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## **Balancing Development and Heritage Conservation in Nepal: An Analysis with Reference to Legal and Policy Framework**

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### **Abstract**

The confluence of infrastructural development and heritage conservation manifests a complex challenge in a least-developed country like Nepal, which celebrates its rich cultural legacy. The sustainable development of Nepal is affected by a lack of a proper legal and policy framework for balancing infrastructure development and heritage conservation. This research delves into the analysis of the existing laws and policies of Nepal, which have been legislated to create an equilibrium amidst the two. The research further investigates the gap in the legislation and practice in Nepal. Nepal has several national laws and ratified conventions like the Ancient Monuments Preservation Act in 2013, and the Convention Concerning the Protection of World Cultural and Natural Heritage, 1972, etc. which have not been well-implemented. Most of Nepal's legal and policy frameworks for heritage conservation are adaptations of international frameworks, which might not be appropriate in the context of the country. The thesis statement stresses that comprehensive, proportionate, and flexible legal and policy frameworks and their implementation can help achieve a delicate balance between infrastructure development and heritage preservation. Moreover, the research highlights the need for a multidimensional approach that considers the socio-cultural, economic, and environmental aspects of infrastructure projects while safeguarding Nepal's cultural heritage, emphasizing the need for ongoing refinement. The study uses doctrinal methods for data collection and analytical and descriptive approaches to data analysis. The findings of the study provide insights into the current situation and suggest recommendations for better balancing of infrastructure development and heritage conservation in Nepal.

**Keywords:** Heritage conservation, infrastructural development, legal and policy framework, legislated inaction, multidimensionality

### **Introduction:**

Nepal has always given immense importance to its heritage. Convention Concerning the Protection of the World Cultural and Natural Heritage divides heritage into: Cultural Heritage and Natural Heritage. Article 1 of the Convention outlines "cultural heritage" as encompassing

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architectural works, monumental sculptures, archaeological formations, inscriptions, cave habitations, and amalgamations of elements distinguished by their exceptional significance in the realms of history, art, or science. (Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972). It also includes groups of buildings and sites, which are works of human beings or combined nature and human beings, with outstanding universal value. Article 2 of the Convention defines "natural heritage" as physical and biological formations, geological and physiographical areas, and natural sites of outstanding universal value for aesthetic or scientific purposes, as well as habitats for threatened species (Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972). The Ancient Monuments Preservation Act, of 1956 established Nepal's heritage conservation policy and this has been aided by UNESCO in restoring World Heritage Sites like Hanuman Dhoka Durbar and the Durbar Squares, Pashupatinath, Bouddha, Changu Narayan, and Swoyambhu.

Resolving the fundamental conflict between economic development and conservation is the first step toward addressing the current global ecological crisis and the threats it poses to human survival and security (Tian et al., 2018). Disagreements in conservation and development in historic city town centers can lead to unfavorable effects, such as urban development threatening their unique character or conservation restrictions making town centers unattractive for investment (Thaitakoo, 2006).

It is a global challenge to achieve a delicate balance between the two imperatives of development and heritage conservation, but it is especially important in the context of Nepal as Nepal encompasses thousands of cultural heritages that are quite significant to the identity of Nepal's people. They signify the history of Nepal while preserving ancient cultural values. Similarly, Nepal has numerous natural heritages that are useful for scientific research and the understanding of the natural world. They contribute significantly to Nepal's economy and tourism. At the same time, Nepal faces a pressing need for development for the reduction of poverty, infrastructural development, and improvement of the standard of life of people. This dichotomy creates a difficult problem for Nepal: How can the country meet its development objectives while preserving its rich cultural legacy?

The research examines the study of the impacts of poorly planned infrastructural development on cultural and natural heritage. It explores the existing laws of Nepal to assess the possibility of improvement in them. Laws are rules and regulations that guide the state and people living in that state and they can either lead a state towards harmonious development or degradation. Even though several laws address the issue of harmonization of development and heritage conservation, they are influenced by international laws that might not be relevant to the local contexts of Nepal. This research emphasizes the significance of contextualization in laws and the effective implementation of those laws. It also accentuates the effective implementation of the Environment Impact Assessment and the importance of the introduction of the Cultural Impact Assessment.

