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## Rights of crime victim under the prevailing laws of nepal

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### Abstract

*The rights of crime victims are an important consideration in the criminal justice system. In Nepal, there are a number of prevailing laws that outline the rights and protections afforded to victims of crime. This study provides an overview of the key rights and entitlements of crime victims under Nepalese law. The prevailing laws of Nepal recognize the need to protect and support victims of crime throughout the criminal justice process. Under the Criminal Procedure Code of Nepal, victims have the right to be informed about the progress of the case, to participate in the proceedings, and to receive compensation for losses incurred as a result of the crime. The Domestic Violence (Offense and Punishment) Act further safeguards the rights of victims of domestic violence, granting them the ability to seek protection orders and access emergency support services. Additionally, the National Criminal Justice Coordination Committee has established a Victim Support Fund to provide financial assistance and rehabilitation services to victims. This fund can cover expenses such as medical bills, legal fees, and livelihood support. Victims also have the right to confidentiality and privacy, and measures are in place to protect them from intimidation or retaliation. While Nepal's laws demonstrate a commitment to upholding victim rights, challenges remain in terms of effective implementation and access to support, especially for marginalized groups. Ongoing efforts are needed to strengthen the capacity of the criminal justice system to consistently fulfill its obligations to crime victims. Overall, the legal framework in Nepal represents an*

*important foundation for ensuring victims are treated with dignity, provided with necessary resources, and empowered to participate in the justice process.*

**Keywords:** Crime victims, victim rights, criminal justice system, NepalIntroduction

“Victims” means 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 omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim.

The term “victim” also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, color, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. (www.ohchr.org)

### **Access to justice and fair treatment**

Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered. Judicial and administrative mechanism should be established and strengthened where necessary. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated.

### **Restitution**

The term ‘Restitution’ in the criminal justice system means payment by offender to the victim for the harm caused by offender’s wrongful acts. Courts have the authority to order convicted offenders to pay restitution the victims as part of their sentences. Many states of the courts are required to order restitution to victims in case involving certain types of crimes, typically violent felony offences but sometimes other serious offences as well. Offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims, their families or dependents. Such restitution should include the return of property of payment for the harm or loss suffered, reimbursement

of expenses incurred as result of the victimization, the provision of services and the restoration of rights. Courts may order full or partial restitution. When courts order restitution, they look not only at the victim's losses but also the offender's ability to pay. The courts may order to reduce total amount of restitution if offender is unlikely to be able to pay or scheduled per month payment. (Shah, 2018)

Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions. Restitution can cover any act of pocket losses directly relating to the crime, including:

Medical expenses

Therapy cost

Prescription charges

Counselling cost

Wages cost

Expenses that related to participating criminal justice process

Lost or damaged property

Insurance deductibles

### **Compensation**

When compensation is not fully available from the offender or other sources, States should endeavor to provide financial compensation. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged.

### **Assistance**

Victims should receive the necessary material, medicinal, psychological and social assistance through governmental, voluntary, community based and indigenous means.

### **Victims of abuse of power**

States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support. States should consider negotiating multilateral international treaties relating to victims. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstance

should enact and enforce.

### **Statement by Notable Jurist Regarding Rights of Victims**

In the publication of the law literature in Nepal, probably **Katak Malla** happens to be the pioneer to introduce the subject of victimology. (Malla, 1988, p.58-62) He has dealt with defining the term victimology and has pleaded the compensation to the victims. He has in short explained about the European laws, Indian experiments and Nepalese traditions.

**Justice Gajendra Keshari Bastola** has continued the introductory information to the prior publications. (Malla, 1988, 18-25) He has argued more to prove the penal policy under the Hindu Jurisprudence, where the compensation policy was prescribed for the victims.

**Shankar Kumar Shrestha** has voiced about the problems of victims. (Shrestha, 1994) He has satired on the constitutional and legal system of our country, not being positive toward she crime victims.

