

Children Victims of The Justice System in Nepal with Reference to The Applicability of Forensic Psychology

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Abstract

The motto of the justice system is to provide justice to victims. A question frequently raised is whether it is 'criminal justice system' or 'victim justice system'. While it was supposed to be justice system in totality, children victims of sexual abuse were found to be victimized when they encountered the justice mechanism in Nepal. It was found that the ratio of children being victimized by acquaintances is significant. Similarly, data reveals that the number of female victims is much higher than male victims. Children victims of sexual violence are prone to psychological problems, and they might suffer from such problems in their adulthood as well. Justice system and court proceedings in Nepal are focused on perpetrators and their rights whereas victims are treated a means to collect evidence and prove offense. Child victims of sexual abuse are to be treated with special care and the person questioning him/her ought to be aware of their psychological state. In practice however, this has not been followed. Giving compensation to victim has been regarded as being equivalent to justice. Application of psychology is very rare in the investigation process and in the judicial system; with regards to victims, it is almost equal to null. The overall practice is focused on crime, criminals and conviction rather than on victims and their justice.

Method of study

The researcher has used empirical data in this research. The researcher interviewed judges, public prosecutors, police officers, clinical psychologists, counselling psychologists, defense lawyers, medical doctors, safe house managers and victims. Structured Interview method was used to collect data from these respondents. Total respondents for this research were thirty-six (n=36).

Total sexual offence cases registered in Kathmandu District Court, Lalitpur District Court and Bhaktapur District Court from F/Y 2072/073 to 2077/78 (ongoing) were collected. Total number of cases studied were n1= 477. These cases were studied from the victim's perspective with major focus on forensic psychology.

In the same way, precedents established by the Supreme Court of Nepal were studied

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to analyze the trend of Supreme Court. Cases published in Nepal Kanoon Patrika from 2072 to 2077 were studied. Total number of cases relating to sexual offences were n=79.

Content analysis, structured interview, observation, case law study, questionnaire, survey method was used for collection of primary and secondary data. Quantitative data acquired from research was analyzed statistically and charts and statements are used for clarifications. Similarly, qualitative data were presented on statement forms.

Conflict of interest

The researcher has carried out this research work independently and solely for understanding the application of psychology in the criminal justice system. *Mens rea* is regarded to be essential in order to establish crime, while the harm sustained by victim is the yardstick to determine sentence. Hence, researchers only tend to do this research for academic purposes and to give recommendations. The researcher has no conflict of interest with other researchers carrying out a study on similar issues independently.

1. Introduction

This qualitative study aims to explore and describe the applicability of use of forensic psychology in the child victim justice system. Relationship between psychology and crime is blended yet, it is not in the limelight in the justice system of Nepal. Although there is plenty of literature on the consequence of sexual abuse, little research has been conducted regarding the risk of secondary victimization when a child victim testifies as a witness throughout the preliminary proceeding to the police, as well as hearing in the court room.¹ In the case of Nepal, the psychological aspect of victims has been ignored for far too long. The problem that victims face after being victimized with sexual abuse has been unnoticed and ignored.²

Concern about children's victimization is not new.³ Mendelssohn has categorized child victims as a innocent victims. Children are prone to victimization due to their simplicity, immaturity, and dependency. One reality not widely recognized about child victimization is that children are more prone to victimization than adults.⁴ It is ironic that the problem of children as aggressors has until recently had more attention in social science than children as victims, reflecting perhaps the priorities of the adult

¹ Olga Themeli & Maria Panagiotaki, 'Forensic Interviews with children victims of sexual abuse: The Role of the Counselling Psychologists', *The European Journal of Counselling Psychology* p.1, Volume 3:1, 2014, pp. 1-19, available at <https://ejcop.psychopen.eu/article/view/17/html> , accessed on 5 June 2018.

² Laxmi Bakhadyo, 'Analytical Study of Juvenile Justice System: with reference to Children victims victimized by juvenile delinquents', Master's Thesis, Purbanchal University.

³ David Finkelhor, 'The Victimization of Children and Youth, Developmental Victimology', in R.C. Davis, A.J. Lurigio & W.G. Skogan (eds), *Victims of Crime*, Sage Publication, United States of America Second Edition, 1997, p.86.

⁴ Ibid, p.87; This is clearly true for teenagers. According to National Crime Survey (NCVC), the overall violent crime victimization rate for youth aged 12-17 in 1992 was 2.3 times higher than the average national rate. It was three times higher for rape, two times for robbery, more than two times higher for aggravated assault, and three times higher for simple assault.

world.⁵

Consent given by a child is not regarded to be consent in the criminal justice system, as children are said that s/he is not able to think about the consequences. Kjellgren stated that

In order to be able to judge whether situations are of abusive character, one must be able to evaluate closely the conditions of interaction and quality of events. In order to distinguish normal, sexual activities from those which are involuntary and thus abusive, we need to evaluate the existence of consent. Consent is made up of several elements. In order to consent on an act, one must understand the proposal, the implications of behavior and be aware of the possible consequences⁶

All these mental states are study areas of psychology. The field of psychology that deals with all aspects of human behavior relating to the law or legal system is forensic psychology. Forensic psychology has played a large role in the criminal justice field over the years. Forensic psychology is unique, yet the crucial blend of both psychology and the criminal justice system.⁷ Nepal has seen a paradigm shift in its criminal justice system. The *Muluki Ain 2020 (1963)*, a general law dealing with overall criminal justice system of Nepal, has been replaced with *Muluki Criminal Code Act 2074 (2017)*, *Muluki Criminal Procedure Code Act 2074 (2017)*, *Crime (Sentencing Policy and Implementation) Act 2074 (2017)*.

