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# Social Practices (Reform) Act, 2033 (1976) of Nepal in light of Jurisprudence

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## Abstract

*The paper delves and critically analyze the concept of Volksgeist in Nepali society concerning the Social Practices (Reform) Act, 2033 (1976) and conducts a comparative analysis with the proposed draft bill, tracing the evolving Volksgeist. Ultimately, the paper concludes that jurisprudentially, laws can be categorized as either obeyed or transgressed, with Savigny's Volksgeist doctrines providing insight into the reasons for transgressions. It advocates for a self-realization approach in addressing social matters, aligning with Volksgeists perspective of law as a biological and evolutionary phenomenon.*

**Keywords:** Jurisprudence, Law, Volksgeist, Social behavior

## Introduction

Social reform means reforming and changing normative rules prevailing laws and practices to take into account new cultural paradigms. It is a movement that aims to make gradual change or changes in certain aspects of society rather than rapid or fundamental changes. Process of correcting the social problems, reshaping and orienting or directing the society to run in the right path/track. The goal of social reform is to secure social welfare by correcting societal flaws and ills, as well as to bring about significant and constructive change in society and people's attitudes. It seeks to take into account recent societal developments. Human beings do not exist independently and in isolation; so that they live in society. Society is guided by norms, values, ancient practices, long-standing habits, rituals, traditions, customs, beliefs,

superstitions etc. In society several evil practices may exist. Social reform is necessary to rid society of evil practices and beliefs. Thus, social reform is essential to ensuring constructive social change in society and minimizing such bad behaviors and superstitions. To eradicate the long-standing bad customs in society and address social issues, changes must be made to the institutions, social systems, functional structures, and patterns. So, social reform is the need of the time and changed social condition.

Social legislation denotes to laws which created to uplift and safeguard the conditions and practices of social life and social conduct. The purpose of social legislation is to direct, regulate, and impose limits on the conduct of both individuals and social groupings. It is designed for ensuring institutional reforms, reducing the prevalence of harmful ideas, or improving society and the well-being of the entire society. Various social legislations are framed and enacted by the state to improve the social condition and regulate better social life. In Nepal, the Social Practices (Reform) Act, 2033 (1976) is one of the social legislation which was enacted 'to impose restriction on existing as well as growing competitive pomp and worthless expenses in social practices in order to make reforms' (Preamble, Social Practices (Reform) Act, 2033).

The aim of this act is to restrict and eradicate the certain prevalent social practices of Nepali society. Those social practices 'means including marriage, *Bratabandha*, (A solemn Hindu ceremony in which boy wears a sacred thread (*Janai*) in his body), *Chudakarma* (Hindu practice of cutting the hair of the boy for the first time after his birth leaving a scuff of hair uncut), *Pasni* ( the practice of feeding rice to a child for the first time after his/her birth), *Nwaran* (practice to be observed normally after eleven days from the date of birth of a child in which the child is given a formal name to address him/her), Birthday, *chhaiti* (The Hindu practice to be observed in the sixth day of the birth of a child, *Bhudo-pasni* (The practice to be observed in eighty four years in age of a man/ woman) and *pitri-karya* (practice to be performed in honor of one's deceased ancestors)' (Section 2(a), Social Practices (Reform) Act, 2033). This act made restriction and prescribe limitation to conduct such kinds of social rituals and ceremonies. Based on the major provision of Social Practices (Reform) Act, 2033 (1976) this article intended to explore the rationale, practicability, social effect of this act in Nepali society.

### **Method of Data Collection and Analysis**

This article intended to explore the rationale, practicability, social effect of the Social Practices

(Reform) Act, 2033 (1976) in Nepali society. In this paper, the authors have used qualitative, doctrinal and descriptive research methodology and content analysis as a tool of this research. Social Practices (Reform) Act, 2033 (1976) is the core statutory source of this paper. Secondary data and information collected from various pieces of literature such as authentic books, Nepal Law Report (*Nepal Kanoon Patrika*) etc. are used. The collected information and literature are descriptively examined and analytically explained.

