

Shaping a Child-Centric Legal Doctrine: Evolving Judicial Trends in Nepal’s Anti-Child Marriage Rulings

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Abstract

The judiciary, as the constitutional custodian of justice, is mandated to adjudicate with the Constitution, statutory provisions, and universally recognized principles of justice. Over the years, Nepal’s judiciary has significantly played a transformative role in shifting the legal narrative on child marriage—from a culturally accepted, socially normalized, and legally ambiguous practice to a serious violation of fundamental rights. This doctrinal shift is evident in key jurisprudences, where the Court has progressively adopted a purposive, rights-based adjudicatory approach that centres on the victim and child, grounded in the principle of the “best interests of the child” and departing from rigid statutory formalism. The shift in the courts reflect a broader interpretive shift away from rigid legal formalism toward a more survivor-informed, context-sensitive adjudicatory framework. A defining milestone in this evolution is the Supreme Court’s ruling in *Government of Nepal v. Santosh Kumar Yadav*, which reaffirmed core constitutional values—dignity, equality, and protection from exploitation—while operationalizing international child rights obligations. This article undertakes a doctrinal analysis of the decision, examining the Court’s interpretive reasoning, its alignment with global jurisprudence, its adherence to constitutional and statutory mandates, and its application of international legal standards. Despite these advances and clear adjudicatory guidance, inconsistencies across various courts reveal persistent lack of doctrinal clarity and shared understanding within the judiciary – ranging from limited institutionalization of child rights-based practices to prevailing reliance on rigid, traditionalist interpretation of law that disregards liberal approaches grounded in established precedents. This article, therefore, underscores the need for doctrinal consistency, institutional alignment, and enhanced judicial education to ensure a coherent, uniform, and child-centered approach to justice. By tracing this evolving jurisprudential landscape, the article highlights both the normative progress made and the structural reforms still required to realize Nepal’s constitutional mandates and international commitments to protect children’s rights.

Keywords: best interests of the child, child marriage, doctrinal analysis, jurisprudence, survivor-centered

Introduction

The judiciary of Nepal, entrusted by the Constitution as the custodian of justice and

fundamental rights (Preamble, Constitution of Nepal, 2015), increasingly asserted its role in confronting harmful traditional practices and

shaping progressive legal interpretations. As an institution central to legal reform, it holds the responsibility to interpret constitutional and statutory provisions in ways that is responsive to both evolving societal realities and align with Nepal's international human rights obligations.

Within this broader mandate, over time, the judiciary has demonstrated a transformative role in shifting the legal discourse surrounding child marriage. While national law defines persons under the age of 18 years as "children," it categorizes any marital union involving persons under the age of 20 as "child marriage". Once viewed as a culturally embedded and legally ambiguous practice, child marriage is now understood and adjudicated as a grave violation of the rights and dignity of children. The Court's jurisprudence has moved decisively from rigid formalism toward a purposive, rights-based approach – placing the child's best interest and well-being at the centre of legal reasoning.

This jurisprudential progression is evident in series of precedent-setting rulings that collectively shift the legal narrative from punitive formalism to a more child-centric rights-based approach. In *Laxmi Maya v. Government of Nepal* (2011), the Court interpreted minor's consent in marriage and equated it to statutory rape. *Sarita Adhikari v. Rajaram Adhikari* (2020) reinforced rights and welfare of minors post-marriage, including property rights and parental care, despite the invalidity of marriages. *Krishna BK v. Government of Nepal* (2017) went further by declaring all sexual relations within minor marriages as rape and as punishable conduct. Meanwhile, *Abhimanyu Ahir Yadav v. Government of Nepal* (2021) underscored the necessity of balancing the rights of survivors, highlighting due process as a complementary principle to victim protection. *Balaju 100* (2023) addressed the legal ambiguity surrounding consensual underage sexual relations and declined to assert such a case as rape, considering contextual factors like emotional ties and parenthood. *Bogatan, 70 (L)* (2021) reflected judicial sensitivity by deferring sentencing, recognizing the minor's vulnerability, though such provisions remain underutilized. *Bimal Shrestha et al.*, (2023) signalled a shift toward deterrence and accountability by convicting the accused in

a child marriage-related suicide, reinforcing the judiciary's protective stance on vulnerable minors.

These doctrinal advancements culminated in the landmark ruling in *Government of Nepal v. Santosh Kumar Yadav* (2018) (herein after *Santosh Kumar Yadav*), where the Court addressed legal ambiguity around marriageable age. The Court's reasoning firmly grounded the adjudication in the "best interests of the child" (UNCRC, 1989, Art. 3) which requires that in all actions concerning children—whether undertaken by courts, legislative bodies, or administrative authorities—the child's welfare must be a primary consideration. The Court interpreted this not merely as a guiding value but as a substantive legal standard drawn from domestic constitutional guarantees – reflected in Article 39 of the Constitution of Nepal and operationalized through legislation such as the Act Relating to Children, 2018 – as well as Nepal's international obligations.

