
A Study on Violence due to Witchcraft Allegation and Sexual Violence



For Human Rights and Social Justice

Informal Sector Service Centre (INSEC)

POBox : 2726, Kathmandu, Nepal

Tel: +977-1-4278770 Fax: +977-1-4270551

E-mail: insec@insec.org.np Web-site: www.insec.org.np

Preface

Nepal, as a member state of the United Nation, has ratified various International human rights treaties and convention related to the rights of women which explicitly shows Nepal's commitment towards protecting and promoting the rights of women. However, the situation of women doesn't seem satisfactory. More than 50 per cent of Nepal's population is women but their status is still very poor. They have a lower status than men in each aspect of the Human Development Index. Illiteracy, patriarchal society and the economic dependency of women on man create grounds for male domination over woman. Accusations of the so-called practice of witchcraft, rape and incidents of sexual violence are some of the examples of violence against women which occur in Nepalese society.

Women are able to gain 33% seats in the Constituent Assembly, but their voices are still suppressed and issues of women have not been sufficiently raised in the Constituent Assembly. The lack of effective laws, the poor implementation of existing laws and the unaccountability of the government authorities also contributed to the occurrence of violence against women. However, the pro-active role of the court and progressive decisions in some cases concerning women rights present a cause for hope. Still, so many improvements are required to prevent violence against women. In the year 2011, it was recorded that many women and girls were abused after being blamed of practicing witchcraft. Similarly, many more were made victims of rape and sexual abuse. The incidents of rape, sexual violence and accusations of the practice of witchcraft can be reduced by the combined efforts of multiple stakeholders. The role of civil society and human rights organizations remain crucial in this regard.

INSEC has presented the overall description and details of incidents of rape and sexual violence, and accusations of the practice of witchcraft practices in this report in the context of 102nd International Women's Day which I felt could be important means by which to assess the situation of women in Nepal and the respective authorities in addressing these problems in society.

In addition, I would like to thank Samjha Shrestha, Nirmal Kumar Upreti and Aakriti Giri of INSEC Central for their contribution for preparing these reports. Yogish Kharel, Prashannata Wasti, Gita Mali and Grace Kennedy are also admired for their meaningful contribution during the preparation of the report.

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Subodh Raj Pyakurel
Chairperson

A Study on Violence due to Witchcraft Allegation: 2011

1. Background

The main objectives of all the human rights conventions and instruments have always been “equality”, and “respect to human dignity”. The periphery of equality covers “beyond any religion, caste, race, sex” and human dignity assures a respectful life. Here highlighting mostly on the issue from the women perspective, most of the time the term “equality” and “equal treatment” has been just limited in the black letters. Nepali system lacks proper implementation of concepts due to which Nepal lags far behind and Nepali women still are ill-treated. The right to equality is guaranteed by the Interim Constitution of Nepal, 2067¹ and confirmed in various cases² by the Supreme Court of Nepal yet prevalence of witchcraft is a threat to the notion of equality.

Violence against women is serious problem which often receives less attention.³ Violence against women stems from unequal power relation between men and women. Women from all over the world suffer from violence, due to which they had to suffer every day on one hand and their development was impaired on the other hand⁴, and Nepali women are no exception to this.

Nepal is one of the poorest countries in the world where some 60-70 per cent of women are threatened by violence. One out of five

1 Article 13, Right to Equality.

2 Advocate Meera Kumari Dhunagana v House of Representatives and others, Writ No. 55 , 2001 , p 710 published in 50 years of the supreme court of Nepal, the supreme court, 1956-2006, p. 103

Rina Bajracharya v HMG

Rina Bajracharya v HMG, writ no 2812 , 1997, Published in Ram Krishna Timilsina(Ed), Some Landmark Decision of the S.C of Nepal, Ktm, Supreme Court, 2003, p 140.

Sapana Pradhan Malla v Ministry of Law, Justice and Parliamentary affairs and others, Writ No. 56, 2001

Chanda Bajracharya v Cabinet Secretariat and others NKP 1996, p 537.

3 http://www.unescap.org/ESID/GAD/Publication/Others/Publication_EGM-VAW.pdf

4 General assembly resolution 48/104

men is involved in committing violence against women. Of the number of women who live in fear of violence, only 10 per cent come in contact with the state mechanism. The majority of the women affected do not share their experience of suffering with anyone. Patriarchal norms and values, imbalanced social structures, male dominance and the subordination of women are to name a few causes which gave rise to such form of violence.⁵ In the villages of Nepal a number of women are killed or ostracized on charge of practicing witchcraft.

According to the Domestic Violence (Offence and Punishment) Act 2009, domestic violence can extend to any form of physical, mental, sexual, or economic harm perpetrated by a person to a person with whom he/she has a familiar relationship and this also includes any act of reprimand or emotional harm.⁶

The UN defines Violence Against Women (hereinafter VAW) as “any act of gender based violence that result in, or is likely to result in, physical, sexual or mental harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life⁷.”

The world has reached 21st century but in Nepal the age-old practice of persecuting women in the name of witch still persists. Abuses resulting from charges of witchery are one of the worst forms of violence possible against Women. Nepal’s society is deeply rooted in traditional values, caste system, illiteracy, male domination, religious beliefs and economic dependency of women on men, which result in VAW including abuses on charge of witchcraft. Nepal has some laws in order to put an end to act such as abuses but lack of effective implementation, decade-long armed conflict and current transitional period are also causing VAW including violence resulting from witchcraft allegations.

