

Proceeding Report of the Conference



Promoting the Application of Restorative Justice in Formal and Alternative Justice Delivery System



National Judicial Academy
Manamaiju, Kathmandu

Proceeding Report of the Conference
On
**'Promoting the Application of Restorative Justice in Formal
and Alternative Justice Delivery System'**

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Jointly Organized by



**National Judicial Academy,
Nepal**



SAARC LAW NEPAL
सार्क ल नेपाल

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PREFACE

The National Judicial Academy (NJA) is an autonomous body established with the aim of enhancing competence and professional efficiency of the judicial service officers, public attorneys, legal practitioners and the people involved in judicial administration; providing trainings and carrying out research in the areas of law and justice and disseminating judicial information.

NJA-Nepal and The Asia Foundation partnership spanning several years has been significant in the field of Rule of Law and Combating Trafficking in Persons (CTIP). Under CTIP, NJA-Nepal is taking lead in inculcating the idea of restorative justice in Nepalese legal framework. Restorative justice is an approach to justice that focuses on the needs of the victims and the offenders as well as the involvement of community. In addition to this, NJA-Nepal carried out a research titled "Restorative Justice and National Laws 2016" to study the scope of restorative justice as provided by laws in Nepal. It also developed a curriculum on restorative justice to orient the judges, lawyers and other law enforcement officials on principles and process of restorative justice.

In this connection, the NJA-Nepal and SAARC LAW Nepal jointly conducted one and half day **conference on 'Promoting the Application of Restorative Justice in Formal and Alternative Justice Delivery System'** in collaboration with the Asia Foundation.

The NJA-Nepal deeply expresses sincere thanks to Rt. Honorable Deepak Raj Joshee, the then Acting Chief Justice of Nepal who inaugurated the conference even in his busy schedule. Similarly, NJA-Nepal has highly valued the role played by the Hon. Kalyan Shrestha, Former Chief Justice of Nepal, and Coordinator of Technical Committee for initiating Restorative Justice System in Nepalese Judiciary and his entire committee members' who immensely contributed their efforts to make this event a success.

The NJA-Nepal is equally thankful and also express its gratitude to the National and foreign delegates, speaker of the conference, participants and media persons, SAARC LAW Nepal for its technical contribution for carrying out conference effectively and in an efficient manner. The NJA-Nepal is also grateful to Hon. Dr. Ramesh Rijal (District Court) who has given time to prepare this report in this shape.

Finally, special thanks goes to the Asia Foundation's Country Representative Mr. George Varughese Ph.D, Deputy Country Representative Ms. Nandita Baruah and Ms. Nischala Arjal for their technical and financial assistance provided for conducting this conference.

National Judicial Academy

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INTRODUCTION OF ORGANIZER(S)

Introduction of NJA-Nepal:

The National Judicial Academy (NJA), a member of International Organization of Judicial Training, was established in 2004 to serve training and research needs of the judges, government attorneys, government legal officers, judicial officers, private law practitioners, and others who are directly involved in the administration of justice in Nepal. Initially, it was established under the NJA Ordinance 2004. Later the Ordinance was entered into a legislative Act. Thus, the governing statute of the NJA is the National Judicial Academy Act, 2006. As per the Act, NJA works under the broad policy guidelines of sixteen members' Governing Council headed by the Chief Justice of Nepal.

Vision

To become a *Center of Excellence* for Judicial Education focused on enhancing capacity and professional efficiency of judicial human resources through training, research and dissemination of judicial information aimed at promoting an equitable, just and efficient judicial system.

Mission

To enhance knowledge, skills and capacity of judicial human resources and bring positive attitudinal change among them through continuing judicial education, research and dissemination of judicial information for promoting a fair, accountable, trustworthy and accessible judicial system.

Objectives

- To conduct training, conferences, workshops, seminars, symposia and interaction programmers for enhancement of knowledge and professional skills of judges, judicial officers, government attorneys and private law practitioners and bring about attitudinal change that enhances their professional efficiency.
- To undertake research in the field of law and justice and to provide scholarly and practical legal literature to judges, judicial officers, government attorneys and others who are involved in judicial administration.

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- To help promote a competitive, professionally competent, service oriented and effective private Bar.

Introduction of SAARC LAW Nepal:

South Asian Association for Regional Co - operation in Law (SAARC LAW) is an association of the legal communities of the SAARC countries comprising judges, lawyers, academicians, law teachers, public officers and a host of other law-related persons, duly registered with the SAARC Secretariat at Kathmandu, Nepal and awarded the status of a **Regional Apex Body of SAARC**. It owes its origin to the desire of the members of the legal community to establish an association within the SAARC region to disseminate information and to promote an understanding of the concerns and developments of the region.