**Dr. Ram Krishna Timalsena** in his article entitled “Sarkaradi Muddha Firta Linda Ko Peedit haru upekchit chainan” (Are not Victim Neglected in Withdrawal of state cases) has argued about the practice of government to withdraw a state cases. (Timalsena, June23, 1994) He also suggested to reform our legal system to welcome victim’s support program. (Timalsena, Aug17, 1994)

### **Bhattarai Rabindra, “Aparadh Peedit Samrakshyan Bidhayak Ma Frak Maat ”**

**Bhattarai Rabindra**, who did a lot in the field of justice to the crime victims of Nepal. In this article he suggested to address the provision of social rehabilitation program to be determined by adding a separate section in an act for social restoration with legal commitment of government. (Bhattarai, 2019)

**Kedar Prasad Poudel** has described a background and need of victimology. (Poudel, 1994) He has noted a few significant information about the development of victimology.

**Chuda Bahadur Shrestha** has briefly discussed the victim support program applied in the different countries and he has copied the typology of the victims from Benjamin

**Mendelson’s** work which can give us information about the classification of the victims. (Shrestha, 1996) He has supplied a photograph to support his description about the victim

support management.

**Kashi Raj Dahal** has briefly discussed on the need of protection of victim's right in his article entitled "Protection of Victim's right" simultaneously, he has given a short sketch on the development of 'victimology'. (Dahal, 1998)

### **Rights of Crime Victim**

Through the analysis of National Legal provisions, Researcher has identified various rights of victim. All states and the government have passed laws to establish a set of victims' rights. In general, these laws require that victims have certain information protecting, and a limited role in the criminal justice process. Rights of crime victim depends on the laws of the jurisdiction where the crime is investigated and prosecuted by government authorities.

Some of the fundamental rights of crime victim proposed in different laws are; Right not to be victimized, right to be compensated against victimization, right to stand as a party on the failure of State Agency, right to be entitled for medical treatment, right to be consulted before the decision is made for withdrawal of sub-judicial cases or before granting pardon, Right to access to justice. (Shrestha, 2012, p.12)

In the Nepalese Context, It's a virgin topics, that's why importance of rights of crime victim is increasing day by day. The constitution of Nepal, 2015 , Country Penal (code) Act, 2017, Crime Victim Protection Act, 2018 and various int'l laws are maintaining law and order to ensures right to justice of crime victims in Criminal investigation, adjudication of cases, compensation, and social rehabilitation. The rights of crime victim can be summarized as follows:

#### **The core rights of crime victims**

The Core rights of crime victim are as follows:

The right to be treated with fairness, dignity, sensitivity, and respect;

The right to attend and be present at criminal justice proceedings;

The right to be heard in the criminal justice process, including the right to confer with the prosecutor and submit a victim impact statement at sentencing, parole, and other similar proceedings;

The right to be informed of proceedings and events in the criminal justice process, including the release or escape of the offender, legal rights and remedies, and available benefits and services, and access to records, referrals, and other information;

The right to protection from intimidation and harassment;

The right to restitution from the offender;

The right to privacy;

The right to apply for crime victim compensation;

The right to restitution from the offender;

The right to the expeditious return of personal property seized as evidence whenever possible;

The right to a speedy trial and other proceedings free from unreasonable delay;

The right to enforcement of these rights and access to other available remedies.

### **Constitutional Provisions on Victims Right**

We have experienced seven different constitutions within seven decades, the latest constitution, “Constitution of Nepal” was promulgated by the constituent assembly in 2072. The Constitution has provided various rights to the people as their fundamental rights from Article 16 to Article 48. It has provided comprehensive provisions for victim’s rights in different articles under fundamental rights and has given special attention to the victim’s right in article 21 under fundamental rights chapter.