There is no universal acceptable definition of witchcraft. Encyclopedia Britannica defines witchcraft as the exercise or invocation of alleged supernatural powers to control people or events, practically

5 “Human Rights Year Book, 2012”, “Power Obsession Delays Peace”, INSEC, (Kathmandu), p 123

6 Domestic Violence (Offence and Punishment) Act 2009 setion 2(a).

7 Article 2, UN Declaration on Violence Against Women 1993, UN General Assembly Resolution 48/104 of 20 December 1993, <http://www.un.org/documents/ga/res/48/a48r104.htm>,

typically sorcery or magic⁸. The laws in Nepal though have made an attempt to punish the perpetrator still are not able to define the term “witchcraft”, “witch” and “wizard” thus leaving much open space for the perpetrators to continue the violence against women in the name of witchery as per their volition. Mostly the women in Nepal are tortured after being accused of witch; however, men too are not immune from this form of violence. Incidents of male being tortured in the name of wizard are recorded too. The only reason for female being more highlighted is that the number of female compared to male is very high.

The main reasons for the prevalence of these malpractices are superstition, lack of education, lack of public awareness⁹ due to which layperson equates certain consequences by blaming a person as being a witch. Often the people nearby are accused of being witch if incidents such as death of any person in the village, even of prolonged illness, death of the cattle or miscarriages occur. The alleged people are tortured either by soot's smeared on their face, forcefully fed human excreta, by garlanded shoes, by expelled from of the village, or even killed. Often widows, differently able women, women who do worshipping,¹⁰ are accused as being witches. Sometimes, the family members of the accused person are also tortured. This has a deep impact on the life of the person who has been victimized in the name of witchcraft practice.

2. Statistical Representation of Victims

2.1 On the basis of age

Age group	Male	Female	Total
Between 20-40		23	23
Between 41-60	4	16	20
Between 61-80	2	9	11
Above 81-100		3	3
Unidentified male	4		4
Total	10	51	61

8 <http://www.britannica.com/EBchecked/topic/646051/witchcraft>

9 Cited from, “Draft Report of Fact Finding Mission Torture in the name if Witchcraft”, FWLD (June 4, 2002) p6

10 *ibid*

Of 61 total cases recorded in INSEC for 2011, 23 women of the age group of 20-40 are the most vulnerable. The recorded data shows that the age group of 41-60 comes at second place where there are 16 female are tortured in the name of being witch. The data shows that it is not only female but also male are victimized in the name of being witch. Four male under this group are tortured. There were nine female and two male of the age group 61-81 who are the victims of such charges. Elderly women are also an easy target for such charge, as the data show there are all together three female tortured in the name of witch in the age group of 81-100. There are three male under the age group of 80-100 who have also been victims. Age group of four male has not been identified.

2.2 On the basis of geography

Geography	Male	Female	Total
Terai	7	28	35
Hill	2	17	19
Mountain	1	6	7
Total	10	51	61

Among 61 incidents of violence on charge of witchcraft, it is found that the people from Terai region are the most vulnerable followed by Hill and Mountain. There are total 35 incidents of witchcraft violence in Terai, 19 in Hill and seven incidents of witchcraft in Mountain Region.

2.3 On the basis of development region

Region	Male	Female	Total
Eastern	6	12	18
Central	2	23	25
Western	1	5	6
Mid-Western	1	11	12
Total	10	51	61

Among the 61 incidents, 18 incidents of violence on charge of practicing witchcraft are recorded in Eastern Development Region in which 12 female were victimized and six male were victimized. Altogether, 25 incidents are recorded in Central Development Region, in which 23 female were victims of witch charges and violence and two male are victim of torture on the same charge. Six cases of witchcraft violence are recorded in Western Development Region where one male and five female victims and are victimized. Of, 12 cases in Mid-Western Development Region and among them 11 were female and 1 was male. INSEC record shows no incident of violence due to the charge of being witch in Far-Western Development Region.

2.4 Killed in the name of witchcraft in districts

District /result	Male	Female	Total
Salyan	1		1
Parwat		2	2
Banke	1		1
Total	2	2	4

Amccording to INSEC documentation, this year a total four persons died among which two were male and two were female. One male each from Salyan and Banke died whereas two female from Parbat died. From the data collected two incident were from Mid-Western Region and one from Western region.

3. Victims

As the data show, young women are the most vulnerable may be because they are subjected to other violence too. When women reject the sexual advances of their male neighbors, it is another cause on the list leading to allegations of witchcraft. Made to pay a heavy price because they have spurned a man, a woman can be declared a witch by an overly greedy ojha, who works closely with the accusing neighbor, causing the accused woman to be harassed, shunned from her village and worse. Widows who refuse to relinquish claim over their husband's property

can similarly be threatened and charged with being a witch; an act that often succeeds to compel them to let go of their claim on their husband's land.¹¹ The INSEC documentation found that the women were more vulnerable. Total 61 incidents of witchcraft violence were recorded this year in which 51 were female. It is clear that the victims are mostly adult women as there was only one girl aged nine of Sindhupalchok district who was fed excreta after she was accused as being a witch. It is reported that due to this incident, she developed psychological problems and became insane. There were 10 male victims in 2011 as well.

Women aged between 41 and 60 were found were also quite vulnerable. Out of the total 61 recorded victims, 20 were between 41 and 60, of which 16 were female and four were male. A 54-year-old elderly, of Basamadi VDC-9 was blamed of being a witch and was forcefully fed human urine and was injured severely in physical assault by her neighbor.

In the same way even male are tortured in the name of being wizard. For instance, a 44-year-old man was beaten up on charge of being a wizard and was displaced due to reasons.