Collectively, these decisions mark a judicial transition toward a survivor-informed, context-sensitive framework that prioritizes child protection and dignity. They illustrate the emergence of a jurisprudential paradigm where the "best interests of the child" are not only central to legal reasoning but also instrumental in challenging regressive norms and ensuring substantive justice.

This article undertakes a doctrinal and normative examination of the judiciary's evolving approach to child marriage, with a particular focus on the *Santosh Kumar Yadav* decision. Situating this case within a broader body of jurisprudence, it analyzes the interpretive shifts that have culminated in a more consistent, rights-oriented legal response. Through the combination of close legal textual analysis and normative assessment, the article assesses how this judicial rectification has contributed to legislative clarity, enhanced institutional accountability, and improved justice pathways for affected children. In addition to mapping this jurisprudential trajectory, the article evaluates the normative influence of key judicial decisions in promoting doctrinal coherence and advancing systemic legal reforms. It incorporates a comparative jurisprudence section that situates Supreme Court reasoning in *Santosh Kumar Yadav*

alongside international case law, highlighting global alignment with the Court's purposive and rights-based approach. While acknowledging the normative gains achieved through these landmark decisions, the article also examines subsequent case law to reveal persistent challenges.

Judicial Progressiveness: Evolving from Formalist Statutory Interpretation to a Rights-Oriented and Liberal Interpretative Approach

Over the past two decades, the judiciary of Nepal—particularly the Supreme Court—has demonstrated a marked shift in its interpretive stance concerning child marriage. The judicial approach to child marriage has undergone a significant transformation – rigid, literal interpretations of statutory provisions to a more purposive, rights-affirming framework grounded in constitutional values and international human rights obligations. This evolution reflects the growing recognition by Nepal's judiciary of its role not only as an arbiter of legal disputes but also as a key agent in the realization and protection of fundamental rights, particularly those of children.

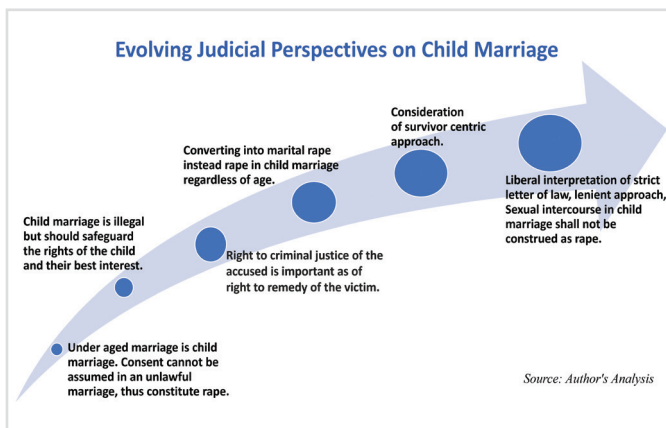
Traditionally, judicial reasoning in cases involving child marriage was dominated by a formalist application of penal law, focused primarily on the elements of crime—age, consent, and statutory thresholds—without sufficient engagement with the broader human rights implications of the practice. Such an approach often holds insufficient to address the structural vulnerabilities faced by children, especially girls, and fails to account for the long-term impact of early marriage on their bodily integrity, autonomy, education, and economic security.

However, over the past decade, landmark judgments of the Supreme Court of Nepal have marked a gradual departure from this constrained interpretive paradigm. This progression is illustrated in cases such as in *Laxmi Maya v. Government of Nepal* (2011), the Supreme Court affirmed that in cases involving minors, particularly where the victim is under 16 years of age, consent to sexual intercourse holds no legal

significance. The Court clarified that such marriages are void *ab initio*, and any sexual activity arising within them constitutes statutory rape. This ruling established a clear legal position that underage marital unions cannot serve as a defence against charges of sexual violence, reinforcing the primacy of child protection within Nepal's criminal justice framework.

In *Sarita Adhikari v. Rajaram Adhikari* (2020), the judiciary underscored the importance of safeguarding the rights and dignity of minors, even in circumstances where a child marriage has already taken place. In a significant decision, the Dailekh District Court reviewed the case of *Sarita Adhikari*, who was married at the age of 13 and divorced at 17. The Court declared the marriage legally void, as both the union and the dissolution occurred prior to the lawful age of marriage. In addition to annulling the marriage, the Court directed Sarita's parents to assume responsibility for her care, reinforcing principles of child protection. Notably, the Court also recognized her property inheritance rights despite the invalidity of the marriage, ensuring her entitlements were preserved within a rights-based adjudicatory framework.