Though application of forensic psychology can make the justice system more reliable, effective and efficient, the intervention of forensic psychology in the criminal justice system of Nepal has yet not been acknowledged. There is an immense scope of forensic psychology in juvenile justice, criminal justice, and victim justice system. If the proper implication of forensic psychology could be done in the investigation, adjudication, prosecution, and implementation of decision then the criminal justice system can be justice oriented and parties related to the criminal justice system could realize justice. Though 'right to victim' has been ensured as the fundamental rights in *Constitution of Nepal 2015*, psychological support has not been ensured. Advocacy has been done in the sphere of restorative justice and restorative justice includes legal as well as social justice to the victims of the offense. Children victims are more vulnerable than adult victims since their psychological state is not matured and are not able to differentiate between love and lust. Hence, psychological aspects should not be ignored.

Children are found to be victims of sexual abuse. Sexual abuse includes rape, attempt to rape, sexual harassment, pedophilia, pornography, and online sexual harassment in which victims suffer in the cost of pleasure or gratification of an adult. Children may not be aware of their victimization. It is a well-known fact that sexual abuse has severe

⁵ Ibid, p.104, para. 5.

⁶ 'Violence Against Children In Nepal, "No more suffering", Child Sexual Abuse in Nepal: Children's Perspectives With Reference To Study In Four Districts', UNICEF, 2005, p. 27, available at <https://un.info.np/Net/NeoDocs/View/7965>, accessed on 1 June 2018.

⁷ Maria Zegarra, 'The Role of Forensic Psychology in Criminal Justice', *Florida National University*, 14 January 2020, available at <https://www.fnu.edu/role-forensic-psychology-criminal-justice>, accessed on 26 January 2022.

consequences for the concerned children and that violation affects them for the rest of their life.⁸ Sexual exploitation of children is on the rise in Nepal as recent studies suggest.⁹ Sexual violence suffered by women and girls has been largely recognized whereas young male victims face the danger of being overlooked due to gender stereotypes.¹⁰

Children victims are traditionally not considered a reliable source of evidence as their credibility and their mnemonic ability are brought into question.¹¹ In the same way, the absence of visible external injuries in most cases make sexual abuses extremely difficult for third parties to detect, thus the burden of going through the difficult and painful procedure of disclosure lies with the child victim.¹² Experts point out that the correct choice and use of the technique applied in each particular case play a decisive role in disclosing the violation suffered by the child as well as in the detection of the truth.¹³

With regards to child victimization and suffering they go through in incident, in court proceedings and in the phase of restoration in society, the researcher tends to do research in applicability of forensic psychology on those processes. The research is limited to the concept of child victim justice system and area of intervention of forensic psychology for providing legal as well as social justice to child victims of sexual abuse. Similarly, the researcher had collected data from Bhaktapur, Lalitpur, Kathmandu, Kavre and Rukum District for generating the scenario.

2. Literature review

2.1 Child sexual abuse

Nepal Human Rights Report 2021 shows that a total of 1,461 children¹⁴ were victimized of violations of child rights, and among them 989 were victims of rape and 356 were victim of sexual abuse in Nepal¹⁵ *State of Children in Nepal 2019*, mentioned that in FY 2018/019, there are a total of 1,420 rape cases that were reported to Nepal Police, whereas the cases were 995 in the FY 2017/018, o¹⁶ As per *State of Child 2020*, in FY 2019/20, 1393 cases of rape against girls have been reported at the Police Office and among them 272 girls were below the age of 10 and 801 were of 11-16 years and 319 were of 17-18 years. In addition, 324 girls have been victimized by the attempt to

⁸ Mapping of Psychological support for Girls and Boys affected by sexual abuse in four countries in South and Central Asia, Afghanistan, Bangladesh, Nepal, and Pakistan', *Save the Children*, Sweden, 2003.

⁹ Anita Shrestha, 'Male victims of child sexual exploitations overlooked', *The Himalayan Times*, Kathmandu, 19 May 2017.

¹⁰ Ibid.

¹¹ Themeli (n 1).

¹² Ibid.

¹³ Ibid.

¹⁴ Shree Ram Bajagain et al., Nepal Human Rights Yearbook 2021, *Informal Sector Service Centre (INSEC)*, 2021, Kathmandu, p. 22.

¹⁵ Ibid.

¹⁶ Gyanendra Kumar Shrestha, 'State of Children in Nepal 2019', *National Child Right Council*, 2019, Lalitpur.

rape this F/¹⁷

2.2 Forensic psychology

The field of psychology that relates to the law or legal system is forensic psychology. Forensic psychology is the study of the integration of psychology and the law. It is a new blend of two old professions: psychology, which is the study of human behavior, and the law, which is the study of how people rule themselves in social situations.¹⁸ Psychologists generally use the scientific method of induction to understand human behavior while lawyers use reason or the deductive method of inquiry to understand legal issues. Each discipline uses different methods to interpret and solve problems.¹⁹

Blackburn (1996) defines forensic psychology as ‘(...)the provision of psychological information for the purpose of facilitating a legal decision.’²⁰ In the same way, British Psychological Society (BPS) explains forensic psychology as being ‘...devoted to psychological aspects of legal process in courts. The term is also often used to refer to investigative and criminological psychology: applying psychological theory to criminal investigation, understanding psychological problems associated with criminal behaviour and the treatment of those who have committed offences.’²¹

According to American Board of Forensic Psychology, ‘(...) forensic psychologists (and forensic psychiatrists) will assess a person’s competency to stand trial, assess the state of mind of a defendant, act as consultants on child custody cases, consult on sentencing and treatment recommendations, and advise on issues such as eyewitness testimony and children’s testimony.’²²

Forensic psychologists are called upon the court for judicial process as experts. As experts, forensic psychologists ought to have a good understanding of the law and provide information in the context of the legal system rather than just within the realm of psychology. They may also be involved in providing psychological treatment within the criminal justice system. Criminal profilers are a relatively small proportion of psychologists that act as consultants to law enforcement.²³ Psychologists trained in forensic psychology provide a variety of services. For example, in the judicial system, they evaluate and assess the psychological functioning and capacity of individuals suspected or convicted of committing a crime. Within law enforcement, they pr²⁴

¹⁷ Gyanendra Kumar Shrestha, ‘State of Children in Nepal 2020’, *National Child Right Council*, 2020, Lalitpur, p. 46.