## **Result and Discussion**

### **Highlights of Social Practices (Reform) Act, 2033 (1976)**

Definition of social practices : According to Section 2(a) of the Act, ‘social practice’ includes: weddings, *bratabandha*, *chudakarma*, *nwaran*, birthday celebrations, *chhaiti*, *budho-pasni* and *pitri-karya* (Section 2(a), Social Practices (Reform) Act, 2033).

Restriction on *Tilak* : There is the complete restriction on *Tilak* (Section 3, Social Practices (Reform) Act, 2033). Both the accepting party and granting parties shall be liable twelve thousand to twenty-five thousand rupees fine or an imprisonment not exceeding thirty days or the both and the proved claimed property shall be forfeited (Section 3(2)).

Restriction to the bride side : Bride side shall not accept or compel any cash and goods (kinds) from bridegroom side in connection of marriage of daughter (Section 4(1)(2)). Acceptance results the fine from twelve thousand rupees to twenty-five thousand rupees or an imprisonment not exceeding one year or the both and proved claimed property shall be forfeited (Section 4(3)). Compelling results the fine up to ten thousand rupees or an imprisonment not exceeding fifteen days (Section 4(4))

Restriction on *Daijo* (Dowry) : *Daijo* cannot be given more than ten thousand (Section 5(2)). A transgression results in the fine up to ten thousand rupees or an imprisonment not exceeding fifteen days or the both and the property shall be forfeited. the fine up to ten thousand rupees or an imprisonment not exceeding fifteen days or the both and the property shall be forfeited (Section 5(3)).

Prohibition on bearing others financial liability : The following financial liability is prohibited for the bride side to the bridegroom side (Section 6(1)):

- Amount to be spend for study of bridegroom
- Capital needed to carry on trade or commerce for bridegroom
- Expenditure for marriage of bridegroom.

A transgression results in the a fine from twenty thousand to forty thousand rupees or an imprisonment not exceeding fifteen days or the both (Section 6(4)).

Regulation of *Janta* , marriage feast and others social practices :The following regulation are made for the *Janta* and *Janti*:

- Bride side shall not bear transport as well as food cost made for *Janta* (Section 6(2)).
- They also shall not give cash, commodity and gift to any person who goes to the chamber marriage to observe *Janta* (Section 6(3)).
- No bar to provide cash or goods to porters.
- No more than 51 people shall be bought in *Janta* and marriage feast (Section 7(1)). For the marriage feast, 51 person do not increase the close relative (Section 8(1)).
- No dancer in rent shall be brought in *Janta* (Section 7(2)).
- Any fire work shall not be carried out in *Janta* (Section 7(3)).
- No more than 25 person shall be called in observing the feast of *Pitrikarya* (Section 10(1)), *Chhaiti*, *Nwaran*, Birthday, *Pasni*, *Chudakarma*, *Bratbandha*, *Bhudhopasni* others than close relatives (Section 9(1)).

**Table 1**

*Comparison of provision of Act and the Bill*

Particulars	Social Behavior Reform Act 2033	Social Behavior Reform Draft Law
Definition of social practices	According to section 2 (a) of the act, ‘social practice’ includes: weddings, <i>bratabandha</i> , <i>chudakarma</i> , <i>nwaran</i> , birthday celebrations, <i>chhaiti</i> , <i>budho-pasni</i> , and <i>pitri-karya</i> . <sup>1</sup>	The bill, on the other hand, broadens this definition by changing it to birthday celebrations, weddings, rituals related to death, <i>pitri-karya</i> , as well as ‘rituals and ceremonies associated with customs, traditions, and religion’
Restriction for <i>tilak</i>	whosoever accepts or grants <i>tilak</i> shall be liable to a fine from twelve thousand to twenty-five thousand rupees or an imprisonment not exceeding thirty days or the both and the proved claimed property shall be forfeited.	The bill states that the <i>tilak</i> shall be forfeited, and an appropriate fine shall be imposed (based on the <i>tilak</i> ) or prison sentence not exceeding 90 days given or both. if the <i>tilak</i> is yet not given but there is consent, then the concerned parties are liable for Rs 50000 fine or imprisonment not exceeding one and half month or both.