In *Government of Nepal v. Krishna BK* (2017), the judiciary adopted a more nuanced stance by distinguishing between sexual relations arising within marital and non-marital contexts involving minors, while nonetheless reaffirming the legal invalidity of child marriage. The Makawanpur District Court convicted the accused of both child marriage and rape—findings that



were subsequently upheld in part by the Patan High Court and the Supreme Court. The Supreme Court emphasized the gravity of sexual violence, recognizing that sexual intercourse within an underage union constitutes marital rape and must be penalized in accordance with criminal law, irrespective of the purported marital relationship or the age of minor girl involved. This decision marked a significant step in framing child marriage as a non-exemptible excuse for perpetrators of sexual offences.

In *Government of Nepal vs. Balaju 100* (2023), the Patan High Court examined the legal ambiguity surrounding consensual sexual relations between minors. While the Kathmandu District Court had earlier convicted the minor male of rape, the High Court overturned the ruling, citing the absence of clear legal provisions addressing such situations under the juvenile justice framework. Taking into account that the minors had a child together and maintained a stable relationship before and after the incident in question, the court concluded that the act should not be legally classified as rape.

In *Government of Nepal v. Bimal Shrestha et al.*, (2023) the case involved a minor girl who assented into child marriage and suffered sustained abuse, ultimately leading to her suicide. While the Rupandehi District Court convicted Bimal Shrestha for child marriage, it acquitted him of abetment to suicide. However, the Tulsipur High Court overturned this acquittal on appeal, finding him guilty of abetment and sentencing him to two years' imprisonment, along with a fiscal penalty and compensation to the victim's family. The court emphasized the importance of balancing the rights of the accused, the victim, and public interest, underlining the deterrent value of applying abetment provisions to maintain public confidence in the justice system. This case highlights the heightened vulnerability of minors in child marriages—especially those formed without family support—who often face sustained abuse with limited avenues for protection or redress.

In *Government of Nepal v. Bogatan, 70 (L)* (2021), the Court invoked Section 36 of the *Act Relating to Children, 2018*, which mandates that, in

determining penalties for juvenile offenders, courts must consider factors such as age, sex, maturity, the nature of the offence, and the surrounding circumstances. The provision allows the court to defer sentencing, conditionally or unconditionally, or to issue any other appropriate order in the interest of justice. Although this provision reflects a progressive and child-sensitive approach, it remains infrequently applied—particularly in cases involving child marriage, polygamy, and related offences. In the present case, the High Court initially imposed custodial sentences on a minor girl: one year for polygamy and one month for child marriage. However, acknowledging her age and vulnerability, the court ultimately deferred the execution of the sentence pursuant to Section 36. This represents a rare, yet significant, instance of survivor-centred adjudication. Given the potentially severe and long-term consequences of criminal punishment on children, it is essential that the judiciary adopt an interpretive approach that prioritizes the best interests of the child. While such instances reflect judicial sensitivity, a more proactive and rehabilitative orientation is needed. Courts must move beyond occasional leniency and consistently apply child-centred principles that prioritize recovery and reintegration over punishment.

In *Abhimanyu Ahir Yadav v. Government of Nepal* (2021), the Supreme Court reaffirmed the principle that the right to a fair trial for the accused is of equal constitutional significance as the victim's right to an effective remedy. The Court held that a conviction for rape cannot rest solely on the victim's testimony; rather, it must be substantiated through corroborative evidence to meet the standard of proof beyond reasonable doubt. This decision underscores the judiciary's commitment to maintaining procedural fairness while safeguarding the rights of both parties in criminal proceedings.

Jurisprudential Turning Point: *Government of Nepal v. Santosh Kumar Yadav*

A turning point in this trajectory is observed in *Santosh Kumar Yadav*, where Justices Anil Kumar Sinha and Kumar Chudal signalled a critical departure from rigid legal formalism.

Acknowledging legal inconsistencies, conflict of law and its impact on children, the court opted for a child rights-oriented interpretation of the law. The Court called upon the state to take affirmative legal, institutional, and policy measures to prevent child marriage – thereby reinforcing a linkage between judicial interpretation and broader governance obligations. While the leniency in sentencing remains contentious, the judgment's doctrinal contribution lies in its holistic engagement with the rights of the child, notably reinforcing the “best interests of the child” principle as a central adjudicatory standard.