SAARC LAW was established in Colombo on 24th October 1991, when the then President of Sri Lanka, His Excellency Mr. Ranasinghe Premadasa inaugurated the Association in the presence of a large gathering including 175 members of the legal community like judges, legal practitioners and academics of the SAARC. In the ensuing twenty-six years, affiliate Country Chapters have been established in Bangladesh, Bhutan, India, Nepal, Pakistan and Sri Lanka and activities of the Organization have also taken place in the Republic of Maldives. A permanent Regional Secretariat has been established in Kathmandu, Nepal on January, 2016.

Background:

SAARC LAW Nepal was established in November 29, 1993 with the membership of 11 legal luminaries and Chapter President being the then Hon'ble Justice T. P. Rana, Judge, Supreme Court of Nepal.

Currently, SAARC LAW Nepal is led by Hon'ble Justice Mrs. Sapana Pradhan Malla, Judge, Supreme Court of Nepal. In its more than 24 years of existence, SAARC LAW Nepal has persistently worked towards the achievement of its objectives of bringing together the legal communities of the member nations for closer co-operation, development of understanding, exchange of ideas, dissemination of legal information and to use and develop law as a source and an instrument towards social change for development. SAARC LAW Nepal has brought numerous lawyers, judges, academics within its fold. SAARC LAW Nepal now has more than 115 legal luminaries contributing as members of SAARC LAW.

Vision:

Standardization of laws and policies for the closer Cooperation and Collaboration towards Economic, Technological, Social and Cultural Development.

Mission:

- To create hub of the legal fraternity;
- To exchange and disseminate legal information, ideas, progressive judgments;
- To bring effort to highlight and improve prevailing laws.

Values:

SAARC LAW Nepal believes that connectivity through law can bring Prosperity, Peace and Cooperation.

Introduction of The Asia Foundation:

The Asia Foundation is a nonprofit international development organization committed to improving lives across a dynamic and developing Asia. Informed by six decades of experience and deep local expertise, our works across the region addresses five overarching goals—strengthen governance, empower women, expand economic opportunity, increase environmental resilience, and promote regional cooperation. Headquartered in San Francisco, The Asia Foundation works through a network of offices in 18 Asian countries and in Washington, DC. Working with public and private partners, the Foundation receives funding from a diverse group of bilateral and multilateral development agencies, foundations, corporations, and individuals.

VISION

A peaceful, just, and thriving Asia.

MISSION

The Asia Foundation improves lives, expands opportunities, and helps societies flourish across a dynamic and developing Asia. We work with innovative leaders and communities to build effective institutions and advance path breaking reforms. Together with our partners, we are committed to Asia’s continued development as a peaceful, just, and thriving region of the world.

VALUES

In an increasingly complex and changing world, we believe that a peaceful and engaged Asia is of critical global importance. These core values continue to define our work in the 21st century.

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- Deep respect for local context
- Inclusion of differing views
- Innovative, agile thinking
- Trust, accountability, and partnership
- Longstanding presence and commitment

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OVERVIEW OF THE CONFERENCE

Overview of the Conference

The conference aimed to brainstorm ideas surrounding the notions of Restorative justice (RJ), and its particular relevance within the formal and alternative justice delivery system in South Asia. In doing so, the conference reflected upon different initiatives that are gaining traction to foster the understanding and application of RJ principles, in both the formal and alternative justice delivery structures in Nepal and across South Asia. The conference further explored the opportunities and challenges of applying RJ within the existing legal system to specific transgression relating to GBV; and explore if RJ can be applied as a normative justice delivery tool to the broader area of peace and conflict. The conference aimed to unpack the conceptual framework and the principles of RJ, with the aim of influencing jurisprudence, from being applied solely through a retributive lens.

The conference commenced with an inaugural session led by Rt. Honorable Deepak Raj Joshee, the then Acting Chief Justice of Nepal. It was followed by five working sessions. The first session provided a brief overview on the conceptual context of RJ and expanded on the principles of RJ, followed by reflections on how legal structures in countries within South Asia are positioned in relation to the understanding and application of RJ in the formal and alternative justice delivery systems. The conference had three thematic sessions namely: RJ and Gender-Based Violence (GBV), RJ and peace and conflict, and identifying opportunities and challenges for mainstreaming RJ in the formal and alternative justice delivery process.