The aged women too have been victims on the charge of practicing witchcraft. Six people aged between 60 and 80, amongst which four male, and three women aged between 80 and 100 were tortured after being accused of performing witchcraft.

A 70-year-old woman of Change VDC-3 in Taplejung was seriously injured when beaten up with baton and punched on the witchcraft charges by Roshan Limbu along with five other men.

Furthermore, the incident of torture, killings and degrading behavior against the victims were mostly found in the Tarai region.

For instance a 65-year-old woman of Mohanpur VDC-5 in Saptari was tortured mentally and physically on the charge of being a witch.

One woman in Jhapa was beaten up by the villagers on charge of being a witch after a 15-year-old son of her neighbor died. A 72-year-old woman of Nawalparasi was tortured by smearing soot on her face,

11 Niaz, Shuriah, 'India: Protective Laws Fall Short for Women Charged with Witchcraft' <http://archive.truthout.org/india-protective-laws-fall-short-women-charged-with-witchcraft57896>

head was shaved and shoe garlanded on charge of being a witch. Thus the crime of VAW in the form of accusation of witch/wizard takes place frequently in Tarai region.

However, even the VAW on the charges of witchcraft practicing took place in Hill and Mountain too in 2011.

The case of from Taplejung is one such example. In another case in hilly areas, a 56-year-old woman of Salyankot VDC-1 in Dhading district was tortured on charge of being a witch.

The cases women being tortured in the name of “witch” is very rampant in Tarai region, lesser in Hill and the least in Mountain Region.

Far Western Region has no recorded case regarding witchcraft in 2011 while the Eastern Region has the maximum cases followed by Central, Western and Mid-Western consequently.

Sometimes the victim is not the person who was blamed of being a witch but the person who opposes such claims and the witch doctors too. For instance in Saptari a man was beaten up and severely injured for protesting the charges of witch labeled against his wife.

Furthermor, the victim is not only layperson but witch doctors too. For instance two witch doctors of Jhapa district were fed human urine and excreta by the locals for not being able to cure the diseases.

Apart from torture and inhuman/degrading acts in the name of witchcraft, incident of killing has also been recorded. A man of Mahadevpuri, VDC-3 of Banke has been tortured and killed.

4. Perpetrators

It is very difficult to extract the actual number of perpetrators in the cases of abuses meted out on people accused of being witch as in other forms of violence against women such as rape which are often committed by one or, sometimes a gang where perpetrators' number is identifiable. The perpetrators in the witchcraft violence consist of family members, local villagers/neighbors and witch doctors and undisclosed kind and number of people. The number of villagers in such situation is very difficult to ascertain and to press the charge.

Of the total incidents reported by INSEC documentation, the highest number of local villagers/neighbors were involved in torturing,

physical and mental harassment, involved in doing degrading behavior against the victims like smearing soot, garlanding shoes, forced feeding them urine and human excreta. The family members come on second in the list of perpetrators. Sometimes, the perpetrators are not distinguished whether they were locals or family members or both. INSEC documentation this year revealed even a policeman was found involved in this form of Violence.

For instance, a 45-year-old woman of Sripur in Triyuga Municipality was injured in an assault carried out by her neighbors on July 9. She was attacked with a khukuri by Ranjana Rai and her husband Niraj accusing her of being a witch. A 26-year-old woman of Sunsari was attacked by Armed Police Force member Dukhan Lal Uranwa charging her of being a witch. A woman of Malu VDC-2 of Dolakha was beaten up by a police Prem Bahadur Shrestha accusing her of so called witch.

In Makwanpur District, a woman was fed cow dung by her own family members accusing her being a witch.

In one incident, there was the involvement of both family and locals. A woman was beaten up by a local Lalit Bahadur Shrestha and his wife Ganga Maya Shrestha in the instigation of a shaman Madan Kumar Shrestha .

In Jhapa district, the involvement of the person working in temple was found. Jamuna Gautam, who was a resident of old age home in the Laxmi Narayan Temple was beaten up by Tek Bahadur working in the same temple who charged her of being a witch.

The involvement of unidentified groups was also recorded in such cases. This year, there was involvement of unknown groups in five districts. A man, 55, of Mahadevpuri, VDC-3 of Banke was tortured and killed. Six persons were arrested in the cases while others were at large until the end of the year.

5. Justice

“Justice hurried justice buried, justice delayed justice denied”. Thus, it is very important for the judiciary to provide justice in an appropriate time. Nepal has guaranteed various rights regarding right to life and right to health in the Interim Constitution. In General Code, there are

provisions prohibiting any person from causing harm or defamation, and Some Public (Offence and Penalties) Act 1970 prohibits people from doing acts that hamper public peace. Nepal is bound by the principles of UDHR and is a party to various International Conventions such as ICCPR and CEDAW, which guarantee the rights to life, equality and prohibits the discrimination. But even after all the guaranteed rights, people are still tortured, killed and discriminated. The prevalence of killing, torture, beatings and discrimination put a big question mark in the effectiveness of justice system of Nepal. INSEC documentation shows that a very few incidents were reported in the police station, court have given verdict in few cases, where as in few cases, the victims have complained that they were not able to get justice.

A 44-year-old man of Lumfawung VDC-6 of Panchthar who was beaten up on the charge of being a wizard complained to media that he was not been able to go back to home due to the threat to his life as no action was taken against the perpetrators.