¹⁸ Lenore E.A Walker & David L. Shapiro, *Introduction to Forensic Psychology Clinical and Social Psychological Perspective*, Springer Science+ Business Media LLC, Germany, 2003, p.3.

¹⁹ Ibid.

²⁰ Sandie Taylor, *Forensic Psychology The Basics*, Routledge Taylor & Francis Group, London, 2015, p.2.

²¹ Ibid.

²² ‘Forensic Psychology’, *OpenEd CUNY*, available at https://learn.saylor.org/pluginfile.php/40708/mod_resource/content/1/OpenStax-Psychology.pdf, accessed on 18 Jan 2018.

²³ Ibid.

²⁴ ‘What is Forensic Psychology?’, *The Three Seas*, available at <https://thethreeseas.com.au/forensic-psychology/>, accessed on 20 Jan 2020.

2.3 Child Victim Justice

Dr. Shanker Kumar Shrestha in his book 'A step towards Victim Justice System,' defines victim as 'negatively affected persons or group directly or indirectly from the criminal activities'²⁵. In fact, the principle of criminal justice begins with the victims but unfortunately, there is no provision in the present criminal justice system for the welfare, remedy and security of them. As per *Declaration of Basic Principle of Justice for Victims of Crime and Abuse of Power 1985*, victims are of two types i.e., victims of crime and victims of abuse of power.

There, victims of Crime have been defined in the following way:

Victims mean persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omission that are in violation of criminal laws operative within Member States, including those laws prescribing criminal abuse of power.²⁶

Victim of crime has no separate entity. They are viewed in relationship to the offender who has harmed them.²⁷ Mendelson, who has established victimology as independent science, has described offender and victim as "penal couple". He described victim as 'a person who has sustained physical, material or moral damage owing to an unlawful act'. The victim is not necessarily an individual. It may also be a collective entity like a family, a firm, a corporation, a group, or even a whole nation.²⁸ Mendelson had categorized 6 types of victims, and child victims, as per him, are completely innocent victim.

Cases of child victimization are often registered in police station or concerned authority when the offender is somebody else than family members and offence is of grave nature like rape, grave assault, homicide, human trafficking etc. If victimization is of minor nature, then they are unreported. Victimization of children would count more if the number of family victimization is added along with the data of children victimization.²⁹

Victims of juvenile delinquencies were most often likely to be about the same age of juvenile delinquent.³⁰ Child victims victimized by juvenile delinquents are to be duly considered while adjudicating the case on juvenile justice system. It is ironic that the problem of children as aggressors has until recently had more attention in social science than children as victims, reflecting perhaps the priorities of the adult world.³¹ Guidelines in justice in matter involving child victims and witness of crime adopted by Economic and Social Council in its Resolution 2005/20, wherein its preamble clearly

²⁵ Shanker Kumar Shrestha, *A step towards Victim Justice System: Nepalese Perspective*, Pairavi Prakashan, Kathmandu, 2001.

²⁶ *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, 29 November 1985, UNGA 40/34, Principle 1.

²⁷ Ram Auja, *Criminology*, Rawat Publication, 2011, p. 386.

²⁸ *Ibid*, p. 387.

²⁹ Finkelhor (n 3), p.88.

³⁰ *Ibid*.

³¹ *Ibid*, p.104, para.5.

states that while protecting right of accused, justice to child victims of crime is to be ensured.

When a child comes in contact with the law as a victim, then they are entitled to the following rights:

- Protection of best interest of child
- Access to justice and fair treatment
- Right to restitution
- Right to get compensation
- Right to counsel and assistance
- Right to privacy
- Right to participate/informed in criminal justice proceeding
- Right to be treated with compassion and respect
- Right to speedy trial
- Right to rehabilitation and reintegration

2.4 Laws relating to Victim Justice

2.4.1 National Laws

National legislations like *Constitution of Nepal*, *Sentencing Policy Act 2074*, *Children Act 2075*, *Children Justice Procedure Regulation 2076*, *Victim Protection Act 2075* along with *Muluki Criminal Code 2074* and *Muluki Criminal Procedure Code 2074* deals with the provision relating to crime victims' rights.

Article 21 of the *Constitution of Nepal* ensures rights of crime victim as fundamental rights. This provision ensures right to get reasonable compensation, right to restoration and right to get information of cases proceeding as fundamental rights. Similarly, for the implementation of rights ensured in the Constitution, *Victim Protection Act 2075* has been enacted. This Act includes overall rights of victims. Sec. 2(da) defines harm and also states the psychological harm sustained by victims. This Act enlist long list of rights of victim in part 2 and in part 3 it states about report of harm sustained by victim, part 4 explicitly explains about compensation. In the meantime *Children Act 2075* in particular describes rights of child victims of offence in sec. 25. *Muluki Criminal Code 2074* and *Muluki Procedure Code 2074* are general code, and these codes includes right of victims as per the nature of offence.

2.4.2 International Laws

2.4.2.1 *Child Rights Convention 1989*

Child Rights Convention 1989 (hereinafter, *CRC*) is the leading and most respected international convention in child law and covers civil, economic

and social rights of children. Furthermore, it has legally recognized children as individuals of equal value but with special needs, attention and protection. CRC is international instrument which unequivocally deals with rights of children. It does not mean children victim of crime but in general had mentioned rights of children. Protection of best interest of children, right to be treated with dignity and non-discrimination, right to be heard, right to development are major principle enshrined through CRC. These rights are applicable to every child either whether they are in conflict with law or in contact with law.

