political position, the Kisans in Jhapa district are treated as a higher caste / category people by the surrounding groups of Tarai such as Kwar, Gwal, Rautiya and Mundas. The community political mechanisms in both Jhapa and India regulate not only relationships within the community, but also modify relationships with outside groups; since the political mechanisms within the community are so robust, it limits the necessity of interactions with the other groups.

In the view of key informants, the Kisans might have arrived in Nepal searching for unclaimed land. The reason to leave the Tea Estates of West Bengal could be the distaste for daily interaction with non-Kisans. The North-East of Jhapa which was settled by the Kisans eight generations ago (around 1800AD) remains the primary home of the Kisans in Nepal. None of the Kisans can trace out the actual date of their arrival to Nepal. However, in the household census almost all Kisans replied that they have been living in Jhapa for more than seven generations. The present *Mahato*, *Wakil* and most of the *Sipahi* of the Kisan government have traced out their own ancestry up to seven generations in Nepal.

#### **4.5 Caste, Kinship and Marriage**

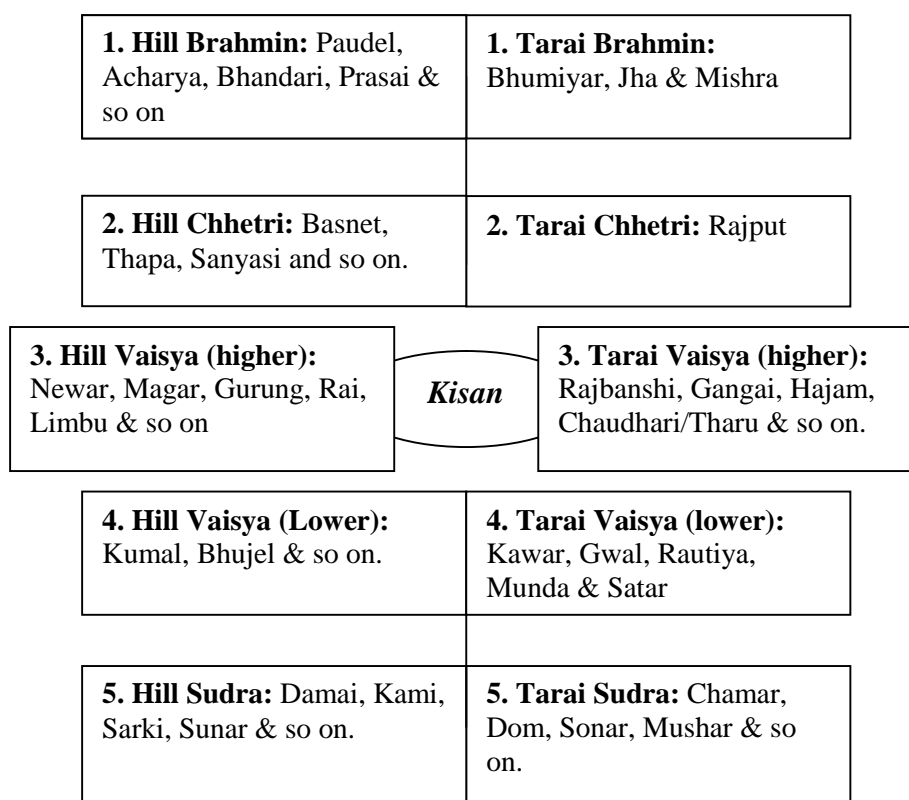
The Kisans of Jhapa, like other Hindus, believed the caste system. In the household census most of the Kisans were identified as Hindus except a few educated younger individuals<sup>27</sup>. The educated Kisans requested that I write religion of Kisans as "nature worshippers" though they believed that their position is higher than other Tarai ethnic

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<sup>27</sup> The only graduate Mr. Khim Kisan and the activists of their Club argue that Kisan are registered in NEFIN as Shamanists (*Prakriti Pujak*), and are not Hindus.

groups, such as the Kavar, Gwal and Rautiya (See Figure 1). The young generation Kisans have engaged with the ethnic politics emergent in Nepal after the People’s Movement I of 1990, and intensified after the People’s Movement II of 2006. Some Kisans have established an organisation, Kisan Community Development Foundation (locally known as Kisan Club). The Kisan ethnic group has been registered in NEFIN in 2001 as an endangered marginalised group with less than 1000 population in Nepal. However, a meeting of Kisan community representatives held in March, 2008 has determined the religion and caste of the Kisans. The meeting concluded that Kisans are Hindus and their caste position is higher than the low strata Vaisya and Sudra caste people of the both Hill and Tarai origin. In the caste structure of traditional Nepali society, Kisans prefer to place themselves as equal to Rai, Magar and Gurung of the Hill and Rajbanshi, Dhimal and Chaudhari of the Tarai. Figure 4.1 shows Kisans caste position in the society of Jhapa district.

**Figure 4.1: Kisans Caste Position in the Study Area in Jhapa**



Thus, the Kisans put themselves in the 3<sup>rd</sup> position of the vertical caste hierarchy, higher than the surrounding Kavar, Gwal, Rautiya, Munda and Satar of the Taria origin and Kumal and Bhujel of Hill origin people. On the other hand, the Kavar,

Gwal, Rautiya, Munda and Satar claim themselves to be equal to the Kisans. In practice, I have observed several inter-caste marriages between these groups. In a discussion with senior Kavar, a mythical story about the relation of Nagasia and Kavar was revealed. According to story, Kavar were the cooks, Gwal were the herdsmen and Rautiya were the helpers of the Nagasia-Raja in Chhotanagpur. Moreover, it was also revealed that Kisan eat mouse whereas the Kavar, Gwal and Rautiya do not. Therefore, the senior Kawars believed their caste status higher than the Kisans. When I told Kisan informants the mythical story traced by some Kavar informants about the caste position of the Kisans, they informed me another story. There were Kavar cook-men of the Kisan Raja in Chhotanagpur until the time the Raja discovered the horse eating practice of the Kavar.

Food habits and cultural practices maintain the boundaries of ethnic groups (Barth 1981). The Kisans and Kawars of Jhapa also maintain the ethnic boundary tracing out mythical stories of food habits and cultural practices. Today, there is no rigid cultural boundary between these groups among the young generations. Some senior Kisans informed me that they drink water but do not eat foods cooked by Kavar, Gwal and Rautiya but these groups eat cooked foods by Kisans. This indicates higher status of the Kisans than Kawars, Gwals, Rautayas and Mundas and other similar groups.

The Hill origin Newar, Gurung, Magar, Rai and Limbu and Tarai origin Rajbanshi, Gangai, Hajam and Chaudhari also regard themselves as higher than the Kisans, although in practice some of them eat pork like the Kisan. Pig is considered an inauspicious animal by high caste Hindus. The Tarai origin people, especially the Rajbanshi, Gangai and Hajam do not even touch pigs. Only the Tharu eat pork and mouse as the Kisans do. Kawars, Gwals and Rautiyas also eat pork but they do not eat mouse. Hence, it is not an easy task to place different groups of people in the caste hierarchy. On the basis of the food consumption, one could consider Kisans, Kawars, Gwals, Rautiyas and Tharus in the same position of the caste hierarchy in Nepali Hinduism.

The Kawars, Gwals and Rautiyas in Jhapa used to identify as Kisans until 2004. Therefore, the locals treat all these groups as Kisans. However, when the government of Nepal decided to provide scholarship support to the school children of minority ethnic groups, the Kawars, Gwals and Rautiyas also formed their own organisations

and each of them went to register to NEFIN and National Foundation for Development of Indigenous Nationalities (NFDIN) as separate groups.

The non-Kisans high caste Brahmins and Chhetris of the surrounding area consider the Kisans just above than water untouchable groups. These groups accept water but do not accept cooked foods from the Kisans, and a Kisans may enter into the house of a Brahmin/Chhetri but he cannot enter into the kitchen. Kisans seem to have accepted these restrictions and restricted their own interactions with water-untouchable castes to maintain their position with higher caste Hindus.

There is a caste hierarchy within the Kisan community that is, in some ways similar to the caste hierarchy of the larger Nepali Hindu community; there were food taboos and cultural restrictions between high caste and low caste Kisan until the last few decades, although those practices seem to have decreased in importance. However, in the view of Toyala Kisan, 81, of Majhergaun, there was not historically as rigid a caste system within the community as there was in the rest of Nepal, but living together with non-caste groups in Nepal, Kisans have also learnt some caste characteristics and interact and behave accordingly. During fieldwork, I talked with those who referred to themselves as *Teliya* sub-caste, and claimed higher status than other Kisans. In the discussion with the sub-caste *Sindhariya* they claimed similar status as *Teliya*, and there are marriage ties between these groups. There were no *Tiriya* and *Dhuriya* sub-caste Kisans in Jhapa. *Tiriya* is considered a little lower than *Teliya* and *Sindhariya* and the *Dhuriya* is the lowest sub-caste group among the Kisans. The *Dhuriya* Kisans increasingly prefer to identify as *Mushar*. The *Mahato* of the Kisans belongs to the *Teliya* sub-caste and therefore the Kisans perceive and interact with this group as higher than the other sub-caste groups. However, non-Kisans do not recognize within Kisans sub-caste distinctions. The present *Mahato*, Bhabir Kisan, is landless, and his wife is a wage labourer. The non-Kisans of the area hires labourers from all Kisan sub-caste groups, offers the same foods and treats them equally. Regardless of caste relationship, the Kisan understand non-Kisans as *Anjait* or *Parjait*, referring to outsiders of both Hill and Tarai origin.

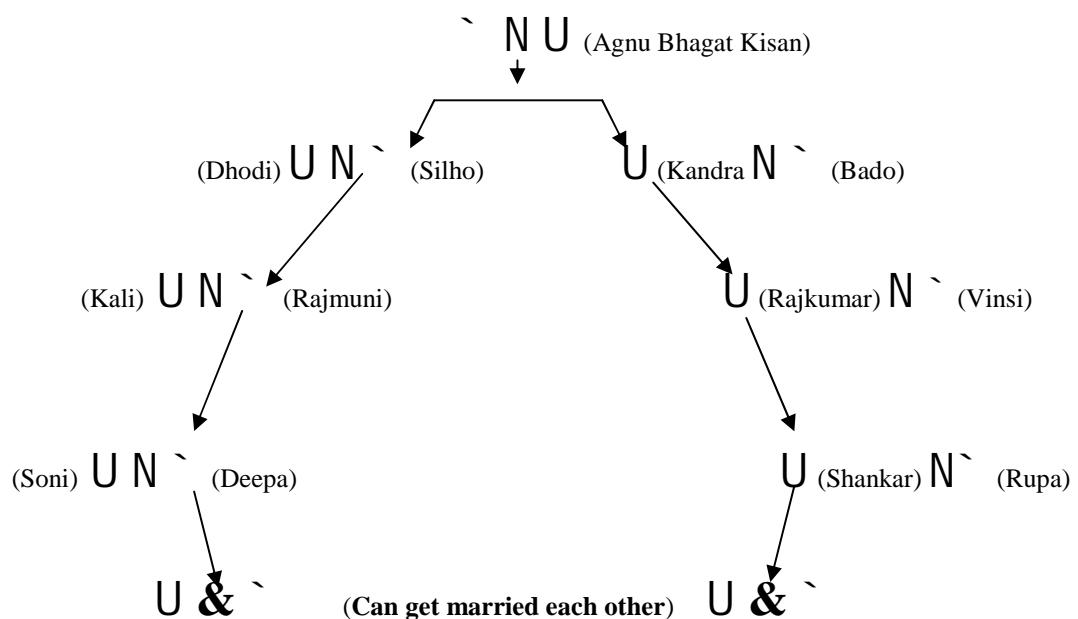
Marriage is perceived as a fundamental social institution among the Kisans. The relationship is taken not only between two individuals but also between two families and villages. Despite sub-caste divisions, the Kisans consider all other community members as their own relatives, using the word *Apanahit* or *Apanajait*, with distinction



between blood relatives and affinal relatives. Blood relatives are known as *Ekego-ladapotakar*. This literally means “related to an intestine” or “offspring from the same penis”. Strong networks of *Ekego-ladapotakar* relatives are emotionally attached and together resolve family problems and perform ceremonies including ancestor worship, marriage, and illness and death rituals. Affinal relatives are known as *Kutumb* are considered important, but not as close as *Ekego-ladapotakar*. As with clan exogamous and caste endogamous groups in the surrounding areas, the Kisans have affinal relatives within the community. In a few families, affinal relationships are especially strong between son-in-law and father-in-law or mother-in-law.

Normally, the Kisans conduct marriage between *Teliya* and *Sindaria* sub-caste groups; however, in Jhapa, only three households out of 160 belong to *Sindhariya*. In the past, Kisans used to bring wives from India. Nowadays, Kisan girls may go to India with Nagasia boys but Nagasia girls are less likely to marry Kisan boys and move to Nepal, because of political uncertainties and unemployment issues. Therefore, it is impossible to find marriage partners between these two sub-castes groups only. As a result, the Kisans can select partners within an ancestrol group (cross-cousin marriage) after four generations, if the partners are not both from male lines. (This would mean that son/daughter of the great grandson and daughter/son of the great granddaughter of the same ancestors can marry. Figure 4.2 shows about marriage partners of the same lineage). Older Kisans disagree with this type of marriage but their court has accepted it for the last few years and they are silent.

**Figure 4.2: Marriage partners within the same ancestry**



Arranged marriage was the common practice among the Kisans until the last decade. It is accepted as formal marriage within the community, and so the couple does not need to go to court to formalise their relationship. In the past, paying bride price to a girl's family when she was quite young was common among the Kisans. Some cases have arisen where a man may bring a newly wed couple to court, claiming to have already paid a bride price for the now married woman at an earlier date. This type of claim to the court is increasingly rare, but in such cases the newly married couple may have to pay the court fee (Rs 2000) and the amount claimed by the man. I witnessed two such cases, but in both cases the claim amount was less than NRs. 500 and 40kg paddy.

Love marriage is increasingly common in the Kisan community. None of the young boys and girls is interested in arranged marriage. One reason behind this change is the poor economic condition of the community and the long and expensive formal process to be necessary. Some older Kisan remember paying many ornaments, pairs of oxen, and land to pay for their arranged marriages in the past. In fact, a groom had to spend a huge amount of money and grain for completing the rituals of an arranged marriage. Normally, an arranged marriage was held for four to six days, during which both groom and bride's families are obliged to serve foods and liquors to the invitees. I was informed that about Rs 20,000 and lots of food grains are required for an arranged marriage.

In love marriages, the couple must pay Rs 2000 to the court to formalise the union, and a *Dhoti* and a *Pheta* (turban) to the *Mahato*. The court uses Rs 2000 for a feast and purification rituals. Without purification rituals the family formed by the newly married couple is not accepted as of the community. In the purification ritual, the *Mahato* appears with the *Dhoti* and *Pheta* offered by the groom, offers the cooked foods to gods and deities while chanting *Mantras*, and invites all the participants and community members to accept the foods and liquors offered by the newly married couple. Acceptance of foods and liquors symbolises acceptance of the couple and their families in the community. In this ritual, both the groom and bride have to serve the food and liquor to the participants.

In Kisan community, "joking relationships" are common between affinal relatives, particularly between marriageable partners. These "joking relationships" may end in

marriage. A few harassed cases of “joking relationships” have come before the *Kachchheri* in the past. For instance, teasing the youngest sisters of a wife is common among the Kisans. Once, a powerful Kisan police officer was brought to the court by his wife. She claimed that her husband always harassed her youngest sister saying, “I like you and you like your sister. It is better to go to my home as my youngest wife to assist your elder sister. Otherwise, I will bring another woman and your sister will suffer.” The case was brought to the *Kachchheri* by her wife and the policeman promised not to repeat such manner again publicly and dismissed the case.

*Mit* relationships also exist in the community. “*Mit*” denotes a pledge between two friends, creating a fictitious familial relationship. It is a kind of *Apnahit* extension practice which is not unique to the study area. *Mit* is closer than *Kutumb*, on the level of *Ekego-ladapotaker* relatives. The Kisans believe that by creating a *Mit* relationship, one can remove inauspiciousness and misfortune, and that even after death; a deceased’s soul may stay few nights in his *Mit*’s house. A few Kisans have established *Mit* relationship with non-Kisans of the surroundings, often for economic cause, rather than social reasons. For instance, Kandra Kisan of age 65 of Shantinagar VDC informed me that he has a Newar *Mit* in Hadiya Bajar where he used to stay and drink liquor when he goes to weekly markets. He thinks the Newar *Mit* is also benefited from him because he goes to him with seasonal fruits, lentils and grains every week.

However, Mangru Kisan of Mechinagar Municipality-4 has had a bad experience with *Mit* outside of the Kisan community. He extended *Mit* relationship to a literate Brahmin. Once his *Mit* was going to the district headquarters, and Mangru gave him a land-holding certificate to tally it with the office records. When Mangru asked him the certificate later, his *Mit* told him to go to the District Land Revenue Office. Mangru went to the office the next day and discovered that the land was registered in his *Mit*’s name. Mangru filed a case against his *Mit*, which he lost because of lack of the official supporting documents. Mangru believed that his *Mit* paid bribe to the officials to grab his land. There are some other Kisans who also have similarly negative experiences. Therefore, Kisans have stopped to extending *Mit* relationships to non-Kisan high caste Hindus. Nowadays, very few Kisans have *Mit* relationship with non-Kisan high caste people.

## 4.6 Socio-Political Organisation

As discussed above, the Kisans in Jhapa are divided into different families, clans, castes, classes, occupations, villages/settlements, and toles. Despite all these differences the Kisans are unified and organised under their socio-political organisations, which are well defined with specific roles and functions and as effective and functional as the mechanisms of a modern state. In Jhapa, the Kisans identity of an individual is rooted in interactions with the immediate family, and gradually matures through interactions with relatives, neighbours and the government authorities. A Kisan, as a culturally situated individual, interacts with other community members and institutions accordingly. The socio-political organisation of the Kisans is strong enough to control the activities of a community member. The community accords special space and significance to authority figures, including the family head, the village head, and the community head that have the responsibility and acknowledged authority to enact punishment and reward.

The central socio-political organisation is organised under their *Mahato*, two *Wakil* and nine *Sipahi*. The main function of the Kisan government is to execute the community laws, organise community court and maintain peace and order in the community (detail discussion is in chapter 5).

The community head, the *Mahato*'s authority is based on the understanding of him as the living representative of the god and the guardian of the entire community. In the community, the *Mahato* and his *Teliya* sub-caste kinsmen also claim higher status and enjoy greater freedom than others. The Chief of a simple society, like the *Mahato* of the Kisans, enjoys greater power than the head of modern state because they are understood as possessing superior, if not divine, power and are accepted as a unifying symbolic force that reinforces a community's collective identity (Gluckman 1973). The present *Mahato* Bhabir Kisan's house is located in ward no 4 of Machinagar Municipality (Magurmadi village). The present *Mahato* has no permanent asset except a small hut (see the photograph 4.5 of the present king and his house 4.6). His power is symbolic and political, rather than economic.



**Photograph 4.5: The present Mahato Bhabir Kisan**



**Photograph 4.6: The house of the present Mahato**

The *Kachchheri* settles community disputes in the presence of *Mahato*. There are 12 members of the *Kachchheri*, nine elected representatives from each village, known as *Sipahi* (police in English), two *Wakil* and the *Mahato*. The *Sipahi*, as a local representative of the Kisan political organisation, controls and maintains peace and harmony in the village. Shamans and senior people may be nominated in the position when the position of *Sipahi* is vacant in the village. There was no woman head in the Kisan villages until the time of my study. A few houses in Bahundangi, Shantinagar and Anarmani and Mechinagar are dispersed in different toles and hamlets, but come under the jurisdiction of the same *Sipahi*.<sup>28</sup>

The village head resolves village problems, provides advice to the villagers and help in organising village activities. The main political processes in each village are the annual assembly, dispute settlement as required, and the organisation of an annual *Gram-Pooja*. Household heads attend the assembly, which elects the *Sipahi* or village head, discusses the village organisation, identifies and approves village laws, and discusses intra-village disputes. The *Sipahi* organises *Gram-Pooja* once a year during May in which all village members worship the village gods and goddesses and celebrate together. The foremost function of the village head is to resolve village

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<sup>11</sup> In general, a village contains 10 to 20 houses of the Kisan though there are a few villages less than 10 houses. Tole is the smallest unit of a village therefore sometimes only 2 household belong to a tole.

problems. The village court is organised under the *Sipahi* which settles minor disputes within the village.

The *Sipahi* act collectively as the parliamentarians of the Kisans, and gather in the yard of the *Mahato* to discuss the socio-cultural and political issues of the community. The *Mahato* attends village assembly and discusses about the village problems directly. He also attends *Gram-Pooja* and involves in worshipping with villagers. Moreover, the *Mahato* accepts invitation to go to individual households for household rituals and *Pooja*, especially mourning rituals.

## **4.7 The Economy**

The economy of the Kisan of Jhapa is simple, based on farming, wage labouring, domestic servant and carpentry. The traditional economic mainstay of the Kisans is farming. Out of 160 households, 69 are somehow involved in agriculture. Out of 69 households, 28 have own land above 2000Sqm, and 41 households have rented the land from non-Kisans, but are, in general unhappy with the behaviour of their absentee landlords. Since the 1995, local forests have been changed into community forests. This restricted free hunting of wild animals for Kisans, which was the main source of meat for them. Another source of food is fish, crab and snail, of which yields have also been reduced with the recent conversion of waterways into cultivatable land.

The majority of the Kisans are illiterate, they have not involved in business and none of them are in permanent services. As a result, about 90% of farmers also perform wage labour, unable to manage sufficient income from farming alone. Some family members act as domestic servants for non-Kisans. The Kisans have has a difficult time adjusting to changing circumstances.

### **4.7.1 Agriculture**

“*Haameta Jaite Kisan, Kheti Karek Bahek Kono Nijanila. Paidke Kaa Kaam, Harjoitke Khai Maam.*” This is a common proverb among the Kisans repeatedly heard as an answer of the question about their main occupation. Literary it means, "we are farmer by caste, we do nothing but work in the field. What is the use of education for us, it is more useful to plough the field for bread". Agriculture was the main source of

food supply for the Kisans in Jhapa until the last decade. In the flat irrigated land, just in the foot of Churiya hill in the bank of Ninda, Timai and Mechi Rivers, the Kisans were subsistence farmers in the sense that they produced almost entirely for consumption, not for trade.

Kisans are chiefly rice cultivators. However, they also produce wheat, maize and millet on a smaller scale. Different varieties of lentils and grams and mustard are also produced, but vegetable farming is a new phenomenon. A few Kisans who hold own lands are producing potato, taro and pumpkins for domestic use. Instead of lentil and vegetables, Kisans prefer a piece of fish or pickle of dried fish along with rice, and one family member often goes down to a nearby river for fishing and crab/snail collection just before lunch or dinner.

Lands, whether irrigated or un-irrigated, are categorised by the government according to their productivity as *Abal*, *Doyam*, *Sim* and *Chahar*. None of the Kisans hold or are able to rent *Abal* irrigated lands (*Khet*), which have access to irrigation throughout the year, and so only one crop of rice is possible every year. Different types of lentils and grains are cultivated in the *Khet* and its terraces after harvesting the rice. Wheat and maize are grown in the winter both in irrigated and un-irrigated fields (*Bari*). Mustard is grown in the *Bari* lands most of the time. The Kisans who farms are no longer producing sufficient food grains for whole year's needs. The table 4.5 shows that only 9 per cent Kisans have been able to produce sufficient food grains throughout the year, and the most Kisans now meet their food need by purchasing grains with wages earned through labour.

**Table 4.5: Food Sufficiency among the Kisans in Jhapa**

<b>Duration in months</b>	<b>Total households</b>	<b>Per centage</b>
Buy throughout a year	91	56.9
Up to 3 months	36	22.5
3.1 to 6 months	5	3.1
6.1 to 9 months	7	4.4
9.1 to 1 year	6	3.7
Surplus produces	15	9.4
<b>Total households</b>	<b>160</b>	<b>100.00</b>

Source: Household Census 2008

Land shortage has become a barrier to agriculture. Most of the barren land has been changed into agricultural land; forest and riversides are also being cultivated. Most of such lands have been occupied by non-Kisans after the eradication of Malaria, when the government of Nepal introduced resettlement programs on the boarder of Nepal and India along with education, road and bridge building, water infrastructure and health posts facilities (Rhoades 1997). As discussed below, most of the Kisans lost their land during Cadastral Survey to these migrants. The non-Kisans population also increased in the region during the East-West Highway construction. The table 4.6 presents current land distribution among the Kisans.

**Table 4.6: Land Distribution among the Kisans in the Study Area**

<b>Land Size in Kattha<sup>29</sup></b>	<b>Total households</b>	<b>Per centage</b>
Landless	95	59.38
0 – 5	23	14.38
6 – 10	8	5.00
11 – 15	6	3.74
16 – 20	8	5.00
21 +	20	12.50
<b>Total</b>	<b>160</b>	<b>100.00</b>

Source: Household Census 2008

Out of 160 household, just 22 households Kisan have above 1 Bigha land (6770Sqm). Less than 5 Kaththa land is considered less than minimum viable landholding in Nepal. Both of the cases in Box 4.1 illustrate the ways in which the Kisans have been deprived of land that they had originally cultivated. Only about 40 per cent Kisans retained their lands in their own name at the time of this study. In their view, the main reasons for losing land are illiteracy, lack of unity within the group, lack of access to power and politics, and lack of *Afnumanchhe* (or connections) in government offices. Anthropologists point out that land grabbing process of tribal groups by high caste Hindus in Nepal has always been facilitated by the state officials (Caplan 1970).

<sup>29</sup> Kattha denotes a smallest unit of Bigha. Twenty Kattha equals to one Bigha (6770Sqm and 1.5 Bigha equal to 1 hectare).



#### **Box 4.1: Land Loss among the Kisans**

**Case A:** The present Magurmadi village (Mechinagar 4) was an uncultivated area at the arrival of the Kisans in Jhapa district. Khuttidangi was the nearest village and the people of this village used the uncultivated land for their animal grazing. The cultivated land was known as *Hal-aabadi* and the uncultivated land as *Jirait* during this time. The Kisans went to the government representative of Jhapa (Land Revenue Collection Officer) and got permission to cultivate the land of Semairdanga. The officer was known as *Writer-baje* to whom they had to pay Rs 5 as annual tax for the use of the cultivated land and *Haran-biran* (nearby forests, water sources and rivers and pastureland). Six households of Kisans along with one Majhi cultivated the land and settled down in Magurmadi.

However, the now-cultivable land proved tempting to the settlers' neighbours. The *Write-baje* first increased the land tax from Rs 5 to Rs 30, then subsequently to Rs 80, which non-Kisan neighbouring land owners proved eager to pay. Lack of currency meant Kisan settlers were forced to attempt to pay this tax in exchanged goods, when the rice of paddy was only Rs 1 for 10kg. Thus, almost all six Kisan households were unable to pay the increased revenue, and became tenant farmers for a local Brahmin, Rabiratna Khanal, who had paid Rs 180 for all Kisan's *Hal-aabadi* and Rs 300 for *Haran-biran*. It was later thought that, as a friend of the *Writer-baje*, he used this advantage to take the land of Kisans through malfeasance.

**Case B:** Bhote Kisan, 67, is a permanent resident of Pashupati Goun (ward no 6 of Mechinagar municipality which is known as Nindakinar village among the Kisans). At present, he has a wife, a son age 11, and a daughter age 9 living in a small hut constructed on a Chhetri's land. For the last 27 years he has worked as wage labourer in the village to meet his daily subsistence needs. For the last few years, his wife is not capable of wage labour due to illness, although she can occasionally take on small tasks for neighbours in exchange for food. For the most part, however, when Bhote can not participate in day labour, his family can not eat.

Kisans were the main residents of this village before the Land Survey in the district. During the Survey, many Kisans lost their land. The non-Kisans registered their lands, paying bribe to the surveyors, the Kisans believe. Bhote says that his forefathers arrived at Jhapa seven generations ago and settled down in Nindakinar village, cultivating the land, and that his grandfather had about 10 Bigha (6.5 ha) lands. The Land Survey reduced this land in his father's time to 7 Bigha (4.5ha). One of the surveyors asked Rs 1000 and a hen from his father for registration of his land. His father gave him the money by borrowing from a Brahmin neighbour in the next day but was unable to procure a hen. The surveyor gave him a cheat which he thought a temporary land holding certificate and kept. After some time, a Chhetri came to their house and claimed his land as he had bought it from the Surveyors. He gave two weeks time to his father to remove crops and structures from the land. Bhote's father resisted, offering proof of registration at a cost of Rs 1000. To their surprise, Bhote's father got a summon letter of the District Court within a week. The case ran in the court for about five years, but he lost the land due to illiteracy and lack of *Afnumanchhe* (connections), power, and money. Bhote Kisan and his father were illiterate and the receipt given by Surveyor was not proof of land ownership, but rather tenancy rights to the land.

Later, the Chhetri convinced Bhote's father to relinquish tenancy rights by offering homestead land and Rs 5000 at the time of Bhote's marriage. Bhote's father agreed to receive Rs 5000 from him and to remove his name from tenancy rights, but never receive a certificate of the homestead land. From a young age, Bhote was working in the Chhetri's house as a herd boy. After the death of his father, he left the Chhetri's house and has been living in the same hut constructed by his father. The Brahmin's family, who had lent Rs 1000 to his father for land registration during the Land Survey, is asking him to pay back the loan.

Some Kisans have rented land from non-Kisans. In their view, agriculture is not a good occupation for earning but it is at least a familiar one. Table 4.7 presents size of rented land, total land rented households and their percentage.

**Table 4.7: Size of Rented Land and Number of Cultivator Households**

<b>Land size in Kattha</b>	<b>Total land rented households</b>	<b>Percentage</b>
0 – 5	8	29.63
6 – 10	2	7.41
11 –15	2	7.41
16 – 20	6	22.22
21 +	9	33.33
<b>Total household</b>	<b>27</b>	<b>100.00</b>

Source: Household Census 2008

Out of the 27 households represented in Table 4.7, only nine have rented lands above one Bigha (0.6ha). Rented land less than one Bigha is considered insufficient to provide food grains for a family of five members. Out of 27 households, 22 have rented lands from non-Kisans absentee landlords.

The Kisans involved in rice farming use a seasonal labour exchange system among themselves, known as *Hauli*. In *Hauli* the host provides local brew, meat and rice for the participants. At present, there is also a labour exchange system between the Kisan and non-Kisan living together in the same village. In this labour exchange system, the host provides plain rice as main food and beaten rice as breakfast. This type of labour exchange system is known as *Perma*. Both the *Hauli* and *Perma* labour exchange systems are existed among the poor farmers in the study area. The high caste/class non-Kisans prefer to hire Kisan labourers with daily cash wages.

Borrowing money and grain is common among the Kisans. Nowadays, the practice is decreased as a result of the establishment of grocery stores in the villages. Since the loss of Kisans lands is in part due to debt incurred by Kisans to non-Kisans, a Kisan prefers to borrow something only from other Kisans. If one does not pay the loan or cash back on time then the creditor goes to *Kachchheri*. These are common cases in the *Kachchheri*.

Livestock raising is the integral part of agriculture in Nepal. The Kisans keep cows, bullocks, buffaloes, goats, pigs and chicken. These animals are important to the Kisans agriculturally, economically and socio-culturally. Animal wastes are an important component of fertiliser (Rhoades 1997). Table 4.8 shows the number of animals, their types and average number of animals per households.

**Table 4.8: Distribution of Animals among the Kisans in Jhapa**

Types of animals	Number	Average no. of animals/hh	Remarks
Oxen (plough animals) and cow	71	0.43	
Calf	44	0.26	
Buffaloes	22	0.14	
Goats	187	1.17	
Pigs	44	0.26	
<b>Chicken</b>	<b>321</b>	<b>2.01</b>	

Source: Household Census 2008

The table shows that no Kisan farming households keep sufficient draft animals, and are dependent on the help of neighbours to complete ploughing. The insufficient drafting animals is a result of the poor economic status of the Kisans, unavailability of grazing land, no person for animal care due to schooling of children and available wage labouring for adult members.

#### **4.7.2 Non-Agricultural Activity**

Due to loss of agricultural land described above, many Kisans have turned to non-agricultural activity to generate sufficient income, particularly after the penetration of the modern market economy to the area.

##### **4.7.2.1 Wage Labour**

Wage labour is in increasing trend among the Kisans. Out of 160 households, 95 households are landless and totally dependent on wage labour. Of the remaining 65 households, 23 households have less than 5 Kathha land {0.17ha} and rented land from others for agriculture though they also involved in wage labour as a secondary

occupation. Out of the remaining 42 households, 15 households have about one bigha (20 Kathha) and above one bigha land who are not involved in wage labouring. Out of a population of 773, 471 are involved in wage labour. Out of 471 wage labourers, 140 works in local agricultural fields, 57 works in local bazaars and 274 works in Tea Estates. Agricultural work involves cultivation, manuring, rice transplantation, weeding and harvesting and so on. Six young Kisan have also driven tractors recently. The Kisan labourers in the bazaar are involved in house construction, load carrying; house cleaning, rinsing and washing cloths, etc. The Kisan wage labourers are employed in Tokla, Barne and Giri-bandhu and Raj Tea Estates, all nearby to home villages. A male receives Rs. 125 and a female receives Rs 100 a day. In general, women prefer to work in village-based agriculture, so as to manage her time for household chores. A few women also work as domestic servants. Table 4.9 shows number of wage labourers and their average monthly income.