The constitutional provisions regarding compensation for victim in violation of these provision, includes; a victim of crime shall have the right to get information about the investigation and proceedings of a case in which he or she is the victim. A victim of crime shall have the right to justice including social rehabilitation and compensation in accordance with law. (Art.2, Constitution of Nepal, 2015) No person who is arrested or detained shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment, that shall be punishable by law, and any person who is the victim of such treatment shall have the right to obtain compensation in accordance with law. (Art.22, Constitution of Nepal, 2015)

The Constitution has also guaranteed the right to privacy of any person, his or her residence, property, document, data, correspondence and matters relating to his or

her character shall, except in accordance with law, be inviolable. (Art.28, Constitution of Nepal, 2015) Likewise, it has clearly spelled out that no one shall be subjected to trafficking nor shall one be held in slavery or servitude, no one shall be forced to work against his or her will. (Art.29, Constitution of Nepal, 2015). Similarly, the Constitution is against the violence against women, which states that no woman shall be subjected to physical, mental, sexual, psychological or other form of violence or exploitation on grounds of religion, social, cultural tradition, practice or on any other grounds. Such act shall be punishable by law, and the victim shall have the right to obtain compensation in accordance with law. (Art.38, Constitution of Nepal, 2015)

The Constitution has states on the rights of the child, such as; No child shall be employed to work in any factory, mine or engaged in similar other hazardous work, child marriage, transported illegally, abducted/kidnapped or taken in hostage, recruited or used in army, police or any armed group, or be subjected, in the name of cultural or religious traditions, to abuse, exclusion or physical, mental, sexual or other form of exploitation or improper use by any means or in any manner as well as physical, mental or any other form of torture in home, school or other place and situation whatsoever.

Any act contrary to these clauses shall be punishable by law, and a child who is the victim of such act shall have the right to obtain compensation from the perpetrator, in accordance with law. (Art.39, Constitution of Nepal, 2015) The social justice and social has been guaranteed in this constitution. The Constitution has provided right to constitutional remedies in the manner set forth an Article 133 or 144 for the enforcement of the rights conferred in the chapter of fundamental rights. It can shows as follows:

#### **Article 21: Right to victim of crime**

The constitution of Nepal 2072 Art 21 has provisioned ‘Right to victim of crime’. Whereas 21(1) says that ‘A victim of crime shall have the right to get information about the investigation and proceeding of a case in which he or she is the victim.’ likewise 21(2) defined ‘ A victim of crime shall have the right to justice along with social rehabilitation and compensation in accordance with law’

#### **Article 22: Right against the torture**

(2) Any act mentioned in clause (1) shall be punishable by law, and any person who is the victim of such treatment shall have the right to obtain compensation in accordance with law. (Art.22, Constitution of Nepal, 2015)

## **Article 24: Right against untouchability and discrimination**

(5) Any act of untouchability and discrimination committed in contravention of this article shall be punishable by law as a severe social offence, and the victim of such act shall have the right to obtain compensation in accordance with law.

## **Article 30: Right to clean environment**

(5) The victim shall have the right to obtain compensation, in accordance with law for any injury caused from environment pollution or degradation.

## **Article 38: Rights to women**

(1) No woman shall be subjected to physical, mental, sexual, psychological or other form of violence or exploitation on the ground of religion, social, cultural tradition, and practice or on any other grounds. Such act shall be punishable by law, and the victim shall have the right to obtain compensation in accordance with law.

## **Article 39: Right to the child**

(10) Any act contrary to in clause (4), (5), and (7) shall be punishable by law, and a child who is the victim of such act shall have the right to obtain compensation from the perpetrator, in accordance with law.

## **Article 44: Right to consumer**

A person who has suffered injury from any substandard goods or services shall have the right to obtain compensation in accordance with law.