Particulars	Social Behavior Reform Act 2033	Social Behavior Reform Draft Law
Restriction on <i>Daijo</i> (Dowry)	In addition to a set of ornament wearing in body, whosoever intends to give <i>Daijo</i> , may be entitled to give <i>Daijo</i> up to ten thousand rupees, in maximum. A transgression results in the fine up to ten thousand rupees or an imprisonment not exceeding fifteen days or the both and the property shall be forfeited.	The proposed legislation mentions that bridegroom side shall give maximum 20 gm gold or ornaments compromising the amount of 20 gm gold and, clothes and goods equivalence to prescribed price. If a dowry—more extravagant than the proposed limit, the dowry shall be forfeited, and an appropriate fine shall be imposed (based on the dowry) or prison sentence not exceeding three months or both. if the dowry is yet not given but there is consent, then the concerned parties are liable for Rs 50000 fine or imprisonment not exceeding one and half month or both.
Prohibition on bearing other financial liability	Bridegroom side shall not accept any amount spent or likely to spend for study of bridegroom or any capital needed to carry on trade or commerce for bridegroom or any expenditure for marriage of bridegroom. Bride side shall not bear transport as well as food cost made for <i>Janta</i> . A transgression results in the a fine from twenty thousand to forty thousand rupees or an imprisonment not exceeding fifteen days or the both and the property shall be forfeited. Bride side shall not give cash, commodity and gift to any person who goes to the chamber marriage to observe <i>Janta</i> . A transgression results in the fine from twenty thousand rupee to forty thousand rupees or an imprisonment not exceeding fifteen days.	an appropriate fine shall be imposed (based on the <i>Bigo</i> ) or prison sentence not exceeding three months or both. If the <i>Bigo</i> is not known, one lakh fine or prison sentence not exceeding three months or both.  Bride side or groom side shall not give cash, commodity and gift to any person who goes to the chamber marriage to observe <i>Janta</i> . A transgression results in the fine of Rs. 50,000

Particulars	Social Behavior Reform Act 2033	Social Behavior Reform Draft Law
Maximum number of <i>Janti</i>	No more than fifty-one persons including the persons who play musical instrument in marriage shall be brought to mark <i>Janta</i> . A transgression results in the fine up to ten thousand rupees or an imprisonment not exceeding fifteen days or the both.	No more than 150 persons including the persons who play musical instrument and porter in marriage shall be brought to mark <i>Janta</i> . A transgression results in the fine up to fifty thousand rupees.
Restriction on marriage feast	No more than Fifty one persons including neighbors and relatives other than close relatives shall be invited in marriage feast organized by Bridegroom and bride side. Whosoever contravene shall be liable to a fine up to Twenty Thousand Rupees or an imprisonment not exceeding Fifteen days or the both.	No more than 350 persons shall be invited in marriage feast. Whosoever contravene shall be liable to a fine up to Rs. 50,000.
Restriction on feast of <i>Chhaiti, Nwaran, Birthday, Pasni, Chudakarma, Bratbandha, Bhudhopasni</i>	While observing <i>Chhaiti, Nwaran, Birthday, Pasni, Chudakarma, Bratbandha, Bhudhopasni</i> no more than twenty-five persons including neighbours and relatives other than close relatives shall be invited in the feast of such ceremony. Whosoever contravenes shall be liable to a fine up to ten thousand rupees or an imprisonment not exceeding seven days or the both.	No more than 100 persons shall be invited in the feast. Whosoever contravene shall be liable to a fine up to Rs. 25,000

