



AN ANALYSIS ON INTERSECTION OF CULTURE RIGHTS WITH BASIC HUMAN RIGHTS STANDARDS IN THE CONTEXT OF NEPAL

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ABSTRACT

Basic human rights are entitled to everyone as inherent and natural by virtue of being human. The nature of basic human rights is universal and enforcement of those rights has to be guaranteed by the state apart they belongs to certain groups and tribes in terms of various socio-economic status. Often it has been clearly visible that there are some challenges to enforcement of basic human rights due to different socio-cultural practices, believes and the way of life of the people. Moreover, some people are practicing such socio-cultural practices which are not only traditional often some of them are also harmful to human as well. Specially, in the situation of conflict between basic human rights and rights of socio-cultural practices, an issue raises is which rights supersedes the other. There is no unanimous principle or value is being established yet, however based upon prevailing international and national legal human rights frameworks and judicial decisions, the crux is to create enabling utmost enabling environment to flourish all basic human rights of everyone.

Key Words: Cultural rights, Human rights, Religion, Culture, Freedom.

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BACKGROUND

Without the inherent, unalienable, and undivided nature of each and every person's human rights, regardless of status or conditions of acquisition, human existence is impossible. The basic standards of human rights uphold the dignity, fundamental freedom and respect of each individual based on the principle of equality and non-discrimination. Therefore, human rights are not based on opinions or presumptions but rather on real-world events.¹ All people have certain inalienable rights and fundamental freedoms collectively known as "human rights," regardless of their race, gender, nationality, religion, or other status. Various international human rights law generally recognizes and defends these rights.² Basic human rights do not depend on social status, wealth, birth, or any other circumstance.³

The basic nature of human rights is known as universal and it cannot be divided and classified into different groups or in segments. It is also acknowledged that human rights are natural and universal so that every human being is entitled to entertain their inherent rights only by the virtue of human being all over the globe. Since the idea of human rights evolved through time, jurist Karel Vasak publicly proposed the notion of generations of human rights in 1977⁴. Yet, the concept of generations is not without detractors. The generation theory of human rights divides human rights into three generations: the first generation is comprised of civil and political rights; the second generation is comprised of economic, social, and cultural rights; and the third generation is comprised of collective or solidarity rights.

Principally, there is an understanding that fundamental values of international human rights accommodate, recognize and promote cultural

¹ Yubaraj Sangroula, *Concepts and Evolution of Human Rights: Nepalese Perspective 2* (1st edn. 2005).

² Human rights, United Nations (Feb 20, 2023, 09:00AM), <https://www.un.org/en/global-issues/human-rights#:~:text=Human%20rights%20are%20rights%20inherent,and%20education%2C%20and%20many%20more>.

³ Human rights, United Nations (Feb 20, 2023, 09:00AM), <https://www.un.org/en/global-issues/human-rights#:~:text=Human%20rights%20are%20rights%20inherent,and%20education%2C%20and%20many%20more>.

⁴ Steven L. B. Jensen, Putting to rest the Three Generations Theory of Human Rights (Nov. 15, 2017), (Feb 18, 2023, 07:00AM), <https://www.openglobalrights.org/putting-to-rest-the-three-generations-theory-of-human-rights/>

rights too. However, often we have been witnessing of various challenges that come across to enforcement of human rights due to various social, religious and other kinds of culture of the particular society. There is conflict has been seen in enforcing human rights with cultural practices and values in situation where such practices and values undermine or neglect the core essence of human rights.

One of the key international instrument that have tried to shape the idea of human rights over time is known as the Universal Declaration of Human Rights (UDHR), which was approved by the United Nations General Assembly in 1948.⁵ Apart from that other key international human rights instruments are also significant to safeguard and accommodate all aspects of human rights including cultural rights which includes International Covenant on Civil and Political Rights, International covenant on Economic, Social and Cultural Rights etc. The preservation, promotion, and realization of human rights continue to be a vital concern on a worldwide scale, with ongoing conversations and arguments about the best approaches to guarantee that these rights are preserved and respected for everyone.