Factual and Procedural Background

On 14 November 2022, a Division Bench of the Supreme Court of Nepal rendered a landmark judgment adjudicating upon the entrenched socio-legal issue of child marriage—an enduring practice that infringes upon the fundamental rights and welfare of minors. The case originated from an FIR lodged by the mother of a minor girl in Udaypur District, accusing Yadav of rape, abduction, and illegal detention. The facts of the case reveal that the girl—under the statutory age of 16 at the time and from a different caste—had eloped with Yadav after a prolonged romantic relationship. The couple subsequently appeared before the Udayapur District Court and affirmed their marital union.

While the District Court acquitted the defendant Santosh Kumar Yadav from the charges, the Biratnagar High Court (Okhaldhunga Bench) convicted him and imposed multiple sentences – 11 years’ imprisonment for abduction and hostage-taking, and six years for rape along with a fine of fifty thousand rupees and further fifty thousand as compensation to the victim on the charge of abduction and hostage taking. Upon appeal, the Supreme Court reversed the High Court’s judgment, acquitted Yadav of the more severe charges citing lack of evidence to meet the threshold of criminal culpability. However, it upheld his conviction for child marriage under prevailing statutory law, sentencing him to six months of incarceration and a fine of NPR 10,000.

Significance of the Judgment

The judgement rendered by the Supreme

Court lies not just in its reduced sentencing but in the Court’s doctrinal approach – setting a transformative precedent by framing child marriage within a broader right-based narrative. It undertook a comprehensive analysis of the legal, institutional, and normative complexities associated with child marriage. By invoking international legal principles, particularly the “best interest of the child” (UNCRC, General Comment No. 14), the court asserted a comprehensive, contextual understanding of child protection.

This judgment is particularly significant and contextual, as it addresses a growing legal trend in which child marriage cases are increasingly diverted and prosecuted under rape statutes or linked with other serious offences such as abduction and hostage-taking (OAG, 2024a). Despite the clear existence of legislation and legal mechanisms for reporting child marriages, actual reporting remains low (Shrestha et al., 2025). Instead, many incidents are often categorized and pursued as more severe criminal charges – including polygamy and marital rape (Shrestha et al., 2025) – raising serious concerns from a child rights perspective. While the underlying causes of this trend warrant further research, this dynamic reflects a problematic shift in legal practice. This section critically examines how the Supreme Court has analysed and addressed these issues in this case and explores its broader impact for the adjudication of the similar cases in the future.

Justice as a Search for Substantive Truth

The judiciary, as the constitutionally designated guardian of justice and public trust, must interpret law not merely by its letter but in accordance with its spirit and purpose. Article 128 of the Constitution confers the Supreme Court the authority as the final interpreter of law, thus entrusting it with the obligation to deliver justice grounded in substantive truth rather the procedural formalism. In this case, the court has embraced this interpretive philosophy, framing justice not in technical formalism but in substantive truth-seeking.

In the case, there was factual evidence establishing a marriage between two minors, which was also supported through statements from

the couple and the minor girl's mother in court. However, since the case was prosecuted under charges of abduction, hostage taking, and rape, the Court emphasized that such severe criminal offences must meet the evidentiary threshold of proof beyond a reasonable doubt. Referring to of the core principle of criminal justice – *in dubio pro reo* (the benefit of doubt goes to the accused) – the court held that any serious allegations like rape, abduction, and hostage taking must be substantiated with concrete and credible evidence and adjudicated along with recognized principle of criminal justice.

Further, the Court underscored the importance of safeguarding the right to criminal justice of the accused within the framework of fair trial guarantees and due process. These rights are enshrined in Nepal's Constitution such as right to justice, the rights of crime victims, right against torture, and protections under nationally and internationally recognized standards of fair trial. In doing so, the Court also reinforced the accountability of the state mechanism to conduct for fair and impartial, right-based investigations and prosecutions, particularly in cases of serious criminal allegations. Such procedural fairness is essential to uphold public confidence in the justice system (Chapagain, 2023) and ensure that severe criminal allegations are also adjudicated with due rigor and objectivity.

Offences like Abduction and Hostage Taking should be Proved Beyond Reasonable Doubt

The Supreme Court has consistently reinforced that any serious criminal offences must be proved beyond the reasonable doubt, a foundational principle of criminal justice both in domestic and international jurisprudence. In the *Santosh Kumar Yadav* case, the Court emphasized that the offences of abduction and hostage taking, which are generally considered forms of organized crime involving multiple individuals, must be supported by substantive and corroborative evidence. Prosecuting against any one with charge of such severe offence itself is not enough, rather it should be proved with the substantive evidence and beyond reasonable doubt. Merely alleging such offences on the basis of controversial

evidence, ambiguity and suspicion does not meet the evidentiary threshold required for conviction.