Particulars	Social Behavior Reform Act 2033	Social Behavior Reform Draft Law
Restriction on feast of <i>Pitrikarya</i>	No more than twenty-five persons including neighbors and relatives other than close relatives and malami shall be invited while performing <i>Kaj Kriya, shradda</i> and other activity to be observed after the death of a person. Whosoever contravenes shall be liable to a fine up to ten thousand rupees or an imprisonment not exceeding seven days or the both.	No more than 100 persons shall be invited in the feast. Whosoever contravene shall be liable to a fine up to Rs. 25,000
Ban on exhibition of <i>Daijo</i>	In the course of observing social practices, <i>daijo</i> or present (gift) shall not be brought or sent by making exhibition in pomp manner. Whosoever contravenes shall be liable to a fine up to five thousand rupees or an imprisonment not exceeding seven days or the both.	
Ban on building decoration in pompous manner	While observing social practices, building shall not be decorated unnecessarily by lightening in pompous manner. Whosoever contravenes shall be liable to a fine up to ten thousand rupees or an imprisonment not exceeding seven days.	While observing social practices, building shall not be decorated unnecessarily by lightening in pompous manner. Whosoever contravenes shall be liable to a fine up to Rs. 25,000
Obligation of local bodies	the concerned village development committee or municipality shall convince such person not to commit such act. In spite of convincing in case the concerned person commits prohibited act or likely to commit such act, the concerned body shall inform the Office of District Administration to proceed legal action against such person.	It is mandatory to submit the expenditure as well as social practice detail to the concerned local bodies within the 15 days of completion of such social practice. However, the new bill do not mention the obligation of local bodies.

Particulars	Social Behavior Reform Act 2033	Social Behavior Reform Draft Law
Information of expenditure to be supplied	On the demand of the C.D.O, the concerned party must submit the expenditure details within 15 days. provided that the complaint must be upon the party. In case the concerned person fails to submit the details, a fine up to three thousand rupees or an imprisonment not exceeding three days to such person.	On the demand of the C.D.O, the concerned party must submit the expenditure details within 15 days. In case the concerned person fails to submit the details or submitted fake detail, a fine up to fifty thousand rupees.

### Social Practices (Reform) Act, 2033 (1976) in light of jurisprudence

Role of law is an ideal in the society. Every society make and enforce laws that govern the conduct of the individuals. Law is created in accordance to the need of the society and society itself is the laboratory where all laws are tested and implemented. The rationale of law depends on the its effectivity, efficiency its impact on the society. The Social Practices (Reform) Act, 2033 (1976) was enacted to eradicate certain practices of the society but it cannot not be effectively implemented. People do not follow it because it cannot address the will of the society. Likewise, this law is beyond the social practice and social trend. Several literatures and theories of jurists are related to the creation and effective implementation of the law.

The term *Volksgeist* have German origin which is coined by Karl Von Savigny. *Volks* means people and *Geist* means spirit. Thus, the term *Volksgeist* means the common spirit of people. Broadly, *Volksgeist* is a German phrase depicting the distinct spirit, character and expression of a people. The concept reflects the characteristics of that nation and etymologically it is a way of life. ‘The central idea of the Savigny *Volksgeist* is law should represent the common consciousness of people. It implies that law doesn’t come from deliberate legislation but arises as a gradual development of common consciousness of the nation’ (Michele, 2000, p.233). The *Volksgeist* manifests itself in the law of the people; creates as per the will of people for the necessity of the society.

Eugen Ehrlich also conceived law in context to existing society. As like savigny, he believed that law evolves spontaneously. According to him, the institutions of marriage, domestic life, inheritance, possession, contract etc. govern the society through living law which dominates the social life. By living law he means extra-legal control which regulate social relations of human belongs. Ehrlich opines that, ‘the centre of gravity of legal development lies



not in legislation nor in juristic science, nor in judicial decision, but in society itself' (Myneni, 2022, p.530). Society ignores the enacted law and lives according to rules created by their will and mutual consent. Such rules are based on mutual consent of the people rather than statutory enactments or court's decision, have been termed as 'fact of law' a social reality which exists quite independent of state's positive law. It is the living law of the people. Practices are living till this period the law cannot be able to minimize or prohibit it. It is developed as the social fact which governs the social life (Paranjape, 2022, p.99).