2.4.2.2 *Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power 1985*

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by General Assembly resolution 40/34 of 29 November 1985. Victims is defined as person who individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member states, including those laws prescribing criminal abuse of power.

The Declaration describes the rights of victims. How they are to be treated and what are inalienable rights of victims are explained. Access to justice and fair treatment, right to get restitution, compensation, and assistance are described in this Declaration.

2.4.2.3 *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime 2005*

In resolution 2005/20 of 22 July 2005, the Economic and Social Council adopted the *Guidelines on Justice in matters involving Child Victims and Witnesses of Crime*. This guideline mentioned the rights of child victims of crime. Viz: Right to be treated with dignity and compassion, right to be protected from discrimination, right to be informed, right to be heard and to express views and concerns, right to effective assistance, right to privacy, right to be protected from hardship during the justice process, right to safety, right to special preventive measures, right to reparation.

Child victim or witness is defined as a person under the age of 18 who is a victim of or witness to a crime, regardless of his or her role in the prosecution of the alleged offender or groups of offenders³². Major principles enlisted in these guidelines are: dignity, non-discrimination, best interest of child and right to participation.³³

³² UN *Guidelines on Justice in matters involving Child Victims and Witnesses of Crime*, UNEcoSoC Res E/RES/2005/20, 22 July 2005, art. 9(a).

³³ *Ibid*, art. 8.

3. Discussion and analysis

The researcher in this study had collected data to analyze three phases of the justice system. Questions for data collection were divided into three parts as follows:

- During the pretrial phase
- During trial phase
- During post trial phase

Kripa Acharya³⁴ and. Anjan Dhakal³⁵ mentioned that victims of sexual abuse face psychological problems. As they went through traumatic situation, they face problems like losing self-identity, trust issue, nightmares, anger, self-blame, feel helplessness, lack of decision-making power, low self-esteem, hate own body, eating disorder, self-harm tendency, accepting abusive relationship etc. They often do not open up about the real situation they face.. Acharya, mentioned that it might take more than five to six sessions of counseling to enable the victim to open up about the incident because s/he may not believe the counselor as well.. Dhakal and. Acharya in common stated that psychological assessment and treatment is required to victim from very beginning of the case i.e., pretrial stage, to make them believe that it was not their fault, and that they need not blame themselves.

Mr. Dhakal also added that one of the major reasons why victims turn hostile, i.e., changing their statements, is associated with psychology. He stated that victim might be re-victimized by society and even by concerned authorities hence, they better opt to be far from hassles of process and turn hostile or even do not appear in the court for statement. Similarly, Acharya mentioned that parents are very important to children and the latter want to ensure happiness of their parents. When children see their parents with so much stress because of incident, the victim child turns hostile, Likewise, they say whatever their parents or trusted person want them to say, they even imagine situation and doubt if the incident was happened or not. In this situation, trauma based therapy is essential. Psychological interference is required in all three phases of trial as well as after restoration.

3.1 Child Victims of sexual offence

3.1.1 Data from Police Headquarter, Naxal

In F/Y 2072/073 1089 rape cases and 452 attempt to rape cases, in F/Y 2073/074, 1131 rape cases and 536 Attempt to rape cases, in F/Y 2074/075, 1453 rape cases, 746 attempt to rape cases, in F/Y 2075/076, 2230 rape cases, 786 attempt to rape cases and 211 children sexual abuse cases, in F/Y 2076/077, 2144 rape cases, 687 attempt to rape cases, 232 child sexual abuse and in F/Y 2077/078, 2532 rape cases, 736 attempt to rape and 281 child sexual abuse were registered.

Similarly, in F/Y 2074/075, 28 children below 10 years, 71 children from 11-16 years

³⁴ Counseling psychologist associated with SATHI Sanstha.

³⁵ Clinical psychologist.

and 20 children of age between 17-18, in F/Y 2075/076, 25 children below 10 years, 110 children from 11-16 years and 27 children of age between 17-18, in F/Y 2076/077, 42 children below 10 years, 59 children from 11-16 years and 36 children of age between 17-18, in F/Y 2077/078, 30 children below 10 years, 90 children from 11-16 years and 34 children of age between 17- 18 were victimized of rape in Kathmandu valley.

3.1.2 Data from Kavre Police Station

While analyzing data from F/Y 2071/072 to F/Y 2077/078 of Kavre (Dhulikhel) police, total 172 rape cases, 65 attempt to rape cases and 10 unnatural sex or child sexual abused were found to be registered. Data reveals an increasing number of child victims.

Table 1.1. Rape, attempt to rape and unnatural sex/child sexual abuse case in Kavre

S.no	Fiscal Year	Rape		Attempt to rape		Unnatural sex/child sexual abuse	
		Total	Child Victim	Total	Child victim	Total	Child victim
1.	2071/072	16	5	15	5	0	0
2.	2072/073	10	4	7	4	1	1 (male)
3.	2073/074	14	6	7	2	1	1
4.	2074/075	25	15	15	6	2	2
5.	2075/076	38	21	8	8	0	0
6.	2076/077	43	Not Mentioned	7	Not mentioned	3	3
7.	2077/078	26	Not mentioned	6	Not mentioned	3	3
Total		172		65		10	10

Source: Kavre Police Station

3.1.3 Data from Bhaktapur Police Station

In F/Y 2071/072 total of 28 cases of sexual abuse were registered, among them 7 was of attempt to rape and rest of 21 were of rape. In F/Y 2072/073, 13 rape cases and 5 cases of attempt to rape were registered, where 18 children were victimized, in F/Y 2073/074, 11 rape cases, 5 attempt to rape cases and 1 child sexual abuse case was registered and 6 victims were minor. In F/Y 2074/075, 20 rape cases and 5 attempt to rape cases were registered and 12 children were victimized. In F/Y 2075/76, 34 cases of rape, 5 of attempt to rape and 4 of child sexual abuse were registered and 27 children were victimized. In F/Y 2076/077, 34 rape cases and 3 attempts to rape were registered, 13 were child victims. In F/Y 2077/078, 39 rape cases, 2 attempt to murder and 8 children sexual abuse were registered, and 29 children were victimized.