The court reiterated that suspicion, no matter how strong, cannot substitute for legal evidence – a fundamental principle rooted in established legal doctrine. This doctrine, reflected in common law jurisprudence such as *Woolmington v. Director of Public Prosecutions* (1935), holds that the prosecution must prove its case and that the presumption of innocence remains intact until guilt is established beyond reasonable doubt. In line with this, the Court underscored that a conviction cannot be based on inconsistent testimonies, evidentiary ambiguity or prosecutorial inference.

Consistent with Section 14(2) of the Constitution of Nepal (2015), which guarantees the right to a fair trial and aligned with Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR, 1966)—to which Nepal is a party—the Court further underscored that the burden of proof lies entirely with the prosecution, and in the absence of substantial evidence, the benefit of doubt must be extended to the accused. In the case, after careful scrutiny of the facts and evidence and in accordance with the fundamental principle of evidence and criminal justice, the court concluded that the evidence presented failed to substantiate the charges beyond reasonable doubt, and thus acquitted the accused of the more severe offences.

Distinguish between Sexual Intercourse in Child Marriage and Statutory Rape

The Supreme Court undertook a critical examination of the legal distinction between consensual sexual intercourse within child marriage and statutory rape. The Court referenced a judgment of the Supreme Court of India – *S. Veradarajan vs. State of Madras* (1965) – where the Indian judiciary adopted a contextual interpretation of marriage involving minors in a liberal manner to both, protect the rights of the child and to distinguish between rape from consensual sexual intercourse within child marriage (*S. Veradarajan v. State of Madras*, 1965).

This judicial reasoning highlights the court's role in balancing the strict letter of the law

with real-life circumstances of those individuals affected, thereby ensuring that legal outcomes are fair and contextually appropriate. It reflects a purposive interpretative approach – emphasizing that the law must not be understood and applied not solely by its letter, but in the light of its broader spirit and intended objectives. While age remains a determinative legal factor in statutory rape, the Court emphasized that *mens rea* (criminal intent) and *actus reus* (criminal act) are the measuring rods to distinguish sexual intercourse within the child marriage from rape.

The court explained that in case of statutory rape, the intention of the accused is primarily to commit sexual exploitation, whereas sexual intercourse within child marriage is often driven by social norms, physical needs, emotional connections, or perceived mutual consent, rather than criminal intent. There is substantial difference between these two and failing to distinguish them will ultimately undermine justice, because the punishment prescribed for a crime should be proportional to the seriousness of the crime (Ashworth, 2015).

By distinguishing between consensual sexual relations within unlawful marriages and actual instances of rape, the Supreme Court of Nepal established a context-sensitive framework that aims to uphold both, the rights of the child and the integrity of justice. This reasoning is consistent with broader international standards such as Article 3 of the CRC, which mandates that the best interests of the child be the primary consideration in all judicial decisions.

Judicial Recognition of Consensual Sexual Relations among Underage Individuals

In this case, the Supreme Court has shown leniency toward distinguishing between consensual sexual relations among minors and statutory rape, while upholding a strict legal position against child marriage convictions. The Court acknowledged that while child marriage is a violation of the law, consensual sexual activity between minors – particularly within the context of culturally sanctioned unions – must be examined with contextual sensitivity. It emphasized that age alone should not be the sole determining factor in

characterizing an act as statutory rape; rather, the presence or absence of *mens rea* and exploitative circumstances must be considered alongside the *actus reus*.

The Courts often views sexual relations within child marriages as natural, differentiating them from statutory rape. This reflects a nuanced approach to child marriage complexities. Notably, the judgement referenced comparative jurisprudence such as the United States legal doctrine known as “Romeo and Juliet” laws, which offer *close-in-age exemptions* in statutory rape cases to prevent the criminalization of consensual relationships between adolescents (Kan. Stat. Ann. § 21-5503, 2005).

Through this interpretative lens, the Supreme Court affirmed consensual sexual activity among underage individuals, while still recognizing the serious implications of child marriage. The court recognizes sexual intercourse between a married couple as a natural occurrence, even in the context of child marriage. Such conduct may reflect prevailing social norms, emotional intimacy, or mutual consent rather than criminal intent. This distinction is critical to ensuring that the legal response remains proportional and consistent with both child protection principles and broader human rights obligations.

Sexual Intercourse within Child Marriage is not Statutory Rape

The Court delivered a landmark jurisprudence that provided a contextual jurisprudential shift to clarify the distinction between sexual intercourse within the child marriage and statutory rape. Departing from a strictly textualist reading of statutory rape provisions under Nepali criminal law, the Court opined that not all consensual sexual acts within child marriage should be considered as statutory rape, particularly when the marriage was acknowledged by both parties and their families, and lacked indicators of coercion or exploitation.