Law requires the study of all social structure and social conditions in which law functions in the society. A statute which is habitually disregarded is no part of living law. It is the living law which dominates the life of the society (Paranjape, 2022, pp.99-100). It is said that enacting and implementing the law is not enough, the concerned law must enter from the door of the society. As like the thesis of Savigny, law can be able to give the social effect by addressing the common will of the society and social problem. People cannot go beyond their consent, declaration of will and social compulsion. Hence, in order for legislation to become living law it must have its practical utility. Law therefore needs to be useful in real life in order to become practically enforceable. For this *volksgeist* must be taken as the credible source for framing the law.

### **Dynamic social structure of Nepal and the rationale of the social practices (Reform) Act, 2033 (1976)**

The Social Structure during the time of 2033(1976) was very different from the present social structure. At that time, the country was less populated and therefore, there was less social interaction and touch. However, with the advent of Globalization, increased division of Labor and the population the social interaction and touch increased, thus leading to change in the *Volksgeist*. This triggered the bill to increase the number of attendees in the social practices. For example, the present Act has legitimized maximum 51 persons in the Marriage feast whereas the bill has purposed the 350 persons in the feast. From the sociological vantage point, marriage as the social event needs the wide people involvement for the social acceptance. However, the purposed bill had mentioned that except marriage in other social ceremony maximum 100 persons shall be invited in the feast. This shows bill failure to separate the private, family and the social event. The inviting the 100 persons in the birthday feast as well as inviting 100 persons in the *Naran* cannot be equated. It needs to be realized the invitation to 100 people in *Naran*, which is family event is acceptable. In contrast, invitation to 100 people in the birthday feast, which is private event is unacceptable and thus, this will unequivocally bring social

anomalies. This is direct denouncement of Nepalese *Volksgeist*.

*Legal Prescription of Number:* Glancing from the other side of the coin, the legal prescription of the number of people in the social ceremony can be counter-productive. The new course of event and venue management and party palace has flourished in the market. It is giving the employment to the large number of people. Today, we encounter at least one-party palace in every ward. The restriction on the number of people in the social ceremony will fuel the unemployment problem and poverty rate will increased. Therefore, the professional consciousness within the common consciousness (*Volksgeist*) of the people must be recognized.

*Secularistic Norms and Values:* Although, the Act has restricted the meaning of Social Practices but its Bill had widened meaning of the social practices stating that social practices embody the rituals and ceremonies associated with customs, traditions, and religion. Going beyond the traditional recognition of Hindu Social practices, it has laid the foundation for the recognition of others social practices. This is in consistent with the secularistic norms and values which is also preached by the Article 26 (right to religious freedom) of constitution of Nepal. Pragmatically, interpreting the article mentions that every religion has right to observe the social practices of its own. In such light, bill reflected the inclusive *volksgeist*.

*Dowry system, Tilak and common consciousness:* There is common consciousness of people that granting dowry or accepting the dowry is bad custom. Contrary to the common assumption and consciousness, the act legitimatizes the dowry with the limitation. The Savigny *Volksgeist* theory is failed at this point when there are circumstances of hypocritical attitude of the people regarding dowry. At the one point, people pretend it as bad custom. At another point, they still adhere to it. So, the Social Practices (Reform) Act, 2033 is hypocrisy law in the sense that it has legitimize the dowry with the ceiling. The mockery of this law became worst when various ministers released the property details claiming that major portion of their property sources was dowry, beyond the ceiling restricted by the act. Although, legally giving or accepting dowry beyond the ceiling is illicit, but rejection by the people, had a become a good pretext to corrupt leaders to disguise their property in the name of dowry, which do not have any sources. The bill has increased the dowry, but there is very less hope that people will adhere.