Lepa Rajbansi and Matokhuwa Rajbansi, local shamans were fed human urine by the locals on February 22, and the case was reported at the Police Station on February 25. Furthermore, two local perpetrators were arrested on May 25 by the police on charge of meting out inhuman or degrading acts against three people in Jhapa

Police arrested Surya Maya Pokhrin, Lok Bahadur Pakhrin on the charge of feeding human and cow urine and torturing a 54-year-old woman in Makwanpur on February 27. The perpetrators were made to apologize and pay Rs. 35,000 to the victim. In another case, the court ordered to release the perpetrator Paltan Mardi of Jhapa on bailment amount of Rs 10,000.

It seems that a very few cases were brought to justice and it can be assumed that many such cases are unreported. Thus, it is very essential to bring these perpetrators into trial and provide justice to the victims and thereby set examples for other victims to come out. For this, judicial activism needs to be taken up. Moreover, there is a requisite of high alert police mechanism and awareness campaigns should be launched to stop violence resulting from such charges.

6. National Legislation

Interim Constitution of Nepal, 2007 guarantees the right to have dignified life as fundamental right.¹² Moreover, it also affirms right to equality and prohibits any kind of discrimination.¹³ It also guarantees right of women as fundamental rights.¹⁴ Right against Torture is guaranteed as a fundamental right and provisions of punishment for offenders are also provided in Article 26.¹⁵ This signifies that any act of accusing anyone specially women for witchcraft is against the above mentioned fundamental rights and is punishable.

There are various national laws to address abuses resulting from allegation of witchcraft practices in Nepal. Section 2¹⁶, 4¹⁷, 5¹⁸ and

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- 12 Article 12 **Right to Freedom:** (1) Every person shall have the right to live with dignity, and no law shall be made which provides for capital punishment.
- 13 Article 13 **Right to Equality:** (1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws.
(3) The State shall not discriminate among citizens on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these.
- 14 Article 20 **Right of Woman:** (1) No one shall be discriminated in any form merely for being a woman.
- 15 Article 26 **Right against Torture:** (1) No person who is detained during investigation, or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment.
(2) Any such an action pursuant to clause (1) shall be punishable by law, and any person so treated shall be compensated in a manner as determined by law.
- 16 Section 2 **Prohibition to commit some public crime:**
(1) No person shall commit any of the following acts:
(a) To hinder or obstruct any public servant from discharging his/her official duty by committing battery or riot or by any other way;
(b) To break public peace by committing battery or riot in any public place;
(c) To break public peace or to make obscene show by using obscene speech, word or gesture in public place.
(g) To insult women in public place by committing molestation (*Hatapata*);
- 17 **4. Limitation to file a case:** (1) Any case under this Act shall be filed within a period of Seven days from the date of the commission on an offence. Provided that, the adjudicating authority may, if he/she is satisfied with reasonable ground that the case cannot be filed within a period of Seven days from the commission of the offence, extend the limitation in order to file the case upto Thirty Five days from the date of commission of the offence.
- 18 **5. Adjudicating authority and procedure:** (1) The Chief District Officer shall have the power of original jurisdiction to initiate the proceeding and adjudicate case under this Act.
(2) The Chief District Officer shall, while initiating the proceeding and adjudicate a case, follow the procedure pursuant to Special Court Act, - 2059.
(3) An appeal against the decision made by the Chief District Officer pursuant to Sub-section (1) shall lie before the Court of Appeal.

6¹⁹ of Some Public (Offence and Penalties) Act 1970 prohibits inappropriate acts in the public. Draft Penal Code 2010 prohibits accusing any person as witch, committing cruel, inhuman or degrading treatment.²⁰

Compensation relating to Torture Act 1996 section 2(a)²¹, 3(1),²² 4,²³ 5(1)²⁴, (2)²⁵, (3)²⁶, 6(1)²⁷, (7)²⁸ restrict torture and demand punishment for the perpetrator. “Chapter on Battering” too prohibits causing hurt

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- 19 **6. Penalty:** (1) In a case tried under this Act, the Chief District Officer may, upon depending on the gravity of the offence, impose a fine of upto Ten Thousand Rupees to the offender and order the offender to provide compensation to the victim as per the actual damage, loss, injury etc; and issue an order of detention to keep the offender in a custody for a period not exceeding Thirty Five days if finds reasonable ground or cause in the course of investigation upon mentioning the cause thereof in the order. Such case shall be decided within a period of three months.
- 20 Proposed draft code on criminal code 2010, 165(1)(a)
- 21 2(a) “Torture” means physical or mental torture inflicted upon a person in detention in the course of investigation, inquiry or trial or for any other reason and includes any cruel, inhuman or degrading treatment given to him/her.
- 22 **3. Prohibition on Torture:** (1) No person in detention in the course of investigation, inquiry or trial or for any other reason shall be subjected to torture.
- 23 **4. Provision of Compensation :** If any employee of Government of Nepal is held to have inflicted torture upon any person, the victim shall be provided with compensation as referred to in this Act.
- 24 **5. Filing of Complaint :** (1) A victim may, within 35 days from the date of inflicting torture upon him/her or of his/her release from detention, file with the District Court of the District, where he/she has been detained, a complaint making a claim for compensation.
- 25 5(2) Notwithstanding anything contained in Sub-section (1), in the event of death of a victim or failure of the victim for any other reason to file a complaint in person, any one of his/her family members having attained the required age or his/her legal practitioner may, setting out reasons therefore, file a complaint under Sub-section (1).
- 26 5 (3) Any one of the detainee’s family members having attained the required age or his/her legal practitioner may, if he/she thinks that torture has been inflicted on the detainee, file a petition with the concerned District Court. If such application is filed, the court may order for physical or mental examination of the person in detention within three days. If, upon such examination, it appears that his/her medical treatment is to be done, his/her treatment shall be done on behalf of Government of Nepal.
- 27 **6. Proceedings on Complaint and Compensation:** (1) The District Court shall proceed with a complaint filed under Section 5 by following the procedures referred to in the Summary Procedures Act, 2028 (1972), and if the contents of such complaint are found to be true and correct, make a decision requiring Government of Nepal to pay compensation in a sum not exceeding One Hundred Thousand Rupees to the victim.
- 28 **7. Action against the Person Involved in the Commission of Torture:** If it is held that torture has been inflicted as mentioned in this Act, the District Court may order the concerned body to take departmental action against the governmental employee who has inflicted such torture, in accordance with the prevailing law.