Under prevailing law, any sexual activity involving a minor – even consensual – is considered statutory rape, irrespective of consent (National Criminal Code, 2017, §§ 219–222). However, in practice, this has resulted in a troubling pattern

where child marriage cases are increasingly prosecuted as rape or combined with more serious crimes like abduction or hostage-taking and subjected to imprisoned (Shrestha et al., 2025). This rigid application risks criminalizing minors and young individuals for behaviour rooted in social norms, familial arrangements, or emotional relationships, rather than exploitation or violence.

The Court's judgment signals a more context-sensitive and purposive approach by affirming that *mens rea* (criminal intent) and social realities surrounding child marriage must be considered before characterizing such acts as statutory rape. In doing so, the decision resonates with international legal principles emphasizing proportionality and child protection. Comparative jurisprudence, such as the "Romeo and Juliet" laws in jurisdictions like the United States, similarly recognizes that not all consensual sexual activity between minors warrants felony-level prosecution (Kan. Stat. Ann. § 21-5503, 2005).

This precedent is therefore significant for the protection of children's rights. The judgment marks a pivotal moment for child protection, offering a more context-sensitive approach to handling child marriage while mitigating the risk of severe and potentially unwarranted legal consequences for minors. It acknowledges the complexities surrounding child marriages and discourages punitive approaches that may further harm victims in child marriages. Instead, it promotes a more equitable legal standard that takes into account the context, intent and the best interests of the child – aligning with Nepal's obligations under the CRC, particularly, Articles 3 and 19.

Court Going Beyond the Claims

Despite the factual establishment of the occurrence of child marriage, the case was prosecuted under charges of abduction, hostage taking, and statutory rape. This raised a pivotal legal question before the court: can the court go beyond the specific charges brought before it to ensue justice aligns with the broader legal and constitutional framework?

The Court opined in the affirmative, upholding that the judiciary, in its role as the

guardian of the Constitution and justice, is not confined strictly to the pleadings or charges brought by the prosecution when those charges do not reflect the factual substance of the case. The Court invoked its inherent judicial authority to reinterpret or reframe charges, provided such interpretation adheres to the spirit of the Constitution, existing legislation and recognized principle of justice.

In justifying its position, the Court referred to precedent set in *Government of Nepal v. Ibrahim Miya & Others* (2009), where the Supreme Court had recharacterized a charge of attempted homicide as battery based on the factual circumstances. Applying that precedent, the Court in *Santosh Kumar Yadav*, found insufficient evidence to convict the accused of abduction, hostage-taking, and statutory rape, and instead convicted him under the offence of child marriage in accordance with prevailing law (National Criminal Code, 2017, §173).

This approach underscores the Court's jurisprudential stance that justice must not be compromised on procedural technicalities, and that substantive justice can require courts to look beyond the prosecution's framing when it is inadequately captures the nature of the alleged wrongdoing. In doing so, the Court reinforced its commitment to impart fair and impartial justice and reaffirmed the judiciary's duty to interpret the law in a manner consistent with both legal precedent and the spirit of constitutionalism.

International Jurisprudence as a Normative Guide for the Nepali Judiciary

The judgment in *Santosh Kumar Yadav* illustrates the Supreme Court of Nepal's shift toward a purposive, rights-based approach in adjudicating cases involving child marriage and related sexual offences. Notably, the Court's reasoning is not developed in isolation but finds strong resonance in comparative jurisprudence across multiple legal systems. These global precedents not only validate the Supreme Court's evolving doctrinal approach but also offer a valuable normative framework for navigating similarly complex socio-legal contexts.

Across jurisdictions, courts have increasingly recognized the importance of assessing

contextual consent in underage relationships. For instance, in *S. Varadarajan v. State of Madras* (1965), the Supreme Court of India distinguished voluntary elopement from abduction, affirming the importance of adolescent agency when no coercion or inducement is present. This perspective aligns closely with the Supreme Court's emphasis on understanding the lived realities of young individuals, especially in the context of socially sanctioned practices like child marriage. The Indian court's interpretation of agency and voluntariness aligns with the Supreme Court's emphasis on factual context over rigid legal formalism.

Equally critical is the affirmation of high evidentiary thresholds and due process. The European Court of Human Rights in *M. C. v. Bulgaria* (2003) underscored the need for credible and sufficient evidence when prosecuting sexual violence, along with safeguarding procedural rights. The Supreme Court's insistence in *Santosh Kumar Yadav* that serious allegations such as rape, abduction, and hostage-taking must be proven beyond a reasonable doubt, invokes this foundational standard—*in dubio pro reo*—thereby reinforcing the due process rights of the accused.