UNDERSTANDING UNIVERSAL HUMAN RIGHTS AND CULTURAL RELATIVISM

Despite of guaranteeing the fundamental human rights by powerful international human rights framework, violations of human rights continues specially the rights of minority people particularly the vulnerable group of people including women, girls and children in various forms with different intensity. The violations of human rights includes limited of access to education, health care, food and many more. Different society believe and practice different cultural values and sometimes such practices and values creates hindrance to enjoyment of fundamental freedom and rights. In different instances, the question arise that which values or practices should prevail in the situation of conflict between fundamental rights and cultural practices and values. Till date, there is no any unanimous principle

⁵ UN General Assembly, Universal Declaration of Human Rights 217 A (III) (10 December 1948), (Feb 20, 2023, 09:30AM), <https://www.refworld.org/docid/3ae6b3712c.html>.

or standard that has been laid down to respond such conflicting instances, however there are some scholarly articulated theories are exist to respond apart from judicial interpretation and decisions.

Cultural rights is also known as basic human rights which advocates for the identity of groups of people who are often based on their religion, race, language, or nationality, so that they can express and uphold their customs or practices as right to self-determination. The cultural rights are in a larger sense interrelated to the art and culture which has the objective to guarantee the rights to practice the culture by the specific community or the group. Moreover, the cultural rights ensures the rights relating to the language, culture and art, participating in the cultural way of life, cultural heritage, intellectual property rights, access to the culture and protection of minorities.⁶ The notion of cultural rights are interconnected with other various fundamental rights and freedoms however it is also being criticized in different aspects. The main reason behind the controversy of cultural rights is that many social practices and way of living style may be normal in one place and taboo in other place. Some cultural rights can be controversial in other geography or the community. For instant, the west liberal woman are asking the rights to free nipples whereas it is taboo in the east.⁷ Everyone has the right to science, to cultural freedom, and to the protection of their authorship interests. They protect the right to take part in and benefit from culture and science, and they are concerned with the search for truth, wisdom, and human creativity. These rights, which are linked intimately to the freedoms of thought, conscience, and religion, are crucial to maintaining societal peace. But, cultural rights cannot be invoked to support actions that oppress some communities or violate other human rights.⁸

Thus, there is significant to see the relationship between universal human rights and cultural relativism. During the End of the 20th century there has seen an increase in focus given to cultural rights. As well as

⁶ Joan Roca De Vinals, *What we mean by cultural rights?*, (Feb 20, 2023, 09:00AM) <https://culturalrights.net/en/principal.php?c=1>.

⁷ Stauffer, Emily, *Free The Nipple: A White Feminist Movement*, 2016 (Essay Contest, 2017), (Feb 20, 2023, 09:00AM), <https://ir.lib.uwo.ca/essay-contest-2017/1>.

⁸ ESCR-Net, *Cultural Rights*, (Feb 20, 2023, 09:00AM), <https://www.escri-net.org/rights/cultural>.

individual rights for some scientific or technological creations, the right to participate in cultural life has received more attention than the enjoyment of economic and social rights.⁹ Members of ethnic groups also have the right to protect and advance their culture as part of their right to participate in cultural life. This takes us to a more fundamental inquiry into “cultural relativism” and the link between human rights and cultures in general. Fundamentally cultural relativism is one kind of thought which stipulates that all cultures have their own belief and practice thus there is no standard to judge those cultural norms. The advocates of cultural relativism strongly advocates that one culture’s values, norms, believes and practice should not be judged through the lens of another cultural.

When culture is viewed as the culmination of a particular social group’s material and spiritual endeavors, it becomes feasible to distinguish between “high” and “low” culture, “dominant” culture and “subculture,” and traditions and innovations. Of course, cultures evolve significantly over time. Although it is inadequate to distinguish between “high” and “poor” culture, it is necessary to acknowledge the presence and development of numerous “subcultures.” Whether these subcultures are located among the hegemonic group in society or among non-dominant minorities or peoples, they may at first be looked down upon or even actively attacked by the adherents of the prevailing culture. Subcultures are frequently started by a small group of people, but they have the potential to grow and eventually overtake the dominant culture.¹⁰ In most communities, conflicts between various cultural orientations are a major source of worry. Focusing on individual human rights forces us to acknowledge the role of the person in shaping and destroying civilizations.