This research analyzes the legal and policy frameworks governing infrastructure development and heritage conservation in Nepal, emphasizing the intricate relationship between development goals and heritage preservation. The objective of the study is to assess the legal and policy frameworks in Nepal that address heritage conservation and development and to analyze the role they play in balancing the interests of the two. Moreover, the study also aims to find the challenges in implementing the laws and the gaps in them. The research

could be beneficial to future policymaking, foster dialogue, and contribute to a balanced and sustainable trajectory for Nepal's development and heritage.

### **Literature Review**

The research emphasizes the conservation of cultural heritage which is linked to tourism and development. The paper draws attention to the requirement of effective policies and institutional frameworks to balance conflicting interests between stakeholders like tourism agencies, donors, and government institutions (Chapagain, 2008). The research highlights that the majority of Nepal's cultural heritage policy is based on recommendations and plans derived from international intergovernmental agencies like UNESCO and UNDP and the accountability of heritage preservation has been shown towards international organizations and donor organizations. Nepal's conservation approach should focus on preserving its heritage, reshaping existing policies, and integrating it with other national and local policies. It should recognize the values, goals, rights, responsibilities, and means of cultural heritage conservation (Chapagain, 2008).

Cohen (2001) in his paper titled "Urban Planning Conservation and Preservation" emphasized that conservation should not solely focus on monuments but also reintroduce everyday urban activities to promote continuity and aesthetic qualities. Similarly, Allendorf and Gurung (2016), in their paper explore how Nepal's national protected area policies address conservation and development issues and how those policies can be balanced. Moreover, in the paper, Tuyen (2023) aims to advance understanding of the development of equitable TBS (Tourism Benefit Sharing) at a living heritage site, where the revenue made from the commodification of minority culture can be used to support the community and the Indigenous heritage custodians. The objective is to use the revenue earned through the marketing of minority culture to support the local community and Indigenous heritage custodians. This highlights the requirement of community participation in heritage preservation, along with providing financial assistance that is considerate of regional traditions and equitable institutional support (Tuyen, 2023).

While there is some available literature that sheds light on the legal and policy framework in Nepal that governs development and heritage conservation, the efficiency of these laws and policies in striking a balance between development and heritage conservation has not been thoroughly studied. The available literature gives little significance to the implementation of Environmental Impact Assessment and no importance to Cultural Impact Assessment. Further research on the role of local communities in balancing development and heritage conservation in Nepal would be beneficial for the literature review.

### **Methodology**

#### ***Research Method***

The paper reviews existing academic literature, research papers, reports, and relevant documents on the topic of balancing development and heritage conservation in Nepal and scrutinizes legal documents, policies, and international conventions related to heritage conservation and development in Nepal, with a focus on identifying key provisions and gaps.

### **Research Design**

The study investigates into the impacts of poorly planned infrastructure development projects on heritage sites in Nepal to critically examine the existing legal and policy framework's effectiveness in achieving a balance between development preservation of heritage.

### **Data Analysis and Presentation**

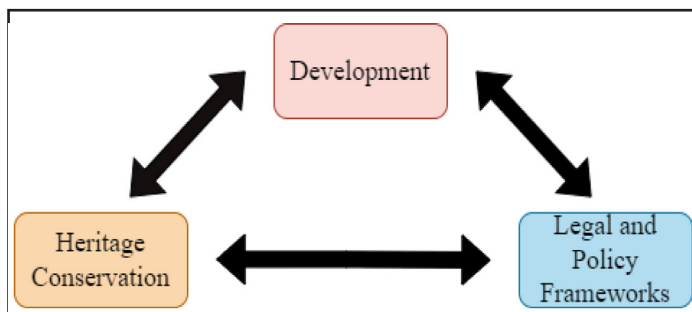
The researcher has employed content analysis techniques to identify key provisions, inconsistencies, and gaps. The study uses doctrinal methods for data collection and analytical and descriptive approaches to data analysis.

### **Interpretative Perspectives**

The researcher interprets legal provisions and their implications on development projects and heritage conservation and examines policy implications and their practical outcomes in the context of Nepal's cultural heritage.