**Table 4.9: Number of Wage Labourers and their average Monthly Income**

<b>Places of wage labouring</b>	<b>Number of laborers</b>	<b>Cumulative Frequency</b>	<b>Average monthly income / individual (NRs)</b>
Village (agricultural labour)	140	-	1250.00
Tea States labourer	274	414	2700.00
Bazaar labourers	57	471	3500.00

Source: Household Census 2008

#### **4.7.2.2 Fishing**

Hunting and fishing are two prevalent practices of the Kisans for supplying meat. Almost all Kisans adults go to river to catch fish or collect *Ghungi* (snails) before lunch or dinner. However, hunting for deer, peacock and other wild fowl is totally restricted after the advent of community forestry.

Informants reported that a Kisan does not need lentils or vegetables if there is a piece of meat or fish. Therefore, each members of a family go to nearby rivers for catching fish or collecting *Ghungi* once a day. Children on their way to school, and women washing dishes or clothes in the river will also fish. If an individual collects more fish

or *Ghungi* than required, the surplus is taken to the local market, where the price of local fish is NRs 100-150/kg. The money is used to buy spices, salt, oil and sweets for children. However, all informants attributed to the sharp decrease in fish availability due to the use of electricity, poison, and other unsustainable fishing methods.

### **4.7.3 Market Economy**

The availability of modern market is a recent phenomenon in the Kisan community. Dhulabari, Kankabhitta, Birtamod and Budhabare are the closest market centres, developed along East-West Highway construction. Eradication of Malaria and other development activities accelerated the arrival of non-Kisans in the region which assisted the establishment of market centres. Establishment of modern markets directly affected the simple community, though they resisted coming to the market until the time they faced food insufficiency.

In the beginning, a few Kisan (who used to produce surplus grains) went to market to sell their products and buying spices, salt and clothes. Traditionally, the Kisans used to exchange such items locally with businessmen for grains instead of money. The Kisans had less need for modern clothing, and were largely limited to a small loincloth for men and a Sari for women, both locally woven.

Nowadays, they sell their labour, agricultural products and animals and use the proceeds to buy food grains, salt, species, clothes and other essential items from the local markets. In the weekly market the Kisan women go to sell vegetables, fowl, and eggs and buy food grains, spices, cloths and stationary for children. The males who are involved in agriculture sell their products in the markets and buy essential items. The wage labourers buy food grains, vegetables, meat, cloths and other essential items for the household use. Normally, wage labourers buy food grains daily in the evening while they return home. In addition, most villages have a teashop and a small retail shop that supplies sweets, sugar, biscuits, salt, species and oil to the villagers. Kisan children are particularly used to buying biscuits or sweets with any extra money they get. Older Kisans also enjoy tea and go to teashop once or twice a day.

However, some of the old Kisans are not satisfied with these changes. According to them, they had healthier foods, nice clothes, sufficient lands and a better life before

arrival of non-Kisan hill migrants and the establishment of the modern market and the initiation of development activities. According to the key informants, the hill migrants bought their land, food grains, and even took their daughters and wives. Money is considered an unethical non-Kisan product that entered into the Kisan community and destroyed their traditional life. The Kisan women and girls are selling food items in the local markets, an activity considered shameful work by the older generation. They believe the main cause of quarrels and disputes among the Kisans to be the modern market and money.

## 4.8 Education

Jhapa district is considered an advanced district in the context of Nepali economic and educational development. Many non-Kisans from Jhapa have accomplished higher education and are employed in national and international organizations as well as government. On the contrary, no Kisan is employed in public service. One Kisan was doing a Masters Degree (2008-2010) but he was discouraged by their *Mahato* several times. The *Mahato* repeatedly said him that you will be a thief after education; nobody will offer you a job or would appoint you to parliament and ministry. A Kisan proverb on formal education says, “*Likhapadi Janahite or school Padahitelok Gharekam Nikare, Kodilok Dagrajaaike Dakait or Chorikare.*” Literary, this means that literate people or those who go to school are too lazy to work at home; they reach the road and become robbers.

There are established 7 primary and 4 secondary schools and 4 private English schools near Kisan settlements, and a higher secondary school at a half an hour distance. Kisans have not traditionally sent their children to schools, and they instead catch fish and fetch firewood and fern to sell them in the local bazaars. However, some of the young generation realise the need for education and are sending some of their children to school. They informed me that they would not be cheated by non-Kisans if they were literate. Therefore, they want to make their children literate, but they have to face financial problem to educate children to a higher degree. Table 4.10 presents educational status of the Kisans in the study area.

**Table 4.10: Educational Status of the Kisans in Jhapa**

Status	Male	%	Female	%	Total	%
Children below 6 yrs age	40	10.5	34	8.6	74	9.6
Illiterate	117	34.41	162	45.13	279	39.91
Literate	90	26.47	74	20.61	164	23.46
Primary (1 - 5 grade)	87	25.59	96	26.74	183	26.18
Lower secondary (6 - 8)	31	9.12	24	6.69	55	7.87
Secondary (9 – 10)	12	3.53	3	0.84	15	2.15
S. L. C.	1	0.29	0	0	1	0.14
Intermediate	1	0.29	0	0	1	0.14
Bachelore and above	1	0.29	0	0	1	0.14
Total	340	100	359	100	699	100

Source: Household Census 2008.

Table 4.10 shows that many children drop out of school after finishing a primary education. In comparison to males, females are less educated, being pulled out of school to help with domestic tasks. The Kisans also send their children to nearest towns to seek work as domestic servants. Normally a child of age 10 to 15 earns Rs 500 to 1000 monthly.

Primary education is free for everyone in government school. During my fieldwork, only 47 Kisan children were attending the primary school, 24 at lower secondary and 18 at secondary levels. Only 4 young Kisans have passed the SLC exam. One died, one is working for the Kisan Club, one has gone to Soudi Arab, and one is doing Masters Degree. There are four under SLC girls working in the Kisan Club. According to educated Kisans, lack of knowledge about the benefits of education, negative beliefs about educated people, lack of proper support and guidance, expectation of immediate benefits, and practice of love marriage among the school going children are the main reasons for drop outs.

For the last couple of years, the educated Kisans have been conducting awareness raising programs in the community through the Kisan Club. As a result, more Kisan who can afford to do so are sending their children to school.

## CHAPTER FIVE

### Genesis, Structure and Function of the Kisans Political Organization

This chapter presents the genesis, structure, formation, and function of the *Baiga* system<sup>30</sup> of the Kisans. They have been living in Jhapa district of Nepal for generations. The eastern Tarai, including Jhapa district, was unified with Nepal during the 18<sup>th</sup> century through the conquest of Bahadur Shaha and Rajendralaxmi Devi Shah, and since then the government mechanisms of the state (police, court, administration and other quasi-judicial bodies) have been functioning in the region (Regmi 1978). Jhapa is one of the more developed districts of Nepal, as its placement on the eastern boarder with India places it in the trade corridor from Nepal to India and Bangladesh.

The Kisans claim to be among the original inhabitants of the district, but they remain largely uninfluenced by national governance structures, even 250 years after unification. They are not fully included in the socio-economic development of the rest of the district's population, and view the government's development initiatives as hindrances and obstacles. Some Kisans have begun to participate in formal forums as other citizens nowadays. They are also becoming familier to state-based political organizations and government services, though they still prefer their own community socio-political organizations.

The Kisans political system is known locally as the *Baiga* system<sup>31</sup>, and features legal, administrative, and political components. The chief of the *Baiga* system is considered equivalent to the executive in a modern nation-state, and is referred to as the *Raja*, although some elderly Kisans will use the more archaic *Baiga* or *Mahato*. The *Raja* is the chief of the government and law enforcing agencies, particularly the community court and is regarded the chief of socio-cultural, religious and political life

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<sup>30</sup> The government structure of Kisan is still known as *Baiga* system in their language. The religious/political leader of this system was also formerly known as *Baiga* or *Mahato*, and is also called *Mahato* and *Raja*. The *Mahato* performs religious activities, but is primarily a political leader.

<sup>31</sup> The *Baiga* system was observed among the Kisan in the study area and among the Nagasia in India. The Kisan of different territories have a separate political organisation. I visited Tokariya Tea Estate of West Bengal in India and found out that there are several *Baiga* systems existing in India among the Nagasia.



of the community. He is the central symbol of power, and his words are required to end each private and public ritual, function, and *Pooja*. In addition to the *Mahato*, the government apparatus includes two *Wakil* and nine *Sipahi*. The community assembly identifies the laws as per requirement. The laws are not documented properly but are known to all community members who recognize the *Mahato*, *Wakil*, and *Sipahi* as the legitimate enforcers of those laws. Besides the government officials, the main law-enforcing agency is the *Kachchheri*, or community court.

This chapter attempts to describe the political, administrative and legal systems of the Kisans. Mainly, this chapter seeks to answer the following questions: For how long have the Kisans maintained their own political organisation, particularly in Jhapa district and how did it originate? In what circumstances is this political system used? What is the structure of the political organisation? Why this system is maintained side by side with the government structures of the Nepali state?

## **5.1 The Genesis of the Political Organisation (The *Baiga* System)**

In the view of Gluckman (1973), “Simple societies create a unifying force of symbols to maintain peace in their societies” (22). According to the Kisans stories of origin discussed in Chapter 4, they originated in the Jungle of Madhya-Pradesh in India. According to the stories, the territory of Ranchi was under the control of the several tribal leaders, with the Kisans organised under the *Baiga* Law. The *Baiga* was responsible for protecting the band from the attack of invaders, diseases, the evil eye, dead spirits, etc, and acted as head of socio-cultural, religious and political institutions, the advanced form of which is the present government system of the Kisan community. Older Kisans used to trace their origin history as Chhotanagpur of India and the first King as Nagbansi Raja. Their kinsmen who live in India are known as Nagasia, a short form of Nag-banshi, as I was informed. In Sanskrit, *Nag* means snake and *Banshi* means offspring or lineage. Thus, all stories and myths related to Kisans trace the origin of Kisans to Chhotanagpur and the Nagbansi Raja.

In the view of Vidyarthi and Rai (1985), Nagasia Raja had ruled the Mundas and Uraun of Chhotanagpur during 15<sup>th</sup> to 16<sup>th</sup> century. The Nagasia, Mundas and Santhals were the main inhabitants of Madhya-Pradesh at the time. According to Ghuriya (1963), the aboriginal groups of Madhya-Pradesh had been in fairly intimate

contact with the Hindus in matters of religion and gainful occupation (cf Galanter 1997). "...As a Hinduised group with settled agriculture, the Nagasia had been able to establish themselves as the Nagbansi Raja in Chhotanagpur during Medieval period" (Vidyarthi and Rai 1985: 33). Anthropologists argue that tribal groups were organised in the principle of contextual opposition and alliance (Evans-Pritchard 1990, Keesing and Strathern 1998), and, indeed, Nagasia, Mundas and Santhals joined together several times and extended their political power in Madya-Pradesh to fight with the Muslims invaders during medieval period. However, ultimately, the Nagbansi *Raja* with his followers was displaced during the medieval period by the Muslim invaders. Vidyarthi and Rai write:

**From the tribal until the beginning of the medieval period [the groups of Madya-Pradesh] enjoyed autonomy. But by the end of the 16<sup>th</sup> century they were harassed by the Mohammedan rulers and gradually lost this status. A few instances will confirm the state of affairs. In middle India the Nagbansi Raja of Chhotanagpur, who was the head of Oraons and Mundas, was reduced to Malguzar or tributary (A.D. 1585). In the region of Jehengir again the Mohammedan governors wanted some regular payment or periodical supplies or aid hitherto obtained by the Chotanagpur Raja from the Oraon and the Munda village communities. This was difficult to meet and consequently in A. D. 1616 he was arrested and when released after 12 years was to pay annual rent (1985: 33).**

Despite the dissolving political organisation in Madya-Pradesh, the Kisans have formed several territorial *Baiga* systems. The Kisans of Jhapa do not know the actual time of the genesis of their own *Baiga* system but believe it was concurrent with their permanent settlement. In the view of the present *Mahato*, the *Baiga* developed initially as a religious institution and evolved into a political one, at which time the position of *Wakil* and *Sipahi* were created. The authorities of different territories also feel equal in social status. The territorial heads, where socio-cultural ties exist between people, exchange a *Dhoti* and a *Pheta* (a loin cloth and a turban) annually to each other as symbols of respect. The practice exists between the Kisan *Mahato* of Jhapa district and the *Mahato* of *Negasia* in West Bengal, India. Both political chiefs invite each other to political and socio-cultural functions.

## **5.2 The Structure of the Kisan Government**

Structure is an arrangement of interconnected parts of a whole. In anthropology, structuralism is a perspective as well as a methodology that explains socio-cultural practices of a society (Radcliff-Brown 1930, Levi-Strauss 1963, Durkheim 1963 cf

Barfield 1997). Society is subjective reality constructed by the interactions and interrelationship of individuals. A society is the totality of relations and interactions of different people of ages, sexes, castes/ethnicity, religions, classes and professions. The structure of the Kisan government is composed of the *Mahato*, *Wakil*, *Sipahi* and messengers as well as their laws and the law-enforcing agencies, including the community court. There were only five *Sipahi* and one *Wakil* in the Kisan government in Jhapa district until 2005. The community assembly of 2005 realised the need for one *Sipahi* in each village and one more *Wakil* to visit the Kisan settlements frequently. All the participants of the assembly agreed on and identified four additional *Sipahi* and one *Wakil*. There were one *Mahato*, two *Wakil* and nine *Sipahi* during the study. The Kisan political organisation has become more complex with the growth of community members and the villages. The main elements of the Kisan government structure are described below.

### **5.2.1 The *Mahato* or *Raja***

The Kisans divide their world into four cosmological spheres: (1) *Dewalok*: a space control by the God and Goddess (*Mahadev* and *Parvati*), (2) *Siralok*: a space control by dead spirits of their ancestor, (3) *Jagatlok*: a space control by the surrounding reality (nature) which is composed of five objects (the earth, sky, planets, forest and water), and (4) *Naraklok*: a space control by demons, bad spirits and evil eyes or Ghost.

The *Mahato* is the live representative of these spaces of the Kisan cosmology. Only he can understand the desires of the representatives of these four domains, talk to them, and also keep them far from the human settlements through offerings and *Mantras*. Shamans can also understand these spaces, but are not believed to be as powerful as the *Mahato*. Following Durkheim (1912), in that first institution of human society is religion, the *Baiga* of Kisans was first a religious institution as well as a religious position which evolved into the *Mahato* and *Raja* as its authority expanded from religious to socio-cultural and political spheres of the community. The *Mahato* is the chief of the Kisan community, their government, and the *Kachchheri*. Along with the supreme political authority of the community, the *Mahato* holds a special position in religious and socio-cultural spheres of life. He is the supreme symbol of

power required for each political and socio-cultural function, and he and his family enjoy special status in the community.

The political and religious authority of the *Mahato* is not based in economic affluence. The present Kisan *Mahato* is landless and poor. His wife is a wage labourer, but as the *Mahato* has higher status in the community, he is not able to do so. The Kisan government has no source of income, and therefore it does not pay a salary and allowances to its representatives, although the *Mahato* may receive Rs 5-10 along with a *Dhoti* and a *Pheta* for performing a ritual. However, this is not enough to maintain the family economy and so he fishes, collects snail, and hunts small game. This state of affairs may increase community satisfaction with the *Mahato*. They said that “our *Mahato* gives enough time to us and eat everything whatever we offer to him.” However, the authorities of the Kisans are not satisfied with the time given by the *Mahato*. In my question regarding the time given to the public work the *Mahato* replied, “It is tough to manage time for public works, though I am performing the given duties. I think community members are happy with me. If I were a rich *Mahato* like the earlier King of Nepal, people would sack me earlier than him,” he laughed.

The Raja is known as the *Baiga or Mahato* among older community members, who invite him for family rituals. The community head of the Kisans was known as *Baiga* during their arrival in Nepal. The term *Mahato* was adopted from the local Tarai groups, after settlement in the study area which is famous among the community members these days. Non-Kisans hill migrants were increased in the region during 1970 to 1990, and used the term *Raja*, or king, to describe the Kisan leader, a term which has been adopted by most of the community, particularly the younger generation. However, chosen terminology is less important than how the historical symbol has been preserved in changing contexts.

The Kisan community assembly elects the *Mahato* and, through a ritual, offers him the crown (a red coloured turban, known as *Pheta*). In general, the out going *Mahato* removes the *Pheta* from his head and gives it to the new *Mahato*. If the existing *Mahato* is not alive then the senior minister gives the *Pheta* to the elected *Mahato*, explaining the value of the crown and role of the *Mahato*. Then the new *Mahato* takes an oath publicly. The participants applaud and give the new *Mahato tika*, wishing him

success. The *Wakil* declares the time of the first meeting of their government and community court, and, of course, the welcome party.

In the welcome party, the *Sipahi* of each Kisan village and some senior members come with *Sagun* (a bottle of local wine) to offer the *Mahato*. The government provides beaten rice, chicken, mutton, and vegetables. The *Mahato* receives the *Sagun* and then gives a short speech about his commitment. The *Wakil* welcomes the *Mahato*, on behalf of the community, with a glass of wine.

According to the Kisan law, not all community members are eligible to be the *Mahato*. A *Mahato* can be elected from the same family, but the sitting *Mahato* cannot declare his own successor. In general, the eldest son of the *Mahato*, or eldest son of his brother, is eligible to be the *Mahato* after the death of his father, but the community assembly<sup>32</sup> maintains full authority to elect their leader, considering his nature and characteristics.<sup>33</sup> The Kisan authority decides the date of community assembly immediately after the death of the *Mahato* and elects a new one for the position. Box 5.1 describes the consequences of a challenge to and violation of the authority of the rightful *Mahato*.

**Box 5.1: A Kisan Returns the Crown after One Year**

Mr. Dhodi Kisan was the *Mahato* of the Kisans until 1996. He was the head of the community for about 30 years. According to his wife, Chilho Kisan, he became the *Mahato* during 1970s when his father died. He was just married at that time.

At the same time, Luther Kisan, a young man of age 32, permanent inhabitant of Dhajian VDC 7, was bold and eager to be leader. The community members encouraged him to be either *Sipahi* or the *Wakil*. Once in the community assembly meeting, Luther made his interest public, saying, “he would manage the government more effectively if he were the authority”. The *Mahato*, Mr. Dhodi Kisan, realised it as an insult to him and requested his *Wakil* to call an assembly. The *Wakil* organised an assembly immediately for January 1987. The *Mahato* made a speech, saying, “the responsibility of *Mahato* is to respect the interest of community members. Luther is interested in the position therefore I have given

<sup>32</sup> The Kisan government organises community assembly time to time especially in political crisis. In an assembly all household heads are invited but among them shamans, *Sipahi* and respected people of each villages and the *Wakil* are considered the must. The community assembly declares new laws, elects the authorities and terminates the inactive one.

<sup>33</sup> For instance, the present *Mahato* was elected in 1996. The earlier *Mahato*, Dhodi Kisan, had a son but he was considered unfriendly and an alcoholic. Bhabir, the current *Mahato*, was known as a simple and sober individual among the community members, and was therefore elected

him the crown. I would like to request this honourable assembly to accept him as the *Mahato*.” Mr. Dhodi Kisan gave Luther the crown, the assembly approved the proposal of their *Mahato*, and Luther Kisan took oath according to their laws and became the community chief.

Luther had a wife, a son and a daughter. To his dismay, all three died within a year after he became the *Mahato*. All community members including his relatives were shocked with the events and advised him to return the Crown. Luther agreed with his relatives and called an assembly in which he returned the Crown. Thus, Mr. Dhodi Kisan became the *Mahato* again. Since then, nobody has shown interest to be the *Mahato* in the place of a rightly elected community head.

### **5.2.2 The Wakil (Minister)**

The *Wakil* is next in authority to the *Mahato*. In Nepali language, *Wakil* means lawyer, but in Kisans they use it to indicate minister. There were two *Wakils* in the Kisan government during my study. In the understanding of the common Kisans, *Wakils* do not have the religious power of the *Mahato*. Therefore, all community members are eligible to be *Wakil*. The community assembly elects an individual who is active, social, and motivated to serve the community. According to informants, the *Wakil* like the *Mahato* has a long history in the community. There was no *Wakil* in the Kisan government during the time of *Baiga*. When the *Baiga*'s authority expanded to socio-political life of the community, a position of assistant was created. Thus, *Wakil* is the assistant of the Kisan *Mahato* for administrative works. The *Wakils* are the managers of the government and community court. They have to deal with community legal cases, organise community meetings, and assist the *Mahato* in resolving community problems. They are the judges of the Kisan court, and have to hear the cases and give their opinions to the Chief Judge (*Mahato*) for resolution. Hence, the main role of the *Wakils* is to assist the *Mahato* in decision-making process.

Outsiders cannot distinguish between the general population and the *Wakil* based on external characteristics. The role of *Wakil* can be seen in assembly, meeting, and formal functions only. The Kisans acknowledge their authority, but do not make outward obeisance to it in daily life. Like the general population, the *Wakil* work in the farmlands, are employed in wage labour, and eat and drink together with common people.

There was only one *Wakil* in the Kisan government in Jhapa district until the last decade. The community assembly of March, 2000 realised the necessity of two *Wakils* to provide services to a growing population, and elected Soma Kisan to the position. Otherwise, Phuyu Kisan was the only *Wakil* of the Kisan government, elected to the position in 1989.

In interviews, Phuyu Kisan expressed his dissatisfaction with the time that he has to contribute to public duties. He has to attend meetings, be involved in public works, and assist the *Mahato* in decision-making. He believes the *Mahato* does not give enough time for public functions, and so the *Wakil* has to compensate. On the contrary, Soma Kisan is satisfied with the duties he performs as *Wakil*. However, he also agrees with Phuyu that the *Mahato* occupies himself with his private concerns too much, leaving public duties to the *Wakils*. In general, the community assembly elects the *Wakil* as per the choice of the *Mahato*. For instance, Phuyu was elected in the position of *Wakil* according to the choice of the previous *Mahato*, in consideration of his economic condition and supportive nature.<sup>34</sup>

### **5.2.3 The *Sipahi* (Police)**

In the Kisan government structure, a *Sipahi* holds the third position of authority. The word *Sipahi* means police in both Nepali and Kisan languages. During the time of the study, the Kisan population spread among nine major villages<sup>35</sup>. In each village, a *Sipahi* is elected as head of the village and representative of the government. The *Sipahi* controls socio-cultural and political life of the village (*Gaam* in Kisan language) and villagers (*Gamaklok*). In most of the Kisan villages there is a central place with a teashop and one or two small retail shops for daily use items. The *Sipahi* along with his fellow villagers appears in the centre daily. Hence, villagers easily meet their head to communicate news and problems. The *Sipahi* is responsible to maintain peace in the village, and organises dispute resolution sessions. If he fails to resolve a case, then he forwards it to the *Kachchheri*.

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<sup>34</sup> I went to Tokoria Tea State of West Bengal in India to meet the Nagasia *Mahato* with Soma Kisan (the new *Wakil*) and we talked about all these realities.

<sup>35</sup> The major villages of Kisan are (1) Semairdanga (Mechinagar 4), (2) Majhargau (Mechinagar-5), (3) Nindakinar (Mechinagar-6), (4) Kalakhuta (Mechinagar-2), (5) Bagribadi (Mechinagar-12), (6) Bansaun (Dhaijan 7 & 8), (7) Barne (Shantinagar-1), (8) Bamhandangi (Bahundagi 3 & 9), and (9) Bhhutabari (Anarmani 1).

Any villager with good health can be elected *Sipahi*. Generally, villagers elect a *Sipahi* from the village assembly with the advice of their higher authorities. According to the Kisan law, a *Sipahi* can remain in the role as long as he can physically perform his duties. During fieldwork, I marked that most of the *Sipahi* were less than 60 years of age, and physically fit. Community people believe that *Sipahi* have to be strong physically and mentally because they are responsible to apprehend suspected criminals. Therefore, the village assembly considers the physical fitness of a candidate while electing a *Sipahi*.

Among the nine *Sipahi* at the time of fieldwork, five were elected before the democracy of 1990, 3 were elected in 2000, and the remaining one was elected in 2006. If a *Sipahi* is no longer interested in maintaining his post, then he can orally inform the *Mahato*. At the advice of the *Mahato*, the villagers organise an assembly and elect a new *Sipahi*. Attendance of *Mahato* and *Wakil* is compulsory in the village assembly.

Again, an outsider cannot distinguish the *Sipahi* (village head) from common villagers. He exercises power in the village meeting but appears as common people in other public and private places. According to the informants, the role of *Sipahi* was created at the same time as the *Wakil*. Since then the *Sipahi* as village representative / head has been assisting the *Mahato*.

All *Sipahi* were found happy with the responsibility given to them. It is a voluntary position with no salary, benefits or pension. The village head has no right to charge a fee for the disputants in a case in which he adjudicates. The *Sipahi* settles minor cases only, and if a case involves a fine or compensation, then he would forward such a case to the *Kachchheri*. In a resolution session, disputants offer local wine to the *Sipahi* sometimes. The *Kachchheri* provides Rs 5-50 to the *Sipahi* when an offender from his village is ordered to pay a fine. Normally, a fine paid by a culprit is small, and is used to buy a bottle of local wine.

The *Sipahi* of the Kisan government are motivated to serve the villagers, none of them expect to reap financial benefits. Rogi Kisan, a respected *Sipahi* of Semairdanga, informed me that their goal is to preserve Kisan culture and traditions. I also found



*Sipahi* as a main pillar of the Kisan government for the implementation of the Kisan laws and the decisions of the government and court in the community.

#### **5.2.4 The Laws**

As discussed in chapter two, law, whether formal or informal, must have four main features. They are (1) regular application, (2) an authentic official or agency for its application, (3) sanction given by authority has to be accepted by the followers, and (4) universal application (Hoebel 1940 and Pospisil 1971). The Kisans in the study area, as I have described, have a mini-state with government authority, community court, laws and law implementing agencies. The community members know both the laws and the consequences of their violation very well.

There is no written documentation of the Kisans legal code. The village assembly, under the leadership of the *Sipahi*, prepares village laws and the community assembly prepares laws for the whole community under the leadership of the *Mahato* and *Wakil*. The community assembly identifies new laws and modifies earlier laws as necessary, but it is believed that the *Mahato* and *Wakil* have the greatest familiarity with and authority to implement the laws. In practice, however, the authorities were also found confused during implementation. An extensive discussion was organised with the authorities to identify their laws and record them systematically. Fourteen types of laws were in place at the time of my fieldwork, which the authorities felt sufficient to maintain peace in the community.

The 14 types of laws fall within six broad categories. They are: (1) code of conduct for the government officials, (2) law regarding respect to gods and goddesses, ancestors, parents, seniors, *Mahato* and shamans and preservation of natural resources, (3) law for the protection of cows, women, poor and children, (4) law regarding assault, insult, and theft, (5) law regarding illegal sexual relationships and inter-caste marriage, and (6) law regarding murder and killing.

The main principle of the Kisan law is “tit for tat”. If a prohibited disrespect is committed, the culprit will be disrespected publicly in the court and fined cash up to NRs 2000, a bottle of wine and a *Dhoti* for the *Mahato*. In the case of resource damage or theft, the culprit has to pay the double amount of the damaged or stolen

item, and also pay a fine as per the decision of the court. The punishment for illegal sexual relationships and inter-caste marriage is either a heavy fine or the imposition of a purification ritual, or a termination of the relationship. Abuse of a cow, woman, poor person or child is considered a serious crime and results in a large fine to provide the restoration of the lowered status of the victim through a ritual. In the case of cow killing, the killer has to wear a rope in his neck, pay a fine, and also organise a purification ritual after one year.

Murder or Killing is considered a serious crime. Traditionally, the community court used to order the compensation by blood money in cash, silver and animals. However, these days, the *Kachchheri* submits such individual to the nearest Police Office as soon as possible.

In general, the court receives complaints from the victims or from their supporters. The *Sipahi* adjudicates the case.<sup>36</sup> Failing adjudication by the *sipahi*, an initial session will be held in which the *Kachchheri* tries to mediate in a simple case. If the case is more serious then the court decides fines, beats the culprit as per the provision of law, and arranges a purification ritual. The last and final punishment for any crime is the termination of the community membership. Additional detail of Kisan laws and prevalent punishment is summarised in appendix 1.

### **5.2.5 The Community Court (*Kachchheri*)**

The main law-implementing agency of the Kisans is the *Kachchheri*, or community court. The *Mahato* is the chief judge, the *Wakils* assistant judges, and the *Sipahi* the functionaries in the *Kachchheri* meetings. In the case of village court, the *Sipahi* is the chief judge and his assistant is the functionary.<sup>37</sup> The *Mahato* is responsible for rendering the court's final decisions. The assistant judges have been given managerial roles, and the *Sipahi* have to present the disputing parties in a session of the community court.

There is no written documentation of the origin of the *Kachchheri*. None of the key informants or authorities was able to trace the history or myth of origin of the

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<sup>36</sup> If the case comes from the *Sipahi* it does not need to rectify and therefore proceed for resolution.

<sup>37</sup> The *Sipahi* of each village elects one or two assistants as per the size of the village. The assistance is known as *Khabardar* (messenger) in the community. There are messengers in all the nine Kisan villages.

*Kachchheri*. One *Sipahi* speculated that the *Kachchheri* originated with the permanent settlement of the community. Dispute as a universal phenomenon of a society, must have always had some method of dispute resolution. The same dispute resolution mechanism might have evolved into the *Kachchheri*. Furthermore, he speculated that there was not always such defined law, authority, and the court mechanism. In the beginning, senior members or respected individuals of the community might have initiated the *Kachchheri* by settling community problems. The original dispute resolution practice recognised as effective mechanism continued through the addition of required formal components. Hence, the present community court might be the advanced form of primitive dispute resolution practices, he concluded.

Although their service is voluntary, and community authorities harboured no expectation of compensation, they are dedicated to their work for the *Kachchheri*, in order to preserve their customary practices and maintain order in the community. A universal feeling of unity and devotion to community is found among the *Kisans*. The court and its authorities play important roles in maintaining this feeling.

*Kisan* authorities are very conscious of the need to deliver justice consistently and equitably. If a simple case, resolvable at the village level, goes to *Kachchchheri*, it will be said that the *Sipahi* of that village is inactive adding to the *Wakils' and Mahato's* burden. Therefore, the *Sipahi* does his utmost to resolve issues at the village level, sometimes in coordination with the *Wakil*. It is generally accepted among the *Kisans* that the *Kachchheri* provides equitable justice. However, there is a provision for a special appeal to the *Mahato*, who will review a case that remains disputed. If the *Mahato* rules that injustice has been committed, he will punish the responsible *Sipahi* and *Wakil*; in general, the *Mahato* slaps the *Sipahi* and *Wakil* publicly in the *Kachchheri*.

The office of the *Kachchheri* and the rest of the government apparatus, as well as the *Kisan Club*, are in the house of the former *Mahato*. The house of the present *Mahato* is in the same location. The *Kachchheri* organizes mediation sessions as needed, on an average once a week. During a session, the *Sipahi* and *Wakil* will present the circumstances of the case, and the *Wakil* will outline possible resolutions. The *Mahato* listens to the information and renders final decision. The photograph no 5.1 shows the house of the earlier *Raja* and the signboards of different offices of the *Kisans*.



**Photograph 5.1: Rented house for the offices of the Kisan**



**Photograph 5.2: A key informant going out from his house**

The conclusion of a mediation session does not end the process of dispute settlement, but is only the first step in restoring the peace disrupted by the disputants. The *Kachchheri* assigns responsibility to the concerned *Sipahi* for following up on the implementation of terms and conditions determined by the *Kachchheri*, and updating the *Wakil* on progress made; the *Wakil* will then inform the *Mahato*. If the disputing parties do not implement the terms and conditions within the given time, then another resolution session will be called. Up to three sessions may be called over a single unresolved dispute.

The overt function of the *Kachchheri* is to resolve disputes and restore peace in the community, but it also has various latent functions. As a senior informant (age 81) explained, “the *Kachchheri* is the only institution to preserve our culture and identity in the changing contexts”. Indeed, the court not only resolves disagreements but also implements community laws that favour the traditional Kisan socio-cultural values, as well as validating changing practice within that system of values. For instance, the community has recently begun to accept inter-caste marriage, and so the *Kachchheri* formalises it through a ritual. This has enhanced the relationship between the Kisan and non-Kisan communities. The main role of the *Kachchheri* is to integrate community members, preserve the traditional culture and restore peace in the community.

### **5.3 Function of the Political Organization of the Kisans**

The Kisan government authorities and *Kachchheri* are composed of the same individuals, but those individuals' functions are different in their government and *Kachchheri* roles respectively. The government meetings focus mostly on policy issues, whereas *Kachchheri* meetings are concerned with the implementation of their law and restoration of peace in the community. The government executes the decision of the community assembly and the *Kachchheri* resolves disagreements of community members. The authorities in the government meeting act as *Mahato*, *Wakil* and *Sipahi*, whereas they act as chief judge, judges and assistants in the *Kachchheri*. However, the role of the government and of the *Kachchheri* seems, in practice to overlap most of the time. Role of the both institutions is to maintain peace in the community. Both organisations engage in social control by execution of laws and dispute resolution.

The authority of the Kisan government and community court is similar in scope and, at least within the community, formality, to that of most state-based authorities. However, in this case, the legitimacy of their authority is maintained by the strength of the community's faith in these institutions, rather than on a "monopoly of legitimate violence", as represented by armed forces, detention centres, etc. During fieldwork, both organisations were observed to be unified, integrated, and deeply rooted among the community members, who are eager to have these institutions preserved.