### **Specific Laws Related to the Victims' Right**

Specific rights of crime victim are as follows:

#### **The Country Penal (Code) Act, 2017 (2074)**

This act serves to amend and consolidate laws in force relating to criminal offences. It is expedient to provide for a timely code on criminal offences, by amending and consolidating the laws in force relating to criminal offences in order to maintain morality, decency, etiquette, convenience, economic interest of the general public by maintaining law and in the country, maintain harmonious relationship and peace among various religious and cultural communities, and prevent and control criminal offences. The Legislature - Parliament under clause (1) of Article 296 of the Constitution of Nepal has enacted this Act.

The provision regarding to the compensation of victims are as follows:



## **Chapter 2: General Principles of Criminal Justice:**

**Section 32:** Victim of crime to be entitled to obtain information of proceeding of case and compensation:

32(1) of this section defined ‘The victim of crime shall have the right to obtain information about the investigation and proceeding of the case in which he/she is the victim’. Similarly 32(2) says ‘The victim of crime shall have the right to justice with social rehabilitation and compensation.’ (Dhakal, 2018, 329)

## **Chapter 5: Provision Relating to Punishment and Interim Relief**

### **Section 48: Power of court to order interim compensation**

The court may order the accused of such offence to provide medical treatment or pay an interim compensation or relief amount to such person. (Dhakal, 2018, 332-35) the court shall cause such amount to be recovered from any assets of such person within thirty five days of such acquittal according to this section.

## **Part 2, Chapter 4: Offences against Public Justice**

### **Section 99: Prohibition of malicious investigation or prosecution**

(3) Where any person suffers any kind of harm or loss from the offence under sub section (1), he or she shall be entitled to get compensation from such offender. (Dhakal, 2018, 99)

## **Chapter 5: Offences against Public Interest, Health, Safety, Convenience and Morals**

### **Section 127: Order for Compensation to be paid:**

Where any harm or loss is caused to anyone or any property of anyone from any of the offences under section 104, 105, 106, 107, 108, 109, 110, 111, 113, 114, 115, 116, 117, 118, and 124 of this Chapter, compensation shall be ordered to be paid by the offender to the person who so suffers such harm or loss. (Dhakal, 2018, 356)

## **Chapter 10: Offences Relating to Discrimination and Other Degrading Treatment**

### **Section 169: Order for compensation to be paid**

A reasonable compensation for the injury or pain caused to the victim shall be ordered to be paid by a person who has committed the offence under this chapter. (Dhakal, 2018, 369)

## **Chapter 12: Offences Relating to the Human Body**

### **Section 186: Order for compensation to be paid**

Where any harm, injury or loss is caused to the body, life or property of any person from the commission of any offence under this chapter, a reasonable compensation for such harm, injury or loss, shall be ordered to be paid by the offender to the victim and to his or her if the victim is **unavailable**. (Dhakal, 2018, 373)

## **Chapter 14: Offences against Protection of Pregnancy**

### **Section 198: Order for Compensation to be paid**

Where any harm, damage, or loss is caused to any person's body, life, or property from the commission of an offence under this chapter, compensation shall be caused to be paid by the offender to the victim.

## **Chapter 15: Offences Relating to Unlawful Detention / Confinement**

### **Section 204: Order for Compensation to be paid**

A reasonable compensation shall be ordered to be paid by the offender, who commits, or causes to be committed, an offence under this Chapter to the victims. (Dhakal, 2018, 378)

## **Chapter 16: Offences Relating to Enforced Disappearances**

### **Section 208: Entitlement to compensation**

A person who is subjected to enforced disappearance **appears or is made public** subsequently, he or she shall be entitled to get a reasonable compensation from the person who has so subjected him or her to enforced disappearance.' And 208(2) has been said that, if the person subjected to enforced disappearance is already dead, the immediate heir to him or her shall be entitled to get the compensation referred to in sub-section(1). (Dhakal, 2018, 380)

## **Chapter 18: Sexual Offences**

### **Compensation ordered to be paid**

A reasonable compensation shall be ordered to be paid to the victim of any offence under this chapter other than the offences under section 220 and 226. (Dhakal, 2018, 386)