or committing grievous hurt by using weapon or by any other means²⁹, which is followed by compensation³⁰ of General Code 1963. The Proposed Draft Criminal Code 2010 in the section 170 talks about prevention to commit inhuman treatment, and further prohibits accusing any person as witch³¹,boycotting socially³², committing cruel, inhuman or degrading treatment by committing other any act³³.

According to the Miscellaneous Section 10 (B) of the General Code of Nepal, anyone involved in mistreating a women in the allegation of practicing witchcraft will be sentenced to anytime between three months to two years of imprisonment or will be fined a sum ranging from Rs 5,000 to Rs 25, 000.

7. International Obligations

UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948³⁴

UDHR recognizes the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.³⁵ UDHR has assured the human rights in these provisions:

1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.³⁶
2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation

29 Chapter on Battering, number 1

30 Chapter on Battering, number 2

31 The Proposed Draft CriminAL Code 2011, section 170(1) (a) pg 90

32 Ibid section 170 (c)

33 Ibid section 170 (d)

34 Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

35 See Preamble of UDHR.

36 Article 1.

of sovereignty.³⁷

3. Everyone has the right to life, liberty and security of person.³⁸
4. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.³⁹
5. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.⁴⁰
6. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.⁴¹
7. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.⁴²
8. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.⁴³

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966⁴⁴

ICCPR in its preamble recognizes that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural

37 Article 2.

38 Article 3.

39 Article 5.

40 Article 7.

41 Article 8.

42 Article 10.

43 Article 12.

44 Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966

rights.⁴⁵ ICCPR protects and promotes human rights through these provisions:

1. Each State Party to the present Covenant undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.⁴⁶
2. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.⁴⁷
3. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.⁴⁸
4. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal

45 See Preamble of ICCPR.

46 Article 2.3.a.

47 Article 7.

48 Article 9.

established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.⁴⁹

5. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.⁵⁰
6. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁵¹

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN⁵²

CEDAW in its preamble⁵³ recalls that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women

49 Article 14.

50 Article 17.

51 Article 26.

52 Adopted by the United Nations General Assembly on 19 December 1979

53 See Preamble of CEDAW.

in the service of their countries and of humanity. Thus, it guarantees the security of women through these provisions:

1. The term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁵⁴
2. States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; to repeal all national penal provisions which constitute discrimination against women.⁵⁵
3. States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures,

54 Article 1.

55 Article 2.

including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.⁵⁶

4. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.⁵⁷

8. Conclusion and Recommendation

The INSEC documentation reveals that mostly the women are victimized as compared to male. The perpetrators are generally the locals, followed by family members and unknown groups. The main reason for existence of this kind of violence is lack of awareness and superstitious beliefs followed by lack of proper implementation regarding the laws. One of the biggest challenges of this kind of violence is that the perpetrators are in large number making it difficult to actually pin point them.

Thus, in order to minimize this kind of violence, the following things could be done

- enact specific laws with concrete definition and strict provisions of punishment
- launch awareness campaign about the superstitions on witchcraft practices
- alert civil societies and encourage them to be proactive
- organize special policies targeting to educate women on issues related to witchcraft violence
- conduct women empowerment and skill development trainings especially in rural areas

⁵⁶ Article 3.

⁵⁷ Article 14.1.

A Study on Sexual Violence: 2011

1. Background

Rape is one of the worst forms of violence against women (VAW). Rape not only damages the biological and mental being of victims but also has a profound psychological effect on the victim while it poses an affront to their dignity. The United Nations defines rape as “sexual intercourse without valid consent”, and the World Health Organization defined it in 2002 as “physically forced or otherwise coerced penetration – even if slight – of the vulva or anus, using a penis, other body parts or an object.¹ Similarly, the chapter concerning rape in our Muluki Ain (General Code) defines rape as, “If a person enters into sexual intercourse with a woman without her consent or enters into sexual intercourse with a girl below the age of sixteen years with or without her consent shall be deemed to be an offence of rape”. From these definitions it is clear that rape is any kind of sexual act carried out without the consent of the female. Rape is defined as a crime, crime against women and crime against humanity. However, the culture of rape prevails in society.

The high incidence of rape in the world is a result of the power imbalance between men and women. Women are expected to assume a subordinate relationship to men. Consequently, rape can be seen as a logical extension of the typical interactions between women and men. One way to analyze the power relationship between men and women is by examining some of the common social rules women are taught.

Rape victims are compelled to live in fear, while bearing the psychological consequences of the attack and while also being stigmatized in their community. It can take a long time for victims to regain their self-confidence and esteem. A supportive environment is required to help achieve this over-time. These are some of the reasons why rape features amongst one of the worst forms of violence.