Other jurisdictions have also grappled with the risk of blanket criminalization of consensual adolescent relationships. The House of Lords in *R v. G* (2008) and the United States' "Romeo and Juliet" provisions recognize the importance of distinguishing between exploitative conduct and consensual teenage intimacy. These frameworks seek to protect minors without unduly penalizing non-exploitative behaviour. Similarly, the Supreme Court, by declining to automatically categorize sexual intercourse in child marriage as statutory rape, advocates for a measured, context-sensitive application of the law, particularly when predatory intent is absent. The Supreme Court, through its interpretation in *Santosh Kumar Yadav*, adopts a similarly sensitive approach by recognizing that underage sexual activity within marriage—though legally impermissible—may not always constitute criminal exploitation warranting charges such as rape or abduction.

Furthermore, comparative cases reaffirm the primacy of fair trial rights, even in matters

involving vulnerable populace like minors. In *DPP v. Morgan* (1975), the UK judiciary emphasized the necessity of establishing both *actus reus* and *mens rea* in sexual offences—an approach also adopted by the Supreme Court. The Supreme Court similarly drew attention to the mental state of the accused, clarifying that criminal liability must be determined not solely by the act but by its underlying intent—a particularly critical distinction in child marriage cases, where cultural and emotional dynamics often inform behaviour.

Taken together, these comparative jurisprudential developments demonstrate that the Supreme Court's ruling in *Santosh Kumar Yadav* is not only contextually grounded but also globally aligned. The Court has laid the groundwork for a more balanced, humane, and constitutionally faithful approach to justice by prioritizing rights-based reasoning, evidentiary rigor, and child-sensitive jurisprudence over strict formalism.

Implications of the Judgment in Legal, Judicial, and Policy Reform

As the constitutional court of record, the Supreme Court of the Nepal plays a pivotal role in shaping the legal, judicial and policy landscape of the nation. Article 128 (4) of the Constitution affirms that decisions rendered by the Supreme Court constitute binding precedent and serve as authoritative references for adjudication for subordinate courts. Thus, the jurisprudence established in *Santosh Kumar Yadav* carries far-reaching implications beyond the immediate case.

Child marriage remains widespread yet underreported in Nepal (Shrestha et al., 2025), often prosecuted under more severe charges such as statutory rape and even associated with other severe nature of crimes such as abduction and hostage taking in many instances. In this context, the Supreme Court's nuanced distinctions – particularly its separation of sexual intercourse within child marriage from statutory rape, and its recognition of such intercourse in child marriage as natural occurrence and socially embedded phenomenon rather than a *prima facie* criminal act – mark a jurisprudential evolution toward a more context-sensitive, child-rights-based framework.

By interpreting the meaning of “sexual intercourse” in the context of child marriage and invoking the “best interests of the child” principle (as required under Article 39 of the Constitution and Article 3 of the CRC), the Court has laid an instrumental foundation that should inform both, future litigation and statutory reforms, from the perspective of child rights safeguarding. These developments underscore the judiciary’s transformative function in aligning Nepal’s legal regime with its international human rights obligations, and signal a need for corresponding institutional, prosecutorial, and policy adaptations to reinforce child protection without resorting to excessive criminalization.

Precedential Value and Guiding Reference for Future Adjudication

In recent years, there has been a noticeable increase in the prosecution of child marriage cases under statutory rape provisions and interlinking it with abduction and hostage taking. This prosecutorial trend has led to legal inconsistencies and raised concerns about the proportionality and contextual appropriateness of such charges – particularly when applied to consensual relationships between minors.

This judgment with a new dimension of interpretation of sexual intercourse in child marriage establishes a critical jurisprudential benchmark by distinguishing consensual sexual relations within child marriage from statutory rape, thereby offering much-needed doctrinal clarity. The subordinated courts have a statutory obligation to abide by the precedent set by the Supreme Court. Moreover, the Supreme Court itself is expected to maintain consistency by referring to its own prior rulings when addressing analogous legal questions, unless a compelling constitutional or legal ground justifies departure.

This precedent thus plays a pivotal role in harmonizing judicial reasoning across various levels of the judiciary and contributes toward establishing a more coherent, child-sensitive, and context-aware legal framework in cases of child marriage. As such, it reinforces the interpretive responsibility of the courts to uphold constitutional values and international child rights standards.

Policy Impact

The judiciary has critical role in shaping legal and policy reforms through its interpretative authority and landmark judgments. Under Article 133 (4) of the Constitution, the Supreme Court holds the power to issue necessary and appropriate directive orders, including writs, for the enactment of needful legislation to ensure fundamental rights and justice. When adjudicating cases involving systemic gaps or socio-legal complexities, the Court’s jurisprudence or interpretation often serve as a directive tool to relevant state institutions, prompting legal or policy action.