Functionalism argues that each component of a society is indispensable to maintaining the social system as a whole (Barfield 1997). A society is an outcome of the functions and interrelationships of such units. This section describes the functions of the Kisan government, their laws and the *Kachchheri* in detail.

#### **5.3.1 Functions of the Kisan Government**

The community assembly elects the government authorities: the *Mahato*, *Wakil* and *Sipahi*. All Kisan household heads attend the assembly, discuss the possible future leaders and finally elect their representatives. According to senior Kisans, competition for the election of *Sipahi* is higher most of the time, whereas there is no competition

for *Mahato* and little competition for *Wakil*. In addition to the election of the authorities, the community assembly creates new laws and approves the activities of the government.

There are three major functions of the Kisan government: executive functions, legal functions and security functions. The executive function involves the execution of the decisions of community assembly and *Kachchheri*. The legal function means identification and implementation of community laws. The security function denotes the protection of community members, available resources and cultural practices.

The main functions of the Kisan laws that I noticed during fieldwork were cultural preservation and maintenance of socio-cultural systems; control of inter caste marriage; protection of private and public property; protection of women, children and weaker members of society; preservation of available natural resources; and observation of respect for gods, ancestors, and senior members of the family and community; and protection of individuals rights.

### **5.3.1.1 Executive functions**

The Kisan community forms the government to execute the decisions made by community assembly and to perform daily administrative tasks. According to key informants, primary administrative functions include maintenance of peace and order in the community, performance of socio-cultural rituals, and protection of available resources. During the study, there were 160 Kisan households, and it is impossible to convene the community assembly for daily administration, and so the assembly elects its representatives, the nine *Sipahi*, two *Wakil* and the *Mahato*. The *Mahato*, *Wakil*, and *Sipahi* have to meet almost daily, although not all *Sipahi* are required to attend all meetings, only those pertaining to their own jurisdictions. The full meeting of the Kisan government is organised as required, for instance, in the event of the death of the *Mahato*, a *Gram-Pooja*, and so on.

In addition, the community assembly introduces policies and develops strategies for the protection of socio-cultural practices and the surrounding natural resources. In principle, the community assembly seems to be powerful institution, but in practice the government officials are more powerful as implementers. The government also

assists the *Kachchheri* to implement the laws and punish the wrongdoers, exercising power publicly in daily life. The *Kachchheri* resolves a dispute according to the community law, and the government executes the decisions of the *Kachchheri* in practice. The Kisan government delegates power to the *Wakil* and *Sipahi* for executive functions. The *Mahato*, as symbol of supreme power, appears in the *Kachchheri* as chief judge, but ultimately leaves direct implementation of decisions to the *Wakil* and *Sipahi*, as illustrated in Box 5.2.

**Box 5.2: A *Sipahi* also uses Power**

Aalu Kisan, age 29, is a resident of Bamhandagi village. Once, villagers brought Aalu Kisan to the village *Sipahi* in the case of an illegal sexual relationship with a non-Kisan widow of the same village. As evidence, his neighbours had seen him in the widow's house in a half-naked condition several times. With this proof, the village *Sipahi* gave him two options this time; either he would cut off such relationship with the woman or he would accept her as a wife. He agreed to end the relationship. However, villagers noticed his relationship with the woman again. Alu Kisan was caught by the village *Sipahi* in the house of widow in November, 2007, who took him to the *Kachchheri*.

Aalu Kisan admitted the crime in the session, apologised for his mistake, and again promised to end the relationship. This time, the court decided to "keep him under observation" for six months. Some villagers found Alu Kisan at the widow's house again during the time of observation of the *Kachchheri* and informed the *Sipahi*. Two assistants of the *Sipahi* brought Aalu at the village *Kachchheri* where he was beaten by the *Sipahi* with a bamboo stick, according to their laws. Thereafter, Aalu Kisan married with the widow and paid the court fee. If Aalu had not ameliorated his behaviour a third time, the *Kachchheri* would have terminated his community membership.

Thus, the Kisan government implements the decisions made by the assembly and community court, including socio-cultural regulation of both the public and private spheres.

### **5.3.1.2 Legal Functions**

Another important function of the Kisan government is to implement the community laws. As discussed above, the Kisan community has defined 14 types of laws to maintain social order in the community. The Kisan government identifies the necessary laws and the community assembly approves them. The approved law is implemented by the *Kachchheri*, and regulated by government officials.

The main functions of the Kisan law are cultural preservation and maintenance of socio-cultural systems; control of inter caste marriage; protection of private and public property; protection of women, children and weaker members of society; preservation of available natural resources; observation of respect to gods, ancestors, and senior members of the family and the community; and protection of individuals rights. The community assembly has created laws regarding these issues, which are enforced by the government.

The common punishments available to the Kisan government are physical punishment, fines in cash or grains, and termination of community membership. Termination of the community membership is a final and highly unusual punishment. Nobody could remember any instances of such in Jhapa district at the time of fieldwork, although there were many examples of membership termination and conversion of Nagasia to Christianity in India.

An individual Kisan, whether chief of the community or a simple individual, is always under jurisdiction of the laws. Almost all community members were aware of the laws, but very few of them remembered the specifics of the provision. The only graduate student member of the Kisan community was not much impressed by the traditional practices, though he believed that the community laws are more effective than those of the state. State institutions are located only in headquarters, leaving the community relatively unfamiliar with state law, in contrast to the immediate access afforded to the community by the immediacy of the Kisan traditional government institutions.

However, there is also a Police Office, branch of Chief District Administration Office and other state offices established in the study area, leading to increased community exposure to state laws. The Kisan *Kachchheri* still settles civil cases in the community court, but now forwards criminal and state-related cases to the government offices. Thus, the Kisan government has also become an interlocutor for state law within the community as well.



### 5.3.1.3 Security Functions: Preservation of Kisan Culture

The natural, socio-cultural and economic environment of the Kisans has been changing significantly for the last few decades. A population of cultivators has changed into landless labourers. A closed community has been exposed to a multi-cultural society. A goods and services exchange system has been influenced by the market economy, especially by the locally established bazaars and wage labour in non-Kisan farms and Tea Estates. As discussed above, the Kisan communities and authorities have also been exposed to state laws and formal forums: VDC/Municipality, District Court, Police Office, District Administration Office, District Land Revenue Office, and so on. Through regular interactions with non-Kisan high caste groups, some Kisans have come to consider their cultural practices inferior and have integrated into non-Kisan practices, making inter-caste marriage, celebration of high caste Hindu festivals, and social mobility increasingly common.

The construction of a local bazaar and the East-Weat Highway caused a large influx of non-Kisan communities and influences. According to a senior key informant (Thepna Kisan of age 79), a five-day community assembly was convened in 1985 to discuss the preservation of Kisan culture in the changing context. There was an intense debate over whether to preserve traditional culture or to adapt to high-caste culture. Finally, it was resolved to expand the mandate of government for the preservation of Kisan culture.

The community assembly has introduced some laws regarding the preservation of their socio-cultural practices, including legitimizing changing practice to bring it into accord with traditional socio-cultural norms. For instance, inter-caste marriage, regardless of which spouse is from outside the community, is now accepted in the community after purification rituals. The inter-caste couples have to pay the court fee (around NRs 2000) which will be used for organising the purification ritual. After the purification ritual, it is believed that dead ancestors of the family and the gods of Kisans accept non-Kisan partners as their Kisans.

The Mahato has been given extra roles and responsibility accordingly by which he controls political, socio-cultural and religious aspects of community life. By law, the *Mahato* has to attend private as well as public rituals and functions. Attendance of the

*Mahato* is crucial to finalise family and community rituals, or Pooja. The *Mahato*, as living representative of the Dewata (god) is considered pure/holy and his attendance makes the events pure/holy. As the Kisan law provides for the preservation of cultural practices, the attendance of the *Mahato* in private rituals is part of implementing that law. For the preservation of their culture, the Kisan government organises *Gram Pooja* yearly. The *Sipahi* has been given the main responsibility for organising *Gram-Pooja* in which attendance of the *Mahato* is compulsory.

It is not always possible to follow traditional practices in changing contexts, and the Kisans have redefined their traditional practices accordingly. As a result of exposure to movements for inclusion, women's rights, and human rights, women members of the community now can also attend public rituals and *Gram-Pooja*. The government and *Kachchheri* meeting is open to all community members. The Kisan authorities have also condensed the week long traditional arranged marriage process to a one day version, although it is compulsory to wear traditional dress and ornaments.

The Kisans are similar in outlook and dresses to some neighbouring groups. Some of these groups were also identified as Kisans until 2004, and were clients of the Kisan government and the *Kachchheri*. After they began to identify themselves as distinct from the Kisans, the Kisans have cut relationships with these groups. The Kisan community members, their government and the *Kachchheri* are sensitive to the preservation of their culture and have created ethnic boundaries with these groups in various ways these days. Identity among the Kisans has also been promoted by the Kisan Club, which has been established by younger, educated Kisans to support the interests of the Kisan community in the Nepali political process.

### **5.3.2 Functions of the Laws**

Law, whether it is implemented by a modern state or by a simple community, are the commonly accepted rules, and a mechanism of social control. Custom controls the activities of people in a tribal community, the way a constitution and legal system might be in a modern state (Bohannan 1967, Gluckman 1973, Caplan 1995). Gluckman (1971) has classified tribal societies into three types, on the basis of authority structure and membership. The first type of tribal community is controlled by a powerful chief and consists of about hundred fellow members. The second type of tribal community has soldiers and judicial officers in addition to the chief to control

about five hundred community members. The third type of tribal community has a more advanced political system, including various authorities like the tribal chief, judicial officers or police and a defined role for mystical symbols in signifying the ultimate common interests of a tribe. The chief holds the symbolic power to alert community members to danger, and protects the group. This type of tribal community can have more than five hundred members.

The studied community does not have many tribal characteristics by the anthropological definition. The Kisans are permanently settled, practices irrigated agriculture, and are familiar with the modern market economy. However, they also have distinct socio-cultural and political practices, are organised under their own political system, and have well defined layers of authority functioning under the control of the *Mahato*. The community also has defined laws and law implementing agencies like a 21<sup>st</sup> century state. Thus, the Kisan community is an odd hybrid, not quite described by a tribal definition, but not fully incorporated into the state. A closer examination of various functions of Kisan law will help illuminate the issue.

### **5.3.2.1 Regulation of Individual Activities**

As discussed above, clear and well-understood laws (see Appendix 1) have been approved by the community assembly and are enforced by government officials. Regulations on individual behaviour include resource use, the treatment of protected groups, religious practice, and sexual relationships. There is also a code of conduct for the authorities describing how to behave with the public, the limits of authority, and so on.

The laws regulate the individuals' collection and use of natural resources and the treatment of cows, women, children and the poor. Previously, the community assembly would decide a designated day and area for fishing hunting, and the collection of other natural resources. The Kisan law also defines orphans and the very elderly as the collective responsibility of the community, and articulates special provisions for the treatment of women and cows. Women and cows are considered mothers in the Kisan culture. It is believed that society is impossible without the care of the mother and the livelihood is impossible without the contribution of cow. Therefore, the Kisans worship mothers and cows once a year. Kisan law also

regulates religious practice. It is said that if a Kisan does not worship his parents, the supreme god and goddess (*Mahadev* and *Parvati*), and his dead ancestors, he can not truly be a Kisan. According to the law, such individual are Saitan (like a demon) and the government can terminate their community membership.

The Kisan community and the Kisan government authorities are mutual regulating entities, ensuring that individuals follow the regulations established, and the government officials are abide by the code of conduct; all Kisans, from a layman to the *Mahato*, are subject to community laws. The high level of awareness of Kisan law within the community also results in a high level of social policing, with neighbours monitoring each others' compliance as well.

### **5.3.2.2 Maintenance of Peace in the Community**

Kisan community laws regulating individual behaviour are the formalized versions of commonly accepted socio-cultural practices, and are understood by the government authorities and community at large to be necessary for the maintenance of peace within the community. As discussed above with the example of inter-caste marriage, practices that have become to be accepted can be legitimized through legislation by the community assembly and implementation by the government and community court, and so become accepted as "traditional".

Due to the existence of community law, the government, and the *Kachchheri*, the community is peaceful in comparison to surrounding groups. A few cases related to land or boundary disputes, economic transactions, the damage of crops by animals, violence against women and children, and extra marital relationships were noted during fieldwork, but the number of such cases was small.

The *Sipahi*, as the head of a village, maintains peace in the village, whereas the *Mahato* and *Wakil* are involved in the peace keeping process of the community of a whole. A few cases go to the *Kachchheri*, but most are settled by the *Sipahi* in the village. No cases within the community had been taken to state authorities at the time of my study. Senior members of the community may also facilitate informal dispute resolution before a case is even taken to the *Sipahi*. Thus, the authorities, including senior community members, are responsible for the implementation of community laws and maintenance of peace in the community.

### 5.3.2.3 Protection and Promotion of the Culture

The Kisan laws are also intended for the preservation of Kisan cultural practice. These cultural practices include unification under the *Mahato*; practice of the *Gram Pooja*; worshiping of gods and ancestors; belief in *Siralok* (haven), *Naraklok* (hell), *Dain* (evil eyes), dead spirits, and other supernatural phenomenon; the continuation of traditional practices including the life crisis rituals such as *Goriya Pooja* (worshiping of the cow shed), *Sikari/Jangali Pooja* (worshiping of the forest), and *Bhumi Pooja* (worshiping of the earth). The Kisan government has also recently passed a regulation requiring community members to participate in public rituals in traditional dresses and ornaments.

To the Kisans understanding, their cultural practice is their way of life, means of adaptation, and source of identity. It is something that must be preserved and passed down to future generations. Most adult Kisans were particularly aware of this in the face of the influx of non-Kisan hill groups and their cultures, and feel that the market economy, modern education, and improved infrastructure hold an appeal that diverts members of the community from traditional practices. Additionally, young and educated Kisans are organised in the Kisan Club. The Club has collected traditional musical instruments, dresses and ornaments, and performs traditional dances and organises cultural shows for public functions.

The Kisan authorities do not avoid the access of the community members to modern goods and services, have engaged in the preservation of traditional cultural practices of the the community. For instance, at all public functions, they call for traditional performances to be put on. It was also reported that the Kisan authorities can terminate community membership for neglect of traditional cultural practices although no Kisan has yet lost community membership for this offence. However, one informant did relate a story told to him by his father. According to the story, Jhamtu Kisan of age 79 of Chyalnegaun was blind, and eventually died of starvation. When the news reached the authorities, they went to the house, organised a meeting, and punished Jhamtu's son, Bhagilal, He was beaten with a bamboo stick ten times, fined Rs 500, and had his membership withhold for one year, because he had failed to respect and care for his elderly father, as mandated in Kisan community law and practice.

### 5.3.3 Functions of the Community Court (*Kachchheri*)

The *Kachchheri* was the only institution for justice delivery in the community until the last two decades, and remained the main law-implementing agency of the Kisans. The establishment of local government units and a Police Office in the areas have created alternative forums for the resolution of criminal and state related cases.<sup>38</sup> However, the Kisans have not gone to formal forums to resolve civil cases arising between members of the community to the date of this study.

Due to the effectiveness of the *Kachchheri*, it is known among the non-Kisans of the area. Some ally groups of the Kisans used to resolve their cases through the Kisan *Kachchheri* in the past. The situation has changed now, and the harmony between different groups has been disturbed because of recent ethnic politics in Nepal. The *Kachchheri* is generally easier to access, more cost effective, and more people friendly. The main functions of the Kisan court that marked in the field are summarised in the following three headings:

#### 5.3.3.1 Dispute Resolution

The main function of the Kisan *Kachchheri* is to resolve disagreements among community members. The *Kachchheri* is always available at any time, and anyone can come to the door of the *Sipahi*, *Wakil* and *Mahato*, day or night, with problems. The official hears the problem, analyses the case and takes necessary steps. If the case is simple, a session may be arranged immediately. The authorities are free to resolve a case on the spot. If the case is complex and one of the disputants is not ready to resolve it at that time, then the case is sent to the *Kachchheri*.<sup>39</sup> The *Kachchheri* does not have a set time for dispute resolution sessions, but organises them once or twice a week depending on the volume of the cases.

In general, the *Sipahi* resolves the cases in the village. He also forwards the cases to the *Kachchheri* if the case is complex, one or both of the disputants are not willing to resolve in the village court, or if resolution fails. If the case is not resolved in the village, the *Sipahi* brings the case to the *Wakil*. The *Wakil*, in consultation to *Mahato*,

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<sup>38</sup> Resolution of criminal and state related cases in informal forums is restricted by law. Only the judicial institutions of the government are eligible for the resolution of such cases.

<sup>39</sup> The *Kachchheri* denotes community court only, not the village court.

fixes the date and time of a new resolution session and informs the disputants through the *Sipahi*. The *Sipahi* informs the disputing parties about the date and time of the session. The *Wakil* runs the session in the presence of the *Mahato*, and the *Sipahi* assists the *Wakil* in presenting the case.

The Kisans are satisfied with their access to justice through the *Kachchheri*. Mr. Julfe Kisan, age 79, of Bagribadi village, informed me that, “if someone feels injustice in the community it symbolises ineffective service of the *Kachchheri*. The community members can organise the community assembly and change the authorities.” Due to the effective services of the *Kachchheri*, none of the Kisans have gone to the District Court and Police Office for justice in civil cases. However, a few Kisans have gone to Police Office, District Court and District Administration Office in criminal cases. As mentioned above, the Kisan authorities now coordinate with state mechanisms and forward criminal cases to the Police Office directly. Dhan Bir Kanwar, age 77, of Bansgaun, summarised his view about the Kisan *Kachchheri*. “The *Kachchheri* is easier to reach and fair for all for social justice, therefore we used to go to *Kachchheri* for justice until 2004. Nowadays, they have excluded us as non-Kisans and we have formed our own ethnic organisation, but how can our new organisation provide services as their age old institution?” This statement indicates both the easy and effective services of the *Kachchheri*, and also its influence among the surrounding communities.

According to the authorities, about 80 per cent of the total cases are brought to the *Sipahi* first, and more than 50 per cent are resolved in the village. The rest go to the *Kachchheri*. Of the remaining 20 per cent, half are resolved informally by relatives and family members, and half dismissed without any treatment. According to the authorities, out of the total registered cases in the *Kachchheri*, about 10 per cent are considered difficult to resolve. However, the *Kachchheri* has resolved all cases registered to date.

### **5.3.3.2 Enhancing Access to Justice in the Community**

Law scholars often argue that delayed justice is injustice (Nayer 1976). The *Kachchheri* of Kisans not only resolves social conflicts, but also enhances access to justice, which ultimately enhances the unity among the community members. The

Kisans, like other communities, are divided into classes, sub-castes, clans, age, sex and educational categories. Although everyone gathers in the community assembly and *Kachchheri* meetings from time to time to discuss common concerns, the justice system directly unites them. All Kisans, whether they are working in the Tea Estates or farm lands of non-Kisans, or in their own villages, have a strong feeling of unity because of their common effective governing system and access to community justice.

On the other hand, only forty-seven per cent of the Kisans population was unfamiliar with state-based law and justice mechanisms. Only 11% of Kisans have visited the Police Office, District Court, District Administration Office or other formal offices, and these tend to be the leaders of the Kisans. The Kisan *Kachchheri* is considered more effective because of its decentralised justice delivery mechanisms. There is *Kachchheri* representative in each Kisan village (*Sipahi*) who can resolve local cases on the spot. A disputant can go to the *Kachchheri* directly or to the *Sipahi* for justice.

The *Kachchheri* does not charge fees for case registration and resolution. The authorities offer voluntary services; they do not receive regular salary, commission, and bribes or gifts. I was told that disputants used to offer a flower to the authority during case registration, a practice which is stopped now. The disputants can offer a bottle of local wine to the authorities after resolution of dispute, which is distributed among the participants. The *Kachchheri* seems to treat all community members equally, whether poor or rich.

As a result of such effective and immediate justice systems in the community, the Kisans have a feeling of unity. The impressions of non-Kisan hill migrants about the *Kachchheri* is reflected in the statement of Som Nath Poudel, age 73, of Mechinagar-5. He says, “The non-Kisans have to learn many things from the Kisans as how to preserve traditional culture, maintain peace and live together in the community.” Thus, the justice system of the Kisans is also an example for the non-Kisans of the area.

According to the key informants, the *Kachchheri* and its authorities are dedicated to social justice. However, I found the Kisan *Kachchheri* dominated by patriarchal social values; all its authorities are males. Nowadays, females are allowed to attend resolution sessions and public meetings. Before, it was believed that a female could



not see beating, punishment or torture, and there was a fear of being teased by males. According to their belief, a female cannot purify if someone blames her. Therefore female always prefer to be far from public life and keep distance with other males to be un-blamed by the community.

### **5.3.3.3 Social Control**

The *Kachchheri* also indirectly controls the activities of an individual defined as harmful to the community or culture. Community members are aware of what an individual can and cannot do, according to their laws, strictly implemented by the *Kachchheri*, and enforced by the other government officials.

According to the Kisans, their government and community court are mainly for social control. The *Kachchheri*, as justice delivery institution, determines the wrongdoer in a resolution session and punishes such individuals. The community assembly gives prerogative rights to the government and the *Kachchheri* to regulate the behaviour of community members. Punishment and reward is a direct form of social control, and is the social reality attached to justice system in all societies (Keesing and Strengthen 1998). In general, the *Kachchheri* punishes the culprit in a dispute resolution session, and rewards a productive member of the community in public functions. The punishments and rewards approved by the community assembly are described below.

#### **A. Punishment**

The Kisan community assembly (*Kisan Sabha*) has approved seven types of punishments at the time of the study. The *Kachchheri* in the resolution session identifies the types and nature of a crime and the type of punishment associated with that crime. Normally, the *Sipahi* and *Wakil* contribute to the discussion of the punishment, but the final verdict and sentence is determined by the *Mahato*. Sometimes, the issue of punishment goes to appeal the assembly, but this is considered a failure of justice and is rare. The main seven types of punishments approved by the community assembly and practiced by the *Kachchheri* are as follows:

### **1. Ear Twisting**

Ear twisting is the first and most common punishment in the Kisan *Kachchheri*. Simple cases like intentional insult, use of bad words, or misbehaviour, etc. are considered unsocial activities. A first offence requires a public apology. In a repeat offence, the court punishes the culprit with public ear twisting. In general, the culprit's home village *Sipahi* twists the ear of the culprit. I marked that the *Mahato* and *Wakil* keep a distance from the culprits, and do not twist the ear of a culprit directly.

### **2. Slapping**

The second type of punishment is slapping. Theoretically, the *Kachchheri* has stopped after March 2006, when the authorities received human rights training, but in practice, it is still a common punishment. When the *Kachchheri* decides to slap a culprit, the *Mahato* stands up and slaps the *Wakil* once. The *Wakil*, then stands up and slaps the *Sipahi*. Following the *Mahato* and *Wakil*, the *Sipahi* stands up and slaps the culprit up to ten times. Normally, slapping occurs as a result of filing a false claim, inflicting minor injury, stealing and looting. In addition, the *Kachchheri* may decide to compensate the loss and damage of the victim by fining the culprit in cash or in kind, which is generally double the damage/loss. These types of cases can be resolved in the *Kachchheri* only.

### **3. Beating with a Stick**

Use of the stick in the *Kachchheri* is not as common as ear twisting and slapping. Theoretically, this has also stopped since 2007, but it, too, is still practiced. It is reserved for those who force others to involve themselves in crimes like stealing the property or wives of others. The *Sipahi* hits the culprit with a bamboo stick up to ten times at the direction of the *Wakil*. The *Kachchheri* decides a demand compensation from the culprit, double the value of the damage / loss.

In the case of adultery, the male culprit has to pay back the value of the woman's ornaments and Rs 1000 to her former husband. If the woman was

taken forcefully then the *Kachchheri* decides a fine of up to NRs 3000, and the *Sipahi* hits him ten times with a bamboo stick. The culprit has to pay compensation to the woman and her husband according to their demands and the decision of the *Kachchheri*. The husband, and his wife, may also hit the culprit with a whip or a stick up to five times. If the woman accepts the culprit as her husband then the individual has to pay NRs. 2000 to the *Kachchheri* to formalise their marriage. The *Sipahi* cannot resolve this type of case in the village, and must forward it to the *Kachchheri*.

#### **4. Punishment in Cash and Kind**

The *Kachchheri* can fine the culprit who damages or attempts to damage others' property, cultural symbols, and or network of relationships. The amount of fine varies from Rs. 10 to 2000 according to the damage or loss. For an example, the *Kachchheri* fines Rs 2000 and a *Dhoti* and *Pheta* to a Kisan who marries a non-Kisan. This is considered an attempt to destroy Kisan culture and the cultural harmony between Kisans and non-Kisan communities. Therefore, the court uses the fine to organise a marriage ritual to restore peace and harmony in the community. This type of offence also requires resolution by the *Kachchheri*.

#### **5. Keep under Observation (eye-witness)**

The fifth type of punishment exercised by the Kisan *Kachchheri* is to keep someone in eye-witness, or under probationary observation. This is not a common punishment among the Kisans. However, the Kisan *Kachchheri* decides to keep a culprit in eyewitness when the victim still feels threatened by the culprit or if the *Kachchheri* suspects recidivism. In this case, the culprit has to report to the *Kachchheri* or concerned authority once a day. Such an individual may be given public duties such as cleaning the court office, school, public streets, etc. This type of punishment is given to those culprits who have threatened or harassed someone. The *Sipahi* also cannot resolve this type of case alone.

## **6. Suspending Community Membership**

The *Kachchheri* can suspend community membership if a culprit does not improve his behaviour in the time allowed by his sentence. In general, the *Kachchheri* declares the withholding of community membership of family members, including those of couples who disappear after an inter-caste marriage. The Kisan authorities go to family's house and announce the withhod of the community membership of the family publicly. In this case, the parents of such couples have to ensure the *Kachchheri* that they will bring the couple back in the given time and pay NRs 2000 for the marriage purification ritual. From then until the time of purification ritual, other villagers cannot interact with them.

## **7. Termination of Community Membership**

Permanent termination of community membership is the last punishment of the Kisan *Kachchheri*. As the supreme justice delivery institution, the *Kachchheri* reserves full rights to terminate community membership of an individual. The Kisan authorities know that this is the direst punishment available. Therefore, they seek permission from the community assembly if they have to take the decision. However, an individual can appeal to the community assembly if he does not accept the decision of the court and community. According to the key informants, if one does not purify the inter-caste marriage, does not implement the decision of the *Kachchheri* and the government, or does not follow the Kisan traditions, then the *Kachchheri* can terminate the membership of such an individual. This step is taken normally after withhold of community membership, if the culprit does not improve his behaviour.

The community members may not interact with the individuals whose membership has been terminated. In general, such individuals migrate away from the settlement. However, termination of community membership is a rare case. There is only one example of membership termination in the study area. Around 35 years ago, Mr. Jhularam Kisan, age 25 of Bagribadi village, married a Satar woman. There was no practice of marriage purification in an

inter-caste marriage during the time. Therefore, the *Kachchheri* terminated his community membership and the family migrated to India.

With the establishment of democracy in Nepal, the Kisan community leaders have received human rights and paralegal training from local humanitarian organisations. After the training, the authorities are aware of the rights of an individual and discourage inhuman physical punishments in the *Kachchheri*. Instead of inhuman punishments, the *Kachchheri* employs community service punishments, like clearing public path or wells, sweeping a school once a week, and so on. However, ear twisting and slapping are not considered serious physical punishment and are not forbidden completely.

## **B. Rewards**

Reward is the positive means of social control. There may be some individuals who always attempt to maintain peace and harmony in society. The institutions that attempt to control harmful activities through punishment offer rewards to those who contribute to the betterment, peace and harmony of society. The explicit interest of such institutions is to inspire other people to contribute positively as well. Among the Kisans, the *Kachchheri* punishes the individuals who violate customs and traditions and offers rewards to those who maintain peace and order in the community, preserve their customs and culture, and enhance community justice. Such rewards are described below.

### **1. Recognition**

Recognition is the main social reward in the Kisan community. The *Sipahi* identifies people who contribute to the protection and promotion of the Kisan culture and enhance peace in the community. The Kisan community assembly also organises a recognition session at the end of the assembly. In general, the Kisan government organises a recognition session once a year, but the community assembly organises one whenever the assembly is held. The Kisan authorities organise a recognition session at the end of the annual *Gram Pooja*. The *Sipahi*, as the head of a village, has to recommend a few people for recognition to the *Wakil* annually. The *Wakil* receives names from all nine *Sipahi* and calls a full meeting of the government. The meeting finalises the

list of names and then recognises them at the end of the *Gram Pooja*. In the session, the *Mahato* describes the contribution of such individuals. After recognition, the individual is considered a respected person. Such individuals are considered advisors to the Kisan government, *Kachchheri* and the community.

## **2. Appointment to the Authorities**

According to the advice of the *Sipahi* and an evaluation report of the Authority Recommendation Committee (ARC), the community assembly appoints an individual for the vacant position of the advisor to the Kisan government and their *Kachchheri*. The community assembly forms an ARC of three members (in general, the *Mahato*, *Wakil* and a *Sipahi*) which recommends the name of such individuals for the positions. However, individuals are found less interested in these public volunteer positions nowadays, and it can be difficult to fill the positions.

## **3. Nomination to the Kisan Club**

This type of reward is a recent phenomenon, developed after the establishment of multiparty democracy in Nepal. The Club was established by young and educated community members and registered in 2001 in the District Administration Office as an NGO under the name Kisan community Development Foundation. The office of the Club is attached to the government and *Kachchheri* offices. The main objective of the Club is to work for the welfare of the community in the changing modern political context.

All community members, including the authorities, have accepted the Club as their own organisation because of its contributions to the community<sup>40</sup>. It has distributed toilet pans and tube wells and has run several literacy and awareness programs for the community. The Club invites selected community members and the authorities to discuss progress and change in the community. Most of the young and educated Kisans are working as activists in the Club. During my fieldwork, the organisation was working with the support of the

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<sup>40</sup> In fact, in the discussions, it was revealed that many old and/or illiterate people were unclear as to whether the club was a separate organisation or a part of their government and the *Kachchheri*.

Nepal Federation of Indigenous Nationalities (NEFIN), Action Aid Nepal, and a local NGO called SAHARA Nepal. The *Sipahi* of Semairdanga has been the chairperson of the Club since its establishment. The Club has three employed staffs, eleven executive members, and fifty-four volunteers. The executive members of the Club are nominated from the general assembly, and the staff and activists are appointed by the executive members of the Club. The Club has a cultural section, an education section and a sport section. The Club appoints the head of these sections for one year. Nomination to the club, whether in the executive body or as a general member, carries a kind of social prestige.

The Kisans in my study area informed that seven types of punishments are commonly given depending on the nature of the disputes in question. Of all those, expulsion from community membership is regarded as the most severe punishment. Therefore I tried to record the number of expulsion cases in the community. To my surprise, not a single case of expulsion was reported by the people except for a mythical case that was relayed by 81 year old informant. Hence, the community does not deliver such a punishment (termination of community membership). However, the *Kachchheri* and *Sabha* remind those who commit crimes very frequently that they may lose their community membership if their behaviors are not improved. On the other hand, in regard to the rewards, all three types of rewards are used by the Kisan government as an appreciation for good conduct by individual members of the community.

## CHAPTER SIX

### Process of Dispute Settlement, Participation, and Access to the Community Court

All languages have many words to describe social problems or social conflict. Conflict is a fluid and ambiguous word understood differently in different contexts. It can refer to a debate or contest; a disagreement, an argument, a dispute, a quarrel, a struggle, a battle or a confrontation; or a state of unrest, turmoil, chaos and violence (Warner 2001). A dispute is the result of disagreement among two or more individuals or groups. A simple debate or disagreement can become a dispute when one party makes a public claim for compensation (Burton 1996). The Kisans of Jhapa use the term "*Jhagra*" (literally meaning quarrel) to describe simple, common disturbances in social relations. The method and venue of resolution is determined by the degree of *Jhagra*, including which the *Sipahi* can settle in the village, and which he must forward to the *Kachchheri*.

To begin with, senior relatives, or occasionally tole members, will facilitate mediation in simple cases of quarrel, small-scale transactions, and verbal insults and so on. If they fail to settle the cases, then the disputants go to the village *Sipahi*. In practice, about 80 per cent of all disputes go to the *Sipahi*, of which half are settled there. The remaining half, including those which fall outside the jurisdiction of local settlement, go to the *Kachchheri*. The *Sipahi* and the *Kachchheri* settle minor social conflicts, commonly known as disputes in English language. They may not settle criminal cases, or *Ladain*. The *Kachchheri* forwards the criminal cases to Police Office and other formal forums. The human species lives only in terms of self-constructed meanings, or cultural understandings (Rappaport (1994). Cultural understandings of a dispute and its resolution vary widely among different groups of people. In the Kisan community, first offences concerning minor cases of domination, abuse or name-calling, theft of small items, damage to crops by animals, etc., are not an issue of *Jhagra*. Family members and seniors in the village warn the person(s) in question not to repeat such "mistakes". The affected parties of such an incident also do not take the first offence seriously. But many groups of people in the Tarai region of Nepal understand such mistake as a possible root of conflict (Chhhetri and Kattel 2004).



During my study, I observed some incidents that did not result in disputes. For instance, in Barne village, Koili Kisan and her neighbour Dhuria quarrelled for about half an hour regarding a fight between their children. Similarly, in Semairdanga village, Gomi Kisan quarrelled with Sancho Kisan one day over the issue of damage to her home garden by Sancho's fowl. In Buttabari village, Haru Kisan (age 29) and his youngest brother Dille Kisan (age 23) had a dispute over family property. Haru Kisan insulted his brother, and both of them fought until their mother intervened. In the evening, Dille Kisan came with a bottle of beer which he offered his brother for his mistake. Both of them drank it together and dismissed the problem. None of these disagreements were taken seriously or reported to the *Sipahi* and *Kachchheri*.