1 <http://en.wikipedia.org/wiki/Rape>

In a Nepali context, patriarchal society, traditional values, caste system, illiteracy, male domination, religious beliefs and the economic dependency of women on men are to name the main root causes of VAW and rape in particular. A lack of effective laws, the low implementation status of law and order, the current transitional period and 10-year-long armed conflict have all contributed to the occurrence of rape and VAW. Many cases of VAW including 464 cases of rape and sexual abuse were recorded by INSEC in 2011. The same societal ills prevalent in the country gave rise this year to the number of rape cases and other forms of VAW. A child of one year of age to an 87-year-old woman became rape victims. Mostly children and youths became the victims of rape and sexual offense during 2011. In some incidents, boys were subjected to sexual exploitation. Supposedly protectors also became the perpetrators in many cases. Women have been raped, sexually assaulted or violated by their relatives or even by their own father or brothers. Security persons, teachers and many named and unnamed groups and individuals were also involved in rape and other sexual offenses.

2. Statistical Representation of Victims

2.1 On the basis of age

Age group	Rape	Sexual Abuse	Total
Below 10	50	41	91
Between 10-14	124	38	162
Between 15 to 16	30	21	51
Between 17 to 20	39	17	56
Above 21	85	19	104
Total	328	136	464

Of the 464 cases recorded by INSEC in 2011, 91 victims were below 10 years of age, of whom 50 were raped and 41 were sexually abused. Between the age group of 10 and 14, 124 were raped whereas,

38 were sexually abused. A total of 51 victims aged 15 and 16, of whom 30 were raped and 21 were sexually abused. In the age group of 17–20 years, 39 persons were raped and 17 were sexually abused. 104 persons over 21 years of age were affected by sexual violence; of whom 85 were raped and 19 were sexually abused. 13 boys also became victims of sexual abuse. Children are often in a vulnerable condition due to physical condition, fear, social bondage, dependency upon their guardians and lack of knowledge about sexual violence.

Type of events	Female	Male	Total
Rape	217		217
Sexual Abuse	92	13	105
Total	309	13	322

Children are frequently the targets of sexual offenses because perpetrators can easily manipulate and control them.

2.2 On the basis of geography

Geography	Rape	Sexual Abuse	Total
Tarai	152	59	211
Hill	136	58	194
Mountain	40	19	59
Total	328	136	464

Of the reported 464 incidents of sexual offenses, the majority were carried out in the Tarai region followed by the Hill and Mountain regions. In the Tarai, 152 rape and 59 incidents of sexual abuse and attempted rape were recorded. A total 194 cases were recorded in the Hill region; among which 136 were of rape and 58 were of sexual abuse and attempted rape. 59 sexual offense cases were recorded in Mountain Region in which 40 were of rape and 19 were of sexual abuse and attempted rape.

2.3 On the basis of Development Region

Region	Rape	Sexual Abuse	Total
Eastern Region	98	22	120
Far Western	18	28	46
Central Region	84	43	127
Mid- Western Region	65	19	84
Western Region	63	24	87
Total	328	136	464

It was found that the maximum number of sexual offenses and related incidents were recorded in the Eastern Development Region. Of the 464 incidents reported, 120 occurred in the Eastern Development Region of which 98 were of rape and 22 were of sexual abuse and attempted rape. 84 rape and 43 sexual abuse cases were recorded in the Central Region while 63 rape offenses and 24 incidents of sexual abuse and attempted rape were recorded in Western Development Region. A total of 84 sexual offense incidents were recorded in the Mid-Western region, among which 65 were of rape and 19 were of sexual abuse and attempted rape. 46 incidents were recorded in the Far-Western Region, among which 18 incidents of rape and 28 of sexual abuse and attempted rape were recorded.

2.4 Killed After Rape

S.N.	District	Victims No.	Perpetrators No.
1	Illam	1	1
2	Kailali	1	1
3	Morang	1	1
4	Sindhuli	3	3
5	Sunsari	1	1
6	Saptari	2	2
7	Sankhuwasabha	1	1
8	Nawalparasi	1	6
Total		11	16

Of the 464 incidents recorded, 11 victims were killed after rape in which 16 accused were involved. All the victims were female. Of 11 incidents, three victims were from Sindhuli district, two were from Saptari district whereas six victims were from Illam, Kailali, Morang, Sunsari, Sankhuwasabha and Nawalparasi district.

3. Victims

The INSEC documentation shows that the majority of victims were under the age of 16. A total of 304 children became victims of sexual crimes in 2011 alone. While 56 victims were aged between 17 and 20, 104 victims were of above the age of 21. A girl of one year of age and an 87-year-old woman were also victimized. Similarly, 13 boys were also sexually abused. The one year old minor of Garamani VDC of Jhapa district was raped at her own home by an 18-year-old youth of the same VDC on May 12. Similarly, a 60-year-old woman of Banlek VDC of Doti district was raped and beaten by two men, a 25-year-old and 35-year-old of same VDC on February 19. Six minors aged between 11 and 14 of Shree Jan Jagriti Secondary School of Sindhupalchok district were sexually abused frequently by their teacher and the incident was posted on INSEC documentation on November 14.

Furthermore, many persons with disabilities also became victims of sexual offense in 2011. Some victims were also killed after being raped. For instance, a disabled woman aged 30 of Sanishchare VDC of Morang district was raped by a 30-year-old-man of the same VDC on April 2. Similarly, a 35-year-old woman of Lalpur VDC of Siraha district was killed after being raped by an accused of the same VDC on January 16. A 15-year-old girl of Gadariya VDC and sixth grade of Shree Janata Higher Secondary School was killed after being raped at a hotel in Musuriya VDC-6, by a man of 26 years of age of the same place on August 24.