ACCOUNTABILITY TO ENFORCE CULTURAL RIGHTS

Often, we have been witnessing the complex relation between universal human rights and the notion of cultural relativism, particularly, when there is conflict between two of them. It is important to balance among those two approaches of universal human rights and cultural

⁹ *Ibid.*

¹⁰ Asbjørn Eide, *Cultural Rights as Individual Human Rights*, more on Economic, Social and Cultural Rights, pp. 289–301.

relativism. But it should not be allowed to compromise fundamental universal human rights in the name of culture. The basic standard of universal human rights should supersede upon the culture if such believes, practices and values kills the essence of universal human rights. The issue of accountability, generally it is accepted that it lies to the government to enforce and execute fundamental human rights. Thus, the culture rights also must be ensured by the government. Furthermore, the General comment No. 21 of UNESCO has provided certain guidelines to be ensured by the government to ensure the cultural rights. Following are some of the key guidelines:¹¹

i. Availability:

It advocates for the assurance of availability of facilities and services to safeguard the cultural rights. It ensures everyone's access to cultural facilities and services, including shared public areas, institutions and events (such as libraries, museums, theaters, cinemas, and sporting venues), as well as intangible cultural commodities (such as languages, customs, beliefs and history).

ii. Accessibility:

Nondiscrimination, physical accessibility, economic accessibility, and information accessibility are the four fundamental facets of access to culture. Governments must guarantees that everyone has unrestricted access to genuine, useful, and affordable opportunities to appreciate in culture. This access is necessary for both rural and urban areas, with a focus on meeting the requirements of the elderly, the disabled, and the poor. The freedom for everyone to learn, exchange, and receive cultural knowledge in the language of their choosing must be ensured by governments.

iii. Acceptability:

States should interact with the persons and communities affected before taking any action to conserve cultural diversity. This guarantees the actions of government are acceptable to them.

¹¹ Asbjørn Eide, *Cultural Rights as Individual Human Rights*, more on Economic, Social and Cultural Rights, pp. 289–301.

iv. Appropriateness:

While implementing cultural rights, states should pay particular attention to cultural values associated with, among other things, food and food consumption, water use, the provision of health and education services, and housing design and construction.

Cultural rights are also included under the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which was ratified by the United Nations General Assembly in 1966. This is from the standpoint of social science. ICESCR ensures that everyone has the right to engage in cultural activities, benefit from scientific advances and its applications, and have literary, artistic, and scientific works protected.¹² Furthermore it also stipulates that education “shall be dedicated to the complete development of the human personality and the feeling of its dignity,” also guarantees the right to education.¹³ Although cultural rights have been discussed at several international conferences and are protected by various international human rights frameworks, their full implications as human rights have not yet been fully examined.¹⁴ Cultural rights are connected to other individual rights and fundamental liberties, such as the freedom of speech, the freedom of religion and belief, the freedom of association, and the right to education for obvious reasons, among others. Although states do have obligations to ensure the observance, protection, and fulfillment of each of these rights, these obligations should be made explicit in the case of cultural rights and their various interpretations. In theoretical texts on human rights, cultural rights are largely ignored and are instead seen as a minor category.¹⁵

Although certain cultural rights can only be addressed within the framework of fundamental individual human rights, the link between culture and human rights calls for a more comprehensive approach.¹⁶

¹² International Covenant on Economic, Social, and Cultural Rights, 1966, Art. 15.

¹³ International Covenant on Economic, Social, and Cultural Rights, 1966, Art. 13.

¹⁴ UN Educational, Scientific and Cultural Organization (UNESCO), Convention Concerning the Protection of the World Cultural and Natural Heritage (16 November 1972), (Feb 20, 2023, 08:30AM), <https://www.refworld.org/docid/4042287a4.html>.