3.1.4 Data from Kathmandu Police Station

The researcher was not able to get segregated data from Kalimati Police station but there is lump sum numbers of sexual abuse cases listed. In F/Y 2071/072; 95 rape cases, 42 attempt to rape were registered. In F/Y 2072/073, 102 rape cases and 31 attempt to rape cases, in F/Y 2073/074, 114 rape cases and 28 attempt to rape cases, in F/Y 2074/075, 148 rape and 44 attempt to rape cases were, in F/Y 2075/76, 225 rape, 45 attempt to rape, 24 children sexual abuse cases, in F/Y 2076/077, 184 rape, 35 attempt to rape and 23 children sexual abuse, in F/Y 2077/078, 151 rape, 29 attempt to rape and 15 child sexual abuse cases were registered.

3.1.5 Data from Lalitpur Police Station

Similarly, as in Kathmandu (Kalimati) Police, no segregated data were found in Lalitpur (Jawalakhel) police station either. Data were available in lump sum. In F/Y 2071/072, 13 rape cases, 1 attempt to rape, 1 unnatural sex and 1 marital rape was registered. In F/Y 2072/073, 23 rape and 12 attempt to rape cases, in F/Y 2073/074, 16 rape, 7 attempt to rape and 2 unnatural sex, in F/Y 2074/075, 21 rape cases, 17 attempt to rape, 1 child sexual abuse, 1 abduction and rape, 1 rape and attempt to murder were registered. In F/Y 2075/076, 39 rape, 14 attempt to rape, 3 rape and abduction and 2 children sexual abuse, in F/Y 2076/077, 48 rape, 2 children sexual abuse, 1 rape and child marriage, 13 attempt to rape, 1 rape and homicide and 3 abduction and rape, in F/Y 2077/078, 39 rape, 9 attempt to rape and 6 children sexual abuse cases were registered.

3.1.6 Data from Rukum East Police Station

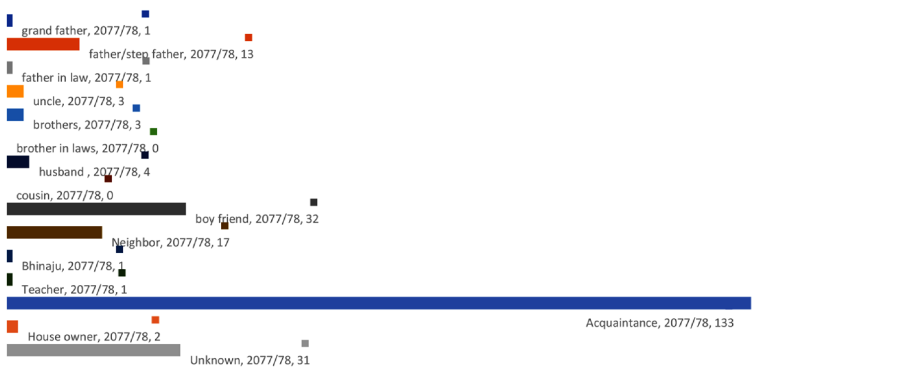
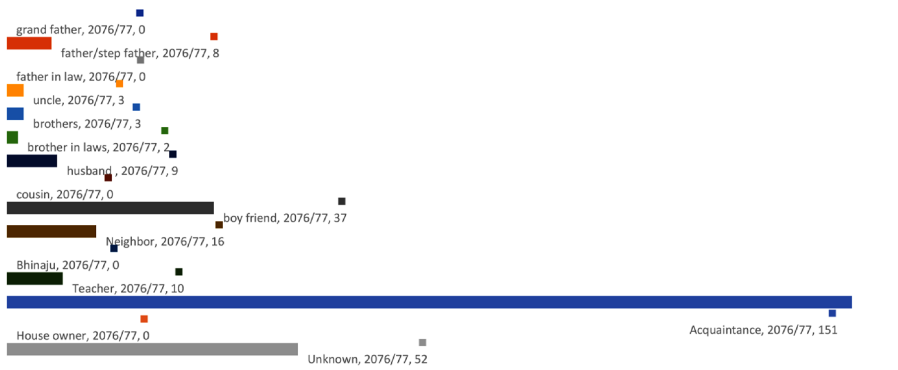
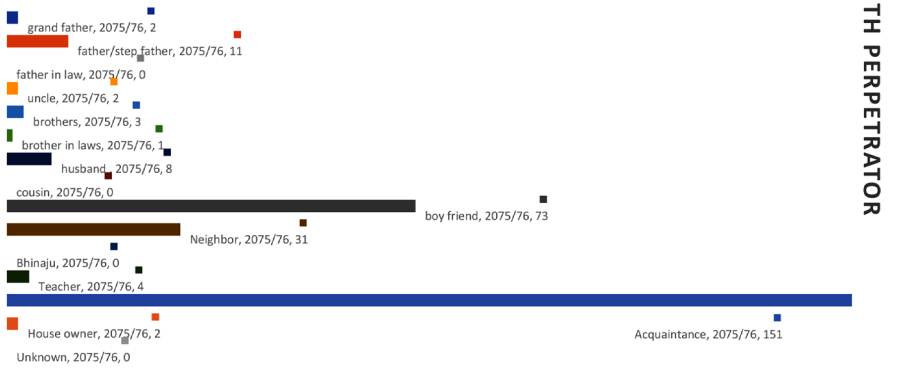
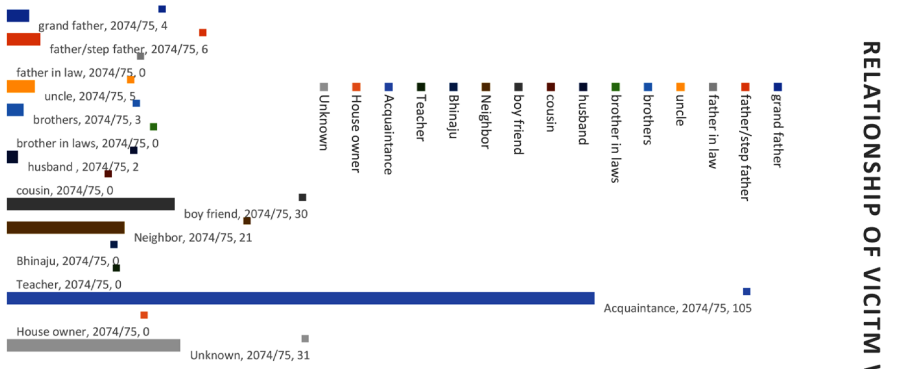
As Rukum East is a newly formed district, the data were therefore available only from F/Y 2074/075. There was only 1 rape case registered in F/Y 2074/075. In F/Y 2075/076, 8 cases of rape, 5 of attempt to rape, in F/Y 2076/077, 5 cases of rape and 3 of attempt to rape were registered, and in F/Y 2077/078, 4 cases of rape, 2 of attempt to rape and 1 case of abduction and rape was registered. In total 29 cases 10 children were victimized.