Some of the victims were abused by their caretakers, by their guardians and security personnel, by political activists and by different known and unknown groups. For instance, a constable of APF in Rakta Kali Gand VDC of Surkhet district attempted to rape a 14-year-girl of

Uttara Ganga VDC of Surkhet on October 21. The attempted rape took place at a ditch near by her home. A 12-year-girl of Kamalpur VDC of Saptari district was raped by a member of the district committee of UCPN-M on May 21. She was raped at gun point, while nobody was present at her home. Similarly, the father of a 15-old-girl of Padam Pokhari VDC of Makawanpur district attempt to rape her while she was sleeping in the night of March 29.

Some of the victims were gang raped. For instance, a 22-year-old girl of Latikoili VDC of Surkhet district was gang raped by a group of six persons on August 13. She was abducted, raped and a video recording of the rape was made public. Likewise, an attempt to rape a 13-year-old girl of Dhangadi Municipality was made by a group of three people on March 21, while she had gone out to play Holi with friends during the Holi festival.

4. Perpetrators

As per the available data of INSEC documentation, it was found that around 500 persons were involved in 464 incidents of sexual offenses. From the available data, it was found that in the incidents of rape and sexual violence some of the accused were close relatives like father, brother and grandfather, some were neighbors, some were security persons from Nepal Police, Arm Police Force, some were from political parties, some were of teachers and co-workers and some were from different unidentified groups.

For instance, a 70-year-old man from Makha VDC, Sindhupalchok district raped an 8-year-old girl from same place on January 19. The accused was the grandfather of the victim. A 41-year-old man from Kota Tulasipur VDC of Kailai district attempted to rape his 14-year-old daughter on August 15. The victim claimed that he had made several attempts to rape her. With the help of her maternal uncle, she filed a complaint against her father at the District Police Office. An 18-year-old girl from Chimadi VDC-5 of Sunsari district was raped by Sub-Inspector aged 35 on October 3. She was raped when she went to file an application at a police station about a quarrel she had had with her

neighbor. The accused policeman was suspended after a complaint was filed against him. A 13-year-old girl working at DJ Restaurant & Bar at Dulegaunda, Tanahu was frequently raped by her 23-year-old employer on May 19, 20 and 21. Moreover, a doctor working at a pharmacy in Turture attempted to rape a 17-year-old pregnant girl of Bhanu VDC-8 on October 31. The doctor had tried to rape her when she had gone for treatment.

Generally, attacks are not perpetrated by persons unknown to victims. Among 464 cases reported by INSEC data, in more than 90% incidents the accused were somehow known or close to the victims in various ways. However, many reasons including fear of stigmatization hold people from reporting the incidents. So, the victims' fear empowers the perpetrators which results in the increase in the number of rapes and sexual assaults. Illiteracy, deep-rooted traditional values, a patriarchal society, male dominance in almost all political, social and economic spheres are the grounds for these kinds of incidents. Moreover, changing social structure, the impact of different electronic and social media, easy access to the free market and of the negative consequences of modernization is also making space for sexual offenses. Not only female but also males are becoming victims of sexual violence.

5. Justice

Justice is not to be given but justice is to be internalized. However, in the case of rape victim, the question of justice is hardly answered. Interim Constitution of Nepal, 2007 has ensured the right to a dignified life, the right to equality, the right to social justice, protection against torture and exploitation and the right to freedom. Similarly, Article (20) of Interim Constitution has explicitly concerns the rights of women while Sub-Article (1) states that no one shall be discriminated against in any way due to their gender. Sub-Article (3) affirms that no physical, mental or any other form of violence shall be inflicted on any woman, and such an act shall be punishable by law. Incidents of rape or any form of VAW defy these constitutionally guaranteed rights of women. Nonetheless, such rights are continuously violated.

The Muluki Ain (General code) has defined the offense of rape and contains different punishment provisions for rape, intent to rape and incest. However, a 35 daytime limitation for filing a complaint of rape is much too short. As the trauma interferes with the physical and mental condition of the victim and may cause a delay in their ability to file a complaint, a victim will generally not be able to file a case within this time limit. Our socio-economic situation, traditional values and customs also act as barriers in one's ability or willingness to publically admit to having been abused. As a result, the victims of sexual abuse and domestic violence seeking justice face many obstacles. These include inadequate, negative or dismissive responses by police, medical and judicial personnel. Given the pervasive indifference of authorities, many women feel ashamed or blame themselves and don't even try to report these crimes to the police. As women's dignity is perceived as family honour, in many cases, in an attempt to uphold the honor and prestige of the family, the cases remain unreported. Rape is viewed as 'secret crime' and thus only few incidents come out in public. Many incidents are settled within the community and many are mediated by the police and authorities without first following the formal procedures.

Rape victims are often re-victimized in various ways after the incident. For instance, a 27-year-old woman of Phugling VDC of Taplejung district was injured with a khukuri after she filed a case of rape against the accused. Similarly, when a girl of 18 years of Dadagaun VDC of Khotang district filed a complaint against the accused at District Police Office, she was threatened by the accused's brother for filing the case. A 43-year-old woman of Tribhuvan Basti VDC of Kanchanpur district was raped by her two neighbors on January 17. Both of the accused absconded whereas the victim has been facing acute financial problems. Likewise, a divorced woman of Chhatiwan VDC of Makwanpur district was gang raped by four persons under the instruction of her ex-husband. The police stated that the case was under investigation.