¹⁵ *Ibid.*

¹⁶ Asbjørn Eide, *Cultural Rights as Individual Human Rights*, more on Economic, Social and Cultural Rights, pp. 289–301.

According to Article 22 of the International Covenant on Civil and Political Rights (ICCPR), individuals who are part of linguistic, ecclesiastical, or religious minorities have the right to freely practice, profess, and use their native language in public alongside others who hold similar beliefs.¹⁷ This right was reiterated in the 1992 United Nations Declaration on the Rights of People Belonging to National or Ethnic Minorities, Religious, and Linguistic Minorities, which also urged nations to support minorities' efforts to promote their traditions.¹⁸

International human rights legal frameworks provide for many types of political and legal responsibility; nonetheless, some of the most egregious violations are recognized by international law as crimes that call for criminal culpability and punishment. Genocide, war crimes, crimes against humanity, enforced disappearances, extrajudicial killings, torture, and other cruel treatment are only a few examples of these crimes. In this sense, Nepal is subject to unambiguous treaty duties under the ICCPR (Articles 2(3), 6, 7)¹⁹ and CAT (Article 3 - 13)²⁰.

Cultural rights are defined as a separate category of human rights under the framework of human rights outlined in the International Bill of Human Rights²¹ in Articles 27 of the Universal Declaration of Human Rights (UDHR)²² and Article 15²³ of the International Covenant on Economic, Social, and Cultural Rights (CESCR). Cultural rights are listed at the very end of both agreements, almost as an afterthought. Cultural

¹⁷ UN Human Rights Committee (HRC), 23 CCPR General Comment, Art. 27 (Rights of Minorities, 8 April 1994), CCPR/C/21/Rev.1/Add.5, (Feb 20, 2023, 09:00AM), <https://www.refworld.org/docid/453883fc0.html>.

¹⁸ UN, General Assembly Resolution 47/135 of 18 December 1992, Art.4.

¹⁹ UN Human Rights Committee (HRC), ICCPR General Comment No. 23: Art. 2(3),6, 7 (16 December 1996), General Assembly resolution 2200A (XXI), (Feb 20, 2023, 09:50AM), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

²⁰ UN Committee against Torture (CAT), General Comment No. 1: Implementation of Art. 3 of the Convention in the Context of Art. 22 (Refolement and Communications), A/53/44, annex IX (21 November 1997).

²¹ UN General Assembly, International Covenant on Civil and Political Rights, 999 United Nations, Treaty Series, 171 (16 December 1966), (Feb 20, 2023, 07:40AM), <https://www.refworld.org/docid/3ae6b3aa0.html>.

²² UN General Assembly, Universal Declaration of Human Rights 217 A (III) (10 December 1948), (Feb 20, 2023, 09:50AM), <https://www.refworld.org/docid/3ae6b3712c.html>.

²³ *Ibid.*

rights of the person have received little consideration, which is evident in both human rights theory and practice. Both proponents and opponents of these rights frequently concentrate on the economic and social rights when the term “economic, social, and cultural rights” is employed²⁴.

NEPALESE CONTEXT ON CULTURAL RIGHTS

Issues of human rights are not a new concept in the context of Nepal; however, enforcement of cultural rights is comparatively gets less prioritize due to various reasons despite of guaranteed by constitution as fundamental right. Relevancy of culture rights is more significant in the context of Nepal because Nepalese people are multiethnic, multilingual, multi-religious, multicultural characteristics and geographical diversities.²⁵ Cultural rights is more pertinent as Nepal is inhabitants for more heterogeneous group of people in terms of socio-economic, culture, religious as well as the vulnerability of people on the basis of socio-economic status. Moreover, inequality, discrimination, and exclusion of vulnerable groups of people are also considered as one of the key concerns of society on the basis of caste and class²⁶. Specifically, the lower-caste people, including *dalit*, *janajati*, and women, were excluded from the mainstream of the state mechanism. Especially, the rural indigenous people were adversely affected and remained ignorant of their human and cultural rights. In the context of Nepal, the whole paradigm of human rights campaigning and advocacy has adopted a legalistic strategy that aligns with the mainstream global rights discourse, prioritizing the prosecution process and disregarding the social and economic rights concerns that contributed to the conflict.²⁷

Similarly, in the context of Nepal, the constitution ensure right to language of everyone with stating that all languages spoken as the mother

²⁴ Rodolfo Stavenhagen, *Cultural Rights: A Social Science Perspective*, 4 In: Peasants, Culture and Indigenous Peoples. Springer Briefs on Pioneers in Science and Practice 29–52 (1998).