Similarly, in the winter of 2007, Dhobi Kisan and Bhaturam Kisan were returning home from the bazaar after consuming local liquor. They had a serious fight under the influence of alcohol, and Bhaturam was seriously wounded. In the evening, both families and their neighbours sat together and settled the case. Dhobi Kisan went to Bhaturam's house the next morning when he realised what had occurred, and said "I do not remember properly how I harmed you yesterday. I do not know how much liquor the woman gave to me. My wife told me this morning about the event. Therefore I came to apologize to you." I assumed that Bhaturam would insult or hit Dhobi. However, Bhaturam smiled and said that he had a little pain in his chest. Dhobi Kisan went to Bhaturam's bed and helped him to sit up on the bed. After a few minutes talking, both of them got up and went to the nearest medical centre. Later, I was informed that Dhobi Kisan borrowed Rs 1000 from a Brahmin for the medical treatment of Bhaturam. This incident indicated to me that fighting after drinking liquor and paying for the medical costs the next morning is common in the Kisan community. If it had happened in my own community, of course, Dhobi Kisan either would have to pay a heavy compensation to Bhaturam or he would be in remanded to police custody. When I have observed such quarrels, none of the parties were interested in escalating the case. They did not feel the need for the village *Sipahi* or the *Kachchheri* to resolve their disagreements. In the case of a physical altercation, senior family members and relatives would gather and settle the case. If one is seriously injured during a fight, then they force the wrongdoer to take the sufferer to hospital for medical treatment.

This chapter attempts to describe the understanding of *Jhagra* among the Kisans; the dispute resolution process, especially how it begins and proceeds; types of *Jhagra*; settlement processes; and trends in people's participation in dispute resolution and access to the court. First, I will present details on the meaning, development, and types of *Jhagra* in the Kisan community.

## **6.1 Disputes in the Kisan Community**

In the view of anthropologists, people's knowledge and perceptions develop through their communities' cultural practices (Barth 1993, Rappaport 1994). Hence, different people understand a dispute differently depending on their cultural context. For example, there is a saying about some hill ethnic groups in Nepal that they do not consider a dispute serious until one of the individuals involved inflicts at least a one inch long wound on the other. Among some of the Tarai groups, merely shouting at someone is also considered a serious dispute. Among the Kisans in Jhapa, dispute is a situation in which one deliberately disturbs, insults, or assaults another person and the insulted/disturbed person makes a public claim for compensation. However, Kisans of poor economic backgrounds have found slightly different understandings of the occurrence of a dispute. Simple fighting or quarrelling among children cannot be a source of dispute for them, whereas the same can be the source of a dispute for rich Kisans. In this section, I will present the general understanding of a dispute among the Kisans; the recognition of a dispute; the types of dispute; and the process of escalation of a simple event into a dispute and the process of its entrance to the *Kachchheri*.

### **6.1.1 The Definition of Disputes among the Kisans**

All types of social tension, strife, and chaos are not considered "disputes" among the Kisans. I found four words in the Kisan language describing types of social problems: *Thens-thans*, *Jhamela*, *Jhagra* and *Ladain*. These four types are illustrated by the cases summarised in Box 6.1. *Thens-thans* denotes simple arguments or use of insulting language. *Thens-thans* may result in the two parties not speaking to each other for few days, with a subsequent return to the regular relationship. Sometimes, this may also escalate into a dispute. *Jhamela* is unnecessary disturbance and tension. It is the situation in which someone picks a quarrel without cause. For instance, one person may approach another and express his doubt as he has lost something and for that he asks him to go to community court or to police post for investigation. The

victim may be forced to go to *Kachchheri* or police without having committed any misdeed. *Jhamela* may be related to any issue, including the rights of an individual or material goods and services. Sometimes, it may also escalate into a dispute.

*Jhagra* may be the escalated result of *Thens-Thans* or *Jhamela*, or the result of a serious quarrel, insult, or fighting. Therefore, in the understanding of the Kisans, relatives and neighbours cannot settle a *Jhagra*; the disputing parties have to go to the *Kachchheri* for resolution. *Ladai* denotes serious violence between two individuals, families or groups, particularly involving the use of weapons. It is a war-like situation. The village head and the community court cannot resolve a *Ladai*, and the Kisan authorities forward such cases to the Police Office and District Court.

An individual has to interact with neighbours, relatives and strangers daily. Sometimes, a minor case of teasing while walking to work can escalate into *Jhagra*. In this situation, the parties go to the *Sipahi* or *Kachchheri* for remedy. A *Jhagra* is considered a life misfortune that can destroy relationships. It degrades the respect for the involved parties because other community members may view the disputants (*Jhagriya*) as troublemakers. Therefore, an individual wants to avoid *Jhagra* and remedy the situation as quickly and quietly as possible when it arises. If *Jhagra* is within a family, then seniors of the family try to resolve it. Sometimes, the village seniors will also help resolve the *Jhagra*. If the incident is repeated, only then will the seniors forward the case to the village *Sipahi*. A *Jhagra* is understood to destroy the relationship between the disputants and their prestige in society. I did not find any Kisans interested in escalating a minor case into a dispute.

**Box 6.1: Examples of Types of Social Tension among the Kisans**

**A. *Thens-thans* (Quarrel or Verbal Fighting)**

Budhan Kisan (age 39) is a permanent residence of Majhergaun. He has a daughter (age 13) and two sons (ages 11 and 9). He was living with the children when his second wife left him. Budhan's first wife had eloped with an Indian man a few years earlier, leaving her children at home. Budhan was a poor but an honest individual. His relatives and friends were not in favour of his remarriage, but he married an Indian woman over their objections. She also eloped with another man after two months taking his money. This hurt Budhan badly, and also became an issue for his friends to tease him.

Haldu Kisan was a good friend of Budhan. One day, he was coming from the work with his wife when he saw Budhan going to bazaar. Haldu thought it is a good time to tease Budhan and said "...why are you going to bazaar alone today?" This hurt Budhan and he replied, "As you have taken my wife therefore I am going to bazaar alone." They argued over this for a while – each trying to overpower the

other. Both of them got angry and went their separate ways. They did not speak to each other for about two weeks, but then began talking to each other again. Thus, a disagreement of two friends was forgotten after two weeks. The Kisans understand this type of situation as *Thens-Thas*.

### **B. Jhamela (Unnecessary Tension)**

In 2006 Gundruk Kisan was coming from bazaar to his home (Semairdanga), stopping at Bansgaun (Dhaijan VDC- 7) for a while to see his parents-in-law. Rama, the eldest daughter of his wife's eldest brother was preparing local brew. She offered Gundruk a glass of brew and also expressed her desire to go with him to see her cousin. After having the glass of brew, he went with Rama.

Gundruk had heard from his wife that Rama had a weak character, and started teasing her, pretending to be drunk. He proposed having sexual relations with Rama. He promised that he would keep her as his second wife if she got pregnant. Rama rejected his proposal, and removed her wrist from his hand. When she escaped, she ran to her sister. She cried with her sister and told her about the incident. Domi Kisan took this event seriously, and immediately went to the *Mahato* with her sister and informed him of the event. He was their relative, so they spent the night at his house.

The next day, a *Kachchheri* meeting was organised in the village in the presence of the *Mahato*. The *Mahato* asked Gundruk Kisan about the event. He said that it was not a real event; rather, he was trying to check her character. He claimed that he had no bad intention, and that he had no interest in bringing her as a second wife as he had good relationship with his wife. However, his wife and Rama did not believe him, and Gundruk Kisan apologised, touching the feet of her sister-in-law and his wife. Thus, the case was resolved in the presence of the *Mahato* and *Wakil*, but relationship of the husband and wife did not normalize for about one year. Thus, Gundruk Kisan faced a *Jhamela* with his wife.

### **C. Jhagara (Dispute)**

As neighbours, Kandru Kisan (age 44) and Taluk Kisan (age 39) had very good relationship. These two families lived nearby since their fathers' time in Amdangi village of Bahundangi VDC- 1. One evening, in the winter of 2004, one of Kandru's cows became separated from the herd and did not come home from grazing in the jungle. His family thought the cow was lost somewhere and would come home sooner or later as usual. However, the cow did not come in the evening. In the morning, Taluk came with the cow and abused Kandru very roughly. He claimed that the cow destroyed paddy crops that would have yielded about 500 kg rice. Kandru said that he would pay the fine after observing the paddy field.

After a short discussion, both went to the paddy field to check the crop damage. When they reached the paddy field they found seven more cattle grazing in the field. Mr. Kandru was surprised by Taluk's previous claim, and said he would pay Rs 100 to him as compensation. Furthermore, he said that he would not have to pay such a big amount if the case went to the village *Sipahi* or the court. Without saying a word, Taluk went to chase the cattle and Kandru went back home. After he chased the cattle, he went to village *Sipahi* and reported the case. According to his claim, Kandru Kisan had to pay compensation equivalent to 500kg rice, including the cost of fence that was destroyed by his cattle.

The next day, a *Kachchheri* was organised in the yard of village *Sipahi* and a mediation session was held for about two hours. Finally, the session decided that if eight cattle had destroyed the paddy crop, then the owner of each cow had to pay Rs 100 to Taluk Kisan. Kandru Kisan accepted the decision of the *Kachchheri*, and paid the compensation, but was reluctant to normalise his relationship with Taluk. Taluk Kisan took the decision poorly and was still not speaking to Kandru and his family.

Thus, the cases presented in box 6.1 illustrate *Thens-thas*, *Jhamela* and *Jhagra* in the community. According to these examples, *Thens-thas* is a brief disagreement, an initial form of quarrel that settles itself. Sometimes, it escalates into *Jhamela* creating unnecessary trouble or disturbance. A *Jhamela* can also change into *Jhagra*, a serious case that affects the relationship of the disputing parties indefinitely, when one or both parties to a dispute take the case seriously. In my observation, I found most of the community members do not want to escalate minor *Jhamela* (disagreements) into *Jhagra* (disputes).

### **6.1.2 Progress of a Dispute among the Kisans**

The progress of a dispute is the course of a dispute from the beginning of its root of disagreement; through its escalation to a dispute, to its resolution. For the Kisans, a *Jhagra* is a serious, antagonistic, and public situation between two individuals or groups, in which one claims compensation from the other directly or through a third party, which may include relatives, village members and court authorities. In general, the seriousness of a *Jhagra* depends on degree of escalating behaviour on the part of the *Jhagriya* (disputants). None of the disputants may acknowledge a need for resolution until and unless one of them is badly injured (physically or otherwise), or his relatives advise going to the *Kachchheri*. According to Burton, disputants are not ready to resolve their disagreement until this moment of realisation (Burton 1996).

Kisans seek to avoid *Jhagra* as far as possible. I discussed the progress of disputes with key informants and with participants in group discussions. Most of them informed me that, normally, a Kisan disputant does not react to the antagonism of his opponent. Rather, he considers the first incident of such antagonism a punishment of the god and tolerates it. Repeated antagonism is considered the result of ill intent on the part of his opponent, and he requests that his opponent correct the behaviour. If, instead of correcting the behaviour, his opponent ignores him, and either party claims compensation directly or through a third party, then the situation is considered a *Jhagra*, and the case is registered with the *Sipahi* or the *Kachchheri*.

Because Kisans consider a *Jhagra* a serious misfortune, they worship their chosen family deity twice a day seeking a remedy to the situation. They may also go to *Devithan* (places where deities are symbolised by a large tree) for daily morning worship.

Even the *Mahato*, *Wakil* and *Sipahi* worship these deities in the belief that they can save them from misfortunes.

During field research, I witnessed several cases of *Jhagra* being settled within the Kisan community. Most such cases were settled immediately through the initiative of disputants, in the presence of *Sipahi*. However, in two cases one of the disputing parties took the cases more seriously, escalating them into serious problems. Finally, these cases were settled in the *Kachchheri* by the initiative of the Kisan authorities. Box 6.2 presents two cases, one settled immediately within the concerned families and another by the Kisan authorities in the *Kachchheri*.

### **Box 6.2: Examples of Case Settlement**

#### **Case A: Settlement by concerned families/neighbours**

One day in April 2006, two children (Rajan, age 10, and Kiran, age 11) of Chyalnegaun (Mechinagar municipality-6) fought each other while returning from the school and Rajan was wounded. He came home with swollen hands and went to sleep without informing family members, because his parents were not at home upon his arrival. His parents returned home from work in the evening and found Rajan asleep with swollen hands. They found out from Rajan that he had been beaten by Kiran. They were alarmed at the state of Rajan's hands, and gave him some food and cleaned and applied herbal paste to his injuries. After this, they went to their neighbour to inform the event and to learn details of the event from Kiran.

When they reached Kiran's house, Kiran's parents were preparing dinner, Kiran was not at home, having gone to maternal uncle's house. They had not been aware of the fight between Kiran and Rajan and Rajan's injuries. Kiran's parents also took the news seriously and went to see Rajan immediately, taking him a cream for the treatment of his hands. The next day, Kiran's mother went to her natal house to ask Kiran about the event and fetch him home, and Kiran's father took Rajan to Dhulabari bazaar for medical treatment. On the evening of the third day, both families sat together in the Rajan's family's house to discuss the matter. Kiran's parent forced Kiran to beg pardon from Rajan and his parents. He promised not to repeat such actions in the future, and the incident was settled within the two families concerned without the intervention of outside authorities.

#### **Case B: Settlement requiring outside intervention**

Murmu Kisan, age 57, was a permanent resident of Bansgaun (Dhaijan VDC -7). In August 2007, he had irrigated his rice field by stealing water from Ratilal Kisan (age 43). In Bansgaun, there was a functioning Irrigation Water Management Committee (IWMC), composed of seven members under the chairmanship of village *Sipahi*. The committee managed irrigation among the 19 farmer households in the village from a small water source, based on a rotation system at the rate of eight hours per farmer.

Ratilal Kisan got his turn after ten days, and he turned the water to his field at 10pm, and went home for sleep, assuming that his field would be completely irrigated by 6am. At 5:30am, he went to check the field. To his surprise, Murmu Kisan's field was completely watered, but his own was dry. He

immediately went to the chairperson of the IWMC to inform him of the event, and both returned to the field within an hour.

The IWMC chairperson with the village *Sipahi* observed both fields, and went to Murmu's house to ask him about the event. Murmu Kisan was clearing his cattle shed when they arrived. When he saw them, he understood the meaning of their arrival, but he pretended ignorance and asked them their destination. When they explained, he came with a few sitting mats (*Sukul*) and requested that they sit. The *Sipahi* questioned him about the incident, but contrary to their expectation, he claimed ignorance and suggested that "some enemies of Ratilal might have directed the water to my field," since "Ratilal has many enemies in the village."

Despite these protestations, the IWMC noted that Murmu's face appeared guilty, and talked to the *Sipahi*, asking the water users of the village for a *Kachchheri* meeting. After some time, the *Sipahi* organised a *Kachchheri* at which the IMWC chairperson proposed to withhold Murmu's IWMC membership and water privileges for one year. When Murmu heard the statement of chairperson, he admitted guilt and requested a less harsh punishment. The *Kachchheri* asked him to publicly explain the reason for the offence. Lowering his face, Murmu said that there was no enmity with Ratilal. He had merely gone to check the flow of water at 11pm that evening, because own his turn was the next morning. When he reached the field he saw Ratilal's field getting irrigated, whereas his own field was dried up. Therefore, he turned the water to his own rice field.

Finally, the *Kachchheri* decided that Murmu should pay Rs 500 and cede his own irrigation turn to Ratilal. A bond paper was prepared in which it was written that if Murmu repeated the offence, his membership of IMWC would be terminated. Murmu signed the bond paper.

In the first case, the offender's family readily accepted the guilt of his son, and took the victim for medical treatment as compensation, easily settling the dispute within the families. In the second case, the wrongdoer was not initially ready to accept his mistake. This type of behaviour on the part of the offender escalates a minor case to a serious problem. In general, when disputants mistakes confronted with his offence, he does not negotiate or deny it, but goes to village seniors, the *Sipahi*, or the *Kachchheri* for a solution. If one of the parties is not ready to resolve the case then the chance of resolution without intervention by the authorities is low, and the presence of the *Sipahi* or other authority becomes essential to resolve the problem. In each instance, a case begins when one is hurt by the behaviour of another. A simple incident changes into a serious problem, or *Jhagra*, when the wrongdoer denies his offence or blames his accuser. These cases require significant effort to resolve.

### **6.1.3 Types of Disputes**

As mentioned above, Kisans understand a *Jhagra* as the result of bad fortune or a divine punishment, and seek to remedy the situation by regaining the favour of the deity in question. If this is not possible, they will tolerate the situation for as long as

possible, as they believe that admitting *Jhagra* is a black spot on the social standing of an individual. Ultimately people become ready to cope openly with the situation because of the belief that “one cannot escape from the eyes of gods”.

As discussed above, Kisans do not consider all types of disagreements as *Jhagra*. Other issues are considered “unnecessary obstacles” to social harmony. Table 6.1 further describes these *Jhagra* in the Kisan community.

**Table 6.1: Types of Dispute in the Kisan Community**

Types of dispute	Problem	Settlement venue	Remarks
1. Marriage between Kisans and non-Kisans	Identity issue & violation of law	Kisan <i>Kachchheri</i>	Within a month
2. Love marriage within Kisans	Challenge to tradition	Kisan <i>Kachchheri</i>	Within a month
3. Rape and attempted rape	Violation of law and increasing criminal culture	The Police Office	Forward by the Kisan authority
4. Illegal sexual relations and looking at women with ill intent	Violation of law and increasing criminal culture	Kisan <i>Kachchheri</i> and the Police Office	Serious cases go to the Police Office
5. Violations in economic transaction or delayed repayment of debt	Development of unethical culture	Kisan <i>Kachchheri</i> , Police Office and VDC/Municipality	Most of the cases resolved within community.
6. Theft	Violation of law and development of unethical culture	Kisan <i>Kachchheri</i> and Police Office	Serious cases forward to the Police Office
7. Fighting due to drunkenness	Disturbance in social harmony	Kisan <i>Kachchheri</i>	
8. Not keeping cattle properly	Damage of crops	Kisan <i>Kachchheri</i>	
9. Misuse of resources, including irrigation land in other's turn, collection of forest products from others' forest, etc.	Violation of law and development of unethical culture	Kisan <i>Kachchheri</i>	
10. Verbal abuse or insult	Disturbance in social harmony	Kisan <i>Kachchheri</i>	
11. Disrespect to parents, seniors, shamans or community authorities	Disturbance in social harmony and violation of law	Kisan <i>Kachchheri</i>	
12. Domestic violence	Distrust in family and disturbance in social harmony	Kisan <i>Kachchheri</i>	
13. Overuse of resources (forests and water)	Development of unethical culture	Kisan <i>Kachchheri</i>	
14. Interfamily property dispute	Development of unethical culture	Kisan <i>Kachchheri</i>	
15. Animal abuse	Development of unethical culture	Kisan <i>Kachchheri</i>	

Source: Household Census 2008



The first two types of disputes in Table 6.1 are settled by the Kisan *Kachchheri*. Numbers 3, 4, 5 and 6 can be settled locally if they are simple. If they are serious, then the *Kachchheri* forwards such cases to the local Police Office. Dispute types 7 to 15 can be settled by the *Kachchheri* within the community. Disputes other than these 15 types of *Jhagra* are considered *Thens-thans* or *Jhamela* only. Knowing that these can also escalate into a *Jhagra*, a Kisan tries to avoid all types of social tensions.

As mentioned, the community court settled criminal cases as well until the late 1970s, until which time there were no nearby Police Offices or other government offices. Now, the *Kachchheri* forwards all criminal cases to the local Police Office. The Kisan authorities have received training from local NGOs and are now aware of what types of disputes they have to forward to the Police Office.

## **6.2 Processes of Dispute Settlement in the Kisan Court**

The *Kachchheri* is formed following democratic norms by elected representatives. It is generally accepted to be a fair and reliable justice mechanism, and it has defined and systematic steps in the process of dispute settlement. The *Kachchheri* strictly follows the steps defined by the community assembly when it receives a case. These cases include anything a village *Sipahi* fails to resolve or anything that falls outside his jurisdiction, including cases related to cow killing; natural resource destruction; disrespect to parents, shamans, community authorities; and any other cases between people of two different villages.

As discussed above, the community assembly is the supreme Kisan governance body, and approves the laws, the activities of the government, and the *Kachchheri* and defines their working procedures. While the village *Sipahi* and *Kachchheri* shortcut some steps of dispute settlement, others are compulsory. These are: registration of a case, contacting the second disputing party, conducting a resolution session in the presence of both parties, hearing the facts of the case from each party, giving each party time for clarification, and hearing testimony of witnesses.

### **6.2.1 Step One: Dispute Registration and Contact of Second Party**

The Kisans classify *Jhagra* into two broad categories: those which can be settled within the village and those which cannot. The cases which can be settled in the village are settled by the *Sipahi* and the cases which cannot go to the *Kachchhheri*.

The *Kachchheri* cannot settle all types of cases; the criminal cases must be forwarded to the Police Office.

First, a disputant goes to the *Sipahi* and informs him of the case. In cases that the *Sipahi* cannot resolve in the village, he will assist the disputant to register the case with the *Kachchheri*. For cases in his jurisdiction, the *Sipahi* collects a detailed history of the case from both parties, and fixes the date and venue for a resolution session. If the *Sipahi* thinks the case is complex and not resolvable in the village, he will suggest that the disputant go to the *Kachchheri*. The steps followed by the *Kachchheri* for dispute resolution are as follows:

- **Registration of a Dispute**

Registration of a case or *Jhagra Darta-Kalek* in Kisans, by the disputant himself is the established practice, although he may also send a relative or friend. Normally, disputants have to go to the *Wakil* with the village *Sipahi* for case registration. To handle the flow of cases, there have been two *Wakils* elected since 2000, one from Semairdanga and another from Bansaun. In general, a *Wakil* makes an appearance in the *Kachchheri* office once a day. Disputants can go to the office and wait for the *Wakil*, or they can go to his house directly.

While oral notice provided to the *Sipahi* is understood as case registration at the village level and for the *Kachchheri*, the disputants must go to *Wakil* with their *Sipahi* to register a case. The disputant can register the case through the *Wakil* orally or submit a written complaint. The *Kachchheri* has no any provision to receive only written petitions. The *Sipahi* or *Wakil* will assist disputants in writing a complaint if necessary. The *Kachchheri* does not require a registration fee or stamp on the complaint, and the entire process is free for all community members. However, a guilty party has to pay for a bottle of wine (NRs 10 to 20) at the end of the session to raise the moral of the sufferer. Offering a bottle of wine at the last of the session by offender to the victim symbolizes raising the moral of the victim which is known as *Sir Uthaune*.

- **Contacting of the Second Party**

After hearing a case from the first party, the *Sipahi* contacts the second party to hear his statement. If a disputant goes to the *Wakil* first, then the *Wakil* contacts the second

party through the *Sipahi*. In general, the *Wakil* collects the details of a case from both disputants and the *Sipahi* and fixes the date, time and venue of mediation session. The *Wakil* also informs the *Mahato* of the case and the arrangements for the mediation session. On the day of the mediation session, the *Sipahi* brings the disputants to the *Kachchheri* office, having already worked to understand the demands, interests and needs of both the disputants.

- **Dispute Analysis**

The *Mahato*, *Wakil* and *Sipahi* organize a brief meeting before the mediation session to analyse the case. In the meeting, the *Sipahi* presents the demands, interests and needs of both the disputants, and they discuss the case's concerned individuals and families, evolution, root causes, affecting factors, damage caused by the dispute, and so on. The authorities also interview witnesses, most often neighbours, and outline options for resolution. After analysing a dispute, the *Kachchheri* authorities go to the mediation session. The brief dispute analysis meeting is crucial for understanding and resolving a case.

## **6.2.2 Step Two: Resolution Session**

The mediation or resolution session, where the disputants meet face-to-face for the first time, is the most important step in dispute resolution. It is carefully orchestrated so as to maintain a peaceful, solution-oriented atmosphere. The *Kachchheri* authority manages the sitting arrangement, and requests that the disputants remain cordial and respectful. The *Wakil* repeatedly says in the session, "we Kisans are all family members; we do not have to escalate minor mistake into a *Jhagra*. If we fight among ourselves then only outsiders benefit". A mediation session is organised once or twice a week depending on case load. Normally, a single mediation session will resolve two to four cases. The following stages are the standard procedure in the mediation session:

- **Welcome by the *Wakil***

The Kisan authorities, including the *Mahato* present themselves as servants of the community, and do not derive their authority in mediation sessions from a

commanding appearance. In physical appearance and style of dress, they are very similar to the general population, including the disputants.<sup>41</sup>

The *Mahato* assigns tasks for both the *Wakil* and *Sipahi* before the session. In general, he assigns responsibility for the welcome speech to one *Wakil*, responsibility for processing the case to another *Wakil*, and miscellaneous assistance to the *Sipahi*. The *Mahato* then becomes a silent observer until rendering his decision at the end of the session.

After arrival of concerned individuals, the *Mahato* declares the beginning of mediation session. The *Wakil* welcomes everyone who has accepted the invitation of the *Kachchheri*, and come to the session. He announces that session will run under the authority of the *Mahato*, but that the *Kachchheri* needs help from all in attendance to resolve the problem, including provision of facts related to the dispute. Finally, he requests the concerned *Sipahi* to maintain the rules of the *Kachchheri* throughout the session.

- **Norms or Rules Setting for the Resolution Session**

The main role given to the *Sipahi* by the *Kachchheri* is to inform disputants of the rules of the *Kachchheri* after the *Wakil*'s welcome speech. The main rules for the session are:

- We all are in a formal meeting, therefore we have to speak in turn and in the given time only,
- We all are community members therefore we have to speak in simple, soft, and respectful language which does not hurt others, and
- We have to listen carefully others' feelings and reactions so that we can understand others, as well as to prepare own criticisms.

Following this explanation, if all agree to the rules, then he requests that the relatives of disputants and the witnesses of the event assist the *Kachchheri* by providing evidence, saying, "helping disputants to resolve a case is a remarkable contribution to maintaining peace and harmony". At last, the *Sipahi* asks the disputants once again whether the rules are acceptable, and gives the floor to the *Wakil* to run the session.

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<sup>41</sup> This is in contrast to Nepali government officials, who, compared to their constituencies, often appear healthier and with better dressed.

In the half a dozen sessions I observed, I never witnessed disputants object to or break the rules. However, I have been told that in other circumstances, disputants have gone as far as to fight during the session. In this situation, the authority considers the case unready for resolution and ends the session. The case reverts to the *Sipahi* for resolution in the village. If the case comes to the court again, the court considers it a serious case and, both disputants have to pay an amount from Rs 20 to Rs 500 and a *Dhoti* to the *Kachchheri* (which is received by the *Mahato*).

- **Problem Presentation**

After explaining the rules, the *Wakil* allots time for the first disputant's testimony, reminding all parties to be truthful throughout the session. The first party presents the case from his side in detail, sometimes with input from friends and family present. Then the *Wakil* asks him to clarify unclear points, if any. When both the disputants have presented their testimonies, the *Wakil* asks other participants to provide necessary evidence related to the case. The *Wakil* hears each presentation and asks clarifying questions. Sometimes, the *Mahato* also requests that the *Wakil* clarify certain issues.

The discussion of a case in the session does not only help the *Kachchheri* to resolve it, but also helps the disputants to understand their opponents' feeling about the case. In fact, 40 per cent of disputes discussed in the *Kachchheri* is resolved by themselves, without an official ruling, when disputants carefully listen to the other person's side. In my presence in the session, such disputants shook hands, offered an apology, thanked the authorities, and returned home. The *Kisan* authorities are familiar with this occurrence, and are happy to accept a mediated resolution rather offer a ruling.

- **Identification of the main Problem**

In the process of the clarification of a case after the presentation of evidence by the disputants, their associates, and witnesses, the *Kachchheri* authority identifies and articulates the main problem, root cause, and additional causes, and damages caused by the dispute. Moreover, the authority, through questioning, tries to bring to light any previously obscured information related to the case.

Once the disputants agree on the issues as articulated by the authorities, then the authority requests that the disputants present their own needs. Sometimes, disputants present their needs, interests, and claims easily, but often. The *Kachchheri* authority has to spend significant time facilitating this discussion. Usually this depends on the success of the *Kachchheri* in identifying the salient issues at stake. For example, in a case of family separation due to domestic violence, the *Kachchheri* identified the drinking habit of Bhadre Kisan as the main problem. His wife, Chandrika Kisan, immediately expressed her willingness to stay with him if Bhadre would stop drinking liquor. To prevent a family breakdown, Bhadre agreed. When the *Kachchheri* accurately identifies the root of the incident, a resolution amenable to both parties is more easily reached.

Finally, the court facilitates a discussion of the best options for a solution. Most of the time, the disputants identified the best option for resolution along with their needs, although sometimes, the *Kachchheri* authority has to facilitate the selection of a best option for resolution. After identification of the best option for the resolution of a case, the authority helps disputing parties to identify terms and conditions for implementing the agreement.

- **Identification of Terms and Conditions**

The *Kachchheri* believes that the terms and conditions of the settlement have to be identified by disputants themselves for proper implementation of an agreement, and are skilled at facilitating discussions aimed at this. For instance, in the case between Bhadre and Chandrika Kisan the disputants proposed the following terms and conditions: Both husband and wife will come to inform the *Kachchheri* of the status of their relationship after a week; henceforth, Bhadre will not drink liquor and Chandrika will not fight with her husband; the *Sipahi* and two neighbours, chosen by the disputants, will bear witness to the *Kachchheri* on their compliance with these conditions. The *Kachchheri* authority ratifies the terms and conditions identified by the disputants in the session.

The *Kachchheri* process is considered preferable to that available in formal forums, although maintaining written records is a problem due to the lack of literate members of the community.

- **Reconciliation**

Reconciliation of disputants is the final step in a resolution session. The process of reconciliation begins with the opening of a bottle of local wine, which is normally bought from the fee or fine paid to the court by the disputants. However, disputants are also free to bring or buy a bottle. In most of the cases, the wrongdoer has to pour the wine into steel cups. He serves a cup of wine to his opponent, saying “we have settled our disputes, let our relationship flourish, the same as before”. In this process both the disputants hold their wine-cups and bow their heads to each other.

At this moment, the *Kachchheri* authority and the people present applaud, symbolising the formal end to the dispute. After this, both disputants serve the wine-cups to the authorities and the participants. Each of the participants takes a few sip of wine and goes home.

To my question about drinking wine during the reconciliation process, one of the *Wakil* (Toma Kisan) responded that “it brings disputants closer both physically as well as mentally. One of them serves wine to his enemy, forgetting all the past bitter experiences. During the drinking, they recall the good memories of the past and regret the bad deeds they have done.” I have participated in and observed about half a dozen reconciliation processes in the *Kachchheri*. The mood is joyful, and disputants talk and drink happily, forgetting the enmity of the past and initiating good relations for the future.

### **6.2.3 Step Three: Implementation and Supervision of Agreement**

This is the last step of a dispute resolution. According to the literature, very few dispute resolution mechanisms and practices, including state-based forums, exercise this step in Nepal. Most of the verdicts of state-based courts are rendered in a written document, and let lie. However, the *Kachchheri* assigns to the *Sipahi*, as the head of the village as well as representative of the *Kachchheri*, the responsibility of observing the disputants to ensure compliance with the terms and conditions of the resolution agreement. In a complicated case, the *Kachchheri* can assign the *Wakil* a supporting role as well. The village *Sipahi* also indirectly enforces the agreement by encouraging other community members to inquire of both disputants as to the state of the

agreement. The attentions of the community and the *Sipahi* create a moral obligation for the disputants to follow the terms of the settlement. The *Sipahi* reports regularly to the *Kachchheri* on the status of settlement implementation.

One of the disputants in Kalakhutta, Mr. Niraj Kisan, informed me that "disputants are always afraid of *Sipahi* and his assistants after a settlement, because they watch their activities closely. The penalty of the *Kachchheri* is double if disputants do not implement the decision and the case must go to the *Kachchheri* again. Therefore, disputants implement the decision of the *Kachchheri* and terms and conditions of the agreement immediately."

The *Sipahi* of Bansgaun, Tuna Kisan, informed me that, in general, two weeks time is given to implement the decision, and the *Sipahi* has to meet the disputants at that time to assess the status of a dispute. If they have not implemented the agreement, then the *Sipahi* finds out why and informs the *Kachchheri*, but allows an additional week. If the disputants do not implement the decision in the extended time, then a second mediation session is organized. Not only is the fine doubled, but the parties' standing in the community is damaged as they become understood again as "disputants" (*Jhagaria*).

The main achievement of this process is that the Kisan authorities more often render decisions acceptable to both parties than not. I talked to 24 disputants in old cases settled by Kisan *Kachchheri*. Out of 24 individuals only two (8.44%) were unhappy with the decision made by the *Kachchheri*. The other 22 individuals (91.66%) were happy with the court decision. This indicates that Kisan *Kachchheri* is strong enough to analyse a case and resolve it permanently.

### **6.3 Status of Participation and Access to the *Kachchheri***

"Peoples' participation" and "access to justice" are common themes in development discourse these days. Human right activists including feminist scholars are also raising issues such as inclusion, empowerment, and equity. The United Nations has also redefined development and added socio-cultural components to previous economic and health-based indicators (Human Development Report 1990 of IGNOU 2005). The Kisans do not form a unitary, egalitarian group. They do not all hold equal



position in society, and are divided into sub groups on the basis of physical, socio-cultural, economic and political features, and it is therefore of interest to evaluate equity of access to Kisan justice mechanisms among sub-groups of the community.