### **Conceptual Framework**

The conceptual framework of the research paper is designed to provide a comprehensive understanding of the key elements used in the paper. The researcher defines the core concepts: development and heritage conservation. UNDP defines development as a multifaceted undertaking aimed at raising everyone's standard of living. Sustainable development integrates social, economic, and environmental aspects. The conservation of cultural heritage follows ethical guidelines emphasizing minimal intervention, appropriate materials, reversible methods, and comprehensive documentation (Dahal, 2008). Heritage conservation involves preserving and overseeing changes to heritage assets to maintain their significance, enhance them when possible, and employ interventions to protect defining features, upholding their heritage value and prolonging material existence (Historic England, n.d.). The framework emphasizes the need to equilibrate development and heritage conservation recognizing the importance of Nepal's cultural legacy while also addressing the necessity of economic and infrastructural development. Moreover, it gives a special reference to the role of legal and policy frameworks of Nepal, which govern heritage conservation and development. It examines the interplay between these elements, analyzes the effectiveness of the current legal framework, and recommends the necessary additions to them. Despite the ethical guidelines in heritage conservation, it is observed that current legal frameworks may not be doing enough to effectively safeguard cultural heritage and support sustainable development.



*Figure 1 Conceptual Framework*

### **Impacts of Poorly Planned Infrastructure Development Projects on Heritage sites in Nepal**

Poorly planned infrastructure development projects are the results of inadequate legal frameworks and ineffective implementation of existing laws. Poorly planned infrastructure development projects have adverse impacts on both natural heritage sites and cultural heritage sites. Nepal, especially the Kathmandu Valley has rampant poorly planned urbanization. Houses are constructed without a proper plan of action on how minimal intervention to the heritage sites can be done. Moreover, there are development projects that are approved by the government without proper research on their impacts on the heritage sites.

#### ***Impacts on natural heritage sites***

Poorly planned infrastructure may severely impact climate, biodiversity, and the natural environment that provides us with basic necessities. It can degrade essential natural resources, exhaust nonrenewable resources like sand and minerals used in construction, destroy habitats, block wildlife migration routes, kill wildlife through vehicle strikes and electrocution, and increase pollution and greenhouse gas emissions (WWF, n.d.). Additionally, poor planning puts the built infrastructure itself at risk, and when projects don't take into account social issues, ecological concerns, and climate factors; they are more likely to fail or significantly increase in cost (WWF, n.d.).

Globally, biodiversity is declining at an unprecedented rate (Millennium Ecosystem Assessment, 2005). Changes in land use and land cover, pollution, climate change, and infrastructure development have been identified as the main causes of biodiversity loss (Laurance et al., 2014). Human activities are causing significant spatial heterogeneity in habitat quality across the landscape of Nepal, with three areas potentially experiencing up to 40% reduction due to planned infrastructure (Sharma et al., 2018). This highlights the need for stronger legal frameworks in addressing not only biodiversity concerns but also the broader challenges in cultural heritage and development.

Poorly planned infrastructure development projects can lead to land-use change and resource exploitation. Landslides, floods, and soil erosions like natural disasters are not unprecedented in Nepal, which are directly/indirectly caused by such unplanned development projects. This causes thousands of deaths every year. Infrastructure projects also require land acquisition, which destroys agricultural land. This hugely affects the maximum population of Nepal that is dependent on agriculture for their livelihood. Similarly, hydropower projects can have severe impacts on river flows and water quantity. Changes in water quantity, location, and timing that follow from hydropower projects can have a significant effect on the riverine systems and the population that reside in the river basins and rely on river flows for land-based activities like fishing and irrigation in Nepal (Crotoft, 2019).

New development projects in southern Nepal's Tarai lowland region are posing a threat to endemic and endangered species by disrupting habitats and blocking wildlife migration routes which includes projects like construction of transmission lines and irrigation canals. Irrigation canals such as Babai, Ranijamara, and Sitka are obstructing wildlife movement pathways (*Nepali Times*, 2023).

However, the world has become climate and environment-conscious, and development around the world now includes planned structures that are climate-smart and wildlife-friendly. For instance, the 30 km Narayanghat-Mugling Highway in Nepal has two of its first wildlife

underpasses, facilitating an important animal migration corridor, and the camera traps show deer, wild boar, and other animals regularly using these underpasses, with half of the movement occurring in winter (Nepali Times, 2023).