²⁵ Article 3 of the Constitution of Nepal, 2015.

²⁶ Clause 7.1.1, 7.1.2 of *Comprehensive Peace Accord Signed between Nepal Government and the Communist Party of Nepal (Maoist)* 9 (22 November 2006), (Feb 20, 2023, 07:40AM), [https://peacemaker.un.org/sites/peacemaker.un.org/files/NP_061122_Comprehensive%20Peace%20Agreement%20between%20the%20Government%20and%20the%20CPN%20\(Maoist\).pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/NP_061122_Comprehensive%20Peace%20Agreement%20between%20the%20Government%20and%20the%20CPN%20(Maoist).pdf).

²⁷ Simon Robins, TRANSITIONAL JUSTICE AS AN ELITE DISCOURSE, *Human Rights Practice Where the Global Meets the Local in Post-conflict Nepal* (2012), (Feb 20, 2023, 07:40AM), <https://doi.org/10.1080/14672715.2012.644885>

tongues in Nepal are the languages of the nation.²⁸ Further, the Constitution ensures the right to live with dignity to every person²⁹ along with right to equality before law and equal protection of law to all citizens³⁰ as fundamental rights. Apart from that the Constitution guarantees the right to language and culture of every person and community which includes right to language, right to participate in the cultural life of their communities, right to preserve and promote language, script, cultural civilization and heritage.³¹ Similarly, the constitution has ensured the right o constitutional remedies for the enforcement of the fundamental rights.³²

Apart from that Nepal is a party to various international instruments to responding cultural rights including ICCPR and ICESCR. Nepal is obligated by law to uphold, respect, and implement all civil, cultural, economic, political, and social rights. These requirements are a result of international treaty law and custom. There are several human rights instruments that provide the obligations that apply to Nepal form and clarity.

JUDICIAL APPROACH TO CULTURAL RIGHTS

The judiciary of Nepal has played a very crucial role to enforce and execute cultural rights by landmark judgments on various facets of cultural rights in different scenarios. As Nepal is a home for different tribes and groups of people with different identity in terms of various socio-economic status. There are numbers of people practicing various customs and lifestyle as part of the way of living and culture, however some of the traditional practices are harmful and against the basic human rights standards.

Specially, in western part of the country, especially in Brahmin and Chhetri community, there is a practice of chaupadi system. Under this traditional system, during the menstruation all women and girls are forced for not to live in their home and they are forced to live outside the

²⁸ Article 6 of *the Constitution of Nepal 2015*.

²⁹ Article 16 of *the Constitution of Nepal 2015*.

³⁰ Article 18 of *the Constitution of Nepal 2015*.

³¹ Article 32 of *the Constitution of Nepal 2015*.

³² Article 46 of *the Constitution of Nepal 2015*.

home in huts of animal and other huts. Women and girls are not allowed to touch male family members, kitchen, temples and etc. Due to this harmful practices, many women and girls are not only in position to enjoy their rights but they are also facing multiple discrimination and violations of rights. Similarly, dowry system is also a traditional practice where during the wedding the bride and her side parents are forced to pay huge amount of money or goods to the groom and his family and this practice is mostly exist in Terai parts of the country. This practices are also creating barriers to enforcement of fundamental rights of women and girls. Though some of the practices are said as social evils and problems which still prevails among the community as culture. There are other forms of practices also exist upon which Judiciary has propounded key decisions.