3.1.7 Victims being victimized by acquaintance

While analysing data collected from the police headquarter, it was found that the majority of victims of sexual abuse were victimized by their acquaintance. This data reveals that, grandfather, fathers, stepfathers, uncles, brothers, brother in-laws, husband, boyfriend, neighbor, teachers, acquaintances, house owners were found to be the perpetrators. From F/Y 2074/75 to 2077/78 total 1028 people were victimized and among them 914 were raped by known person whereas only 114 were victimized by unknown person.

Table 1.2. Relationship of victim with perpetrator

RELATIONSHIP OF VICTIM WITH PERPETRATOR



Source: Police Headquarters, Naxal, Kathmandu

Similarly, as per data of Bhaktapur Police, total 103 rape cases, 10 attempt to rape cases and 12 children sexual abuse were registered from F/Y 2075/76 to F/Y 2077/78 and in those 125 cases, 4 accused were unknown people whereas rest of others were husband (10), friend (45), neighbor (64), father (3), father-in-law (1) and brother (1).

Likewise, data of Rukum East also reveals similar findings. Among 29 registered cases, accused was unknown in only one case and in the rest of 28 cases the accused were relatives, neighbor or acquaintance people.

3.2 Application of forensic psychology during the pretrial phase

The phase from filing FIR to submitting a police report to the public prosecutor and filing charge sheet at the respective court has been categorized as pretrial phase. There is an immense value of psychological intervention in this phase. It is the phase where victims come in contact with law just after being victimized (generally)³⁶ and they seek justice.

Interview was taken with police officers of Kathmandu, Lalitpur, Bhaktapur, Kavre and Rukum to trace if psychological assessment or if any type of psychological intervention has been done during pre-trial phase by police. Following were findings:

3.2.1 Absence of counselor

Counselors had not been appointed in any police station.

3.2.2 Training on psychosocial counseling

It has been found that all police officers other than that of Bhaktapur District were trained with psychosocial counselling. They had been trained for a time duration ranging from 7 to 15 days. Respondents mentioned that such types of short training are fruitful but not enough.

3.2.3 Psychological test of victims

As stated by respondents, victims' psychological assessment is done just after filing FIR. But it is to be noted that most of the time it is done by police officers themselves. In the same way, victims are referred to OCMC.³⁷ One-time session is done, and a report is made.

3.2.4 Statement of victim

In justice mechanism, statement of victim is of immense evidentiary value. Statements are taken by police officers in the presence of parents. Before taking statement, victims' mental status is not accessed. Hon'ble judge Tek Narayan Kunwar, in his article relating to sensitivity and procedure of inquiry

³⁶ Time limitation for cases varies and victim come to file cases as per it. But yet, first point to file case against perpetrator is police.

³⁷ One Stop Crisis Management Center (OCMC) is a facility for medical test, psychological assessment and also resource mapping of legal aid service.

done with victim of sexual violence mentioned about the requirement of well-trained counsellors in the investigation team and in court proceedings to take statements. However, this hasn't been implemented in practice. In such case, forensic experimental trauma interview technique is better technique to make victim comfortable as well as it helps to create environment to make victim give their statement.

3.2.5 Process of *Sanakhat* (identifying perpetrator)

Identification of perpetrator by victim is one of the major steps in criminal proceeding. A question was asked about preparing victims for it, since they might have been traumatized by the incident. A police officer from Kavre mentioned that the victim is accompanied by her parents or guardian for the process unless the perpetrator is the victim's own guardian. A police officer of Bhaktapur mentioned similar thing, and that the victim is pre-informed about the process. The police officers of Kathmandu and Rukum East mentioned that the victim is informed about the identification process, counseled by a counsellor, accompanied by guardian and notified about the consequence of the process. Similarly, an officer of Lalitpur also mentioned about the counseling being done.. Further, in regard to the steps after process of identification, the respondents gave the following responses:

Table 1.3. Process that follows the process of identification

S.N	Police Station	What are the next steps after process of identification?
1.	Bhaktapur	<ul style="list-style-type: none"> • Sent home with guardian • Make victim sign on Identification document
2.	Rukum East	<ul style="list-style-type: none"> • Make victim accessed by counselor • Make victim sign on Identification document • Inform consequence of process
3.	Kathmandu	<ul style="list-style-type: none"> • Session with Psychosocial Counselor if required • Identify if house is safe for victims or not • Sent home with guardian
4.	Kavre	<ul style="list-style-type: none"> • Sent home with guardian • If required then sent to a safe house for protection of the victim
5.	Lalitpur	<ul style="list-style-type: none"> • Sent home with guardian • Session with Psychosocial Counselor if required • Make victim sign on Identification document • Inform consequence of process

So no uniform process was found. Victims were said to be counseled before the process of identification only in some police offices, but not in all. However, there was uniformity on the matter of the victim being accompanied by his/her guardian.