To bridge the gap between conservationists and road engineers, Asia's Linear Infrastructure safeGuarding Nature (ALIGN) Project was initiated which aims to enhance the development and implementation of effective, high-quality linear infrastructure safeguards that support people and conserve nature (ALIGN, 2023). There are three focus areas of ALIGN which include reviewing and assessing the existing policy and legal frameworks related to linear infrastructure development in Asia, building the capacity of government agencies, financial institutions, and other stakeholders to develop and implement effective infrastructure safeguards, and developing and implementing demonstration projects that showcase effective infrastructure safeguards in action (ALIGN, 2023).

The ALIGN Project seeks to address the shortcomings of current legal measures for cultural heritage and development by fostering collaboration between conservationists and road engineers in Asia. It focuses on enhancing the development and implementation of effective linear infrastructure safeguards through policy review, stakeholder capacity building, and demonstration projects.

### ***Impacts on Cultural Heritage Sites***

Nepal is home to thousands of cultural heritages that hold significant ancient and cultural values. These heritages give identity to the people of Nepal. The creator built them with various purposes in mind and these cultural artifacts have been passed down through generations of people. Cultural heritage reinforces a sense of belonging and fortifies the preservation of history. Therefore, they are a crucial part of the culture and identity of Nepal's people.

Poorly planned infrastructural development poses a threat to cultural heritage. Eight cultural World Heritage Sites of Nepal enlisted by UNESCO are also in the shadow of adverse impacts of development. Development projects are often carried out with the economy and quality of life of people in mind. The cultural impacts of development are mostly overlooked and disregarded. As development continues, it is crucial to protect the ancient monuments and heritage.

An instance is Thimi, which is located in Bhaktapur. It has several different cultural heritage resources that are not only a part of its culture but also a significant part of its economy. However, the cultural heritage of Thimi is deteriorating day by day due to several factors including but not limited to rapid urban expansion, conversion of use of heritage buildings, change in modes of movement, lack of public participation, change in community lifestyle, institutional inefficiency, and weak policy. Conservation organizations lack efficiency in terms of technical expertise, legal support, and policy problems (Bhatta, 2009). Integration and area-based conservation are not included in the current conservation policies, which are based on individual monuments. The current plans, policies, legislations, and institutions regarding heritage conservation are inefficient and ineffective in carrying out conservation works for the overall development of Thimi (Bhatta, 2009).

The earthquakes of 2015 caused enormous damage to the cultural heritage of Nepal. Large religious complexes, museums, and important cultural landmarks, including parts of the UNESCO Kathmandu Valley World Heritage Site, sustained extensive damage as a result



of the 2015 Nepal earthquakes (Daly et al., 2023). Nepal's National Reconstruction Authority issued a Post-Disaster Recovery Framework in 2016, focusing on Building-Back-Better, risk mitigation, seismic-resistant building codes, and community-level economic development. The document cites one of its objectives as “To reconstruct damaged cities and ancient villages to their original form, while improving the resilience of the structures” (UNDP, 2016). The 2015 earthquake necessitated a comprehensive rebuilding and recovery, including the restoration of cultural heritage sites, in line with the "Building-Back-Better" concept, promoting modern resilience.

Attempts at conservation may cause conflicts in the historic towns of developing nations such as Nepal, where most of the built heritage and land plots are privately owned, because of the desire to gain the greatest benefits from their development (Bhatta, 2009). Community participation can help resolve these conflicts and achieve the best solutions. Collaborating with the community, public, and private sectors at policy, planning, and project levels can promote sustainable community development in these towns.

## **Analysis and Discussions on the Existing Laws and Policies**

### ***Constitution of Nepal, 2015***

Article 26 of the Constitution of Nepal guarantees the right to religious freedom, ensuring that individuals can openly profess, practice, and safeguard their faith according to their beliefs. Moreover, religious organizations have the authority to oversee and protect their sacred sites and trusts. However, the government retains the right to regulate the operation and protection of these religious assets through legislation. Additionally, Schedule-6 of the Constitution empowers the State to safeguard and promote languages, scripts, cultures, fine arts, religions, and manage trusts (i.e. Guthi).