Some of the practices are studied below:

a. Chaupadi System:

Despite of legal prohibition on any kinds of untouchability against women and others by the provision of national criminal code, some of the traditional practices are found in Nepali society which includes chaupadi system³³. This is a practice of mid and Far-western Nepal where women are isolated during the menstruation. During this period the women are considered as 'impure'. During the isolation, women are kept in the 'chaupadi' or 'goath'. It is the discriminatory practice upon women as women are prohibited to take part in the daily normal aspects of life. The health and overall status of women is not human rights friendly. Yet, it is continued through cultural norms, taboos and superstitions. There exist the superstitious believe that if a chaupadi women touch the fruit tree, the fruits fall before they ripe, if the cattle are fed or milked the blood comes out instead of milk. The women is kept away from the sun, males, cattle and drinking dairy products.³⁴

b. Caste System:

In the case of *Man Bahadur Bishwokarma v. Ministry of Law, Justice and Parliamentary Affairs and others*³⁵, the Supreme Court nullified

³³ Section 166 of the *National Criminal Code, 2017*.

³⁴ Nirajan Khadka, *CHHAUPADI PRATHA: WOMEN'S CONDITION AND SUFFERING* 56 (2014).

³⁵ *Man Bahadur Bishwokarma vs. Ministry of Law, Justice and Parliamentary affairs and others*, NKP 1010 (2049).

and void the proviso of Number 10A of the Chapter “On Adal” of Muluki Ain 1963, which had allowed untouchability practices in public places in the name of religion and customary practices.

Social and cultural rights have been proved in the case of *Man Bahadur Bishwokarma v. Ministry of Law, Justice and Parliamentary Affairs and others*³⁶. Advocate Mohan Shansakar filed a public interest lawsuit against Nepal Vedha Vidhyashram Secondary School in Kathmandu for excluding members of the rest of society while being selective in admitting kids based on their castes. The petitioner requested an order of mandamus to end all discriminatory rules, traditions, and other practices, and to make arrangements so that men and women of all races would have equal access to that school, with special programs for the disabled, oppressed, isolated, poor, and Dalit students. The petitioner did this by invoking constitutional provisions and numerous international laws.

c. Witchcraft:

In *Reshma Thapa v. HMG, Council of Ministers*,³⁷ *Council of Ministers*, the Supreme Court decided that it is barbaric to torture and execute a human being because of superstition. The state must forbid individuals from torturing and murdering others because of the superstitious, barbaric idea of witchcraft. After the decision of the court, the government of Nepal has formulated a separate legislation on anti-witchcraft in 2014.

d. Dowry System:

*Supreme Court of Nepal in the case of Rama Panta Kharel and Others v. Office of the Prime Minister and Council of Ministers and Others (2008)*³⁸. On the grounds that there wasn't enough proof to substantiate the assertion that doing so would violate international agreements like CEDAW and the Constitution's requirement for gender

³⁶ Case related to untouchability, *Man Bahadur Bishwokarma vs. Ministry of Law, Justice and Parliamentary Affairs and others*, NKP 2049, D.No. 4670, p.1010.

³⁷ Case related with witch craft, *Reshma Thapa vs. HMG, Council of Ministers*, Writ No. 2891 of the Year 2058 and Date of Decision: 2061/4/26/3 B.S (2004/08/10/3).

³⁸ *Rama Panta Kharel and Others vs. Office of Prime Minister and Council of Ministers and Others Supreme Court of Nepal NKP 2008*, D.No. 7973.

equality, a petition to eliminate all dowries and replace the current dowry size limitations in the Interim Constitution of Nepal (2007) was refused. Nonetheless, the Court mandated that existing laws prohibiting dowries be more rigorously implemented and that dowry-damaging characteristics be made more widely known in recognition of the societal harm brought on by excessive dowries, including poverty, rivalry, and unfavorable views toward women.

e. Status of Badi Community:

Tek Tamrakar and Others v. HMG Cabinet Secretariat and Others Supreme Court of Nepal (2005)³⁹: The court held that in the event that the father cannot be located, it is customary to deny Badi children citizenship and other privileges. The Court also revised a provision that gave males preference over women in birth and death registrations after ruling that it was illegal to refuse citizenship based on such allegations. Last but not least, the Court mandated a study on the issues the Badi community was facing and instructed that any suggestions made as a result be put into practice in light of the variety of abuses experienced by the Badi.