3.2.6 Safe house during trail phase

Safe house is designated shelter to female victims of domestic violence and other forms of violence. Child victims of offence are also sent to safe houses if there is requirement of protection and their family are unable to provide it. Police officers mentioned that all victims are not referred to safe house. Victims are referred to safe houses in the following situation:

- When home is not safe for the victim;
- If there are chances of the victim turning hostile;
- If the victim is traumatized;
- If the victim requires counseling;
- If the victim is mentally unstable;
- If victim asks for security.

Although there was said to be government owned safe houses in Kavre and Rukum East, the researcher was unable to find any such establishments in those places. In Kathmandu valley, victims are referred to safe house run by NGOs. The manager of government owned safe house were reportedly found to be trained with 6-month counselling training and in NGO owned safe house, psychosocial counselors were found to be hired as staff.

Further, time duration to be in safe house is also required to be considered. In safe house under government, victims are sheltered up-to 45 days in general. Urmila Ranjitkar³⁸ mentioned that she has experience of sheltering victims for 3 months. She also mentioned that safe house is not rehabilitation centre so ultimately, she had to refer it to NGO.

Counselling services were found to be provided to victims in safe house, either by manager themselves or by counsellors. Number of sessions would depend on the nature of offence and harm sustained by victim.

Researcher also asked about tools and mechanism used for counselling and in response to it, Ranjitkar mentioned about communication tools being used, whereas Sugandha Samala Malla (although having 6 months training) was found unaware about different tools and mechanisms that can be used in counselling. Acharya, on the other hand, stated about healing mechanism, trauma counselling, assertiveness mechanism, grounding exercises as tools used for counseling.³⁹

³⁸ Manager of Safe House of Kavre.

³⁹ The counselors from NGOs were found more aware about tools of counseling than those in government based safe house.

3.3 Application of forensic psychology during trial phase

3.3.1 Child Psychologist in juvenile bench

As per section 30 of *Child Act 2075*, child psychologist is a member of juvenile bench. Juvenile bench is established with motive to deal and decide cases of children in conflict with law. Child psychologists of juvenile bench of Bhaktapur, Lalitpur, Kathmandu, Kavre and Rukum were interviewed which led to following findings:

- As per Terms of Reference of child psychologist of juvenile bench, they are not responsible to assess child victim and child witness of the offence. Sometimes they assess child victims *suo motu*. But their assessment of children or counseling of child victims is without the requirement of presenting a report to the court.
- Child psychologists only assess juvenile delinquents. It is a one-time assessment and report is submitted based on it so there is not enough time for proper assessment..
- Assessment of child victims is equally important as assessment of juveniles. Victims of sexual abuse are prone to psychological problems, because of which they are to be assessed and provided proper counseling service, but it is not in practice.
- Victims would freely talk about the incident with psychologists rather than to police and public prosecutors.
- Victims are vulnerable, sometimes fragile, and they are to be interrogated with techniques of forensic psychology, but they are not even assessed.
- Court is more focused on the perpetrator than victims.

Table 1.4. Child psychologist in juvenile bench

S.N	Juvenile bench	Number of counselors in court	Educational qualification	Major task	Ever consulted child victim?	Need of psychologist in court for minor victims?	Your presence while making statement by victim?	Is the psychologists' opinion given evidentiary value?
1.	Kathmandu	4	MA in psychology, LL.M	Assess juveniles and submit report	Yes, was called by Bench.	Yes	No	Better if psychologist was used during the investigation process as well.
2.	Lalitpur	2	PGD in counseling psychology	Assess juveniles and submit report	Yes, but only two children in 7 years	Yes	No	Better to give it as psychologists get to know details of the case via victim.
3.	Bhaktapur	1	MA, LLB, 2 months training on child psychology	Assess juveniles and submit report	No	Yes	No	Yes
4.	Kavre	Roster of 6	MA, PGD	Assess juveniles and submit report	Not as per court order, but done at individual capacity.	Yes	No	It is taken as persuasive
5.	Rukum	1	Educational psychology in B.Ed, LLB, MA	Assess juveniles and make reports.	No	Yes	No, courts do not call us for even those cases with minor victim.	Yes, but judgements should not entirely depend on it. Psychologists assess a person rather than investigate a case.

3.3.2 Victims' presence in court

Judiciary has always presented victim merely as evidence. The importance attached to the victims has only been upto their statements but their mental status is neither assessed nor tested. Victims are neither provided with counseling service, nor do those interrogating them have knowledge about its sensitivity. They were even found being kept in the same room with perpetrator. Only if the environment turns to be too harsh and judges feel better to keep them separately then the victims are kept aside.

3.3.3 Statement of psychologist as of evidentiary value

Taking statement of psychologist is already rare, and even if taken, it is only persuasive. The law does not provide for any formal assessment with regards to child victims.