As with other Hindus groups, the Kisans are largely patriarchal. Although, as mentioned above, they are relatively insular, they are also somewhat geographically dispersed among non-Kisans. The two major sub-castes within villages are Sindhariya and Teliya.<sup>42</sup> In the study area, more than 98 per cent Kisans are of the Teliya sub-caste group. The Sindhariya used red vermilion powder (*Sindhur*) in marriage and other rituals whereas the Teliya used mustard oil (*Tel*) only. However, both subgroups have equal status and select marriage partners from the other group.

The community is also divided into economic classes on the basis of land holding size, employment, and daily/monthly earnings. About sixty per cent of Kisans are landless and out of these, 28 per cent are tenants of non-Kisans. Only about 14 per cent Kisans have land sufficient to produce food grains to meet their household's needs for the whole year.

Status is also afforded to community leaders and their families. A few households are of the *Mahato*'s family, two households are related to *Wakil* families and 11 households belong to *Sipahi* families. Others are shamans or social workers, and others are general members of the community.

### **6.3.1 Participation and Access to the *Kachchheri***

Theoretically, a Kisan goes to *Kachchheri* immediately when he faces a problem, because it is equally accessible to all, but in practice, it is different.

The *Mahato* and one of the *Wakils* are from Semairdanga village, where all the offices, including the *Kachchheri* and the Kisan Club are located. The size of Semairdanga village is almost double the "other" villages. The villagers of Semairdanga are more aware of the processes of the *Kachchheri*. The other eight villages Kisans know about the *Kachchheri*, but while almost all disputes of Semairdanga go to the *Sipahi* or *Kachchheri*, only the serious disputes are forwarded by the *Sipahi* to the *Kachchheri* from the other Kisan villages. Table 6.2 shows the

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<sup>42</sup> The two subcastes Kisans belong to two different clans.

participation of disputants in the *Kachchheri* in 2008. About forty-five per cent of cases registered in the Kisan *Kachchheri* are from Semairdanga village alone.

**Table 6.2: Village-wise Registration of Disputes in the Kisan *Kachchheri* in 2008**

Kisan villages	Registration of disputes	Settled disputes*	Percentage
Semairdanga	72	68	45.1
Majhargaun	14	11	5.9
Nindagaun / basti	17	17	11.3
Kalakhutta	14	13	8.7
Bagribadi	11	9	5.9
Bansgaun	9	7	4.6
Barne	7	7	4.6
Bamhandangi	15	14	9.3
Bhutabari	7	7	4.6
Total	166	153	100

Source: Field Survey 2008

\* Settled dispute in the *Kachchheri* from eachg Kisan village denotes the cases settled in the community *Kachchheri*, not in village by *Sipahi*.

Disputants from other villages say that they do not want to travel up to five hours to *Kachchheri*, and so most of the cases were settled by the local *Sipahi*. Moreover, most of the poor and the women of other villages knew little about the *Kachchheri* but are more likely to go to the *Sipahi* for justice. The poor are ready to acknowledge a dispute and recognize the *Kachchheri* as fair, but can not afford the time to leave their work to travel to the court. In my observation, some poor families also have very little knowledge about the *Kachchheri* and its process though they know that there is *Sipahi* / *Kachchheri* for resolving disputes. A few of them have not seen their *Mahato* yet.

For women, the *Kachchheri* is considered unfair because of the power structures of the Kisan community. In the patriarchal Kisan community, women are discouraged from participating in public functions. Women do not participate in *Kachchheri* meeting, village rituals, or *Pooja*. Although they are not explicitly forbidden participation, they are constrained by their responsibilities at home and traditional

socio-cultural values. However, participation of women in public gatherings, including the *Kachchheri*, has been increasing as a result of the influence of modernising influences such as markets, multiparty democracy and social awareness programs conducted by development organizations.

Furthermore, any community members can attend *Kachchheri* meetings, but few do so regularly. I observed that Thepna Kisan, 79, Puna Kisan, 82, and Magna Kisan, 59, of Semairdanga village attend *Kachchheri* meetings regularly and talk to the authorities and provide suggestions. I also heard that Toyala Kisan of Majhergaun and Bhulu Kisan of Nindabasti also attend court meetings from time to time. These senior Kisans not only attend the *Kachchheri* meeting but also go to the Club and local tea shops in their leisure time. There are other seniors in the community, but none of them regularly attend the *Kachchheri* or Club. It was revealed that those who have land for sufficient food production are more active, but landless people do not have leisure time to go to the *Kachchheri*. They have to take care of the children and animal, whereas those of higher economic status have more free time.

Kisans prefer to settle a simple case within the family, or at the village level with the help of the *Sipahi*. In a big village with more than 20 households, the *Sipahi* seems to be busy most of the time resolving village disputes. However, there is no record keeping system for the disputes registered and settled in the villages. To find out the total number of cases registered and settled in the village and in the *Kachchheri*, an extensive discussion was organised in each Kisan village where the village *Sipahi*, senior members and past disputants were gathered to recall cases. Table 6.3 shows the cases received and settled by *Sipahi* in villages and forwarded to community court in 2008, on the basis of these discussions.

**Table 6.3: Cases Handle by Sipahi in 2008**

Kisan villages	Cases received by <i>Sipahi</i>	Cases Settled in the village	Percentage of cases settled in the village	Case forwarded to the <i>Kachchheri</i>	Per centage
Semairdanga	46	22	58.0	24	52.0
Majhargaun	25	17	68.0	8	32.0
Nindakinar	36	25	69.4	11	30.5
Kalakhutta	38	33	86.8	5	13.1
Bagribadi	29	22	75.8	7	24.1
Bansgaun	27	22	81.4	5	18.5
Barne	16	14	87.5	2	12.5
Bamhandangi	27	21	77.7	6	22.2
Bhutabari	19	18	94.7	1	5.2
<b>Total</b>	<b>263</b>	<b>194</b>	<b>74.0</b>	<b>69</b>	<b>26.0</b>

Source: Field Survey 2008

As per the data presented in table 6.3, it is evident a higher number of cases in Semairdanga come to the *Sipahi* because of the size of village, but disputants prefer to settle the case in the *Kachchheri*. The *Sipahi* of Semairdanga settles less than 50 per cent cases and forwards the rest cases to the *Kachchheri*, but more than 68 per cent cases are settled by *Sipahi* in other Kisan villages. On an average only 5 cases come to the *Kachchheri* from each of “other” Kisan villages per year. However, the *Kachchheri* receives above 20 cases from Semairdanga village yearly. As the two *Wakils* and the *Mahato* live in Semairdanga, community members of this village have greater access to the *Kachchheri*. This indicates that disputants from other villages prefer the *Sipahi*. The main reason behind this is the distance of the *Kachchheri* office from the villages. For example, disputants from Buttabari and Bamhandangi villages have to spend about 5 hours to reach the *Kachchheri* office.

From the survey and discussions, it was revealed that 21 per cent of disputes are never disclosed to *Kachchheri* at all, because of the inability of the disputants to take time away from work, disputants’ unwillingness to be known as *Jhagariya*, or their inability to pay the fine decided by the *Sipahi* or *Kachchheri*. This indicates that only 79 per cent Kisans have access to the *Kachchheri*, and the rest are not participating in the community justice system, as illustrated by the examples in Box 6.3.

### **Box 6.3: Disagreements not entered into the *Kachchheri***

#### **Case: A**

Hareram Kisan, age 39, and Bhutol Kisan, age 37, of Kalakhutta (Mechinagar -2) are neighbours living in small huts on a Brahmin's land, and perform daily wage labour. They grew up together and were good friends.

Due to their intimacy, they were considered family. They used to inform each other of opportunities for daily employment, and borrow money or rice from each other in times of scarcity. In May 2007, Hareram was involved in house construction and Bhutol joined a brick factory. Work in the brick factory was hard, and Bhutol requested several times that Hareram find out easy work for him too.

One day, Hareram informed Bhutol that his landlord needed additional labour. The next day, Bhutol did not go to the brick factory, but went with Hareram to ask the landlord about the work. The landlord replied that he would add some labour after two weeks. This made Bhutol workless for the day. He had no money for the evening, so he went to Hareram's house to borrow one kg of rice. Hareram had limited rice for the evening, but also had no money, and could not give him food. Bhutol murmured some angry words and went home. This hurt Hareram, who stopped talking to Bhutol, which gradually increased enmity between them and became known to their family members and relatives. Although, none of them had informed the case to *Sipahi* or *Kachchheri* people until the end of my fieldwork, relatives were suggesting them to resolve the case.

#### **Case: B**

Bhantu Kisan and Murli Kisan of Mechinagar- 11 are labourers, working together for the last six years in Raj Tea Estate. Murli Kisan lost his new spade one day in 2005. The next day, Bhantu Kisan came with the spade to Murli's house and said that he had taken it. Murli got angry with Bhantu and said that "you should have asked me before taking something. It is an attempted theft. You are not my friend any more." Bhantu also got angry and they quarrelled. Since then, these two friends have no relationship, do not speak each other, and do not work together. The event is known to their family members and relatives though they had not gone to the *Sipahi* until the end of my field study.

In the discussions with the disputants in these two cases, it was revealed that they are aware of the functions of the *Sipahi* and the *Kachchheri*, but they are not ready to resolve the cases if it means leaving work. Both the cases above show that access to the *Kachchheri* is limited by factors including gender, economic status, and distance from the offices of the authorities.

### **6.3.2 Role of Disputants in the *Kachchheri***

Level of participation can be measured through the given position and roles to the participants. Because the *Kachchheri* is elected by the community assembly and serves at their pleasure, the authorities treat disputants respectfully as members of the

community. They use polite language, give enough time for clarification, and show gentle behaviour. Similarly, because the authorities are duly elected, and visibly work hard to achieve justice, their decisions enjoy great legitimacy. "When a crime is proven, the *Sipahi* and a *Wakil* declare punishment and sometimes even beat the culprit with a stick." After the decision, most of the guilty persons cry as "I would not repeat any crime in the future", the court authorities informed me. Due to the mutual respect in the *Kachchheri* meeting, none of the disputants interviewed was found dissatisfied by the behaviour or the decision of the *Kachchheri*.

Fulman Kisan, age 46, of Majhergaun, was brought before the *Kachchheri* by his father Tushman Kisan, age 69. According to Tushman, his son had regularly been insulting him after drinking liquor in the evening. Fulman was found guilty. As the *Mahato* instructed, according to the community law, the *Wakil* beat Fulman with a bamboo stick ten times. Fulman accepted his guilt, paid the fine of Rs 200 to the *Kachchheri*, and apologized publicly, saying he would not repeat such a mistake in the future. He bowed his head to his father's feet in contrition. Thus, the case of disrespect to father by a son was resolved. The *Mahato* concluded the session, saying "hope that we have been able to implement the community laws fairly. Thank you all for participating in the *Kachchheri* process and accepting its decision." Since then Fulman has stopped drinking liquor and has paid respect to his father. He said: "the *Kachchheri* authorities opened my eyes. I realised the responsibilities of a son to parents. I am impressed with the authorities and fully satisfied with the *Kachchheri* decision."

One morning in September 2008, I was talking to Manra Kisan in Semairdanga village. The *Sipahi* was asking all seniors of the village, including the *Mahato* and *Wakil*, to go to Deuri Kisan's house for *Pora-Katek*, or termination of community membership. Deuri's youngest daughter had eloped with a Newar boy two weeks earlier. Deuri did not inform the *Kachchheri* authorities, which normally has to be done within a week. According to Deuri, he had no contact with his daughter since she left the home, and so had not informed the authorities.<sup>43</sup>

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<sup>43</sup> Normally, such a couple must inform the parents of both sides and the parents have to inform the court authority within a week.

The group reached Deuri's house around 9:30am. Some of the neighbours also gathered. Deuri Kisan requested all to sit in his guest house, where the *Wakil* (Khuyu Kisan) informed Deuri and the masses that he was “*Pora Katek*”. Robi Kisan, the *Sipahi* went to the corner of the yard, put a small bunch of straw on the ground, and asked Deuri to sit there. Deuri followed the *Sipahi* silently, and sat on the straw. This indicates suspension of community membership. The *Mahato* instructed Deuri to pay the court fee for the marriage ritual within 15 days, according to community law. If not, then the *Kachchheri* would terminate his membership permanently.

The next day, Deuri Kisan went to India, fetched his daughter and son-in-law, brought them back, and paid the *Kachchheri* fees within a week. The *Kachchheri* organized a marriage ritual, in which the action taken against Deuri was publicly rescinded. The *Mahato* performed the marriage rituals and at last he declared the marriage formal. A few days later, I discussed the decision with Deuri, and his daughter Sunita. Deuri Kisan said: "I am fully satisfied with authorities and the *Kachchheri* decisions. We have made the *Kachchheri* and the laws and we have chosen the authorities." Meanwhile, Sunita added “the authorities have to implement the laws to preserve our culture." Both father and daughter were found satisfied with the authorities and the decision of the *Kachchheri*.

The role of disputants in the process of dispute resolution is to present the history of case, related facts, and witnesses, and to clarify the question asked by the authorities in relation to the case.

### **6.3.3 Disputant’s Perception of the Decision of the *Kachchheri***

As discussed above, the Kisan community is stratified on the basis of clan, caste, class, family background, age, sex, and other socio-economic and cultural characteristics. Therefore, it is important to assess varying perceptions among different categories of people regarding the decisions of the *Kachchheri*.

The disputants of different categories who have settled their cases through the *Kachchheri* were satisfied with the decisions and behaviour of the authorities. According to them, the Kisan authorities are not biased. I personally observed the authorities to be skillful and hardworking in their efforts to make justice fair and

accessible to all community members. They treat each disputant equally and respectfully, use the same language with disputants as they use with each other, and sit together on the ground with disputants.<sup>44</sup> Box 6.4 illustrates people's feelings about the *Kachchheri* decisions.

**Box 6.4: Response of the Disputants about the *Kachchheri* Decisions**

**Case 1: Disputants are satisfied with the *Kachchheri* decision**

Gopal Kisan, age 47, of Majhergaun and Chhundru Kisan, age 43, of Kalakhutta had known each other for a couple of years. One evening in February 2007, they met in Dhulabari bazaar, talked half an hour, and decided to return home together after drinking a few glasses of liquor. Chhundru Kisan had no money because he was coming from the work. Therefore Gopal paid the cost of liquor. Gopal had Rs 100 for buying rice and lentils for the evening, but he paid Rs 65 for liquor. Gopal realized that his children would be foodless if he returned home without rice. Therefore, he asked for Rs 20 from Chhundru for 1kg of rice. Chhundru replied that, "I have no money". Chhundru also got angry because he was not interested in drinking. They quarrelled and fought on the issue on the way home, and Chhundru was wounded.

The next day, Chhundru went to the *Kachchheri*, but Gopal was already there. In the session, it was revealed that Chhundru had inspired Gopal to drink liquor, even though he had no money. The *Kachchheri* concluded that drinking liquor in public places, particularly leaving family members with empty stomachs, was unethical. Therefore, the court fined them Rs 50 each and also ordered Gopal to pay Rs 50 to Chhundru for medicines. Gopal went to his village, borrowed money and paid the fine to the *Kachchheri* and Chhundru.

I met both the disputants and talked with them about the decision. They belong to two different subcastes (one was Teliya and another was Sindhariya), but I found both of them satisfied with the *Kachchheri* decisions. They replied that "if the case were registered in the Police Office, they would have beaten us and fined us more than Rs 500".

**Case 2:**

Bhande Kisan, age 39 of Barne village used to drink liquor regularly in the evening when he returned home from work. His wife, Jyoti, requested that he stop drinking several times, but he did not listen her voice. This hurt her badly. Kanra Kisan, age 42, of the same village, lives with a wife and two children, and performs wage labour. He was known in the village as an honest individual. One day, Karna worked on a non-Kisan's field where Jyoti Kisan was also employed. They talked of each other's family life during the day, and ultimately decided to get married. The next day, they went to the Dhulabari bazaar for watching cinema. Bhande heard about this and went to Kanra's house the next day, quarrelled and fought with him, and they went to go to the *Kachchheri*.

The *Kachchheri* declared that Bhande's wife could remarry Kanra, but that Kanra has to assure her the

<sup>44</sup> Normally, higher status people and judges sit in the special chair and the disputants sit in the bench in formal state offices.



position of second wife. In a question of the *Kachchheri* authority, both of them were found interested to be together. Finally, the *Kachchheri* decided to fine Rs 2500 to Kanra. Thereafter, Kanra borrowed money from a non-Kisan neighbour and paid the fine to Bhande in front of the authorities, accepted Jyoti as his second wife, and went back home.

Both disputants were satisfied with the decision. Bhande said: “I brought another wife, paying the Rs 2000 to the *Kachchheri* for marriage rituals. She is better than my earlier wife.” Karna also said, “My elder wife is a bit ill, therefore she manages the home and Jyoti works with me in the field. Therefore, my family economy is far better than earlier.”

This box presents two cases in which four families of different economic and socio-cultural backgrounds are involved. But they all expressed their satisfaction, saying, “The *Kachchheri* opened our eyes we would not repeat such mistakes in the future again.”

Moreover, I have talked with dozen of disputants of different age, sex, class and subcastes about the *Kachchheri* decisions, and all of them were satisfied. Most of them said that they have charged the *Kachchheri* with the preservation of their culture and for community dispute resolution, and that the decision of the *Kachchheri* is for the protection of the community and culture. They feel the *Kachchheri* is fair and just for all community members, and does not discriminate against any community members on any basis.

## CHAPTER SEVEN

### **Role of the Kisan Court in Justice Delivery Process in Nepal and its Strength and Weaknesses**

During the course of field study, I found the *Kachchheri* and its authorities committed to resolving community problems and protecting and promoting Kisan culture; they resolve a remarkable number of cases of the community yearly. As a result, community members do not need to go to formal forums for dispute resolution, directly reducing the number of cases in formal forums. This chapter attempts to examine the roles of the *Kachchheri* in the larger justice delivery process in Nepal, and its strengths and weakness.

#### **7.1 Contribution of the *Kachchheri* and Formal Forums in Justice Process in Nepal**

Along with the Kisan *Kachchheri*, the local Village Development Committees (VDCs) / Municipality, and the District Court offer justice delivery forums for the community members. The District Court is the judicial forum, whereas the VDC and Municipality are quasi-judicial forums. There are other quasi-judicial forums such as District Administration Office (DAO), District Forest Office (DFO) and District Land Revenue Office (DLRO) which also have been given dispute resolution authority. As discussed in the previous chapter, the Kisans do not prefer the formal forums for dispute resolutions, but since the introduction of state systems in the 1950s, the scope of the *Kachchheri* has been limited by state law and now it cannot resolve state-related and criminal cases. The *Kachchheri* now resolves minor civil cases only and forwards the criminal and state related cases to the formal forums. Due to the effectiveness of the *Kachchheri*, not a single case occurring within the Kisan community was registered in the District Court until the end of May 2009. However, except in cases of inter-caste marriage, the *Kachchheri* does not resolve cases between Kisans and non-Kisans disputants, and the *Kachchheri* forwards such cases to formal forums.

During fieldwork, many Kisans were found knowledgeable about formal forums. Some of them have gone to these offices to resolve disputes with non-Kisans. In the

discussion, the key informants compared the services of the *Kachchheri* with formal forums. The main comparable formal forums for social justice with Kisan *Kachchheri* are the VDC/Municipality, Police Office, DAO and District Court. The Kisan *Kachchheri* refers criminal cases to these offices and some of the community members have also gone for dispute resolution.

### **7.1.1 The *Kachchheri* and VDCs / Municipality**

The preferred formal forums of the Kisans are the VDC and Municipality. None of the Kisans I spoke with were interested in going to the Police Office and District Court. If a Kisan has a dispute with a non-Kisan then he goes to the VDC or Municipality authorities. However, VDC and Municipality also have jurisdiction in civil cases only.

According to Local Self Governance Act (LSGA) 1998, VDC and Municipality authorities can resolve property related cases such as economic transactions, land boundary disputes, cases related to dowry and private property, disputes related to construction, cases related to gifting property to someone (*Dan*), and so on. The LSGA also allows the VDC/Municipality to resolve cases of quarrel and verbal assault, exploitation by tricks and treachery, and family disputes.

In the field study, a question was asked to understand the perception of Kisans about local government bodies. Out of the 14 respondents, eight were disputants who had received related services from the VDC/Municipality and the remaining six were from the general population. Both groups were positively inclined towards the contribution of local government bodies.

The VDC / Municipality's valuable contributions were considered the settlement of disputes between Kisans and non-Kisans, maintenance of vital registrations, and provision of essential documents for citizenship. The Kisan disputants who have gone to VDC/Municipality for dispute resolution have mixed reactions. The majority of the respondents (six of eight) said that VDC/Municipality authorities are slow. However, the remaining two respondents were fully satisfied and positive about the VDC/Municipality authorities. I also asked the same questions to eight non-Kisan respondents. For non-Kisans, VDC and Municipality authorities are considered the

local administrative bodies. These institutions resolve local disputes immediately, like the Kisan *Kachchheri*. Since many ethnic groups do not have their own dispute resolution mechanisms like the Kisans, the VDC and Municipality are essential for resolving disputes locally. The VDC/Municipality representatives are locals and known by the community members. Therefore, they cannot ask for bribes and other benefits. Thus, almost all the non-Kisans respondents were positive about the local government bodies. However, both Kisan and non-Kisan respondents were reluctant to go to other formal forums. The Police Office, District Court and District Administrative Office are considered corrupt and time consuming, as illustrated by the cases in Box 7.1.

### **Box 7.1: Experiences with Formal Forums**

#### **Case A: How a landlord took advantage of a case between a Kisan and a non-Kisan**

Manra Kisan, age 58, of Semairdanga village has two sons and a wife. His eldest son was married but his youngest son Magna Kisan, age 24, was unmarried. Magna disappeared one day from the village. Later, it was learnt that he had gone to India with Sabitri K. C., a girl of a non-Kisan Chhetri caste from Chyalne village. No inter-caste marriage had occurred among the Kisans in Jhapa until this event. The news of inter-caste marriage spread through the Kisan villages. Magna's family was also divided on this issue. Some relatives were not ready to accept a Chhetri woman as their relative, and went to the *Kachchheri* and filed a case against the Chhetri family and Magna. The *Kachchheri* considered the case serious, and went to Manra's house and suggested that he fetch Magna soon and settle the case. This event hurt Magna's mother badly and she fell ill with a high fever. There was a rumour in the village that Sabitri's parents knew *Tantra-Mantra*<sup>45</sup> and had cursed Magna's mother. Led by Magna's eldest brother, some Kisan youth went to the Chhetri house and abused them, and some went to India to fetch Magna. The Chhetri family was hurt badly and filed a case against Manra and his son at the Dhulabari Police Office.

On the same day, a group of police came to the village and took Manra with them and put him in the custody for investigation. This made Manra's family helpless because there was no male in the house, and his wife was seriously ill.

Manra was a tenant of a local Brahmin, Taraman Bhandari. He had tenancy rights on three *Bigha* of land. On the condition of removing tenancy rights for one *Bigha* of land the Brahmin agreed to help Manra be released from custody. The Brahmin talked to the Police, and Manra paid Rs 5000.0 and a rooster as bribe to the Police Office and was released from the custody. The next day, Manra went to Land Revenue Office with the Brahmin to remove his name from one *Bigha* of land as a tenant. However, the Brahmin, paying bribe to the staff of the Land Revenue Office, removed his name from all the lands. After this event Manra is totally negative about the Brahmin of the village and the Police Office.

<sup>45</sup> Among the Kisan there is strong belief in witch-craft. In their language they say *Dayen* for witchcraft and evil eye practitioners.

**Case B: VDC resolves a case between a Kisan and a non-Kisan**

Alu Kisan, age 45, and Prem Tudu, age 51, are neighbours living in Bagribadi village. Once in the winter of 1999, these two neighbours quarrelled on the issue of land boundaries. Prem Tudu filed the case in the municipality against Alu Kisan. The ward chairperson invited both the disputants to the municipality office and organized a resolution session under the chair of the Mayor.

These two neighbours were both poor and had only homestead lands. After hearing the case, Mayor advised the ward chairperson to go to the field to settle the case. The ward chairperson, along with disputants, went to the field, measured the land, and demarcated their boundary.

I discussed the issue and procedures of case settlement in the Municipality with Alu Kisan. I found him very much satisfied with the Mayor and ward chairperson. In his own words, "both mayor and ward chairperson were local and known to him. The municipality representatives are elected by local people. Therefore, they work for people without taking bribes or other benefits".

I talked with seventeen Kisans who have been to the VDC/Municipality, Police Office and other formal offices for the process of dispute resolution. Of them, 14 respondents were found satisfied with the VDC/Municipality authorities, whereas all of them were found dissatisfied with Police Office, District Administration Office and District Court.

Due to the practices of taking bribes, domination of poor and marginalised people, and the use of tricks and treacheries by high class and caste people in the Police Office, District Administration Office and District Court, the Kisans hold negative impressions of these government offices. However, about 79 per cent Kisans hold good impressions of the VDC/Municipality authorities. About 10 per cent of Kisans have not gone to VDC/Municipality, but are familiar with the roles of these offices. The remaining 10 per cent of Kisans know about these offices but do not have positive impressions. Table 7.1 shows the number of disputes settled by VDC / Municipality and the Kisan *Kaccheri* in 2008.

**Table 7.1: Dispute Settled by VDC / Municipality and the *Kachheri* in 2008**

Name of VDCs/Municipality	Registered disputes	Settled disputes	Registered disputes in Kisan <i>Kachchheri</i>	Settled disputes in the <i>Kachchheri</i> *
1. Anarmani VDC	277	172	26	25
2. Dhaijan VDC	213	117	76	60
3. Bahundangi VDC	134	86	42	35
4. Shantinagar VDC	183	109	23	21
5. Mechinagar Municipality	486	327	262	206
Total	1293	811 (62.7%)	429	347 (80.8%)

Source: Field survey 2008

\* Here, settled dispute by the *Kachchheri* indicates the total number of disputes settled by community *Kachchheri* and village *Sipahi* of the Kisans.

The data in table 7.1 show that the VDC and Municipality have settled 62 per cent cases of the total registered cases in those offices, whereas the *Kachchheri* resolved 81 per cent of the registered cases in the *Kachchheri*. Out of the remaining 19 per cent of registered cases in the *Kachchheri*, 5 per cent remain unresolved, 5 per cent take time for resolution, and the remaining 10 per cent goes to formal forums because they are criminal and state related cases which the *Kachchheri* has no jurisdiction to settle. According to the literature, District Court resolves about 15% cases of the total registered cases annually (Nepal Law Society 2002).

Despite the many forums available for resolution, 85 per cent cases in rural Nepal remain unsettled for various reasons (Nepal Law Society 2002, Chhetri and Kattel 2004). For instance, although Kisan authorities are skilful professionals of dispute resolution, their understanding on human rights and basic laws were marked a bit weak (Kattel 2004). Recently, there are various national and international NGOs and institutions working in rural Nepal to make justice accessible to all. The hybrid community mediation and court annex mediation programs are the examples of such attempts.

## 7.1.2 The *Kachchheri* and the Police Office

The *Kachchheri*, as discussed above, is established for delivering community justice. On the contrary, the Police Office is established by the government primarily for enhancing security, resolving local disputes only to further that end. The household census and fieldsurvey sought impressions of Police Office among community members. The respondents unfamiliar with me were positive about the Police Office, whereas the respondents who knew me well as a researcher responded more frankly, saying that instead of being the symbol of social security and justice, the Police Office is a symbol of corruption and injustice in the community. Moreover, the Police Office is understood as the central place where high caste and class people gather and develop strategies of exploitation of poor and marginalised groups. Box 7.2 presents reflections of two Kisans about the local Police Office.

### Box 7.2: Kisan Impressions of the Police Office

#### Case A

One night in the winter of 2007, around 10pm, three young men with covered faces entered into the house of Kusha Kisan of Semairdanga (Mechinagar municipality 4) village. The men kidnapped his daughter, Janga Kisan, age 15, and took her to the nearby maize field. One of the young men threatened Kusha, saying that they were Maoists guerrilla, and they will kill him and his daughter if they informed neighbours of the incident. Some of the neighbours were not asleep yet, and gathered in Kusha's house, hearing the cries of him and his wife. Meanwhile, the kidnappers ran away, and Janga came home. She was very scared and crying, and her most of the cloths were torn.

The next morning, Kusha organised a meeting of the Kisan authorities at his house. Some of his neighbours also attended the meeting. Janga informed the authorities of the event and named a kidnapper whom she recognized, Giththe Kisan (age 24, a permanent resident of the neighbouring village). Janga asserted that the incident was attempted rape. The *Sipahi* went to Giththe's house and brought him to the *Kachchheri*. In the response to the *Wakil's* questioning, Giththe said that he would like to marry Janga and therefore he came with his two friends to take her to his home.

The *Kachchheri* understood it as an attempted rape (a criminal case) and forwarded the case to the nearest Police Office. Giththe and his friends were in custody for about two months. Kusha Kisan, villagers and the Kisan authorities believed that Giththe and his friends paid a huge amount of money to the Police Office to be released easily from the custody. Giththe informed me that he paid Rs 10,000 to the Police Office to normalise his case. In his view, it is easier to settle a case in the Police Office than the *Kachchheri*.

#### Case B

Dumra Kisan, age 39, is a permanent resident of Bamhandangi village, and has a wife, a son and two

daughters. He has a homestead land and a small hut in the village, but earns his family livelihood in Dhulabari bazaar. Once, in the summer of 2006, he was working with some non-Kisan friends. One day, he quarrelled and fought with one, Suryaman Limbu, over a minor issue.

Dumra was physically strong, and he had beaten Suryaman badly. The man went to Police Office and filed a complaint. The police arrested Dumra Kisan the same evening and put him in custody. He was not given food in the evening, and was beaten badly the next morning. Dumra remembered that he told them the event in detail though they beat him with a whip and a bamboo stick. He could not remember how many times they kicked him.

On the third day, the police chief came and told him that the case was being forwarded to the District Court, and that he would be sent to jail. He was afraid of going to jail and requested that the police chief release him. Finally, the Police Office decided that Dumra had to pay the victim's medical expenses and a fine of Rs 5000 and pay Rs 20,000 to the Police Office. Dumra had no way to pay the money, and he advised his wife to sell his land in the village. His wife sold the homestead land for Rs 30,000 to a non-Kisan to pay the fines. Dumra's eyes were full of tears while he told me the incident because he had become homeless since the event. He said that "it is better to die instead of going into police custody".

Ritthe and his friends committed a crime, but escaped easily by paying a small bribe to the Police Office. Therefore he had positive impression, whereas Dumra committed a relatively minor crime, but had to pay a fine to the victim as well as bribe to the Police Office by selling his homestead land. Therefore, he had negative impression about the police. However, the Police Office is the only local government office for handling criminal cases. Therefore, when a young Kisan becomes dissatisfied with someone he commonly says, "I will beat you badly and go to the Police Office". This indicates that Police Office is a least accepted by Kisans as the legitimate forum for resolving criminal cases.

That being said, Kisans do not want to go to Police Office. If there is a civil case between a Kisan and a non-Kisan they go to the VDC/Municipality authorities. During fieldwork, it was revealed that resolving disputes in the Police Office is also expensive then elsewhere. Box 7.3 presents examples of the expenses required in the Police Office.



**Box 7.3: The Kisans think it is expensive to resolve dispute in the Police Office**

**Case A: Resolving case in Police Office is expensive**

Kale Kisan, age 50, is a permanent resident of Bamhandangi village of Bahundangi VDC 3. In the winter of 2006, a debate arose between Kale and his neighbour, Fulman Tamang, regarding the issue of land boundaries. The VDC office was closed due to a political crisis. Therefore, on the advice of the village *Sipahi*, Kale Kisan filed a case against Fulman at the Police Office. The next day, Fulman was brought to the Police Office to resolve the case. Kale Kisan remembered that both disputants paid Rs 5 for registration, and that he paid Rs 1000 for tea and snacks for the meeting. Moreover, he paid a Rs 500 bribe to the Police Chief for prioritising his case. Thus, he spent Rs 1505 and believed that his opponent had also paid some amount.

**Case B: One month earning goes for tea and snakes if a case goes to Police Office**

Bhanu Kisan, age 43 of Barne village (Shantinagar VDC 1) faced a dispute with Ramlal Dahal, age 56, of the same village. The two had farm lands together. In May 2005, they quarrelled over irrigation water, because both of them wanted to irrigate their land first. Ramlal used very hard words in the quarrelling. Bhanu had good faith towards Ramlal, but his words hurt him badly. Therefore, he went to VDC office to register a complaint. Unfortunately, there were no VDC representatives available, so he went to the Police Office to register the complaint. The next day, the police gathered both disputants and settled the case. In this case Bhanu Kisan spent Rs 1000, and he guessed that Ramlal spent about 3000 for tea and snacks and a bribe.

Although the resolution of a case in the Police Office is costly, people have no choice but to go to the Police Office in criminal cases and in cases between Kisans and non-Kisans. Hence, Kisans have grudgingly accepted the Police Office as an alternative formal forum for dispute resolution. About fifty cases between Kisans and non-Kisans are settled by the Police Office, annually, not including criminal cases.

There are three Police Offices in the Kisans settlement areas, the Dhulabari, Bahundagi and Shantinagar branch offices. No have gone to District Police Office for case settlement, as opposed to these local branches. Case settlement data for these three Police Offices were obtained for the year 2008 and were compared with the cases settled by Kisan *Kachchheri* in the same year in Table 7.2.