### ***Ancient Monument Preservation Act (AMPA), 1956***

Section 3 of the act addresses the ownership, preservation, upkeep, and restoration of Public Ancient Monuments. These monuments are owned by the Department of Archaeology, which is tasked with the responsibility and authority to protect, maintain, and renovate them. Section 12 of the act provisions:

One who destroys, demolishes, removes, alters, defaces, or steals, having realized an amount equal to the claimed amount of such ancient monument shall be punished with a fine of Twenty-Five Thousand Rupees to One Hundred Thousand Rupees or with imprisonment of Five years to Fifteen years or both. (Ancient Monument Preservation Act, 1956)

Section 8 of the Ancient Monuments Preservation Act (AMPA) contains provisions regarding the conservation of ancient monuments. If deemed necessary by the Government of Nepal, restrictions on activities such as trenching for tunnels or blasting land with explosives near ancient monument sites may be imposed through an official notification published in the Nepal Gazette. Violation of these restrictions may result in penalties, including fines of up to Ten Thousand Rupees or imprisonment for a maximum of One and a half years (AMPA, 1956).

Section 3 of the AMPA, 1956 provisions that committees can be formed to survey and classify ancient monuments, advise the Department of Archaeology on building styles within protected monument areas, and ensure the conservation of important historical and

artistic monuments. They also make necessary provisions for the preservation of private land within protected monument areas. However, locals who live close to the monuments are underrepresented on these committees (Maharjan, 2012).

In February 2021, a 108 kg golden Jalahari was placed beneath the Jyotirlinga in the inner sanctum of the Pashupatinath Temple in Kathmandu (The Himalayan Times, 2023). This action of Pashupati Area Development Trust (PADT) faced severe criticism as this was against Section 12 of the Ancient Monument Preservation Act, 2013 (1956) Act. Bhim Nepal, a monument conservationist, argues that officials, including the Head of State, seem unaware of the importance of preserving Nepal's ancient monuments, despite the Act's primary purpose of preserving their original form (Ojha, 2023). This situation underscores the lack of effective legal support for cultural preservation and development initiatives, as shown by the disregard for established laws meant to protect heritage assets.

### ***Town Development Act, 1998***

Section 9 mentions that the Town Development Committee has the authority to regulate, control, or prohibit certain activities in town planning areas. These include the enjoyment and use of agricultural land, natural heritage, flora, fauna, archaeological sites, cultivated and barren land, and immovable property. No one can perform these activities without committee approval.

Section 11 provisions that the Town Development Committee has the functions, duties, and power to prepare necessary projects and to implement them in town planning areas for proper development and conservation of religious, cultural, and historical heritage subject to the prevailing law of Nepal on ancient monuments.

### ***Kathmandu Valley Development Authority Act, 1988***

The Kathmandu Valley Development Authority was established to develop a comprehensive physical development plan to provide essential services to the public in a planned manner under the Kathmandu Valley Development Authority Act. Section 6 of the Act provisions that the function, duty, and power of the authority is:

To develop and implement projects for the proper development and maintenance of any religious, cultural, or historical heritage in planned zones subject to the existing laws of Nepal relating to ancient monuments and to fix the terms and conditions in relation to any construction to be carried out in any forest and jungle, rivers and streams, crematorium and water area and other activities for the natural and environmental protection of a planned zone and to do and cause to be done accordingly. (Kathmandu Valley Development Authority Act, 1988)

Section 9 mentions that the authority may demolish or remove the part so constructed without approval or in violation of the law. The neglect of the Kathmandu Valley Development Authority Act, 1988 is a significant example of institutional failure in heritage protection and the legislation is currently a paper statute, as no mechanisms have been established to implement its provisions (Belbase, 1997).