## **Chapter 19: Offence Relating to Medical Treatment**

### **Section 239: Compensation ordered to be paid**

Where the death of, or grievous hurt to, or other harm, injury or damage to, any person is caused from the commission of an offence under this chapter, reasonable compensation

shall be ordered to be paid by the offender to the concerned victim and to his or her heir if the victim is dead. (Dhakal, 2018, 389)

## **Chapter 21: Offence Relating to Cheating, Criminal Breach of the Trust and Extortion**

### **Section 254: Compensation**

Where any injury or damage is caused to any person from the commission of an offence under this chapter, the amount of controversy, if set out, and a reasonable compensation, if the amount in the controversy is not set out, shall be ordered to be paid by the offender to the victim. (Dhakal, 2018, 395)

### **Part 3, Chapter: 1 Offence against Individual Privacy and Prestige**

#### **Section: 303 Compensation to be paid**

Where a person derives any benefit or causes any kind of damage, loss, annoyance or injury to another person by committing an offence referred to in this chapter, a compensation for such damage, loss, annoyance or injury shall also be ordered to be paid by the offender to the victim. (Dhakal, 2018, 408)

## **Chapter 2: Offences Relating to Defamations**

### **Section 307 : Punishment for Libel**

Section 307 (3) clarified A person is convicted of libeling deceased under this chapter, such compensation and litigation costs shall be ordered to be paid by the offender to near heir to the deceased whose feeling was hurt. (Dhakal, 2018, 410)

## **Crime Victim Protection Act, 2075 (2018)**

The crime victim protection act, 2018 enacted by the Federal Parliament of our country that ensures the right to justice of crime victims in criminal investigations, adjudication of cases, compensation, and social rehabilitation. This first law in the favor of victim of Nepal came into force upon its publications in the Nepal gazette on Sep. 14, 2018. This act also aims to minimize the adverse impact of crimes on victims. This act stated, “any victim shall have to right to enjoy, decent, fair, and dignified behavior during the criminal justice process. He/she shall not be discriminated on the basis of religion, color, gender, ethnicity, origin, language, marital states, age, physical or mental unsoundness, disability and ideology among others.”

Similarly, the victim of rape, incestuous rape, human trafficking, and molestation shall have right to privacy during criminal investigation, prosecution and court proceeding. Again stated that “No one shall disclose the identity of such victim in any form whatsoever” concerned investigating officer or agency if required to provide medical, psychological, psycho-social, and legal counselling; name, address, contact number of investigating officer with the history and complexion of crime suspects, and progress report of prosecution to the victim if he/she desires so. The act defines the victims as “the concerned victim directly affected by the crime and his/her family even if the investigation officer releases the crime suspect because it is not necessary to continue to keep him/her in the custody, information there of shall also be provided to the victim.” This law added as per the act, the victim shall enjoy the compensation including medical treatment and payment on the basis of harm.

The major provisions prevailing in the latest Crime Victim Protection Act 2018 are as follows:

## **Chapter: 2, Rights and Duties of crime victims in Criminal Justice Process**

### **Section 4: Right to dignity**

The victim shall have the right to get the respectable as well as dignified behavior in the criminal justice process. (Samiti, 2018, p.258)

### **Section: 5 Right Against Discrimination**

The victim he/she shall not be discriminated on the basis of his/ her religion, color, ethnicity, gender, caste, origin, language, marital status, age, physical or mental unsoundness, disability, and ideology. (Samiti, 2018, p.258)

### **Section 6: Right to privacy**

The victim of rape, incestuous rape, human trafficking and molestation shall have right to privacy during criminal investigation, prosecution, and court proceeding. It again states that “No one shall disclose the identity of such victims in any form whatsoever” (Samiti, 2018, p.258)

### **Section 7: Right to information of investigation**

It states that concerned investigating officer or agency is required to provide medical, psychological, psycho-social, and legal counselling; Name, Address of prosecuting agency,

Name, Address and mobile no: of investigation officer , complexion of crime, suspect and progress report of investigation and prosecution to the victim if he/ she desires so. (Samiti, 2018, p.258)

### **Section 8: Right to information**

The right to information to be exercised by the victim. The prosecuting agency shall be provide victims with all information about the prosecution against the crime suspect.