**Table 7.2: Registered and Settled Cases in the *Kachchheri* and Police Offices in 2008**

Places of dispute settlement	Registered cases	Settled Cases and %	% of total settled cases (n= 804)
<i>Kisan Kachchheri</i>	429	347 (80.8)	43.2
Dhulabari Police Office	284	157 (55.2)	19.5
Bahundangi Police Office	229	153 (66.8)	19.0
Shantinagar Police Office	169	107 (63.3)	13.3
Total	1111	804 (72.3)	100

Source: Field Survey 2008

Table 7.2 shows that the *Kachchheri* resolved above 80 per cent of total registered cases in it, whereas the Dhulabari Police Office settled 55 per cent, Bahundangi 66 per cent, and Shantinagar 63 per cent. If we look at the total settled cases (804) in the area in 2008, the *Kisan Kachchheri* alone has resolved remarkable cases (347). Out of 417 cases settled by the Police Offices in 2008, in only 21 cases were one of the Kisans disputants.

Despite its weaknesses, the Police Offices was considered important for maintaining security in the locality. In discussions with locals, some weaknesses of the Police Office included links to powerful people, use of bribes, and negligence of marginalised groups. These weaknesses need to be remedied in order to make the organisation effective in the changing social and political context.

### **7.1.3 The *Kachchheri* and the District Administration Office**

Household surveys showed that 87 per cent of Kisans were familiar with the District Administration Office (DAO) and its main function, the distribution of citizenship documents. However, only 9 per cent Kisans were familiar with the dispute resolution functions of DAO.

The people who know about the DAO were not very much impressed with its services. According to the survey, out of the total who knew the DAO, 89 per cent were dissatisfied with the service provided. According to them, none have received

citizenship certificates without paying bribes of Rs 500 to 1000. Paying Rs 500 for a citizenship certificate is considered routine among the Kisans.<sup>46</sup>

The Kisan authorities and a few more Kisans knew about the dispute resolution function of the DAO, and that the DAO resolves cases forwarded by the Police Offices. Once, the *Sipahi* of the *Kachchheri* of Semairdanga village, Mr. Robi Kisan, was taken into custody by the Dhulabari Police Office, taken to the DAO, and put in prison for two months. Box 7.4 is his narration of his case.

**Box 7.4: Reflection about the District Administration Office**

My house is in Mechinagar less than 100 meters' distance form the forest. It was a winter morning in 1994 I heard a big sound, like the felling of a tree. I was scared, and went to jungle to find out what was going on. I saw a big Sal tree fallen down. Four people saw me coming and ran away with their axes. I picked up a small branch, and was thinking to take it home. Meanwhile, a group of armed police caught me and took me to police office on the charge of felling the tree. I pleaded time and again that I did not fell the tree. They detained me for seven days in Dhulabari Police Custody and then took me to the DAO. I told the DAO that I did not fell down the tree, but rather why I was in the jungle. None of them believed me. Finally, the DAO decided that I had to pay Rs 30,000 or to go jail for one year. How could I pay such a big amount? Therefore, they put me in jail.

According to the record of District Administration Office, Jhapa, it resolves about 500 cases per year. Table 7.3 compares the cases resolved by the DAO in Jhapa and by the *Kachchheri* in 2008.

**Table 7.3: Cases registered and settled in the DAO and in the *Kachchheri* in 2008**

Name of institution	Registered cases	Settled cases and %	% of settled cases in both places (n=826)
District Administration Office, Jhapa	589	479 (81.3%)	57.9
Kisan <i>Kachchheri</i>	429	347 (80.8%)	42.1
<b>Total</b>	<b>1018</b>	<b>826 (81.1%)</b>	<b>100</b>

Source: Field Survey 2008

<sup>46</sup> There was a retired official of District Administration Office in Mechinagar-5 with whom I met and talked about the issue. The man told me that just a few months back, a Kisan came to him with a new copy of citizenship to verify as original. He asked about the aim of verification. The man replied that "a DAO staff gave it to me today without demanding a bribe. I had Rs 500.0 to pay him but he did not ask me. Therefore, I suspect whether it is original. Please check it now. If it is original, I will pay you the money." The DAO ex-official verified it as original, showing the stamp and logo and was paid Rs Rs 500.

The table 7.3 shows that the DAO resolved 58 per cent and the Kisan *Kachchheri* resolved 42 per cent cases of the total cases registered in these two institutions. The DAO has resolved 479 of 589 cases received from Jhapa district's population of 688109, whereas the Kisan *Kachchheri* has resolved 347 of the 429 received cases from the Kisan population of 773. The small community has easier access to the *Kachchheri* and registers and settles more types of minor cases.

Except Mr. Robi Kisan, none of the Kisan informed me of an experience of custody and imprisonment by the Police Office and DAO. However, according to key informants, two more Kisans went to jail about five years back. Now, a few Kisans go to the Police Office every year, but none of them want to go to the DAO.

In terms of availability of immediate, accessible, rapid, and affordable service, than there is no comparable institution to the Kisan *Kachchheri* for resolving community disputes. The DAO receives only formal complaints and cases referred by the Police Office, where the chances of power play, bribe and *Afnumanchhe* (nepotism) are high. The poor, women and, marginalised people do not have access to DAO because of its formal procedures, location in the district head quarters, and the time and money required. Instead of going to the Police Office and DAO, Kisans will leave disputes unresolved.

#### **7.1.4 The *Kachchheri* and the District Court**

The District Court is known as *Jilla Adalat* (hereafter *Adalat*) among the Kisans. Most of the young Kisans and some seniors are familiar with the *Adalat*. All of the key informants were aware of the functions of the *Adalat* and some of them have gone to the *Adalat* for dispute resolution. The *Adalat* has not left a very positive impression on the Kisans. According to the Kisan authorities, if a disputant is not ready to resolve a problem in the *Kachchheri*, then the authorities used to say that "we will forward this case to *Adalat*". In this situation, the disputants become ready to resolve the case in the *Kachchheri*.

The field survey identified that 78 per cent of male and 49 per cent of female Kisans knew about the justice delivery purpose of the *Adalat*. All of them agreed that the process adopted by the *Adalat* is formal, complex, costly, and time consuming, which are the main reasons why the Kisans do not prefer to go to the *Adalat*. A formal

complaint has to be written by a lawyer. A poor Kisan cannot pay the lawyer's fee. In this process many Kisans have lost their land, because of the tricks and treachery of the lawyers, as presented in Box 7.5.

**Box 7.5: Justice from District Court is not affordable for Kisans**

Poona Kisan, age 82, is a permanent resident of Semairdanga village (Mechinagar municipality 4). He earned his family's livelihood by cultivating a one Bigha (6772SqM) of land belonging to Laxmi Dhungana of the same village. Poona received a certificate of tenancy rights from the District Land Revenue Office in 1989. He had a good relationship with the Brahmin's family until he received the certificate. Thereafter, the Brahmin got angry with Poona and filed a case against him in District Court, claimed he was not eligible for tenancy rights to the land.

Although Poona was a illiterate, he went to district headquarters and hired a lawyer to defend him against the Brahmin. He paid Rs 10,000 in advance and the lawyer received his thumb prints on several official papers. The case ran in the court about seven years (1989 to 1997). Finally, the court decided against Poona Kisan on 17<sup>th</sup> March 1997 and he lost the tenancy rights of the land.

According to the lawyer, Poona had to pay Rs 49,000.0 for 7 years at the rate Rs 7000 per year. Poona had paid Rs 10,000 in advance so he had to pay remaining Rs 39,000. Poona said he would pay the remaining amount in one month's time and returned home.

There was rumour in the village that the Brahmin had paid Rs 10,000 to the Poona's lawyer and a Rs 20,000 bribe to the personnel of District Court to influence the outcome of the case. Poona also came to know that the lawyer misused his thumbprints to the same end. Poona Kisan as he tells the story, lost the tenancy rights to the land, and fell into debt because of an unfair judgement of the court and the deceitfulness of the tricky lawyer.

There are many cases such as this one. I did not hear a single story of a positive experience with the *Adalat*. According to key informants, many Kisans have gone to the *Adalat* in a case of tenancy rights, but none of them have won the case, due to lack of money for bribes and lack of relationships with bureaucrats and politicians. Two more representative cases are presented in Box 7.6.

**Box 7.6: Disputants Experiences in the District Court**

**Case A: *Adalat* favours the non-Kisans of high caste**

Kanra Kisan, age 62, of Semairdanga (Mechinagar 4) was the tenant on 2 Bigha (13545SqM) land of Govinda Bhandari of Dhulabari bazaar. There was not enough monsoon rain in 1993 in Jhapa, which caused low agricultural production. Due to the food crisis, Kanra Kisan borrowed Rs 25000 from the Agriculture Development Bank, Dhulabari, but became unable to pay the debt back on time. Meanwhile, his landlord informed that he would sell his land and proposed Rs 50,000 as compensation. Kanra Kisan thought the amount too small and insufficient to manage family subsistence and requested

him Rs 100,000 or 10 Kaththa of land instead.

After a week, Kanra received a summon letter from the *Adalat*, where a case had been filed against him by the landlord. According to the case, Kanra has not paid the rent of the land for the last five years, and the landlord was claiming that amount in compensation. According to the summon letter he had to attend the Adalat on 14th March 1996. In the same week, he received a notice of Agricultural Development Bank, Dhulabari. According to the notice, his name is published in Gorkhapatra National Daily as defaulter on his loan. Bank will auction his house if he would not pay back the loan and interest by 16 June, 1996.

On the 14<sup>th</sup> March 1996, the *Adalat* officials ruled that Kanra must take the Rs. 50,000 in compensation for tenancy right. The landlord informed the officials that Kanra's name had been published in a newspaper as a defaulter on his loan. The *Adalat* officials advised Kanra to receive Rs 50,000 and pay the debt of the bank back. Finally, he agreed to receive the proposed amount and sign a blank paper.

According to Kanra, the landlord did not give him the cash. He paid his debt of the bank himself and assured him to provide a homestead land in a nearby area. Kanra constructed a hut encroaching into roadside of Majhergaun and has been living there for the last 15 years. His landlord has neither given him a homestead land, nor paid him a single remaining rupee.

Now, Kanra is managing the livelihood of his family through wage labour. He is upset with the high caste non-Kisans and do not want to talk to or interact with them. In his view, all non-Kisans are deceitful people, arriving in the area and becoming landlords by grabbing the land of Kisans through their relationship with government officials. "You see, how the things come to the life of an individual" he informed me the story with full of tears in his eyes.

#### **Case B: Judges of the *Adalat* are unfair**

Krishna Kisan, age 34, of Trinchok village (Bahndangi VDC 9), was put in prison for one year in 1999 for stealing timber from the forest. Krishnan feels that the judges of the *Adalat* are not fair. He says he had gone to the jungle with his two neighbours to collect a bundle of firewood on 17th February 1999. They had seen a group of people in the jungle cutting down a Sal tree (*Shorea rubbosta*) for lumber. Krishna and his friends thought that it would be easy to collect the twigs of the tree for firewood. They got permission from the people there and collected about two bundles of firewood.

Then, Krishna found himself surrounded by a group of armed men. He did not know where everyone else had gone, but was not afraid, as he did not believe he was at fault.

The gunmen took him to Area Forest Office and then the District Forest Office. Krishna repeatedly informed them that he was not the wrongdoer. The forest officials did not listen. Rather, he was beaten and forced to tell them the name of those felling the tree. Finally, the forest office decided to send him to jail and took him to the District Court. He hoped for justice from the District Court, and told the truth in the court, but the judge did not listen. The District Court declared Rs 20000 fine or jail for one year. "As a poor farmer, how could I pay such a big amount? I spent one year in Bhadrapur Jail for nothing. The judges of the District Court are unfair," he concluded.

According to the key informants, Kisans are discouraged from going to *Adalat* for five reasons. First, illiterate people hesitate to face a formal office and literate

officials. Second, the *Adalat* requires a formal complaint and processes. Third, the *Adalat* requires money for case registration and for bribes. Fourth, the process of the *Adalat* is slow. Fifth, they have to hire a lawyer who charges heavy fees and sometimes he misuses his power. All these constraints made the *Adalat* inaccessible to the Kisans of study area.

However, one has to go to *Adalat* in criminal and state related cases. If a disputant comes to *Kachchheri* with a criminal case, then the *Kachchheri* forwards the case to either the Police Office or *Adalat*. According to a female key informant, (Silho Kisan, age 56, youngest wife of the former *Mahato*), the *Kachchheri* resolved all types of cases until 1978. In a blood feud, the *Kachchheri* charged a blood price, offered to the victim's family, and the culprit was to live in eye witness of the *Mahato* for one year. In addition, the culprit had to serve the *Kachchheri* as helper for a year. After a year, the culprit had to organise a feast where the *Mahato* purified him, and he released to his normal life. However, the practice stopped in 1978 when the Police Office was established in the area.<sup>47</sup>

Despite the preference of the Kisans, District Court is effective in resolving some social problems (*Mudda*, or cases, in English). It is the only forum for resolving disputes between the many ethnic groups in the district. The *Adalat* can resolve all types of cases. Table 7.4 presents the trend of registration and resolution of cases in *Adalat* in Jhapa district.

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<sup>47</sup> In the winter of 1978 villagers killed an old woman for Dayen (witchcraft). The dead body was buried, but the resolution process of the case was not completed in the *Kachchheri*. Meanwhile, patrolling of the Dhulabari Police Office arrived and caught two Kisan. They were jailed for 20 years. Since then, the Kisan authorities are aware of the laws of the state and do not settle criminal and state related cases in the community.

**Table 7.4: Cases Registered and Resolved in the District Court, Jhapa in 2008**

Types of cases	Registered cases	%	Resolved cases	%
State related criminal cases	240	20	143	22
Public criminal cases	387	32	249	38
Minor criminal cases	62	5	38	6
Civil cases	509	43	228	34
<b>Total</b>	<b>1198</b>	<b>100</b>	<b>658</b>	<b>100</b>

Source: District court Jhapa 2008

The number of settled cases in *Adalat* is not encouraging. It resolved about half (54%) of the registered cases only, although the resolution rate of criminal cases of all types is bit higher (58%). This means that out of one hundred, 48 cases per year remain unresolved in the *Adalat*. One of the main reasons is registration of civil cases in the *Adalat*. If all civil cases were resolved in the community then it would reduce the caseload by 43 per cent. If all communities/ethnic groups of Jhapa resolved civil cases in the community, like the Kisans, the *Adalat* could resolve a huge number of registered cases effectively. Thus, the Kisan *Kachchheri* makes a remarkable contribution to reducing the load of the *Adalat* and enhancing access of community members to justice as well as to enhance the skills of the judges to be involved in the settlement of serious civil cases and criminal cases only.

## **7.2 Strengths of the *Kachchheri***

A question was added in household census and interviews, and also discussed with key informants to assess the understandings of the Kisans about the strengths of the *Kachchheri*. The researcher also discussed the issue with some non-Kisan informants. Finally, the strength of the *Kachchhari* is measured in comparison to the standards of prevalent democratic practices exercised by modern society.

On the basis of these grounds, I have identified six major strengths of the Kisan *Kachchheri*, which are described below:

### **7.2.1 The Community Assembly forms the *Kachchheri***

The Kisans community organizes an assembly for policy-making decisions pertaining to the entire community. In general, the community organises assembly in two years



interval but it can be held anytime if necessary. The regular assembly extends tenure of its authorities. It reforms the *Kachchheri* and their government during the time of the election of a new *Mahato*. The assembly created essential laws, regulations and policies about the formation and function of the Kisan government and the *Kachchheri*. It also discusses issues such as the unity of community members, preservation of culture, and new roles of the authorities in the changing social context. According to Kisan law, all household heads must attend the community assembly.

The chief of the community chairs the assembly, manages time for speech, and maintains records of the decisions. Consensus is the main mode of decision-making. However, the views of all community members are sought on each issue. Therefore, an assembly is organised for one day and often runs up to three days. Although, consensus is sought, sometimes majority rules over the minority. The community assembly sets up the *Kachchheri* by selecting the Chief Judge, Judges and Assistant Judges. As discussed above, the *Mahato* is the chief judge, *Wakils* are the judges and the *Sipahi* are the assistant judges of the *Kachchheri*. The last assembly was held in March 2008. Out of 157 households, there were representatives of 93 households only. The assembly was organised to select some *Sipahi* and sanction the activities of their government and the *Kachchheri* of the previous year.

According to Bagman Kisan, the present *Mahato* was elected in 1996 by the community assembly. The eldest son of the earlier *Mahato* was a drunkard. Therefore, the assembly rejected him for the position of the community chief. After two days' discussion, son of the youngest brother of the earlier *Mahato*, Bhabir Kisan, was selected as new *Mahato*. The last *Wakil* Toma Kisan, was elected at the assembly in 2000.

Thus, the community members participate directly in the formation and reformation process of the *Kachchheri*. This gives community members a sense of ownership in their government, and empowers them to go to the *Kachchheri* with pride and confidence.

### **7.2.2 The *Kachchheri* and its Authorities are known to all**

Essential qualities in elected authorities are a friendly and generous nature and a good reputation among the community, especially for previous contributions to the

community. The authorities have to dedicate their time to the community after election to protect and promote their culture, to enhance community justice through dispute resolution, and to improve community unity. Thus, the community only considers those with a “social personality” for election.

It was reflected in the discussion with the key informants that many Kisans are not interested in the public positions. According to them, it is very difficult to maintain a positive image among the community members after being a public figure. Therefore, the community assembly spends lot of time for convincing an individual to stand for a position. The case story in Box 7.7 describes how the assembly of 2000 elected the new *Wakil*.

**Box 7.7: Example of Authority Selection in Community Assembly**

Toma Kisan was a permanent resident of Semairdanga village (Mechinagar 4). He was 46 years old in 2000 when he was elected to the position of *Wakil*. Phuyu Kisan, age 51, of Bansaun (Dhaijan 7) was the only *Wakil* of the Kisan Government and the *Kachchheri* until 2000. The assembly added a second *Waki'sl* position considering the increasing size of the community and the number of cases in the *Kachchheri*.

Toma Kisan was not interested in the position, but the assembly participants proposed his name and convinced him to take the position. According to Toma, "ninety household heads participated in the assembly. All participants requested that I be the *Wakil*. I said that I could not manage the time for the public work, because I can not leave my own work. Despite all my attempts, they convinced me to take the position for two years, but I have held the position since then."

As a leading personality of the village, Toma Kisan used to assist the village *Sipahi* on various issues and attended several *Kachchheri* meetings. The community members knew him, and therefore the assembly elected him to the position of *Wakil*.

The *Kachchheri* and its authorities are established and known among the community members. The common people, including disputants who have settled their cases in the *Kachchheri*, informed me that the *Kachchheri* is the core institution of the Kisan community. They argue that due to the *Kachchheri*, they have access to community justice, are protected from corruption and treachery of the formal forums, and are able to preserve Kisan ethnic identity.

### 7.2.3 The *Kachchheri* is easily Accessible to All

The *Kachchheri* is accessible to all villages, classes, and sub-castes Kisans. As the *Kachchheri* is formed and reformed and its authorities are elected by the community assembly, the institution and authorities are known to all. The *Kachchheri* has no formal procedure for a case registration. Its authorities are locals, have no time or process constraints, and receive cases anytime at the convenience of the disputants. In general, the authorities themselves collect information about the case, visit the disputants, and organise a mediation session. There is a representative of the *Kachchheri* in each Kisan village and an equality of feeling between the authorities and the general population. Moreover, there is a strong belief that the authorities are the servants of the community members.

The Kisan government is the central institution that binds community members together. It offers an opportunity for the Kisans to come together, interact, and discuss pressing issues in different functions and forums such as the community assembly, *Gram-Pooja*, dispute resolution sessions, *Pora-Katek* and marriage purification rituals. As a result, a community member feels comfortable going to the *Kachchheri* for justice. However, some of the Kisans have not resolved their disputes due to a personal relationship with the authorities, as presented in Box 7.8.

#### **Box 7.8: Examples of Dissatisfaction with the *Kachchheri* Authority**

##### **Case A**

Guran Kisan, age 50, and Bulu Kisan, age 45, are permanent residents of Itabhatta village (Mechinagar-12), are neighbours, and have farmland together. Once, a land boundary dispute arose between them. So Guran and the village *Sipahi* did not have a good relationship and Guran went to the *Wakil* directly on week after the incident. In the discussion with the *Wakil*, it was revealed that the village *Sipahi* had already informed the *Kachchheri* of the case.

The *Wakil* advised Guran to go to *Sipahi* first to resolve the case. Guran said nothing of his poor relationship with the *Sipahi* to the *Wakil*. A few days later, he was invited by the *Sipahi* for resolving the case, but he did not go. Since then, Guran has been upset with the *Kachchheri* for not resolving the case.

##### **Case B:**

Salo Kisan, age 65, and Gopal Kisan, age 29, were the permanent residents of Bamhandangi village

(Bahundangi-9). Gopal Kisan had been a friend of the eldest son of Salo Kisan, Bijaya, all their lives. Bijaya died suddenly of a snake bite at the age of 26, but Salo Kisan and his wife continued to love Gopal very much. They used to invite Gopal to their house frequently for food and snacks.

Once in the evening of the winter of 2005, Salo Kisan was returning home from Bahundangi bazaar. He met Gopal Kisan, and at his request, drank a few bottles of local *Rakshi* in a *Rakshi* shop. Thereafter, they returned home, Gopal aided Salo, as Salo had problems of walking at night.

Salo had gone to bazaar to buy rice, and he had some rupees left after buying 5kg rice. In the morning, though, he did not find a single rupee and the rice. He guessed that he must have left the rice at Gopal's house, and went to ask him about it. Gopal was surprised, because he did not know about it. He felt uneasy and got angry with Salo. Salo went to the *Sipahi* and informed him of the event. The case was not resolved in the village and eventually the *Sipahi* forwarded it to the *Kachchheri*.

To their surprise, the *Kachchheri* decided to punish both disputants. Salo had to pay Rs 100 and Gopal Rs 150 to the *Kachchheri*, since Gopal requested Salo for drinking *Rakshi* and then both of them drank until they lost their senses, and drinking alcohol outside the home is a mistake.

Since then Sola and Gopal are not happy with each other or with the *Kachchheri*. Salo thinks that the *Kachchheri* should have punished Gopal, whereas Gopal thinks that the *Kachchheri* should have resolved the case to restore the relationship. Although the case was resolved by the *Kachchheri*, the relationship remained un-repaired at the time of fieldwork.

These examples of dissatisfaction with the *Kachchheri* are rare cases. In discussion with 28 disputants only two were found dissatisfied with the decisions of the *Kachchheri*. The *Kachchheri* is generally accepted by community members although it is true that there are some constraints on the participation of female, the poor and people from distant villages.

#### **7.2.4 The *Kachchheri* Offers Free Services**

The *Kachchheri* provides free services to disputants. The *Kachchheri* offers its services in each Kisan village through its representatives. As representative of the *Kachchheri*, the *Sipahi* offers free and voluntary services to disputants. There is no fee for dispute resolution, no cost for counselling and no expenses for paper, stamps and so on.

Sometimes the *Kachchheri* charges a fine to the disputants, but the amount is used for public works. For instance, disputants have to pay a certain amount to the *Kachchheri* and the *Mahato* if found culpable in their cases. For example, in the case of inter-caste marriage disputants have to arrange Rs 2000 for marriage rituals and offer a *Dhoti* and

Rs 5-20 to the *Mahato*. Although not required by law, disputants generally offer *Rakshi* to the authorities as per the prevalent practice. However, except for the offering of a *Dhoti*, a few rupees and a bottle of *Rakshi*, the Kisan authorities do not charge remuneration, receive salary, or get pension for their services.

The *Kachchheri* keeps the records of its income and expenditures and presents them to the community assembly. The *Kachchheri* authorities cannot personally use the amount collected in the *Kachchheri* from fines and other sources. A newly elected authority has to take oath stating, "I am ready to provide free services to the community. I will take nothing for the time I give to the *Kachchheri*. I am ready to accept any of punishment if I accept a bribe or derive any economic or social benefit from my position."

However, the Kisan authorities are also common people. Most of the *Kachchheri* authorities are poor and lower middle class farmers. They are household heads like common Kisans, and have to manage their family's livelihood. As a result, such authorities do not give enough time to public duties. The community members do not prefer such authorities. For example, the present *Mahato* is landless, manages his subsistence from wage labour, fishing and hunting small game. He cannot contribute enough time in the *Kachchheri*. As a result, his assistants and community members are not satisfied with him, as reflected in Box 7.9.

**Box 7.9: Reflections of Community Members on their Authorities**

**Case A: one has to go to the river or forest to meet the *Mahato***

Toma Kisan was elected to the position of *Wakil* in 2000 by the community assembly. As a *Wakil* he has to work with the *Mahato* frequently on dispute resolution, organizing socio-cultural functions, and so on. However, Toma is not satisfied with the time given by the *Mahato* to the *Kachchheri*. He says, "disputants have to go to the forest or river to meet with the *Mahato* instead of to Kisan Club and *Kachchheri* office." He thinks that Bhabir Kisan is not an appropriate individual for the position of *Mahato*, since his economic condition is weaker than the average Kisans, and that it was a mistake to elect him, since the *Mahato* cannot be a wage labourer. Toma's view is that the *Mahato's* economic condition must be improved or he must be replaced soon.

**Case B: Both *Mahato* and *Wakil* have to be changed soon**

Ratiman Kisan is the *Sipahi* and head of Bagribadi village (Mechinagar-6). In his view, "both *Wakil* are inefficient at handling community problems, and the *Mahato* is unable to provide time to the

*Kachchheri*. We are thinking that we have to change both the *Wakil* and the *Mahato* at the upcoming community assembly to enhance the capacity of the *Kachchheri* to resolve community problems.”

Moreover, he informed me that there is no appropriate candidate from the present *Mahato*'s lineage for the position, so they accept Bhabir for the time being.

**Case C: *Sipahi* are more active than *Mahato* and *Wakil***

Laxman Kisan, age 67, is a permanent resident of Bamhandangi village (Bahundangi 9), and is a respected member of the community. In his view, the present *Mahato* and the new *Wakil* are not very active and do not give enough time to public duties. He believes the next community assembly should elect the youngest brother of present *Mahato* for the position of *Mahato* and Robi Kisan (*Sipahi* of Semairdanga) for the position of the new *Wakil*.

**Case D: It is better to change the *Raja***

Robi Kisan is the permanent inhabitant of Semairdanga (Mechinagar 4). He is one of the active *Sipahi* in the *Kachchheri*. Through his involvement, the Kisan Club has been registered in the District Administration Office as an NGO, and “the Kisan” became registered as marginalised ethnic group of Nepal with NEFIN. In his view, Bhabir was elected for the position of *Mahato* for a short time, and has proven himself unable to continue. Therefore, a new *Mahato* is needed.

Key informants were found very much impressed and informed that contribution of the *Mahato*, *Wakil* and *Sipahi* is invaluable. “We have been able to maintain our identity due to the contribution of our authorities. We are thankful to our leaders for their voluntary services.” Thus, Kisans are happy with the voluntary services of the *Kachchheri* and its authorities. Non-Kisan neighbours added that “the government officials, judges and non-Kisan leaders have to learn commitment, discipline and fairness from the Kisan authorities and their leaders.”

However, since there is no remuneration or other benefits for the authorities, poor people are unable to give their full time to public duties, which makes them less effective and popular as leaders.

### **7.2.5 Immediate and effective Justice: No Chances of Appellation**

Another strength of the *Kachchheri* is its immediate and effective justice. In general, the *Sipahi* organises a village *Kachchheri* within 24 hours and the senior authorities conduct a community *Kachchheri* within a week of a case registration, at the request of the disputants. For example, the *Sipahi* himself registers the cases in the village, meets the disputing parties, and organises a resolution session on the spot. Similarly,

if a case is of a serious nature such as domestic violence, theft, or property partition dispute then the senior authorities organise a resolution session immediately. Moreover, if a *Sipahi* comes to the *Wakil* with a complicated case, then the *Wakil* informs the other authorities and organizes the *Kachchheri* immediately. If the *Kachchheri* fails to resolve a case or if the case is criminal then the *Kachchheri* forwards such cases to formal forums.

### **Box 7.10: The Kisan Court is Quick and Effective**

#### **Case A**

Bhurni Devi, age 37 and Fulgaha Kisan, age 43, are married with four children, living in Bansaun village. Bhurni is happy with her husband, except his drinking habit. Fulgaha is not a regular drinker but he drinks when he has money. As a landless Kisan, he performs wage labour in the bazaar, and his wife takes care of the house and children. One evening in February 2007, Fulgaha received his week's wage (Rs 1000) and went to the bazaar to buy rice. On the way, he stopped for multiple glasses of *Rakshi*. He offered a glass of *Rakshi* to a woman passing the same way, and both of them drank few more glasses. Finally, they decided to sleep together for the night and went to Fulgaha's house.

Bhurni Devi was waiting for him for dinner. To her surprise, Fulgaha came with the woman and pulled Bhurni out of the house, beating her badly. With a child of nine months, she could not defend herself, and went to *Sipahi* to inform him of the incident. She spent the night at his house, and the next morning, the *Sipahi* and Bhurni went to the *Wakil*. They decided to organise a session in the presence of the *Mahato* in the afternoon and the *Sipahi* went to bring Fulgaha. In the session, the *Wakil* asked Fulgaha about the previous evening. He refused to answer, so the *Sipahi* informed *Kachchheri* of the event. Bhurni described his drinking and adultery of which this was the seventh incident. The *Mahato* asked Fulgaha, why he should not terminate his community membership as an unethical individual. Fulgaha did not reply, and the *Mahato* ordered the *Wakil* and *Sipahi* to punish him as per their laws. The *Wakil* brought a stick and the *Sipahi* hit him ten times.

Finally, Fulgaha promised that he would not commit such acts in the future. The *Mahato* threatened to terminate his community membership, and gave responsibility to the *Sipahi* to keep an eye on his activities. Fulgaha begged pardon from his wife, and both husband and wife returned home thanking the *Kachchheri* authorities.

#### **Case B**

Bhanta Kisan, age 28, was a permanent resident of Majhargaun (Mechinagar 5). He married Shanti Kisan, age 25, a few years back. This couple had no children for four years. Bhanta came to know that his wife slept with a neighbour, Firan Kisan, in his absence from home. Since then Bhanta observed the activities of his wife and Firan. On the evening of February 14, 2007, Shanti informed her husband that they were out of rice, and Bhanta went to Dhulabari bazaar to buy a sack of rice the next morning. Dhulabari is about one hour far from Majhargaun. On the way to the Bazaar, Bhanta met his father-in-law coming to see his daughter, so instead of going to the bazaar, Bhanta bought 5kg rice in a near by

grocery and both of them returned home.

When they arrived, Bhanta went inside to get a mat for his father-in-law, and discovered Firan and his wife together. Bhanta gave the mat to his father-in-law and went to fetch a stick behind his house. Meanwhile, Firan ran from the house. Bhanta entered into the house with a stick and hit Shanti a few times. After informing his father-in-law of the incident, he went to the *Sipahi*.

After hearing the case, the village *Sipahi* and two more young Kisans went to Firan's house immediately. Firan was getting ready to go to Dhulabari bazaar. They caught him, tied his both of his hands, and brought him to the village centre, where many villagers were gathered. In the ensuing session, Firan acknowledged his crime and said that he wants to accept Shanti as a wife, because they had been in love for two years. The *Sipahi* ruled that Firan had to pay Rs 5000 penalty to Bhanta within the day. Firan agreed with the decision, paid the fine on the spot, and accepted Shanti as a wife.

The *Kachchheri* cannot resolve all cases in a single session. Sometimes, it organises two to three sessions to resolve a case. The *Kachchheri* does not resolve criminal cases these days. It forwards such cases to the formal forums. Box 7.11 presents an example of a case resolved by the *Kachchheri* after three sessions and a case forwarded to the formal forums.

#### **Box 7.11: The *Kachchheri* Organizes Various Sessions to Settle a Case**

##### **Case A: The *Kachchheri* attempts to resolve case many times**

Shankar Kisan, age 47, and Thakur Kisan, age 39, are permanent residents of Kalakhutta village (Mechinagar 12). They were the tenants of Paudel Brahmin, and had long-standing dispute over tenancy rights

The village *Sipahi* had tried to settle this case two times already. However, the case again came to the *Sipahi* in 2007 when Shankar harvested the paddy from the disputed land. This time the *Sipahi* forwarded the case to the community *Kachchheri*. The *Kachchheri* failed to resolve the case in the first meeting and reorganised a second session. In this session, the landlord was also invited. After a long discussion, the landlord decided to divide the debated land equally between both disputants to settle the case.

##### **Case B: The *Kachchheri* forwards a criminal case to formal forum**

A case of an attempt rape was registered in the Kisan *Kachchheri* on the 19<sup>th</sup> February, 2007. According to the charge, Githhe Kisan, age 24, and two friends tried to rape Janga Kisan, age 15. Kusha Kisan, Janga's father, filed a case against Githhe in the village but the case came to the *Kachchheri*. The *Kachchheri* brought Githhe Kisan from his house to the *Kachchheri* and finally submitted to Dhulabari Police Office (see box 7.2 above for details).

These are the example of immediate and effective justice by the Kisan *Kachchheri*. The *Sipahi* in the village and the *Wakil* in the community organise *Kachchheri* and



resolve disputes regularly. Almost all Kisans were satisfied with the services provided by the *Kachchheri*. Some senior Kisan informed me that if an individual goes to *Kachchheri* for justice once then the individual never goes to other institutions again.