3.3.4 Role of judges with regards to application of forensic psychology during trial phase

Five judges, each from Kathmandu, Bhaktapur, Lalitpur, Kavre and Rukum East District Court, were interviewed. The findings were as follows:

- The term 'forensic psychology' was found to be new to judges. Judge Madan Bdr. Dhama was well acquainted about the topic but some of other judges coincided the term with 'forensic science', which displays their unfamiliarity with the term.
- The judges, with their discretionary power, had used child psychologists of juvenile bench while dealing with cases of minor victims but it has been very rare in practice.
- Psychiatrists are sometimes called in court as experts but only where accused was mentally retarded, in case of which the former need to prepare a report on mental health situation of the latter. The judges generally assess child victims themselves and if they find some problems then they refer the child for mental health test or else it is not mandatory.
- Witnesses are not assessed. They simply come to court and give their statement. Either witness is an eligible person for being witness is not tested.
- Statements of children are taken in the presence of guardians. Normally, as per availability of time, judges take statements of victims by themselves, but this is not true in all cases.
- The judges of all five district courts have the same notion. All of them said that sentencing depends upon the harm sustained by the victim and that harm includes physical, social, economic and even psychological. But they are not tested. The level of psychological harm is merely speculated.

3.4 Application of forensic psychology post trial phase

Victim is generally not in touch with judicial mechanism after his/her statement in the court. They are provided with compensation by the court's decision if perpetrators get convicted and that's all to it. Victims are expected to be restored in society but no

steps in such regard were found being taken by either judiciary, or public prosecutor or investigation authorities. The post-trial phase is also concerned only with the penal part of convict and not with the victim.

3.5 Child friendly justice

Constitution of Nepal, Children Act 2075 and *Child Justice Implementation (Procedure) Regulation 2076* ensures the justice system to be child friendly. The establishments of juvenile court, Central Child Justice Committee, District Child Justice Committee and child reform homes are part of child friendly justice system. Part 4 (section 20 to 47) of *Children Act 2075* deals with child justice and among those provisions, section 25 deals with children victim. Article 21 of the Constitution ensures the right of crime victims as fundamental rights and a separate provision for child victims in the *Child Act* are worthy of praise. Section 25 of the Act enlists the following as rights of victims:

- Right to get information in child friendly language
- Involvement in judicial process
- Right to privacy
- Close hearing
- Compensation
- Free legal aid, psychological counseling if required, separate lawyer
- Translator
- Free copy of decision of case
- Protection from potential harm from accused
- If required, then create an environment so that the victim won't face perpetrator

But it needs to be understood that child friendly justice does not only mean juvenile delinquent friendly justice, but also means child victim friendly justice. There is a juvenile bench and child psychologist for assessment of juvenile delinquents but what about child victims? It was found that even child victims victimized by juveniles were not assessed though the case is heard in juvenile court.

The cases published in NKP from 2072 to 2077 Ashwin was studied and a total of 79 cases of rape were found published, among which 66 were cases with child victims. It means 85.71% cases were with minor victims. Similarly, cases from Bhaktapur, Kathmandu and Lalitpur District Court were studied from F/Y 2072/73 to F/Y 2077/78 and among them 477 were cases⁴⁰ with child victim.⁴¹

While studying 66 cases published in NKP and 477 Cases available in District Courts of Bhaktapur, Lalitpur and Kathmandu, it was found that the respective courts had

⁴⁰ 119 cases in Bhaktapur District court, 127 cases in Lalitpur District court and 231 cases in Kathmandu District court.

⁴¹ It is not an accurate number since the researcher could not gain access to the data from the courts. So the researcher collected cases with case number and decision date from the courts and searched it in website of Supreme Court. But the number of cases were not uploaded, hence it is an average number only.

given very significant decisions. Victim's right to get compensation was given immense importance. When perpetrator was not able to provide compensation, the Women and Child Department was made to provide it, and the judiciary had even been ordered to collect details of property of perpetrators, and the privacy of victim had been maintained as well. But none of the cases had stated about psychological assessment of victim. Even when the judiciary had stated about the mental harm suffered by the victim, nothing was mentioned about evaluating the psychological harm sustained by the victim. Decisions from District court to Supreme Court have always focused on establishing the fact and conviction or acquittal of the perpetrator. The judiciary even was not even found giving orders to find the reason for the victim being hostile. In crux it is apparent that child friendly justice, although stated in papers, was not vivid in practice.

3.6 Response of Victims

Three female child victims of sexual abuse, among whom 2 of them were victim of rape whereas one was victim of attempt to rape were interviewed. Among them, cases of two victims were in the court (trial phase) whereas the case of one victim had already been decided. In the interview they stated that none of them were supported by the investigation authority and judicial authority. They shared that when they went to file the case, they were sent to hospital for medical test. They were only asked whether they were okay, and when the response was affirmative, the report would state that the victims were 'mentally and physically sound'. Their private parts were checked by concerned health professionals.

These three victims reported uncomfortable and fearful. They felt as though they were being re-victimized and also regretted having filed a case, as they asked the same question by different authorities. They recounted feeling like criminals while giving their statement. None of them had met with public prosecutors.

4. Conclusion

Victim, victims' rights, victimology, victim justice system are not new concepts. Victims' right has already been ensured as fundamental rights and required legal mechanisms have already been enacted. While victims of crime are stated to be vulnerable group, child victims are even more vulnerable. In addition, child victims of sexual offence have a higher risk of being re-victimized by the system. They are more prone to trauma and other psychological problems. From the day of the incident to being back to society as normal being, they are to be treated with special care. But, it was found that the justice mechanism is more focused on criminals or delinquents rather than victims. Although justice mechanisms have progressed a lot with regards to rights of perpetrators and juvenile delinquents, victims are, however, treated only as evidence for the case rather than a part of it. Their psychological status has not been prioritized. Counselors in the pretrial or trial phase were only found in some offices. Interrogators are not even aware of forensic interrogation mechanism. In conclusion, the child victim justice system in Nepal is still far away from respecting the rights and feelings of victims.