Savigny rightly states that legal enactments do not necessarily change social practice. The court in the case *Advocate Ramakanta Kharel Vs. cabinet secretariat* (Nepal Kanoon Patrika, 2065, Vol.4, D.N.) 7951) has interpreted the Social Practices (Reform) Act, 2033 and expressed that law solely cannot change the consciousness of people, but the awareness

can change it. As a result, awareness is necessary to change the people mindset. People consciousness should be as “cut your coat according to your cloth.”

*Faulty law-making process:* Savigny views that law should represent the people aspiration and consciousness. Additionally, People aspiration is reflected in the culture, custom, traditional, historical norms and values. Moreover, while making the law, historical evolution process also needs to be determined. Unfortunately, our laws do not consider these facts. People as a Real stakeholders had never been never properly consulted. Laws like Begging Prohibition Act, 2018 B.S., Gambling Act, 2020 B.S., Donation Act 2030 B.S. also reaffirm such reality that suggests that many enacted laws have remained as laws in book but have been never translated into application.

In the context of Nepal, actual law-making process has been highly influencing by vested interest of donor agencies. At many instances, it is believed that the Government of Nepal has formulated many laws just because neighboring countries, India has formulated such laws and many laws have been highly influenced by Indian legal provisions. Real problem is that these sorts of law do not represent the will of the people. For example, Nepal Laws Interpretation Act, 2010 BS is highly influenced by Indian interpretation statute. It was originally enacted in English and later translated into Nepali.

*Fundamental principle or norms:* It is obvious fact that some people disobey the law, but more obvious fact is that that there are some laws that almost everybody disobeys. The main reason is that such law failed to represent the inherent fundamental principle or norms of our society. In other words, Savigny views that law should represent our national character. Social bonding or solidarity is so strong in our society that we say that “*Ragat ko nata vanda bhawana ko nata thulo hunchha*”. Even if there is a dispute amongst neighbor, one neighbor goes to *Malami* in case of death of another neighbor. In circumstances of those fundamental reality, it is evinced that social behavior reform act, 2033 threshold *malami* number 25 is not adhered by our society.

Similarly, in most of the offence related to social behavior, the bill has removed the provision of imprisonment and focused on the monetary fine. People often tends to violate the law relating to monetary fine whereas they become more vigilant to the imprisonment. Taking into this consideration the new law should focus on prison sentences in order to be effective. In addition to this, granting 25 percent more punishment to the people holding the public post is positive in nature. The bill implicitly mentions that people holding public post must be the role model of the nation and they should be more alert in terms of observing social practices.

Moreover, there is provision that providing a false statement of expenditures for a wedding, for example, can lead to a fine of up to NPR 50,000. But how practical is this provision? It will be tedious for people to provide such statements accurately. Besides, there is no mechanism to check the accuracy of such statements. On what basis can they be proven inaccurate? This lacuna shows the lack of research culture in law making process.

### Conclusion

Therefore, the jurisprudentially the law can be divided into two types: obeyed law and transgressed law. The reason for the transgression of the law is clearly given by Savigny *Volksgeist* doctrines. As *Volksgeist* propagates law as a biological growth, an evolutionary phenomenon and not an arbitrary, fanciful and artificial creation, there is need of the self-realization in these sorts of matters. The self-realization can be implanted through awareness and showing its negative effects in the society. However, this might take time to realize those acts have negative consequences. The central argument is that our lawmakers should get out of hangover of outdated Austinian dogmas that perceive law as only an instrument imposed by sovereign authority. Therefore, *Volksgeist* is credible source of the law in society.

As like the Savigny's thesis, law can be able to give the social effect by addressing the common will of society and social problems. The objective of the Social Practice (Reform) Act, 2033 is to create consciousness on the people and to improvise the prevalent practice of present Nepali society. But the fate is that, this Act is not practically applied and followed by the people in the real life. This Act became failure and the failure of existing laws needs reforms because failure laws cannot change the social values, social systems, composition of society. Society is dynamic and law is static so law should address the changing needs of the society by incorporating new changes in the concerned laws. Hence, in order for legislation to become living law it must have its practical utility. Law therefore needs to be useful in real life in order to become practically enforceable.

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