### **Section 9: Right to information about criminal justice process**

The prosecuting agency shall provide the victim with all information about the prosecution against the crime suspect, progress report, a certified copy or charge sheet filled against him/ her and court proceeding. Similarly, the concerned court shall inform the victim whether the crime suspect was sent to jail or not: until final verdict date, venue and time of hearing.

### **Section 10: Right to be safe**

The victim and his/her family shall have right to be safe from the potential attack and threat of crime suspect, perpetrators, defendants and their witness.

### **Section 12: Right to hire personal lawyer**

The victim shall have right to hire separate lawyer during the criminal justice process if he/ she desires so. (Samiti, 2018, p.258)

### **Section 18: Right to get information of compensation**

Victim shall enjoy compensation including medical treatment made to lawyer, on the basis of harm ceased to him/her. The compensation shall be borne by the perpetrators.

### **Section 30: Entitled to get compensation from such offender**

Where any person suffers any kind of harm or loss from the offence the court shall acquitted the reasonable compensation to the victim. (Samiti, 2018, p.258)

### **Section 37: Order for compensation to be paid**

Where any harm or injury or loss is caused to the body of victim, until he died without getting any amount or compensation. His/her family member to be entitled to get the compensation.

### **Chapter 5: compensation levy (amount)**

An offender of any crime shall be deposited the amount in compensation fund as the law of this act. It is based on the time duration of punishment according to his/her crime.

### **Chapter 6: Victim Protection recommend committee**

This act has also made a provision of a six member's victim protection recommendation committee led by the Attorney General to recommend to the government protection of interest and rights of crime victims, and delegates the right to work without malicious investigation. It states that No any authority responsible by law for making investigation or prosecution shall make malicious investigation with intend to have an innocent person bear liability. (Samiti, 2018, p.276)

### **Chapter 7: Miscellaneous**

The amount of reasonable compensation will be provided from the fund as per the offence of a crime but it should be properly claimed in court proceeding. It is provisioned to be informed about the court proceeding to the victims as per the law. Our government has power to make a specific law or rule after recommend by the protection committee if needed. (Samiti, 2018, p.258)

### **Determination and execution of sentences for criminal offence Act 2074**

Determination and execution of sentences for criminal offence Act (Act No. 38 of the year 2074) is illustrated in order to maintain morality, decency, etiquette, convenience, economic interest of the public by maintaining law and order in the country, maintain harmonious relationship in common communities and prevent criminal offences. Therefore, the legislature-parliament under clause (1) of Article 296 of the constitution of Nepal has enacted this Act. (Dhakal, 2018, 559) The included major provisions are as follows:

#### **Chapter 6: Provision of Compensation**

##### **Section 41: Compensation should be paid**

As a result of any damage to the victim's life, property or conscience the court may order to pay the reasonable compensation to the victim. Provision relating to the punishment he/she shall be entitled to get compensation from such offender. (Dhakal, 2018, 559)

The following things should be considered when determining the compensation of section

Physical, Mental, or psychological harm to the victim.  
The harm or loss to be entitled to the heir if victim died.  
Financial condition and sources of expenditure of offender.  
The condition of dependent person.  
Other suitable specifies by the court.

Where the death of, or grievous hurt to, or other harm, injury or damage to, any person is caused from the commission of an offender under this chapter, reasonable compensation shall be ordered to be paid by the offender to the concerned victim and to his or her heir if the victim is dead.