### ***The Guthi Corporation Act, 1976***

“The Guthi system was established partly to maintain sites with significant cultural and religious heritage and to continue intangible heritage practices such as festivals and funeral rites” (Scott, 2019, p. 1). The preamble of the Guthi Corporation Act, 2033 (1976) mentions that Guthi



Corporation has been established to remove state trusts (Rajguthi) from the jurisdiction of the Government of Nepal and place them under a corporation, and systematically operate the state trusts. Section 16 mentions that:

The Corporation shall, for the management and operation of its Amanati, Rajguthi, shrines (matha), and temples, appoint Mahants, priests (pujari), managers, and other workers, and employees, as required, and shall carry out such acts required to be carried out, including festivals and worship by donation deed (daanpatra likhat), if any, and with customs (parampara), through its amanat (wage system), and the incomes of such Amanati Guthi, shrines, and temples shall be credited to the Guthi fund and Guthi in-kind stock and the expenses shall be chargeable on the Guthi fund and Guthi in-kind stock. (The Guthi Corporation Act, 1976)

Guthi Corporation has full rights and responsibilities for the conservation and management of Guthi's only intangible heritage, while AMPA has provided the Department of Archaeology with full rights and responsibilities for the conservation and management of tangible heritage as well because of less prioritization of renovation of Guthi heritage (Shrestha & Subedi, 2023).

#### ***Pashupati Area Development Trust Act, 1987***

It was enacted to safeguard, maintain, and develop the Pashupatinath area. Section 6 of the act mentions that the objectives of the trust are to safeguard, maintain, and develop the Pashupati area in a planned manner and to maintain, protect, and promote objects or sites of ancient, historical, religious, cultural, and national importance, movable and immovable assets of the Lord Pashupatinath and natural heritages in the Pashupati area. Similarly, Section 10 provisions the functions of the Pashupati Area Development Trust Governing Council, which includes in the course of carrying out planned development of the Pashupati area, maintaining a clean environment by making construction, maintenance, repair, and sanitation in a well-planned manner. In section 17, it is stated that no person may, without prior approval of the Council, make new construction, reconstruction, alteration, change in the existing foundation and style, repair, or other construction-related work. The act gives space for development but also with consideration to the maintenance of the cultural heritage. However, it is evident from the Golden Jalahari incident that the laws have not been well implemented.

#### ***Local Administration Act, 1971***

The Local Administration Act was enacted to consolidate the laws relating to the local administration of Nepal. Section 9(6) of the act mentions that the Chief District Officer must keep records of public water taps, wells, ponds, shelters, guest houses, temples, caves, and bridges in the district, and if damaged, repairs must be ordered. The act grants the CDO full power to maintain and record monuments within their territory, a crucial aspect of heritage conservation and management.

#### ***Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972***

Nepal ratified the Convention Concerning the Protection of the World Cultural and Natural Heritage on June 20, 1978, and it came into effect on September 20, 1978 (UNTC, n.d). Article 4 of the Convention states that each State Party is responsible for ensuring the identification, protection, conservation, presentation, and transmission of cultural and natural heritage on

its territory. The State will use its resources and international assistance, including financial, artistic, scientific, and technical assistance, to achieve this goal.

Additionally, Article 5 of the Convention mandates States to adopt policies to protect and conserve cultural and natural heritage, integrate it into community life, establish services for its protection and presentation, develop scientific and technical research, take necessary legal, scientific, technical, administrative, and financial measures, and foster national or regional centers for training and scientific research in this field. These measures aim to ensure effective and active protection, conservation, and presentation of cultural and natural heritage. Article 8 talks about the formation of an Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Committee".

There are drawbacks to International Conventions, as they do not have enforcement mechanisms; rather they rely on the cooperation of the member states. The Convention Concerning the Protection of the World Cultural and Natural Heritage has its other limitations in the provisions. It broadly categorizes two types of Heritages: Cultural and Natural Heritage. There is no categorization of intangible heritage (Hua, 2010). The limitations on listing originate from the definition of world heritage, which requires sites to have exceptional universal value in addition to meeting the requirements for listing established by the World Heritage Committee under Article 11(5) and outlined in the Operational Guidelines published by the World Heritage Committee (Belbase, 1997). To qualify for habitat protection, a site must meet integrity requirements ensuring that it is large enough to include the necessary and sustainable elements of a support system (Birnie & Boyle, 1992).