A question was asked about appellation of cases settled in the *Kachchheri* in household census and the issue was discussed with 12 disputants (key informants interview). More than 96 per cent respondents (155 households) informed me that appellation is not required in the cases settled in the *Kachchheri*. Similarly, in the discussion with disputants settled their cases in the *Kachchheri* almost all were found satisfied with the *Kachchheri* decisions and did not go for appellation. However, out of the 12 disputants settled cases in the *Kachchheri*, one of the disputants re-registered his case to the *Kachchheri* for appellation and another one went to VDC office for appellation. Hence, the *Kachchheri* settles cases more permanently and there is very less or no chances of appellation. Almost all the disputants settled cases in the *Kachchheri* are found satisfied with the decisions of the *Kachchheri*, behaviour of the authorities and their sincerity to understand the history of the cases and so on.

### **7.2.6 Effective Mechanism for Implementing Rules**

After resolution of a case, the *Mahato* assigns the responsibility for implementing the decision to the *Sipahi*, and the *Sipahi* appoints one or two assistants. In general, the assistants are appointed from the village(s) of the disputants. Normally, the assistants observe the activities of disputants, without informing them, to determine whether they follow the terms and conditions defined by the *Kachchheri*, informing the *Sipahi* on progress from time to time. The *Sipahi* then informs the *Wakil* and *Mahato*. According to Haldar Kisan, age 81, of Majhergaun (Mechinagar-5), the District Court's decisions remain unimplemented because of a lack of enforcement mechanisms. Box 7.12 describes relationship between the central and village authorities of the *Kachchheri* in the implementation of rulings.

#### **Box 7.12: The *Kachchheri* Implements its Decisions**

##### **Case A: The *Kachchheri* formalises a love marriage**

In the winter of 2004, Tilman Kisan, age 22, and Julu Kisan, age 18, disappeared from the village. The *Sipahi* was informed of the incident by the villagers, and he informed the *Wakil*. The next day, the *Mahato*, *Wakil* and *Sipahi* went to the Tilman's house. His father, Fulman, was cleaning the cowshed. The *Wakil* called for attention, described the objective of their visit, and put a pile of straw outside the yard. Fulman sat on the straw. The *Wakil* declared that the community membership of Fulman and his

family members was suspended until the marriage purification ritual for his son. The next morning, Fulman sent his eldest son to India to fetch Tilman. The family brought Tilman and Julu back and informed the *Sipahi*. Tilman himself went to the *Wakil* and paid the Rs 2000 fee for marriage ritual.

The *Kachchheri* authorities in consultation with the family decided a date for marriage ritual. Main responsibility of organising this ritual was given to the *Sipahi*. The ritual was organised on 17<sup>th</sup> April 2004 and formalised the marriage. Hence, the authorities of the *Kachchheri* have good coordination (central and village) as well as harmonious relationship with community members. This enables them to resolve community problems effectively.

#### **Case B: Bhuman Kisan corrects his behavior**

Bhuman Kisan, age 36, a permanent resident of Bansgaun, was twice warned by the *Sipahi* fined Rs500 by the community *Kachchheri* for extra marital relations and misbehaviour towards his wife. He was brought to the *Kachchheri* again on 19<sup>th</sup> February 2007 by the *Sipahi* for beating his wife. The *Kachchheri* decided to beat him as per the community law, and the *Sipahi* implemented the decision. Moreover, as this was the second time, the *Kachchheri* decided to fine him Rs 1000. The *Mahato* alerted him that if he repeated the offense again, his community membership would be terminated. On the advice of the *Mahato*, the *Sipahi* observed him regularly. Since then Bhuman does not drink liquor and does not even talk with women. He has good relationship with his wife and children now, remembering the warning of the *Mahato*.

As the *Kachchheri* resolves community problems, it gives high priority to the implementation of decisions. Due to strong enforcement mechanisms, the *Kachchheri* decisions are implemented in practice.

### **7.3 Weakness of the *Kachchheri***

In the view of Karl Marx, ruin of something is due to its inherent character (Layton 1997). The Kisans believed that the existence of something is possible because of the wish of the god, if the power shifts to the will of a demon, then death or destruction is possible. According to this logic, the *Kachchheri* is functionable because of its fair, free and immediate services to the community. If its processes were corrupted, lengthy, or as complex procedures as the formal forums, its existence would not be possible. In general, through observations and the discussions with the participants, it was almost impossible to discover the perceived weaknesses of the Kisan *Kachchheri*.

However, nothing is all positive, with no negative consequences. Finally, after rigorous questioning of key informants, I came to learn about some weaknesses of the *Kachchheri*, although in the view of some, the weaknesses that I have pointed out below were actually the strengths of the *Kachchheri*. However, the majority of the informants agreed on the following points as weaknesses of the Kisan *Kachchheri*:

### 7.3.1 The Court Authorities Recognize the Community Members

The community assembly elects the *Kachchheri* authorities. According to Austin, the main pillar of democracy is an election (2000), and so democracy is a way of life for the Kisans. The Kisan community is small, with 773 people in 160 households. As the Kisan authorities are elected by community members (theoretically both male and female household heads but in practice only the male) directly, they know almost all the adult members of the community. While this has its benefits, it also means that the authorities have a preconceived notion of all adult members of the community and their behavior.

For example, Juman Kisan, age 49, of Kalakhutta village (Mechinagar 12), was brought to the *Kachchheri* on 5<sup>th</sup> February 2008 for insulting a neighbouring woman. According to the Juman, Ramesh Kisan had borrowed Rs 500 from him. Ramesh did not repay the money on time and Juman went to Ramesh's house. Ramesh's mother came out and informed Juman that Ramesh was out, but Juman heard his voice inside. He demanded the truth, but she merely went back inside. Juman believed that Ramesh convinced his mother to file the case in order to avoid repaying the money. Juman had been brought to the *Kachchheri* in 2006 in a similar case. According to Juman, the second charge against him was false, but he was punished again, fined Rs100 because of the pre-conceived notions the authorities have of him.

The Kisan authorities are also aware of such issues though they have not improved their perception to be fair and justice. Bidur Kisan, age 37, of Nindabasti (Mechinagar -1), was brought to village *Kachchheri* by his neighbours for stealing a pumpkin. The village *Kachchheri* decided against Bidur and charged him Rs 50 as compensation for the pumpkin owner. According to Bidur Kisan, he used to do such things before his marriage, seven years ago, but has since stopped completely. However, the *Kachchheri* authorities have not changed their impression of him. He remains upset with the decision of the authorities.

During the selection of the present *Mahato*, Govinda Kisan was the eldest son of Dhodi Kisan, the previous *Mahato*. Once, Dhodi Kisan was wounded by his son in a family dispute and was hospitalised for three days. During the selection of the present

*Mahato*, the community members recalled the incident and did not select Govinda for the position.

Similarly, Chature Kisan, age 44, Majhergaun was brought to the *Kachchheri* by his neighbours for stealing a roaster. He was forced to accept the crime in the *Kachchheri* meeting, and fined Rs 500. According to Chature, he was innocent of this crime. Ten years earlier he had killed neighbour's rooster and paid the cost of the rooster to the owner. Since then, he says, he has not done anything wrong, but the Kisan authorities have not changed their perceptions of him. He is not happy with the decision of the *Kachchheri*.

An individual may change over time, but the perceptions of others do not change immediately. In the above cases, the Kisan authorities have given the verdicts on the basis of their impressions of the disputants' past behaviour. A perceived lack of objectivity on the part of the authorities leaves some disputants feeling unfairly treated.

### **7.3.2 Lack of Documentation**

Another weakness of the Kisan *Kachchheri* pointed out during study was lack of a written record keeping system. The office shared by the Kisan Club and the *Kachchheri* has chairs, mats, tables and cupboards with some registers. However, there was no written record of any cases settled by the *Kachchheri*. According to the authorities, they also realised the necessity of a record keeping system, and started one a few years back, but failed to continue it.<sup>48</sup> The main reason for not keeping records is overwhelming illiteracy. Even the *Mahato* and both *Wakil* can only write their names. There is no capable individual who can volunteer their services, and the *Kachchheri* is not in the position to hire someone, as it has no regular source of income.

Robi Kisan, as noted above, is a powerful literate *Sipahi*. In his view, it is essential to document settled cases and traditional customs, including the laws and cultural practices of the community. There was no office of the Kisan government and the

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<sup>48</sup> Chandra Bahadur Kisan (son of the *Sipahi* of Semairdanga) was maintaining a record of Kisan culture and disputes registered and settled in the *Kachchheri*. The *Kachchheri* did not continue it when Mr. Chandra went to Soudi Arab in 2006.

*Kachchheri* until the time of his election. The Kisan Club was established at his initiation. Nowadays, the Kisan Club office is the central place where the community assembly, *Kachchheri*, and other meetings and discussions are held regularly. It has been given some furniture by NEFIN and Action Aid Nepal.

Some Club members were also worried about the preservation of Kisan culture and traditions. They had not initiated documentation at the time of fieldwork. These days, there are some literate youths, but they wish to earn money, and therefore travel to the Gulf or the tea estates, or become involved in other businesses.

### 7.3.3 No Uniformity in Decision Making

Due to the lack of documentation, the *Kachchheri* authorities have failed to follow uniformity in decision-making. For instance, in similar cases one pays Rs 100 and another pays Rs 500 as fines. The authorities informed the researcher that they follow the traditional laws (which have not been written anywhere) in consultation with elders, but are aware of the issues with uniformity. Box 7.13 presents two examples of inconsistency in the *Kachchheri* decisions.

#### **Box 7.13: Decisions of Kisan *Kachchheri* are not uniform**

##### **Case A:**

Hiramani Kisan, age 47, and Budhan Kisan, age 46, are neighbours, and permanent resident of Dhajjan VDC 8, Bansgaun. They worked together in Dhulabari bazaar for two years. They used to drink a glass of local wine while returning home in the evening, and buy foods for the week on the weekly market day (*Hat*).

There was a weekly market on 27 September, 2008. Hiramani and Budhan Kisan arrived at the *Hat* in the evening as usual and then bought rice and lentil for the next week together. After buying necessary items, both of them went for a glass of local *Rakshi*. As it was the last week of the month, both of them had received their wage. They drank a lot together, forgot the food, and lost their way home. They fought each other, lost the money, and even got wounded.

They spent the night in the bazaar and returned home with empty hands the next morning. They blamed each other on the way and went to the *Kachchheri*. The *Kachchheri* fined them Rs 100 each after hearing the case.

##### **Case B:**

A marriage ritual was organised by the *Kachchheri* on 27 February, 2008 between Dhobi Kisan and Kali Nepali in Khutte dangi village. All the members of Khutte Danggi village attended the marriage ritual and enjoyed with food and drink but Baisakhu Kisan, a good neighbour and friend of Dhobi, was

not there.

He arrived around 9pm at the groom's house, congratulated the groom, and informed him why he came late. He brought two bottles of hard liquor, giving one to the groom. Some relatives of the groom were drinking liquor at the corner of the house. One of them was Mangalu Kisan, who was known to Baisakhu. Baisakhu sat together with Mangalu and started drinking local *Rakshi* as well as hard liquor. Both Baisakhu and Mangalu lost their senses and started quarrelling with each other. As a result, Baisakhu wounded his right hand. As the head of the house, Birman Kisan (father of the groom) resolved the case and sent them to bed.

The next day, Baisakhu went to the *Kachchheri* because of his injured hand. However, Mangalu also came to the *Kachchheri* with Birman Kisan because he was felt abused by Baisakhi unnecessarily. The *Kachchheri* fined Mangalu Rs 50 as penalty for not returning home until 9pm. The *Kachchheri* did not fine Baisakhu, but threatened to terminate his community membership if he continued to drink liquor until he loses his senses.

These two cases show that the *Kachchheri* decisions are not uniform in the case of drinking liquor. In the former case both the disputants paid Rs 100 as fine, and in the latter case one paid Rs 50 and another was warned. These are representative cases of the differentiation in the decisions of the *Kachchheri*. According to key informants, the *Kachchheri* authorities consider the situation, and decide the fine accordingly. For example, in a case of extra marital relations between Bhote and Batuli Kisan (wife of Siren Kisan), the *Kachchheri* formalised their relationship. Bhote paid Rs 1000 as a fine (*Jari*) to Siren and returned the ornaments given by him to Batuli. However, in another case between Dakhina and Basanti (wife of Biswanath), the *Kachchheri* did not formalise their relationship. Rather, it fined Dakhina Rs 100, asked them to apologise publicly, and cautioned them not to repeat the case in the future.

*Kachchheri* decisions are not uniform because of the unclear understanding of the laws due to lack of documented laws and so on. In the discussions with the Kisan authorities, it was revealed that they have to consider the situation of disputants (socio-cultural and economic conditions and both hidden and public interests), history of the disputants, and severity of cases and so on. Therefore, the *Kachchheri* decisions are not uniform, though the decisions are accepted by all members of the community. The inconsistency in decision making is pointed out as a weakness of the *Kachchheri* from the perspective of formal legal study. In deed, it is strength of the *Kachchheri* because the authorities know a case and disputant better than formal forums and therefore practice inconsistency in decision making.

### **7.3.4 No Coordination with Formal Bodies**

Although many Kisans do not prefer to interact with non-Kisans, they live in the same villages, and must interact and work together. In the case of conflict with other groups, Kisans must go to judicial and quasi-judicial bodies of the government forums, such as VDC/Municipality and District Court. The District Court is the only formal justice delivery institution that resolves both civil and criminal cases. The District Administration Office is for administration, and the Police office is for security, although these institutions also resolve cases. The VDC, as a local government body, has been given quasi-judicial authority for resolving minor civil cases (LSGA 1998). In addition, the District Land Revenue Office maintains land records, collects taxes, and settles some cases, including land boundary disputes.

The *Kachchheri* is not known among many non-Kisans of the district. A few judges and staff of Jhapa District Court have heard of the *Kachchheri*, but only in a general way. The VDC has quasi-judicial rights though it does not manage enough time for dispute resolution. The VDC authorities and representatives are untrained in dispute resolution. They are powerful people, and women and poor and marginalised groups always hesitate to go to them. If a case is between a Kisan and non-Kisan, then the Kisans also needs to go to VDC/Municipality. The VDC has not tried to extend its relation with the *Kachchheri* or vice versa. In my view, the *Kachchheri*, VDC and Police Office have to extend their relationships with each other for justice delivery in the district to be truly effective.

### **7.3.5 No Motivation or Training for the Local Authorities**

The *Sipahi* is an essential representative of the *Kachchheri* institution in the village. Out of the total cases of the community, the *Sipahi* settles above 60% cases registered in the village and the *Kachchheri* settles the rest 20% in the community (see detail in chapter 6). A village *Sipahi* is always busy with disputants, hearing their problems, organizing mediation sessions, forwarding an unresolved case to the *Kachchheri*, informing the parties of the time of the session, and providing background information to the *Wakil*. Similarly, the *Sipahi* is the only local representative of the *Kachchheri* that can implement its decisions, and monitor and supervise the relationship of the disputants.

The *Sipahi* has been given lot of roles and duties; however, most power and benefits rest with the *Wakil* and the *Mahato*. The *Sipahi* is given nothing for the duties he performs. Except for a short orientation by the former *Sipahi*, the *Wakil*, and the *Mahato*, and a few sip of *Rakshi* in the *Kachchheri* meeting the *Sipahi* gets no training or rewards for his service. Hence, the performance of the *Sipahi* varies according to his economic conditions, personal qualities, and individual motivation.

In terms of benefits, the *Mahato* may receive a Dhoti (a long cloth wrap below the thigh), Rs 5 to 20, or both after settlement of a complex case or during public rituals and functions such as the *Gram Pooja* or ancestor worshipping ritual. The *Wakil*, as a regular assistant of the *Mahato*, also may receive food and wine from time to time. The *Mahato* and the *Wakil* also have access to the fines received, although they have to present it in the assembly and organize the *Gram-Pooja* from the same money. On the other hand, the *Sipahi* has no authority to fine disputants, as all such cases must be forwarded to the *Kachchheri*. The main benefit and motivation for the *Sipahi* is the respect and recognition as representative of the *Kachchheri*. Thus, symbolic capital (Bourdieu 1977) is the only source of motivation for the case of *Sipahi*, *Wakil*, and *Mahato* for accepting the position of authority. Due to the lack of regular support or benefits, some *Sipahi* were reluctant to shoulder the responsibilities. It is felt that it is necessary to have regular support, training, and rewards for the *Sipahi* and the other authorities to maintain the integrity of the community court in the changing local context.

### **7.3.6 No Recognition Given by the Formal Forums**

On an average, the four VDCs' and one municipality's authorities have been able to resolve 69 per cent cases of the total received cases in 2008. By contrast, the *Kachcheri* resolved 80 per cent of the cases received from the community in the same year. This indicates that the *Kachchheri* is more effective at resolving community cases than the local bodies.

However, there is very little known about the *Kachchheri* in formal forums. Even the judges of the District Court are generally unaware of the *Kachchheri* and its contribution. The *Kachchheri* authorities also do not know whether the formal forums recognize their contribution or not. The *Kachchheri* enhances the access of



community members to justice and offer immediate and effective services. The educated key informants (both Kisan and non-Kisan) responded that if formal forums recognized the *Kachchheri*, and cooperatively organized necessary trainings to develop skills and knowledge on human rights, paralegal issues and community justice, then almost all local people would have easy access to justice. Moreover, local cultural practices and indigenous institutions would be preserved and strengthened.

## CHAPTER EIGHT

### Changes in the Kisan Community and Political Organization

Society “exists only as a time-sequence; it is a process, not a product” (MacIver and Page 1949). Every aspect of a society, population, structure, belief systems and religion, means of production, technology, is changing constantly. Change may happen faster or slower, but it is a regular process driven by internal and external factors (Kattel 2000). According to Appadurai (1998), change in simple societies accelerated after World War II, due to the influences of modern markets, technologies, and knowledge. The Kisan community, as discussed above, was largely closed until the last few decades. However, beginning in the 1970’s it was exposed to the state political system, the modern market economy, non-Kisan hill migrants, state-sponsored education and so on.

As a result, the community assembly of 1996 and 2002 and the *Kachchheri* have adapted, post-facto, validating changing norms and practices within the Kisan cultural and legal paradigm. For example, the *Kachchheri* has started arranging marriage purification rituals in the case of inter-caste marriage. Similarly, the 1996 assembly has mandated that community members go to local government bodies for vital registrations and to District Administration Office for citizenship papers. In this chapter, I will describe major changes faced by the Kisan community and impacts of those changes on their political organizations.

#### 8.1 Influence of Modern Education

The Kisan community was exposed to formal education when non-Kisan hill migrants arrived, bringing with them the demand for government schools. Government schools opened in Dhulabari, Shantinagar, and Bahundangi bazaars during the 1960s but the Kisan settlements were located farther away, and remained insulated. As non-Kisan hill migrants encroached further into the Kisan areas, some Kisans lost their productive lands in interactions with the newcomers, commonly attributed to the Kisan community’s illiteracy. At this point, some Kisans realized the advantage of

education and admitted their children to school. However, there were only three SLC-passed community members at the time of my fieldwork.

In the surrounding area, there were 13 primary schools, seven secondary schools and two higher secondary schools. According to the teachers, attendance of Kisans children was good and regular. The attendance of girls from the Kisan community is higher than that of boys (which is opposite from nation-wide statistics). However, the dropout rate is higher for girls after completion of primary school.

Older Kisans (above 50) think that educated people are lazy and disinterested in traditional cultural practices. One proverb states: “*Likhapadi Janahite or school Padahitelok Gharekam nikare, Kodilok Dagrajaaike Dakait or Chorikare,*” meaning that literate or educated people are lazy and do not work at home, but become thieves and highway bandits. Despite this perception, the Kisans have begun to send their children to school, partly as a result of the efforts of the Club over the last decade, and the perceptions of younger Kisans about education and educated individuals have been changed.

As educated youth understand it, education is “the light of life.” Educated people can have good job and enjoy a happy life. They believe that the Kisans remained landless, poor and marginal because of the bias of older Kisans against education. They believe education is essential and a right for all children. A poor family may not be able to save property for their children, but they can send them to school, since the school education is free for all, the government provides a stipend for the Kisan students, and their Club offers bags, books and stationary. Ultimately, they say, education is better than property for maintaining a livelihood. These are the statements repeatedly voiced by social activists of the Club involved in awareness campaigns on education, health and sanitation.

Education has become understood as the way to avoid repeating the past, where illiteracy within the community led to exploitation and loss of lands and livelihood. It has also become understood as a way to better employment opportunities, and, more generally a sign of status. Due to the scholarship program of the government and adult literacy and awareness programs of the Club, only 54 per cent Kisans are illiterate, the same as the national average, according to the census of 2001. Three Kisans have

passed the SLC and 197 students were enrolled in school during the time of fieldwork. Out of the three SLC-passed individuals, one was doing a Masters Degree in Linguistics at Tribhuvan University (who is also doing fund raising activities for their Club).

However, the participation in the community political organizations of the Kisans holds no attraction for young, educated Kisans, who instead choose to participate in the Club<sup>49</sup>. According to the educated Kisans, illiterate people can run the government and the *Kachchheri* smoothly but they cannot run the Club, particularly the necessary fund raising. The only graduate Kisan plays an advisory role, an SLC-passed member manages, and the rest are social mobilization officers running awareness-raising and community development programs. According to the respondents, the educated youths receive some remuneration from the Club for their services, whereas their government and *Kachchheri* are not in a position to offer compensation.

There were no educated Kisans elected in the major positions of the Kisan government and *Kachchheri* at the time of my fieldwork. However, educated people were found supportive of the government and *Kachchheri* activities. According to the only graduate Kisan, “our traditional political institutions (the government mechanism including the *Kachchheri*) are run well by illiterate community members. We educated individuals are also members of such institutions. Illiterate people have negative perceptions about education and educated people. Therefore, we do not want to interfere in traditional practices. We want to do something remarkable to change the traditional perceptions and practices of the community members. Hence, we have established Kisan Club for community awareness, social welfare and development programs.”

The community assembly of 2008 (held February 2 and 3) realized the necessity of documentation of the government and *Kachchheri* activities, community laws and cultural practices, and given this responsibility to Chandra Kisan, and educated youth, in September 2008. Chandra went to Soudi Arab in March 2009 without completing the task, and the authorities have not been able to re-assign the task to another appropriate person. They have suspended the issue of the election of an educated

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<sup>49</sup> Three SLC Passed and 4 under SLC Kisan were involved in the Club activities which gives them remunerations.

youth to a major position of their authorities until the next community assembly. Thus, the traditional institutions of the Kisans and their authorities have also realized the importance of modern education. The earlier perceptions of community members about education and educated people have changed and almost all Kisans have admitted their children to school.

## 8.2 Involvement in Party Politics

A self-sufficient community with a political organization and justice system, the Kisans were insulated in Jhapa district for more than a century, preferring to live far from other groups, modern facilities, and state intervention. The participation of the Kisans in the pre-1991 party-less political system, Panchayat, was very nominal. According to informants, except community leaders, the community was unfamiliar with the Party-less political system, and none of them used to go to the local Panchayat.<sup>50</sup> However, the socio-economic and political environment has changed, especially after the multiparty democracy of 1991. The Second People's Movement established *Loktantra* in Nepal in 2006, which intensified the interaction of the Kisans with non-Kisans and the exposure of community members to outside influence, including party politics. I am going to describe the involvement of the Kisans in party politics and its impacts in their political organization and cultural practices.

The Kisan leaders were used by local elites as political clients during the *Panchayat* period, and, eventually, the agitated Kisan leaders themselves inspired the community members to participate in the People's Movement against the *Panchayat*. After the establishment of multi-party democracy, community members were divided into different political parties and interest groups. Even a single family of the Kisan might support different parties (Nepali Congress, United Marxist and Leninist, Rastriya Prajatantra Party, Nepal Sadbhawana Party, etc).

Some Kisans have become established as local leaders of different political parties and have won elections for ward chairmen and ward members of Village

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<sup>50</sup> The Panchayat political system (party-less politics) was displaced by multiparty democratic political system in 1991. It was established by people's movement in the support of different political party. The ten years Moist conflict was ended by the peace accord with major political parties of Nepal which established Loktantra in 2006 by the second peoples movement (joint movement of Maoist and other political parties against the King's direct rule.

Development Committee (VDC)<sup>51</sup>. This has wrought multiple effects in the community. The Kisan leaders recognized the need for citizenship and other vital registrations, and encouraged the community members to complete them. As a result, the community members were exposed to formal offices and non-Kisan officials, including alternative forms of dispute resolution.

Engagement with party politics and the larger political context has particularly changed women's role in the community. Some young Kisans, including the poor and women supported the Maoist party during the insurgency. It was the first time in the Kisan community that woman participated politically, and it represented a challenge for a traditional community. This has raised political awareness among the women about their rights, including access to justice.

The Kisan authorities also recognized this change and organized a meeting in 2002 to grant political rights to woman. As a result, the Kisan women now participate equally in public gatherings including the government meetings, *Kachchheri* and *Gram Pooja*. A woman can easily go to the *Kachchheri* in a family dispute. Women are also recognized as household heads. In this issue, the senior *Sipahi*, Robi Kisan, informed me that "if women also demand representatives in the government and *Kachchheri* in the future then the community assembly will think about it." According to a women activist of the Club (Shanti Kisan), they plan to raise this issue at the upcoming community assembly.

Education is considered essential for women too, and women have been attracted to adult literacy classes. The Club in response to the demand of women were running literacy class in all Kisan villages. In coordination with community authorities, the Club is also working for socio-economic and political change in the community through awareness raising program on health, education and environment, as well as drinking water and toilet construction. The Kisans have been able to be members of NEFIN through the Club, which has enhanced their access to different donors.

### **8.3 Influence of Market and Modern Facilities**

As discussed above, the Kisan community was closed not only in socio-political relations, but also economically until the last two decades. The arrival of non-Kisan

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<sup>51</sup> The VDC is the local government unit in democratic political system in Nepal.

hill migrants, the establishment of multiparty democracy, and development activities helped modernize the region. Regular and weekly markets, and other business centers, schools, police offices and other governmental and non-governmental offices have been established in the region. In addition, tea shops, grocery and grain collection centers were established in each Kisan village. As a result, the Kisans have been exposed to modern markets, market products, and other government and non-governmental offices.

In the beginning, the Kisans came to the market with their products such as grain, fowl, and vegetables to sell for money to buy stationary for school children, salt, spices and cloth. With the introduction of chemical fertilizers, hybrid seeds, pesticides and modern agricultural equipments, surplus agricultural production available for sale increased, allowing for larger purchases such as bicycles, fast foods, radio, television, modern cloths, tea, and so on. According to the informants above the age of 30, they were the first Kisan introduced to these goods. According to informants over 50, they had no access to modern cloths and processed foods in their childhood. There was no option for earning money except selling food grains and fowl.

As a result of the availability of market products and other facilities in the regions, the illiterate agricultural community was not in the position to fulfill the demand of market products of the young generations. As a result, some Kisans lost their productive land in nominal price and some of them have lost for nothing. Hence, in the process of modernization in the region, many Kisans have been changed into wage laborers by displacing from their land and traditional way of livelihoods.

As discussed earlier, over 200 Kisans, between the ages of 10 and 80, are wage laborers in agriculture, on tea estates, or in construction work. Money, rather than agricultural output, is considered essential, because it determines access to food, clothes and medicines. For example, Thepna Kisan, age 79, of Semairdanga is a widower who lives with his grandchildren. He cuts a basket of grass daily, which he sells in the village for pocket money. He is habituated to drinking tea twice a day in local teashop. The children are also familiar with money and fast foods. Once in the winter of 2008, I was passing Bahundangi village to Shantinagar for an interview. I saw two children in school dress, about ten years old, with full baskets of firewood on their back, coming from the jungle. When asked, they responded that they would sell

the firewood and use the money to go to the cinema with their friends on Saturday. The principal of Khutidangi school informed me that the drop out rate of Kisans children is high in class 4 to 6 because of their involvement in wage labor.

From the perspective of modernization and development, it is good to have access to modern goods and services. However, in the case of the Kisans, attraction of the community members to modern facilities may impact their traditional way of life, including their political organizations. According to informants, the youth are interested in earning money for access to modern goods and services. However, all community members still give their time for community assembly, cultural gatherings and other public rituals.

Since Kisan government services are voluntary, but young people attracted to non-voluntary work, then the future of the voluntary organization will question. The Kisan government and *Kachchheri* authorities have raised this issue in the 2008 community assembly, and community members theoretically agreed to raise funds and provide a basic minimum wage to the authorities. However, the assembly decided that community authorities will have to come up with ideas for fund raising for the next community assembly and then assembly will implement the decision. This shift indicates a significant influence of the market economy on the Kisan political institutions.

#### **8.4 Development Activities and Change**

A number of key development initiatives have been implemented since the 1960s in Nepal, of which land reform, infrastructure development, national education programs, health, communication and agricultural development programs are the most significant (Mishra 1997). While the Kisan settlements were not an exception to this, Kisan experiences with these programs have not been positive. "*Bikas Kehelse Je-Je Alak O Aurekarlagin Alak, Hamkehale Banchehen Muskil / Ayen-Bayen Banalak,*" said Fagna Kisan, age 62, of the Kisan understanding of "development". It means that all development activities carried out in the region are for others (non-Kisan hill migrants), and only create hardship for the Kisans.

As a result of the development initiatives in the district, many hill migrants arrived and settled. Most of the migrants were educated Hindus with access to politicians and



government officials. The Kisans understood the migrants as high caste, advanced and powerful people. After their settlements, the new migrants played crucial roles in enhancing other development facilities in the region such as roads, schools, health posts, and centers for agricultural equipments, and so on.

The available modern facilities further increased the number of migrants to the region, increasing competition with the Kisans for available resources such as forests, water, and land. As the Kisan's traditional niche became insufficient for managing their livelihoods, alternative and subsidiary occupations were introduced, including wage labor where Kisans interacted with non-Kisans. Due to their interaction to non-Kisans, they also became familiar with modern medicines, fast foods, and other market items gradually. Kanti Kisan, age 24, of Shantinagar VDC-1, who is an educated woman activist involved in the Kisan Club, expressed her positive impression of modern medicine. "It is a gift of god for us because it has controlled the child and maternal mortality rate remarkably."

Exposure of the Kisans to non-Kisan communities, development activities, and the outside world has raised awareness of new issues and changed perceptions and practices. All these changes have some impacts on the traditional political organization; the government and community court. Nowadays, they invite their non-Kisan neighbors to the *Gram-Pooja*, family gatherings, and public rituals and have even made accommodations for inter-caste marriage. According to the senior *Wakil*, "it is essential to modify some of the cultural practices without destroying their uniqueness. We are serious about preserving our political organizations without distorting their originality."

## **8.5 Changes due to Migration Abroad**

Migration is another new phenomenon in the Kisan community. Some younger Kisans have left their homes to work in India and Middle East. According to informants, migration to Middle East has only occurred since 2005<sup>52</sup>. During this study, 11 Kisans (seven male and four female) were in Saudi Arab and four (all male)

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<sup>52</sup> Going India for earning was common among the Kisan since their arrival to Nepal. Therefore, India is not considered abroad in the understanding of the Kisan because they think India as their original land.

were in Malaysia. Similarly, two migrants returned home during my field study after spending two years in Qatar.

According to migrants, they have seen the advancement of Middle East countries and realized the value of education and technology, and also become familiar with mobile phones, television, computers, and other technologies. They have sent some modern cloths, wristwatch, television, camera, mobiles and so on to their family members and relatives. Living styles and dressing patterns of the family members of migrants were marked better in comparison to non-migrants. They owned televisions, visible by white antenna either on the top of the roof or a nearby bamboo pole. Patterns of dress, cleanliness of houses, and differences in hospitality practices also distinguished the families of migrants. The family members of the migrants were familiar with fast foods like noodles, chips, peanut butter, and hot and cold drinks. They were found aware of the consequences of liquor drinking and stopped its preparation. They drink tea and also offer tea to guests.

The children of migrants attended private English-medium schools, as opposed to public schools. Mandra Kisan of Semairdanga went to Soudi Arab in 2008, and enrolled his son (4 years old) in Dhulabari Pre Primary Boarding School in 2009. Krishna Kisan (returned from Qatar) told me that “a labor who speaks English earns more than an illiterate individual in Middle East. Therefore I have enrolled my children in private school”.

Family members of migrants also tended to save for the future. None of the community members except migrants’ families had bank accounts. Bulu Kisan, age 39, of Bamhandangi, saves the money his wife sends monthly from Soudi Arab (Rs 10,000) in Nepal Bank in Dhulabari bazaar. He pays household expenses and his children’s school fees out of his own earnings. When his wife returns, they hope to buy a homestead in Dhulabari bazaar. Sending one’s wife abroad is a new phenomenon among the Kisans.

Some additional changes also marked the families of migrants. All adult female members of migrant households were literate, having participated in adult literacy programs. Villagers used to gather in the houses of migrants to watch television in the

evening and discuss things like fast food and new dresses. The children of migrants were accustomed to modern clothing, fast food, and movies.

The attraction of youth to go abroad has indirect impact on the political organizations of the Kisans. The educated youth are attracted to paying employment. Therefore, only old and illiterate people are elected as authorities. However, the educated youth are still committed to cultural preservation. The only graduate Kisan told me, “We are serious about the protection and promotion of our government, community court, and traditional cultural practices. We cannot give our full time for voluntary services. We have to work for bread. Therefore, we are planning to raise initial funds for our government and the *Kachchheri*. We can use the funds to hire someone for the documentation of our law, government and *Kachchheri* decisions, and cultural practices.”