f. Kumari Pratha

Supreme Court of Nepal in *Pun Devi Maharjan v. GoN, Office of Prime Minister and Council of Ministers and Others* (2008)⁴⁰:

According to a petition, it is against children's rights to select young girls to serve as Kumaris, or "goddesses," who are required to follow specific social norms and attend religious festivals. After seeking study, the Court learned that this practice did not deprive the Children of the opportunity to pursue an education or constitute child labor. Instead, the Court decided that Kumaris were a significant cultural and religious institution, ruled that ex-Kumaris should receive compensation if they had not yet achieved social reintegration, and ordered a study to produce recommendations for preserving the rights, interests, and

³⁹ *Tek Tamrakar and Others vs. HMG Cabinet Secretariat and Others*, Supreme Court of Nepal 2062 B.S., Writ No. 121 of the year 2004, Decided on September 15, 2005.

⁴⁰ *Pun Devi Maharjan vs. GoN, Office of Prime Minister and Council of Ministers and Others* Supreme Court of Nepal, NKP 2065 B.S., Vol. 50, No. 6, pp. 751-776.

social security of both current and ex-Kumaris. This case illustrates careful analysis of the compatibility between cultural preservation and children's rights in a country with strong cultural and religious traditions.

g. Kamlari Pratha:

In the case of *Somprasad Paneru and Others v. Office of the Prime Minister and Council of Ministers and Others*, Supreme Court of Nepal (2006)⁴¹, the petitioner had filed a petition stating allegation that the practice of enslaving minors from age 7-8 by the wealthy families and corporate entities was against the Constitution of Nepal and the CRC 1989 convention. Where the Nepalese government was directed by the court to create a law that would eliminate Kamlari and guarantee the safety of the children engaged. Additionally, the Court urged the government to create comprehensive legislation that tackles the basic problems, such education and employment, particularly for girls and women that support these destructive practices.

CONCLUSION

Every human being is equally entitled to enjoy their fundamental freedom and human rights irrespective of their socio-economic status. As people lives in society and they belongs to certain groups and tribes, obviously, they do follow certain practices, beliefs and the way of life. Cultural rights is also one of the key fundamental rights of everyone as recognized by fundamental international human rights instruments from Universal Declaration of Human Rights to International Covenant on Economic, Social and Cultural Rights. Cultural rights are an essential part of human rights, and they are critical for protecting and promoting the diversity of cultures and traditions across the world. Individuals and groups have the right to access, participate in, and contribute to cultural life, as well as to protect, enhance, and express their cultural identities. Cultural rights must be recognized and protected in order to promote a more equitable, peaceful, and inclusive society in which cultural diversity is appreciated and embraced.

⁴¹ *Somprasad Paneru and Others vs. Office of the Prime Minister and Council of Ministers and Others*, Supreme Court of Nepal 2006, Writ No. 3215.

As part of society, it has been clearly seen in various instances that some of the practices, beliefs and the way of life are not only traditional but they are also contradictory to some basic human rights values and standards. Often, there has been struggling to get a pathway, especially in the situation of conflict which rights supersedes over other rights. Similarly, the cultural practices, beliefs and the way of life of human is not applicable in standardize template, it may vary depends on various socio-economic status. There is no super authority to impose standardize template of cultural practices, beliefs and the way of life of people all over the world or country in a same manner.

The maintain proper balance between cultural rights and basic human rights is often became more complicated when the nature of society is more heterogeneous in terms of caste, religion, culture, language and etc. However, international community and national authorities are trying to respond to balancing approach to enforcement of cultural rights and other basic human rights standards to complement each other by formulating various international and national human rights legal frameworks. In the context of Nepal, the government has tried to make functional balance between those rights by formulating different legislative frameworks including formulation of anti-witch craft law, any form of anti-touch ability law, and anti-dowry system law apart from guaranteeing the cultural rights as fundamental rights. The Judiciary is also contributing to establish and maintain such balance of constitutional and legal framework through its case law in numbers of landmark decisions.

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