### **Section 42: Compensation should be provided immediately**

Even if anything is written in section (1), if such a person couldn't pay compensation immediately but mortgage other assets, the court shall order paying in installment within a year. (Dhakal, 2018, 559)

### **Section 43: Compensation to be paid individually**

If there are two or more than two offenders in a same offence everyone will be liable to pay compensation individually as their quantity of crime.

### **Section 44: Compensation to be paid with consent**

Even if anything is written anywhere both offender and victim may be agreed, the court may order the paying of compensation of an offence as their commitment. (Dhakal, 2018, 560) Likewise sec 45(1) in the provision of imprisonment, 'any harm, injury or loss is caused in an offence, if offender doesn't pay compensation within a time to the victim, the court shall order to be paid from his/her ancestral property (Dhakal, 2018, 560) and provisioned sec 45(2) has been incorporated, 'a person who commits, or causes to be committed the offence under sub-section (1) shall be liable to a sentence of imprisonment for a term not exceeding four years.'

### **Section 48: Establishment of Victim Relief Fund**

If the accused is unable to provide compensation or amount pursuant to sub-section(2) in accordance with the order under sub section(1), the court shall order that the compensation or amount be provided to the victim or person dependent on him/her from the victim relief fund established pursuant to the laws in force related to the determination

and execution of sentences for criminal offences; and the amount so provided shall be recovered from such accused person and reimbursement into such fund. (Dhakal, 2018, 561) Laws relating to the protections of rights of crime victims are as follows:

Children's Act, 2018

The Sexual Harassment at Workplace (Elimination) Act, 2014

The Human Trafficking and Transportation (Control) Act, 2007

The Domestic Violence (Offence and Punishment) Act, 2009.

The General Code (Muluki Ain, 1963)

**Findings:** The major findings are as follows:

A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. Various declarations adopted by the general assembly to the UN Convention on transnational organized crime along with its protocol, there has been a significant advancement in the victim justice system in the international arena. In a domestic sphere, as a right of a crime victim is regarded as a fundamental right since 2015, noteworthy improvement can be realized in the physical, mental and economic status of a victim through the assistance of other Acts consistent with Constitution.

Constitution of Nepal, 2015 mandates right of a crime victim as a fundamental right and under this fundamental right Crime Victim Protection Act, 2018 was promulgated into action to ensure and expose the intention in the mentioned Article in a pertinent, elaborative and applicable way so that it becomes easier to administer justice in a victim-friendly manners. This Act ensures the right to justice of crime victims in a criminal investigation, adjudication of cases, compensation and social rehabilitation in accordance with the Constitution.

Recognizing victims as a crime victim itself, they are taken as a witness in the proceeding of their case as per the legal framework of our country.

Nepalese judiciary has adopted a victim-friendly response and procedure towards the trial of cases by implementing the right to privacy, right to a continuous hearing and right to in-camera hearing in the trial of cases like attempt to rape, accident, human trafficking and more has more profoundly respected the rights of victims and attracted the faith of the people towards judicial and victim justice system.

Several laws and courts decisions have mandated several rights of victims which gives a tons of hope to the victims who have lived traumatic life due to the crime done by others. But more



provisions bring more challenges in effective.

Judiciary has clarified the rights to the victim as an integral part of fundamental rights as they are important in living a dignified life.

Though there has been a lot of advocacies regarding rights of a crime victim and also there has been dramatic progress in legal provisions in protecting and assisting the victims, still, there are some challenges to provide and preserve the rights of crime victims.

There is no clear formulation of a judicial approach to compensate the victims of crime as soon as possible, to determine the amount or form of such compensation realistically and to facilitate the livelihood of the victims through compensation.