The criminal justice system in Nepal is ineffective regarding the treatment of rape cases and violence against women. Victims are unable to get justice in a timely manner. It can be said that to take action

against those accused and to deliver justice to victims, the investigation and prosecution process need to be more advanced and accessible. The Supreme Court of Nepal made an important decision in a case of VAW and rape. The case of *Advocate Jyoti Poudel vs. Government of Nepal and Others*² resulted in an order for a Fast Track Court for hearing cases related to violence against women, especially domestic violence. Despite the Supreme Court's progressive judgment, the implementation status is very poor. This needs to be rectified in order to ensure that justice is provided to victims of rape and VAW more generally.

6. National laws to address the rape cases

Part III of the Interim Constitution of Nepal, 2007 ensures 20 fundamental rights such as the right to freedom in Article 12 which also guarantees the right to dignified live. Article 20 refers to the rights of women under which any form of discrimination or physical or mental violence against women are punishable by law. Similarly, Article 22 ensures the rights of the child, which also prohibits any forms of violence against children. Interim Constitution grants special attention to the rights of women and children.

The 12th Amendment of the General Code includes a provision for the punishment of those convicted considering the age of the victim. Punishment ranges from five to 15 years.³ The 12th Amendment also recognizes marital rape as a crime and has recommended punishment for three to six months. The provision was incorporated after the Directive Order was issued by the Supreme Court in *Advocate Meera Dhungana v Ministry of Law Justice and Parliamentary Affairs*⁴. Similarly, the discriminatory provision on the punishment range between marital rape and other forms of rape prevailed in laws, the punishment for marital rape was raised in *Jeet Kumari Pungani v Prime Minister and the Ministerial Cabinet and others*⁵. The Supreme Court has ordered efforts to be made for the eradication of the discriminatory punishment provision

2 "Balatkrit Mahilale Naya Payena." Ekantipur.com/search accessed on January 10,2011

3 General Code 12th amendment, Chapter on rape. 3(a)

4 Writ No. 064-0035. order date 2065/3/26

5 ibid no.9 (a)

between marital rape and other forms of rape. The present General Code also contains provisions which allow for an additional five year imprisonment in the cases of gang rape, rape against pregnant women, disabled women. Likewise, if HIV/AIDS infected person rape someone with the intention to transfer the infection, an additional year will be added to their sentence.

The proposed Draft Penal Code has also kept the similar provision on rape offenses. Moreover, an additional 1 year imprisonment may be handed down including in oral sex incidents. There are different compensation provisions in the proposed Draft Code and the existing General Code. However, no provisions have been made for the compensation to victim if the perpetrators are unable to pay which needs to be addressed by the state by keeping additional provisions in law or by making effective mechanism. Similarly, the section of the General Code treating incest has also categorized different punishment provision for the perpetrators according to their relation with the victims. The time limitation for filing a case concerning incidents of rape is very short that is 35 days, which needs to be extended because victims of rape are generally not inclined to immediately bring themselves to follow an official or legal course of action against the perpetrator. The time limitation provision should be extended up to 10 to 15 years as in New-Zealand and Sweden or lifted as in India and or France. The Domestic Violence (Offenses and Punishment) Act, 2009, however, classified the VAW into four categories, but the rape cases fall within this Act are only limited to domestic relations which needs to be broadened.

Still, our Criminal Justice System lacks the victim protection mechanism. Our General Code doesn't speak about the protection of rape victims. However, the rape victims necessarily require strong security due to many psychological and sociological reasons. The INSEC documentation found numerous examples of rape victims where the victims and their family have been threatened, beaten and pressurized by the accused in different ways. So, our Criminal Justice System must necessarily ensure the provision of victim and witness protections.

Nepali judicial pro-activism is appreciable on the cases of rape and

VAW in recent times; however the implementation status is very poor due to the different reasons. Nepal's current transition has been found to be one of the barriers in the implementation and drafting of new legislation to address VAW and rape cases.

7. International Obligation

As a member of the United Nations, Nepal is obliged to adhere to various international treaties. The Nepal Treaty Act, 1991, Article 9 states that international laws prevail over national laws if there is conflict between two. Nepal has ratified different International Treaties and Conventions and their provisions must be adhered to and necessary legislation related to those treaties and laws must be enacted.

Nepal has ratified different international laws and treaties which relate to VAW and rape offenses. The United Nation Human Rights Declaration (UDHR), 1948, the Declaration on the Elimination of Violence Against Women, 1993, the Convention on the Elimination of Discrimination against Women (CEDAW), 1979, the Beijing Platform for Action, 1995 and different rules, declarations and resolutions passed by UN are also the basis of international obligation towards Nepal. If the state party does not promulgate laws to eradicate VAW, then it would be just as liable as the perpetrators themselves.

8. Conclusion

The offenses of rape and sexual abuse is one of the worst form of violence against women (VAW) existing in Nepalese society. The patriarchal society, unequal power relation between male and female, discriminatory practices towards women are some of the psycho-sociological factors causing VAW including sexual crimes. Nepal has ratified various international laws and human rights treaties which have focused on the protection of the rights of the women. However, the lack of appropriate laws and effective implementation mechanisms in domestic sphere are causative factors of sexual crimes against women. Similarly, Nepal's inefficiency in the implementation of laws and court orders are also another cause of the current incidents of rape offenses and

VAW. Moreover, decade-long armed conflict and its consequences and the present transitional phase also account for lack of state responsibility in addressing the problem of rape victims and victims of domestic violence. A lack of awareness among the victims, illiteracy and poverty are also some of the causes of rape. INSEC data explicitly speak about the background and trend of rape incidents and VAW in the year 2011. A heinous crime like rape cannot be checked by a single effort but by the collective effort of family, community and state and if they work together, rape and incidents of VAW can surely be reduced.