It can be argued that Nepal has not yet met the necessary standards for safeguarding cultural heritage sites included on the World Heritage List (Belbase, 1997). The Kathmandu Valley was added to UNESCO's list of endangered World Heritage Sites in 2003 citing the following as the cause: "Partial or substantial loss of the traditional elements of six out of seven monument zones and resulting general loss of authenticity and integrity of the whole property" (Basnet, n.d., p. 6). The government implemented effective plans and new laws to protect heritage sites, including limiting vehicle usage, preventing modern construction, and supporting local conservation organizations financially and technically, which made it successful for Kathmandu Valley to be removed from the list in just 4 years (Basnet, n.d.).

## **Recommendations**

### ***Effective Implementation of Environmental Assessment Impact (EIA)***

Environmental Assessment Impact is crucial in understanding the effects of development on cultural as well as natural heritage. The process of evaluating a project's or development's likely environmental effects while taking into account related socio-economic, cultural, and human health effects—both positive and negative—is known as an environmental impact assessment (Convention on Biological Diversity, 2010). EIAs ensure that project decision-makers consider the environment's likely effects as early as possible and work to avoid, mitigate, or offset those effects and this guarantees that proposals are properly understood before decisions are made (Environmental Impact Assessment (EIA), 2022). Protection of Environment Act, 1997 defines "Environmental Impact Assessment" as a report on detailed study and evaluation to be prepared to ascertain whether, in implementing a proposal, the proposal does have significant adverse impacts on the environment or not, whether such impacts could be avoided or mitigated

by any means or not. A proponent shall have to carry out an Initial Environmental Examination and Environmental Impact Assessment of the Proposals as prescribed (Protection of Environment Act, 1997).

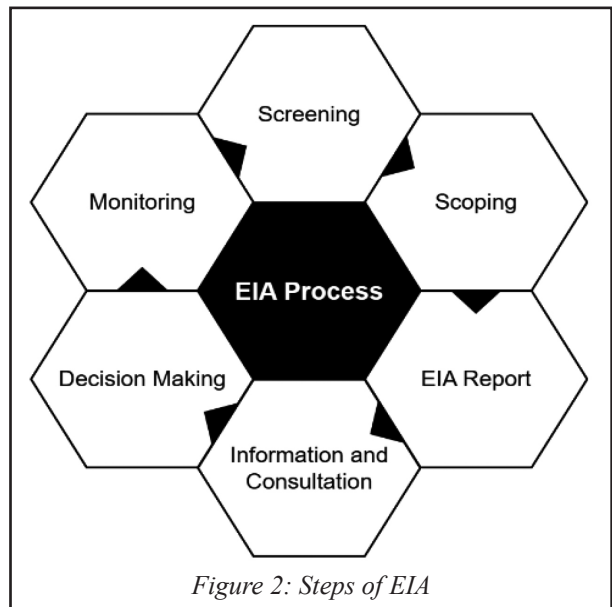
However, experts say that the quality and monitoring of EIAs in Nepal have been largely ineffective (Bhatt & Khanal, 2010). Nepal's Environmental Impact Assessments (EIAs) have been criticized for their low standard and lack of purpose in mitigating environmental problems and protecting communities, according to Madhu Ghimire, head of the EIA section at the Ministry of Forests and Environment. (Bhusal, 2022). Developers view EIAs as procedural steps before implementing projects, leading to flawed reports. The Environmental Inspector

(EIA) system in Nepal is not fully implemented, with no proper methodology, report layout, or implementation instrument (Devkota, 2011). The system is mainly based on legal provisions and lacks trained manpower, which has led to inconsistent preparations and neglect of monitoring, evaluation, and auditing systems, resulting in weak performance (Devkota, 2011). There have been instances of ineffective implementation of EIA like in the case of Nijgadh Airport where the report was approved without taking into consideration the existing errors.

For Nepal's EIA system to be effective in identifying and addressing potential environmental impacts of development projects, it must be strengthened, and this can be accomplished by raising the level of public involvement in the process, enhancing the caliber of EIAs, and making sure they are carried out by qualified experts (Devkota, 2011). Moreover, the government needs to improve monitoring and enforcement of the EIA process to ensure that developers adhere to mitigation measures and follow the recommendations of the EIA report, and this can be done by enhancing the capacity of regulatory agencies and imposing penalties for non-compliance (Joshi, 2022).