### **Conclusion:**

By analyzing various existing prevailing laws of victim justice, the present constitution, for the first time in article 21 illustrates victim's rights as a fundamental right; this is the first constitution all over the world including rights of crime victim as a fundamental right except state constitution of Arizona state of United States America. It states that crime victim should be informed about the investigation and case proceeding as well as social rehabilitation and compensation as provided by law. However, procedural complexities in the execution of decision with regard to getting compensation from the defendant. Which are the important and essential rights for victims of crime. Even though GON has incorporated various rights of crime victim and compensatory justices in its laws, policy even these provisions were scattered in different laws. Our nation promulgated as an act, like the Country Penal Code Act 2017, and Crime Victim Protection Act 2018, that ensures the maintaining of morality, decency, etiquette, convenience, economic interest as well the right to justice of crime victim in criminal investigation, adjudications of cases, compensation and social rehabilitation and more. The crime victim protection Act 2018 section, 41 of compensation levy is a big hurdle for the victim to get compensation; it states that a defendant should deposit a very less amount as their duration of imprisonment.

GON has enacted the Country Penal(code) Act 2017 and crime victim protection Act 2018, in order to reform the entire Criminal Justice System. These laws are illustrated for Compensation for crime victim, the protection of witness, medical treatment, services, financial support, allowances, privacy, victim fund, victim compensation committee and victim protection recommendation committee, etc. These laws of Nepal has incorporated on the basis of various provisions illustrated in International Instruments and guidelines for the protection of victim's rights. Moreover, there is no effective institutional mechanism

for recovering the ordered compensation and not implemented strongly. There is still hindrance for access to court for victim, such as; procedural difficulties, delay, costly, lack of gender friendly environment, lack of information of law and legal procedure, security problem for witness, lack of sensitivity towards victim, political protection to the offenders and imbalance power relationship between victim and offenders. There is procedural complexity in the execution of decision with regard to getting compensation form the defendant. Basically, victims are not able to get the compensation on time. Similarly, the implementation of law and judgments given by courts related to the protection of the privacy for victim is not properly implemented and the protection and security of crime victim is not satisfactory.

Likewise, there is adequate legal mechanism but not effective. The law and procedure to provide compensation should be simplified. The proceeding of criminal justice system should be courteous and empathic towards victim's plight. It would help them to feel comfortable while dealing with justice system. And it is better to determine the special form of rehabilitation program by adding a separate section in act for the provision of social restoration to the crime victim. The government should show the legal commitment of implementation of social rehabilitation program. Even if the accused is not found or convinced in any case of victim, state should be guaranteed of compensation as well as further proceeding. There should be fair deal in all level of courts for the protection of victims and witness. The victim should at all stages of the procedures, be questioned in a manner which gives due considerations to his personal situation, his/her rights and dignity. Whenever possible and appropriate, children and the mentally ill or handicapped should be questioned in the presence of their guardians or other person qualified to assist them. The victim should have the right to ask for a review by a competent authority of a decision not to prosecute.

The responsiveness of judicial and administrative process to the need of victims should be facilitated by taking measures to minimize inconvenience to victims, protect their privacy, ensures safety as well as that of their family and witnesses on their behalf, from intimidation and retaliation. Right to medical treatment, right to be a party to discussion on the case being withdrawn, right to free legal aid, right to access to justice and so on, which are the important and essential rights for victim of crime, that should be guaranteed as the fundamental right. Indeed, our Nation accepted the basic principles of

the justice for crime victim and abuse of power in 1985.

Restitution, compensation, reparation, are aspects of community's restorative responsive to crime and the harm it caused. It should be managed properly. The components/professionals of Victim Justice System should be sensitized on crime victim issue. Rehabilitation centers and Victim Fund must be established as per the crime victim protection act to provide shelter and to be protected them from re-victimization and scheme of providing compensation should be introduced to normalize their livelihood. Victim awareness program should be organized and state should provide vocational training and education to re-establish crime victim in the society. It is necessary to fulfill the six members of victim protection recommendation committee led by the attorney general to recommend the government as per the recent crime victim protection act 2018. Victim/witness assistance program and legal support mechanism should be provided to the crime victim who is poor, weak and illiterate for further proceeding.

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