## CHAPTER IX

### Summary and Conclusion

The present study, "Indigenous Practices of Dispute Management: An Anthropological Study of the Kisans in East Nepal" is an ethnographic description of the socio-political culture of the Kisans. The Kisan community is organized under their own political organization known as the *Baiga system*. The *Baiga system* is effective and functional because of its simple and transparent practices such as the community assembly, government mechanism, community court, and laws. The main objective of this study is to understand the existence of the justice system and practices of Kisan community side by side with formal justice delivery mechanisms of the state. After the study of the Kisan political organization and their justice system it is easier to support the conclusion of earlier anthropologists, that "evolution of more complex political systems is found among simple communities in many parts of Asia, Africa and the Americas" (Keesing and Strathern 1998: 251). The Kisans have a complex political system consisting of an influential government mechanism, two-layer community court and effective laws. These institutions are democratic and popular among community members. The Kisan community assembly modifies existing laws and creates new ones, as well as selecting a successor to the *Mahato*, or King. The *Mahato*, *Wakil* (ministers), and *Sipahi* (Police) are the main authorities of the Kisans. The same authorities run both the government and the community court. The *Mahato* is considered to have the supernatural power who to talk to ancestors, gods and goddesses, ghosts and evil spirits, supporting the idea that a religious leader is considered socio-cultural, economic and political leader (especially as a 'peace maker') in simple societies (Gluckman 1971: 89 and Keesing and Strathern 1998: 254). Hence, the *Mahato* is considered not only a religious or political chief of the community but also a unifying force of sumbole for the community prosperity.

However, the environment has undergone some changes in socio-cultural, economic, and political and the community has modified some of their socio-cultural and political practices to cope with the situation. Although the community has continued their traditional political organizations (the government and *Kachchheri*), the previously closed community has been exposed to non-Kisans, market and market

products, and accepted inter-caste marriage. Thus, a simple community with a population of less than 1000 people is able to cope strategically with changes to preserve a complex political culture. This study is aimed at understanding the genesis, structure and functions of the traditional dispute resolution organization of the Kisans, its strength and weaknesses in terms of overall process, participation of the people and their access to justice. It tried to examine the role of Kisan court in justice delivery process in Nepal. Moreover, it attempted to observe the relationship of Kisan court with formal forums and the changes experienced by the community and its impact in their political organization including the community court. In this chapter I will present a sort summary of the study, conclusions, and the contribution of the study to the discipline of anthropology.

## **9.1 Summary of the Study**

Social laws, law implementing agencies and institutions, and dispute resolution practices are part of culture. Cultural components have functions in society whether it is defined as a holistic legacy acquired from the group (Tylor 1871), a web of significance that an individual has spun (Geertz 1973), or as knowledge (Goodenough 1993 cf Keesing and Strathern 1998), it is the means of adaptation. The main theoretical perspective applied for this study is structural-functionalism and political anthropology and legal anthropology. Political anthropology, as a branch of social anthropology, concerned with the study of power, conflict over resources, historical jurisprudence and so on (Fried cf Vincent 1990). Study of legal anthropology or anthropology of law focuses on the understanding of law, disputes and justice system of a society (Caplan 1995). Structural-functionalism is a major school of thought in social anthropology, emerging from the contribution of Malinowski (1922) and Radcliff Brown (1952) which seeks the meaning of each cultural element within the whole structure of the culture / society and its function in maintaining the system. In this study I have tried to understand for the meaning of Kisan government, community court, laws, and customs in relation to the structure of the Kisan political organization and their cultural system.

The Kisan political organization and community laws and customs are stronger forces than kinship, marriage and other socio-cultural organizations and institutions of the community. The Kisan government and community court not only control the

behaviors of community members but also make them aware of their roles and responsibilities within the smooth function of society. I have analyzed the political process of the community, community laws, dispute and dispute resolution process and practices from the perspective of political anthropology especially through structural-functional perspective.

This study is an ethnographic description of contemporary socio-cultural, legal and political practices of the Kisans. Ethnography, in anthropology, denotes systematic description of a single contemporary culture through ethnographic field (Barfield 1997). Anthropologist Geertz (1973) has described the term “ethnography” as a method of study/understanding of a culture by describing it thickly and descriptively. This study presents a detailed description of the Kisan political organization, their laws and justice systems.

During my study, there were 160 households of Kisans with a population of 773 (380 male and 393 female). I have done a census of all these households and collected socio-economic and demographic information. Household census was done by visiting each Kisan household during the off farm season. I met with household heads, in all but nine households where they had gone to India to meet their relatives, and therefore I talked with the senior family members. In two households I had not made contact in three attempts and so gathered information in consultation with their neighbors. I also collected some information from observations. I observed seven incidents of women quarrelling over household matters, nine incidents of fighting after liquor consumption in the market, and over the issue of land boundaries. I have attended the community court at five meetings and dispute resolution sessions where I have seen the process of dispute resolution, seating arrangements of the authorities and disputants, and role of authorities and disputants.

I also organized nine group discussions of which five were focus groups of court authorities, females, educated youth, and seniors. The group discussions were held in tea shops and workplaces. The focus group discussions were organized to understand the views of different groups of people regarding their access to community court, fairness in community justice, involvement of community members in the law making process, the effectiveness of community court in dispute resolution, and so on. As discussed in the methodology section, the data were collected through triangulation

methods, which enhanced the validity and reliability of the information. I identified 19 key informants in the community from whom I collected information such as the origin of the community and court, the history of their arrival to Nepal, the community justice system, the dispute and dispute resolution process and other information regarding the subject of my study. Moreover, information collected from other sources was also verified with key informants. In my experience, key informant interview is one of the main tools of data collection as well as verification in an anthropological study. For an ethnographic study, key informants provide most of the valuable information about their culture and community.

The original history of the Kisans and their political organization goes back to the ancient and medieval period of India where several tribal Kings ruled. According to their myth of origin, the Kisans of the study area are the descendents of the Nagasia whose ancestor was the Nagbanshi Raja of Madhyapradesh who was defeated by Muslim invader during 16<sup>th</sup> century ((Vidyarthi & Rai (1985). The tribal kings fell from power, but preserved their political structure, including the community court wherever they settled down. The Nagasia settled in Jhapa about 200 years ago as farmers, and changed their name to Kisans (the Neapli word for farmer). There remains a strong socio-cultural and political tie between the Kisans and Nagasia of West Bengal (see chapter 5) in India.

The Kisans political organization has three levels. The community assembly is the supreme body for policy decisions and the approval of the functions of its substructures. The government mechanism, which is headed by the *Mahato* and elected officials, performs executive functions. The government mechanism of the Kisans identifies new laws and recommends them to the community assembly for approval, and implements the existing laws to maintain peace and order in the community. The community court receives the disputes of the community members for settlement.

The community court and its authorities are very familiar to the community members due to their effective service. There is a village head in each village, who is the representative of the court and settles village dispute. Thus, the community court is easily accessible to community members. However, there are no female representatives in the court through the time of my study and they were not allowed

into the community court until the last decade. The Kisan community court has no time restriction for case registration, and it does not require any other formal procedures. Disputants can go to the court themselves or send someone to register the case orally. If the case is simple and resolvable at the village level, then the *Sipahi* organizes a session and resolves it. The village assembly elects the *Sipahi* as their village head and village representative in the community court. If the dispute is complex or disputants are not ready to resolve the case in the village, then the *Sipahi* forwards the case to community court. The *Mahato* heads the community court. The community assembly elects the *Mahato* and *Wakil* as the main authorities of the community who works for their government and community court.

The community members still hesitate to go to formal, state-based forums, but their authorities are familiar with the formal forums and their procedures. The changing political scenario (democracy of 1990 and Loktantra of 2006), paralegal training, and other activities by the local government and various non-governmental organizations have made the Kisan authorities and other people aware of the jurisdictions of laws, human rights, and other basic laws. The community court resolves only civil cases and forwards the criminal cases to formal forums. The community court resolves a good number of cases annually reducing the formal forums' case loads and allowing them to focus on serious cases only.

The Kisans, their political organization, and community court have been influenced by the changing socio-political and economic circumstances in the country. For instance, the Kisans have different political party affiliations, though they do not make their affiliations as public as other groups in the area. Community members also show their political interests indirectly in the community assembly elections (this is a new phenomena since 2006). Hence, there was no political division of the Kisan community members until the time publicly. The community court now organizes marriage purification rituals in cases of inter-caste marriage, which was totally restricted in the past. The community assembly has accepted the attendance of women in public meetings and gatherings, including dispute resolution sessions. The recent community assembly has realized the necessity of having an educated individual among the authorities, especially for the documentation of community laws, cases registered and resolved, and traditional cultural practices, although they have not been



able to elect such individual yet. Educated individuals are interested in Club activities and the court authorities have not been able to attract them. However, all community members, regardless of age, gender, and educational and economic status are unified for the preservation of their traditional political organization and cultural practices.

## 9.2 Conclusion

“Simple” communities may still have complex socio-political organizations, such the as network and exchange system among the Trobrianders in New Guinea (Malinowski 1922); political organizations, such as the Baseri tribes in Persia (Barth 1961 cf Keesing and Strathern 1998), and socio-political organizations, such as the Nuer in Africa (Evans-Pritchard 1990). Similarly, a very simple and small community, the Kisans in Jhapa district, has an internally complex political system, the *Baiga* system, to maintain peace and order in the community. The *Baiga* system is much more democratic in terms of people’s participation in policy decisions and benefit sharing than formal democratic states. It is fully decentralized to the grass root levels and therefore widely accepted by all community members.

The Kavar, Gwal and Rautiya ethnic groups were arrived at Nepal together with the Kisans as their ally groups and accepted the *Baiga* system as their own for more than a century. However, these groups have recently been excluded from participation in the *Baiga* system by the Kisan community assembly. Key informants say that this occurred when the Kisans registered themselves as an endangered indigenous nationality under the Indigenous Nationality Act of 2002 and began receiving certain benefits from the state. This demonstrates a strategic use of identification, like the Nuer’s use of contextual opposition and alliance with other groups (Evans-Pritchard 1990, Keesing and Strathern 1998). This evidence leads me to draw the conclusion that a small, simple community is wise enough to cope with changing situations and to preserve complex political organization and practices.

The socio-cultural and political organizations and institutions of a small and simple community like Kisans are democratic, systematic, and effective. The community assembly identifies new laws and redefines existing laws to ensure social justice and the rights of poor and disadvantage people of the community (appendix 1), which are then implemented by the government mechanisms and community court. These

institutions are sensitive to justice for the poor, the elderly, women, and other disadvantaged community members. These institutions are accessible to all community members, though special priority is given to the victims. In the reference of the socio-political institutions of the Kisans, the community laws, and the justice delivery system I can draw a conclusion that a simple and illiterate people of a developing country can design and exercise an effective, democratic, and people friendly justice delivery mechanism along with socio-political institutions and practices as practiced in so called advanced democratic countries in the west.

Comparison of Kisan government with local government units has been done to discover the rationale of the existence of an indigenous dispute resolution forum side by side with the formal forums of the state. The VDC/Municipality resolves about 60 per cent cases of the total registered cases leaving the rest unresolved. Some of the resolved cases also go to Police Office and District Court on appeal. The District Court Jhapa resolves 54 per cent cases of the total registered cases, leaving the rest unresolved. Almost half the disputants in cases settled in the District Court were not satisfied with the decision of the court and were preparing to appeal.

On the other hand, almost all disputants in settled cases in the Kisan court were satisfied with the decisions of their court, and even informed me their relation with their opposition better than before the dispute. They attributed this to a process which focuses on cooperative mediation. In the Kisan court, the disputants are brought together to seek the root causes of a dispute and cooperatively discuss options for a solution. The disputants symbolize their reconciliation when the culprit offers a glass of wine or a flower to the victim, and they embrace each other. The court authorities are also the neighbors of the disputants, and know their habits and relations better. Therefore, settlement of a case in the Kisan court is permanent because it discovers the root causes of a dispute. This would indicate that the informal processes are more likely to resolve cases to both parties' satisfaction, and, thus, more permanently.

This study describes an example of an effective indigenous dispute resolution in Nepal. The Indigenous Nationalities Acts of 2001 has recognized 59 indigenous groups in Nepal. Several of these have their own informal dispute resolution mechanisms and practices. Resolution within a family and or among relatives and communities is the most common form of civil dispute resolution in almost all

communities in Nepal. State-based forums exist in city centers and district headquarters, to which many illiterate, poor and marginalized groups of people of the remote rural areas have no access. Moreover, such formal forums, whether judicial or quasi-judicial follow certain formal procedures (written complaints by lawyers and so on) which restrict the access of a poor, illiterate disputant. Therefore, most of the communities in Nepal have preserved their own indigenous practices of dispute resolution. However, such practices are not understood properly and are not recognized by the state. If such institutions and practices were studied, the skills of dispute managers enhanced, basic human rights and paralegal training were provided, and linkages to formal forums improved, then it would reduced the load of formal forums, enhance social justice in the community, and improve access to justice in the country.

### **9.3 Contributions of the Study to the Discipline of Anthropology**

This detailed study of indigenous dispute resolution institutions and practices of the Kisan community in Jhapa district will be interesting to the study of political organizations, community courts, and indigenous justice mechanisms. I believe that the study will be useful to furthering the anthropological understanding of indigenous institutions and their roles in helping the people to cope with day-to-day affairs in a changing society.

This study enhances our understanding of micro-level democratic institutions and practices and justice delivery systems and challenges the idea that democracy is an exclusively western idea. Decentralized democracy is the main political ideology of most advanced nations. They attempt to include marginalized groups in formal political institutions and processes at the local level in the name of democratic development and social inclusion. The Kisan community in Jhapa district is only recently influenced by the outside world and remains simple in many respects. However, the community has an indigenous, democratic, and inclusive political institution. The *Baiga* system is an example of local level democracy though it has to be more inclusive considering equality in participation of gender, class and other social category in the authorities.

The study also widens our knowledge of how small communities and their practices are affected by the modern state, development interventions and wider socio-economic changes. Nowadays, most indigenous communities and their institutions are influenced by development interventions, the market economy and the arrival of new migrants in their settlements. The political interventions of modern states also have negative impacts on indigenous communities and their cultural practices. At present, the community court of the Kisans is limited to settling civil cases and has to forward serious cases and criminal cases to formal forums. The Kisans do not prefer to go to formal forums and interact with non-Kisans, but they have to go to the VDC and Municipality offices for vital registration and other issues. Non-governmental organizations, business institutions, and representatives of service-providing institutions frequently visit the community for various reasons. As a result, the indigenous institutions of the Kisans and their practices are affected.

The study also contributes to our understanding of contemporary identity politics by questioning if such politics is aimed at protecting indigenous cultural practices or only creating spaces for educated youths to advance a limited agenda. Recent political events have introduced the debate over a federated state structure among politicians, academics and the general population. As a result, most caste and ethnic groups have formed their own organizations and involve in identity politics with the claim of ethnic federal states. In this process, most of the groups have revitalized their traditional socio-cultural practices, leaving newly adopted cultural practices of high caste groups, and strengthened their ethnic identity by re-joining kin and sub-caste groups. Ethnic activists and educated people have played main roles in vitalizing these actions. The Kisan of Jhapa have also established an NGO called the Kisan Community Development Foundation, or Kisan Club, to raise awareness on socio-cultural, educational, environmental and political issues among the community members. Almost all educated Kisans are involved in this organization. On the contrary, the community assembly has failed to elect an educated individual in their authorities. The educated individuals have less interest in the *Baiga* system of the community, and are affiliated with the newly formed organization.

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# APPENDIX 1

## The Kisan Laws and Their Features

SN	Types of Law	Main features
1.	Code of Conduct for Government Officials	<ul style="list-style-type: none"> <li>) Officials have to be responsible for the people</li> <li>) Must be neutral, fair and bias-less</li> <li>) No temptation to property, alcohol and so on</li> <li>) Sacrifice personal affairs and benefits for public good, and</li> <li>) Ready to accept the punishment of people.</li> </ul>
2.	Laws Regarding Respect to Gods and Goddesses	<ul style="list-style-type: none"> <li>) As the offspring of Mahadev and Parvati, Kisan have to worship them,</li> <li>) All have to attend the Gram <i>Pooja</i>,</li> <li>) The Kisan court may punish the defamer for disrespect against any supernatural power.</li> </ul>
3.	Laws Regarding Preservation of Natural Resources	<ul style="list-style-type: none"> <li>) Collect resources for utilisation only, not for storage and sale,</li> <li>) Worship the gods of natural resources before harvesting, offering the blood of goat and fowl,</li> <li>) A resource destroyer has to pay a fine up to Rs 500 and restore the damage,</li> <li>) Nobody can collect natural resources alone or without informing the community chief.</li> </ul>
4.	Law regarding the respect to the ancestors	<ul style="list-style-type: none"> <li>) Each house must have a stone to symbolise the ancestors,</li> <li>) Organise ancestor worshipping ritual once a year and feed beggars and the poor,</li> <li>) Fines of Rs 100 to 500 may be imposed if one does not organise annual ancestor worshipping ritual, and</li> <li>) Termination of membership may be imposed for intentional neglect of ancestor worship</li> </ul>
5.	Laws Regarding Respect to Parents and Seniors	<ul style="list-style-type: none"> <li>) Parents, seniors, and gods have similar status,</li> <li>) Listen their voices and accept their advice</li> <li>) Violators may be fined up to Rs 500 and beat 10 times with a bamboo stick publicly, and</li> <li>) Violations may result in the termination of community membership</li> </ul>
6.	Law Regarding the Respect to the <i>Mahato</i> /King	<ul style="list-style-type: none"> <li>) The Raja is the head of the community, protector of the culture, and living representative of the god and ancestors,</li> <li>) The <i>Raja</i> has similar status as parents and therefore punishment for disrespect is also the same.</li> </ul>
7.	Law for the Protection of Cow	<ul style="list-style-type: none"> <li>) A cow is the living goddess and her urine may be used for purifying impurity,</li> <li>) All Kisan have to bow their head to the cow,</li> <li>) A cow killing is considered a murder and punished accordingly,</li> <li>) A culprit has to pay blood money as decided by the court, up to NRs 2000, wear a rope as garland</li> </ul>

		<p>up to one year, and serve the community,</p> <p>) The culprit must organise a purification ritual and a feast after a year, inviting all villagers, where the King will purify him.</p>
8.	Law to Protect Women, Poor and Children	<p>) Females must care for men, poor must care for rich and adult must care for children ,</p> <p>) One may not touch women, the poor or children with bad motives (law defines the motives as per the case),</p> <p>) Community elders are responsible to provide them food, shelter, security and respect,</p> <p>) The court can fine Rs 100 to 2000 and terminate the membership of a culprit</p>
9.	Law Regarding Insulting, Beating, Looting and Grabbing	<p>) Insulting and beating, or looting of others' property are inhuman activities,</p> <p>) Public apology, cash fine up to 2000 and beating are the main punishments</p>
10.	Laws Regarding Stealing and Robbery	<p>) Stealing and robbery are serious crimes,</p> <p>) Public apology, beating and fines twice the damages are common punishments, with the assurance not to repeat the offence.</p> <p>) Fine up to 500 to court and Dhoti to Raja.</p>
11.	Law Regarding Illegal Sexual Relationship	<p>) Illegal sexual relationship is unethical,</p> <p>) The court fines up to Rs 500 and may slap the offender publicly,</p> <p>) If the women is married then the man has to pay Rs 1000 ornaments and cloths to her earlier husband and accept her as wife,</p> <p>) If the woman is unmarried then the man has to pay Rs 2000 to the court and formalise the relationship,</p> <p>) The court also fines up to Rs 500 and a Dhoti.</p>
12.	Law Regarding Inter-caste Marriage	<p>) Inter-caste marriage is prohibited,</p> <p>) Inter-caste couples pay Rs 2000, a Dhoti and bottle of wine to the court</p> <p>) If such couples do not pay the fine in a timely fashion, then the court terminates their community membership</p>
13.	Law Regarding Respect to Shamans / <i>Baiga</i>	<p>) Shamans protect society from bad fortune and evil eyes and are due respect accordingly,</p> <p>) Shamans may not demand items above Rs 50 and may not claim any fee,</p> <p>) In the case of disrespect and mistreatment one has to beg pardon publicly and pay a fine up to Rs 500.</p>
14.	Law Regarding Murder and Killing	<p>) The Kisan authority deliver suspects to the nearest police office, according to state law</p> <p>) Until 1971, the culprit had to pay blood money and complete community service</p>

## APPENDIX 2

### Household Census Form 2008

This information is collected for the study doctorate degree in anthropology. Therefore, the information will be used for the same. All information given by respondent will be kept confidential. Hope the respondents will provide correct information and assist the researcher and his assistant in the field.

Name of the respondent: \_\_\_\_\_ Clan or Caste : \_\_\_\_\_

Religion: \_\_\_\_\_ Sex and Age : \_\_\_\_\_

VDC/Municipality: \_\_\_\_\_ Ward no : \_\_\_\_\_

Name of the Tole: \_\_\_\_\_

Generations living in Jhapa: \_\_\_\_\_

.....

#### 1. Informaiton Related to Population and Socio-Economic Lefe

Pls give the information of your family members (sequential order)

Name	Relation to HH	Sex	Age*	Education1	Marrital Status2	Age at marriage	Main Occupation
------	----------------	-----	------	------------	------------------	-----------------	-----------------

\* Age: Write the completed age

1. Education : Illiterate, Literate, and actual grade which has completed.

2. Marrital Status : Unmarried, Married, Seperated, Divorce, Widow/er (write the actual)

- What is the main occupation of your Family?  
.....
- What are the subsidiary occupations?  
.....
- Since how long/generations have you living in this tole/village?  
.....

**2. Family Property and their Ownership**

<b>Types of Property</b>	<b>Amount (area in Sqm) feature*</b>	<b>Owners (male or female)</b>	<b>Source of the Property</b>	<b>Remarks</b>
Irrigated land				
Unirrigate land				
Homestead land				
House				
Vehicle				
Motercycle				
Cycle				
Television				
Cassette/Radio				
Others (specify)				

\* If it is good then write the feature

- Who decides to sell the property mentioned above?  
.....
- Who settles a family dispute or if there is contradictory arguments?  
.....
- How much land did you own ten years back (1997)?  
.....
- How do you manage the additional requirements of food rains if your production is not sufficient?  
.....

➤ If you cultivate other's land pls give the following information

<b>Types of land</b>	<b>Total land (in Sqm)</b>	<b>Name of Land Owner</b>	<b>Types of cultivations</b>	<b>Annual Production</b>	<b>Remarks</b>
Irrigated land					
Unirrigated land					
Others					

➤ Who in your family is earning monthly/daily wage?

.....

➤ If yes pls give the following information?

<b>Name</b>	<b>Sex</b>	<b>Age</b>	<b>Income Source</b>	<b>Working Place</b>	<b>Remarks</b>
-------------	------------	------------	--------------------------	--------------------------	----------------

➤ Do you sell your agricultural production?

.....

➤ If yes, how much?

.....

➤ Do you buy food grains?

.....

➤ If yes, how much per year?

.....

**3. Information related to livestock and fowls**

<b>Types of livestock/fowls</b>	<b>Number</b>	<b>Remarks</b>
Cow/ox (adult)		
He or she buffalos (adult)		
Calves of cow/ox		
Calves of buffalos		
Goats		
Pigs		
Fowls/ducks		
Others		

- How much do you earn annually from livestock and fowls?  
.....
- Who and how do you resolve the case related to crops damage by livestock and fowls?  
.....

**4. Have you taken debt? If yes, pls give the following information?**

<b>Source of debt</b>	<b>Total amount (in Rs)</b>	<b>Date of debt</b>	<b>Interest rate</b>

- Who and how do you settle a case if broken due to the debt?  
.....

**5. Do you have your own house?**

- .....
- If yes, what types of house do you have?  
.....
  - How many storey houses do you have?  
.....

- 6. What are the main life crises rituals (birth to death) of the Kisan?**  
 .....
- Describe the process of each ritual?  
 .....
- 7. What are the main fairs and festivals of the Kisan?**  
 .....
- Describe the process of each fair and festival?  
 .....
- 8. Who decides to celebrate the ritual or festival?**  
 .....
- 9. Who decides about selling and buying in your family?**  
 .....
- 10. Is there anything/issue that decides by female family member?**  
 .....
- 11. What are the things/issues that decide by male member of family?**  
 .....
- 12. In which ritual of the Kisan presence of the Mahato is essential?**  
 .....
- 13. How do you perform the ritual in the absence of the Mahato?**  
 .....
- 14. What is the function of the community court of the Kisan?**  
 .....
- 15. What are the differences between the Kisan government and the court?**  
 .....
- 16. In what types of dispute do you go to the community court?**  
 .....
- 17. Do you go to community court or local VDC/Municipality if you face a dispute?**  
 .....

18. **What do you offer to the Kisan authorities (Mahato, Wakil and Sipahi) after case settlement?**  
.....
19. **How do you select your Mahato, Wakil and Sipahi?**  
.....
20. **Do you think that you are able to tell your problem to the Mahato or Wakil?**  
.....
21. **Do the court authorities treat all community members equally?**  
.....
22. **What are the positive and negative points of your Mahato?**  
.....
23. **What are the positive and negative points of your community court?**  
.....
24. **What can be done for the development of the Kisan (three prioritized points only)?**  
.....
25. **What socio-cultural issues /components of the Kisans are disappeared (five prioritized points only)?**

**Thank Yoy**

Name of enumerator:

Date:

Signature:



## **APPENDIX 3**

### **Checklist For Interviews**

**1. Origin and Arrival History of the Kisan**

- ) Origin of the Kisan
- ) Arrival history of the Kisan in Jhapa district of Nepal
- ) Origin of the Kisan government and community court
- ) Origin of the Kisan authorities
- ) Mythology of the origin of the Kisan, their political organization and authorities

**2. Indigenous Institution of the Kisan**

- ) The main indigenous/traditional institutions of the Kisan:
- ) The Kisan political organization: Government mechanism, community court and laws
- ) Formation and dissolution process of such institutions
- ) Process of formation and reformation
- ) Importance of such institutions in socio-cultural and religious life of the community
- ) Others, if any

**3. Structure of the Kisan Political Organization**

- ) The government mechanism
- ) The community court
- ) The community assembly
- ) The authorities: *Mahato*, *Wakil* and *Sipahi*
- ) Formation process of the government, court and community assembly
- ) Selection process of the authorities
- ) Changes, if any

**4. Functions of the Kisan Political Organizations**

- ) The main functions of the Kisan government, court and community assembly
- ) The main roles and functions of the authorities: the *Mahato*, *Wakil* and *Sipahi*
- ) Function of the community laws

- ) Functions of the court in maintaining peace and order in the community
- ) Role of the *Mahato* in socio-cultural rituals and practices
- ) Changes realized in the mechanisms
- ) Others, if any

**5. Questions Regarding Process of Dispute Resolution**

- ) Understanding of dispute among the Kisan
- ) Types of disputing
- ) Dispute process
- ) Process of dispute settlement
- ) Nature and extent of community members participation in the process
- ) Court process
- ) Reintegration process after a case settlement
- ) Feeling of disputants after a case settlement
- ) Changes realized by the time in the process
- ) Others, if any

**6. Strengthen and Weakness of the the Kican Court**

- ) What is the situation of human rights and access to justice to all
- ) What are the situation of participation of women, poor, dalits and so on in the community court
- ) What are the functions of these institutions to maintain socio-cultural life of the Kisan
- ) What are the strengths of the dispute resolution institution of the Kisan
- ) What are the weaknesses of the dispute resolution institution of the Kisan
- ) Changes realized in the indigenous dispute resolution institution
- ) Others, if any

**7. Inter-relationship between Informal and Formal Forums**

- ) Mutual case referral system between Kisan court and VDC/Municipality,
- ) Mutual case referral system between Kisan court and district court and other formal forums
- ) Relationship between formal and informal forums
- ) Attitude of Kisan authority towards the formal forums

- ) Attitude of formal forum officials towards the Kisan court
- ) Changes realized in the relations
- ) Others, if any

**8. Question Regarding lifeways of the Kisan**

- ) The main traditional occupation of the Kisan
- ) Land holding and ownership of other fix property
- ) Changes in the occupations
- ) Religion and religious values
- ) Socio-cultural practices and fairs and festivals of the Kisan
- ) Major life crisis rituals
- ) Position of the *Mahato* in political, socio-cultural and religion life of the community members
- ) Others, if any

**9. Questions Regarding Changes**

- ) Causes or factors of changes in the Kisan government and community court
- ) Factors of socio-cultural change in the Kisan
- ) Consequences of changes
- ) Impacts of change in the Kisan government
- ) Impacts of change in the community court
- ) Impact of changes in the Community laws
- ) Other changes realized by the community members

## GLOSSARY OF NEPALI WORDS

Abal	:	High quality irrigated productive land
Adda /Adalat	:	Office / Court
Afnumanchhe	:	“Own People”
Amalidware	:	Individual empowered to resolve disputes in the hill areas during Malla Rule
Asakta	:	Disable
Baalak	:	Child
Baje	:	Grand father
Barabasne	:	Gathering of respected people among the Maganta
Bari	:	Dried land
Bhai	:	Younger brother
Bhaladmi	:	Respected people
Bhauju	:	Wife of elder brother
Bidar Pancheti	:	Gathering of respected people among the Khatwe
Buhari	:	Wife of younger brother
Chahar	:	Lowest quality un-irrigated land
Chumlung	:	“Meeting or assembly” in the Limbu language
Daju	:	Elder brother
Devi-than	:	Place to worship a goddess
Dewalok	:	Places of gods
Dhoti	:	Loin cloth and a cloth wrap falling from the waist to the feet
Didi	:	Sister
Doyam	:	Good quality irrigated productive land
Garvini	:	Pregnant
Ghungi	:	Snail
Guru	:	Teacher
Guthiyar-Sabha	:	Meeting or gathering of <i>Guthi</i> members among the Newar
Hajurama	:	Grandmother
Ita-pachali / Kotilinga	:	Central level dispute resolution forum during Malla period

Jagatlok	:	Earth or place where living beings are
Jhagadiya	:	Disputant
Jimmuwal	:	State Authority or a Chief of a Region during Rana Rule
Juain / Bhena	:	Brother in Law
Kachahari	:	Conference or gathering
Kaka	:	Uncle or youngest brother of father
Kamij	:	A Nepali shirt
Khet	:	Irrigated land
Kipat	:	Communal Land Tenure
Kurta	:	A Pakistani / Punjabi long shirt
Ladain	:	Fighting
Lok-Adalat	:	People's court
Loktantra	:	Democracy
Magante	:	Beggar
Mahabharata	:	A mythical story book of Hindus
Mahadev and Parvati	:	Lord Shiba and Parvati
Mahila	:	Women
Maiju	:	Aunty
Majhihadam-Sabha	:	Meeting or gathering of respected people among the Santhal
Mama	:	Maternal uncle
Mana	:	Nepali measurement unit (3 Mana = 1 Kg)
Mantras	:	Powerful Words for Preaching
Manusmriti	:	A Hindu text written by Manu during 200AD
Mauja	:	A village as the primary unit of Land Tax Administration in Terai during Rana regime
Mit	:	Fictitious Relationship
Mukhiya	:	Village head
Mundhum	:	A Kirat ritual text
Muthi	:	A palm-fruit
Nag	:	A snake, worshipped by Hindus
Naraklok	:	Hell or place of demons
Nyaya Samiti	:	A Justice Committee which is known as Dharmadhikar in Malla and early Shaha period
Pancha	:	Senior and respected people, or a group of five

Pancha-kachahari	:	Meeting of respected people
Panchali/Gram-Panchali	:	A local administrative body during Malla Rule
Pancha-samucchaya	:	Formal, local dispute resolution institution in the Malla Period
Panchayat	:	Partyless political system existing until 1990
Perma	:	Labour exchange system
Pheta	:	Turban
Prasad	:	Offering
Raja	:	King
Rakshi	:	Local wine
Rogi	:	Ill person
Saptaha	:	A seven-day Hindu Pooja
Sari	:	A waist to foot cloth wrap worn by women
Shir-uthaune	:	Symbolically raising prestige of the victim after resolution of a dispute
Sim	:	Low qualities swallow land
Singo-naua	:	A community ritual of the Sherpa
Sipahi	:	Police
Subba / Chaudhari	:	Individual responsible for dispute resolution in Terai during Rana rule
Suruwal	:	A kind of pants
Thalu	:	Prestigious individual
Tuhuro/a	:	Orphans
Veda	:	A Hindu text written during 1200 BC
Wakil	:	Lawyer

## GLOSSARY OF KISAN WORDS

Anjait or Parjait	:	Non-Kisans
Apnahit/Apanjait	:	Own people or the Kisan caste people
Baiga	:	A religious leader or the King in earlier days
Bansha	:	Those of common ancestry, or blood relatives
Bhena	:	Brother in law
Dakait or Chori	:	Burglary or stealing
Ekego-ladapotakar	:	Blood relatives on the male side
Gram Pooja	:	Village ritual or worship
Gram/ Gaam	:	Village
Haame	:	We
Hal Abadi	:	Cultivated land
Haran-biran	:	Total cultivating and grazing land
Harjoitke	:	Cultivation
Hauli	:	Labour exchange among the Kisans
Jaite	:	Caste
Jhagra	:	Dispute
Jhamela	:	Unnecessary quarreling or tension
Kaam	:	Work
Kachchheri	:	Conference / Session / Meeting
Khai	:	Eating
Khet	:	Farming
Kodilog	:	Lazy people
Kutumb	:	Relatives
Maam	:	Rice
Mahato	:	Village head or King
Paidke/Padi	:	Education
Pooja	:	Worship or ritual performance
Prakriti-pujak	:	Worshipper of nature
Siralok	:	Heaven
Thens-thas	:	A simple disagreement due to insult