### ***Integration of Cultural Impact Assessment (CIA)***

A Cultural Impact Assessment (CIA) is a report that details the associations, values, and cultural practices of an area or resource, as well as the possible effects of a proposed activity on those practices and values (What Is a Cultural Impact Assessment? | Quality Planning, n.d.). The existing literature suggests that CIA has primarily been used in the last two decades to understand the impacts of development, including mining, on indigenous communities in indigenous countries (Dunphy & Partal, 2016). CIA processes involve studies of traditional land use, ecological knowledge, physical anatomy, ethno-geography, statistical trends in cultural indicators, and community wellness surveys, including cultural indicators (Dunphy & Partal, 2016).



*Figure 2: Steps of EIA*

Culture shapes society. Culture both drives and facilitates sustainable development. Any policy, law, or development project that does not take into account cultural dimension often fails. CIA helps to protect the culture of a society, which can contribute to sustainable development by preserving assets that contribute to economic growth and social well-being. CIA involves the process of assessing potential impacts and identifying suitable mitigation measures, enabling decision-makers to identify sustainable alternatives to prevent damage to cultural heritage sites and promote quality development (Guidance and Toolkit for Impact Assessments in a World Heritage Context, n.d.). The CIA process, which involves community involvement, ensures the consideration of intangible aspects of cultural heritage, such as language and customs. It balances development and conservation by assessing the potential impacts of development projects on cultural heritage sites and identifying sustainable options to protect them for future generations.

### ***Community-Centric Policy Adaptations***

The sociological law school of thought stresses the idea that law is borne in society and dies in society. “The net result is that the formal law can never catch up with the living law. There is always a gap between what the law says about a given topic and how people behave in the context of that topic” (Mahajan, 1987, p. 541). This is to say that a law must work in a social context and not just depend on the formal words written in the paper. Adaptation of laws and policies to local cultural contexts is paramount to balance heritage conservation and development for communities living near the heritage site. Nepal's conservation policy should be rooted in local cultural institutions, traditional practices, and economic structures to effectively address the diverse geographical and cultural landscapes within the country. (Chapagain, 2008). This can involve integrating traditional ecological knowledge of the communities, which can give a better understanding of the cultural practices to the conservationists and lawmakers as well as supplement the ecological processes (Kothari et al., 2013). Similarly, the involvement of community members in the decision-making process is cardinal to ensuring that there is trust between the locals and the government.

Responsible institutions should be efficient in technical, financial, and legal aspects, adopting an integrated conservation approach with public participation. Conservation should not only preserve buildings but also provide quality environments for neighborhoods and in underdeveloped countries like Nepal, integrated conservation should promote sustainable tourism, economic benefits, and community development (Bhatta, 2009).

Conducting research in the local area about what the locals prefer in terms of changes is equally paramount. This helps to understand the cultural practices better which are the base of the heritage. This can also aid in identifying potential conflicts and opportunities for collaboration. It can also give an advantage to policy-makers regarding the development of policies and laws that create a balance between sustainable development and the conservation of heritage.

### **Conclusion**

The intricate balance between progress and preservation is, as revealed and analyzed in the paper, a complex task with both challenges and opportunities. Cultural heritage is an invaluable part of a nation that must be protected. Simultaneously, development is a necessary evil for progress. Creating a balance between the two requires a multi-faceted approach that involves

taking the environment, society, and culture into account. The legal and policy framework is developed to fit the international standard with little consideration for the local context. There is a dire need to consider local cultural institutions, cultural practices, and economic bases in the laws.

The laws have attempted to balance development, sustainability, and conservation, but there is a need to ensure that this balance is achieved in practice. The laws are not well implemented and often the gap in them is easily exploited. The Government of Nepal must take urgent action to change its laws to protect its cultural heritage better, as current laws are inadequate to protect it in the face of rapid development. All stakeholders, including the government, the private sector, and civil society, must work together to demand changes to Nepal's laws.

Overall, the changing concepts and values in heritage conservation have shifted to a more holistic approach that involves processes like Environment Impact Assessment and Cultural Impact Assessment. Nuanced and context-specific approaches should be considered to achieve parallel progress in development and heritage protection.

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