This judgment was delivered in the context when child marriage incidents are prosecuted under the charge of statutory rape or in conjunction with other severe criminal offences such as abduction and hostage-taking. This practice, while addressing serious crimes, blurred legal distinction between consensual underage unions and exploitative conduct, raising concerns about proportionality and the best interests of the child.

In response, the Office of the Attorney General (OAG)– the authority responsible for criminal prosecution on behalf of the state – issued a directive (OAG, 2024b) instructing its subordinate offices not to prosecute cases solely as rape when they arise from child marriage, nor to unnecessarily link them with any other unrelated serious offences. This policy reflects a child-sensitive and reformatory prosecutorial approach, aligning with the CRC and domestic child protection framework.

By prioritizing the best interest of the child and avoiding overcriminalization, the OAG’s decision signifies a progressive step to safeguard the rights of the children and signals the need for parallel reform in the provisions governing marriage and sexual offences under the National Criminal Procedural Code to ensure prosecutorial clarity and doctrinal consistency.

Consistency of Jurisprudence Remains a Challenge

Despite the Supreme Court judgment in the case marking a significant doctrinal advancement in the adjudication of child marriage, ensuring consistent application of this precedent across

similar nature of cases remains a critical challenge. As per established judicial norms, precedent set by the Supreme Court are binding on subordinated courts and are expected to guide future decisions of the Supreme Court itself, unless there are factual differences or the need for a different interpretation of prevailing legislation.

Despite this principle of vertical and horizontal judicial consistency, the jurisprudence developed in *Santosh Kumar Yadav* has not been uniformly reflected in other similar cases. For instance, in *Chetan Lawati v. Government of Nepal* (2018), despite the factual establishment of child marriage, the Supreme Court convicted the accused of marital rape. Similarly, in *Government of Nepal v. Raju Bishankhe Sarki* (2021), the Supreme court adopted a comparable approach, raising concerns over interpretive divergence.

These cases prompt two pertinent questions: first, whether convicting an individual of marital rape in the context of child marriage inadvertently legitimizes the child marriage itself; and second, whether the lack of reliance on the *Santosh Kumar Yadav* precedent undermines jurisprudential consistency. Given the similarity in facts, these cases could have drawn upon the nuanced interpretation of child rights, criminal intent, and proportionality outlined in *Santosh Kumar Yadav*, reinforcing a more child-centric, rights-based adjudicatory framework.

The inconsistent application of this precedent underscores the urgent need for doctrinal clarity and shared understanding within the judiciary to foster uniform interpretation in line with constitutional principles and Nepal's international human rights commitments. A bench book developed by the National Judicial Academy (NJA, 2019)—or a similar authoritative reference—could serve as a practical tool to support consistent, rights-based adjudication across all tiers of the judiciary.

Conclusion

The evolving jurisprudence on child marriage in Nepal reflects a decisive shift in the judiciary's orientation—from formalist interpretations rooted in traditional norms to a more

progressive, rights-based framework that centres children's lived experiences and constitutional protections. Landmark decisions, particularly *Santosh Kumar Yadav* underscore the Supreme Court's growing commitment to embedding the best interests of the child, not as a symbolic gesture, but as a substantive principle shaping legal reasoning, evidentiary standards, and sentencing outcomes.

Yet, a close examination of post-landmark case law reveals persistent inconsistencies across court decisions. These gaps signal the continuing challenges of institutionalizing human rights-based adjudication, including weak application of child-sensitive approaches and sporadic reliance on progressive precedent. Such divergence underscores the need for doctrinal coherence and a unified judicial understanding of child protection jurisprudence.

To translate judicial vision into meaningful and consistent practice, structural reforms must accompany normative progress. This includes harmonizing conflicting legal provisions, institutionalizing child protection standards across the justice system, and equipping judges, prosecutors, and investigators with the tools – such as procedural guidelines, bench book and targeted training – to apply context-sensitive, survivor-informed, and legally coherent approaches. Additionally, enhancing inter-agency coordination and adequately resourcing child protection services are essential to ensure that court decisions are implemented effectively and have impact beyond the courtroom.

Ultimately, the judiciary has emerged as a key actor in reimagining child marriage as a violation of dignity, autonomy, and rights—rather than a private or culturally accepted matter. While important normative strides have been made, sustained and coordinated efforts are essential to ensure that these gains become embedded in everyday judicial practice. Only through a system-wide commitment to fairness, consistency, and child-centred justice - Nepal can fully realize its constitutional and international obligations to protect its most vulnerable citizens.

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