The way-forward session synthesized the information and learnings from the previous sessions and explored how existing national and regional legal networks and institutions such as judicial training academies and SAARC LAW can be utilized to promote RJ. The working session had a panelist or discussant, where each speaker was given 20-25 minutes for their presentation which can be through speaking notes or power point. The floor was opened for Q&A and discussion for thirty minutes after each session.

Introduction to Restorative Justice

Restorative justice (RJ) started in 20's giving it a brief historical point of view. RJ started as a concept gaining momentum. The reason it started gaining momentum was many

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western countries like Canada, Australia, New Zealand started coming into conflict with the rights and beliefs of indigenous people. Their concept of justice, their concept of harm somehow did not match up with the modern western philosophy of justice and vindication. As a result, there was a closer look at the indigenous understanding of justice and how can we incorporate that.

Strongly enough in South Asian and Asian countries we already have this experience of a collective justice through our traditional systems and mechanisms with so how with the period of time we have lost out and I think now probably is the time to relook at what did exist and give it a slightly more advanced more nuance and see how we can apply it in our existing legal system.

Talking about restorative justice is a concept which is very philosophical and abstract to something which is so legalistic, so fixed so normative. But when you start working on it becomes easier and you start understanding that it's not really prescribing any set norms or it is not prescribing any set procedures. It is actually providing for all of us who work as justice providers a set of values, a set of principles.

As Barajas' observation above implies, restorative justice is not a matter of adding some new programs or tinkering with old ones. Instead, it involves a reorientation of how we think about crime and justice. Restorative justice is harm-focused, and it promotes the engagement of an enlarged set of stakeholders. Restorative justice views crime, first of all, as harm done to people and communities. Our legal system, with its focus on rules and laws, often loses sight of this reality; consequently, it makes victims, at best, a secondary concern of justice. A harm focus, however, implies a central concern for victims' needs and roles. Restorative justice begins with a concern for victims and how to meet their needs, for repairing the harm as much as possible, both concretely and symbolically.¹

Restorative justice views crime as more than breaking the law – it also causes harm to people, relationships, and the community. So a just response must address those harms as well as the wrongdoing. If the parties are willing, the best way to do this is to help them meet to discuss those harms and how to about bring resolution. Other approaches are available if they are unable or unwilling to meet. Sometimes those meetings lead to transformational changes in their lives.²

¹ E Barajas Jr, Restorative Justice: the Concept (Movement Sweeping Criminal Justice Field Focuses on Harm and Responsibility), retrieved from <dhss.alaska.gov/djj/Documents/ReportsAndPublications/restorative-concept.pdf> on 24 June 2018.

² <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/#sthash.fM0EjewP.dpbs>

We are working toward restorative justice when we:³

- Focus on the harms of wrongdoing more than the rules that have been broken;
- Show equal concern and commitment to victims and offenders, involving both in the process of justice;
- Work toward the restoration of victims, empowering them and responding to their needs as they see them;
- Support offenders while encouraging them to understand, accept and carry out their obligations;
- Recognize that while obligations may be difficult for offenders, they should not be intended as harms and they must be achievable;
- Provide opportunities for dialogue, direct or indirect, between victims and offenders as appropriate;
- Involve and empower the affected community through the justice process, and increase its capacity to recognize and respond to community bases of crime;
- Encourage collaboration and reintegration, rather than coercion and isolation;
- Give attention to the unintended consequences of our actions and programs; and
- Show respect to all parties, including victims, offenders and justice colleagues.
(*Harry Mika and Howard Zehr*)

If restorative justice were a building, it would have four corner posts:⁴

1. Inclusion of all parties
2. Encountering the other side
3. Making amends for the harm
4. Reintegration of the parties into their communities

RJ Notices three big ideas:⁵

- repair: crime causes harm and justice requires repairing that harm;
- encounter: the best way to determine how to do that is to have the parties decide together; and
- transformation: this can cause fundamental changes in people, relationships and communities.

³ E Barajas Jr, Restorative Justice: the Concept (Movement Sweeping Criminal Justice Field Focuses on Harm and Responsibility),retrieved from< dhss.alaska.gov/djj/Documents/ReportsAndPublications/restorative-concept.pdf> on 24 June 2018.

⁴ Retrieved from <<http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/#sthash.fM0EjewP.dpbs>> on 2018, June 25.

⁵ Ibid

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The foundational principles of restorative justice have been summarized as follows: ⁶

- Crime causes harm and justice should focus on repairing that harm.
- The people most affected by the crime should be able to participate in its resolution.
- The responsibility of the government is to maintain order and of the community to build peace.

A more formal definition is this: Restorative Justice is a theory of justice that emphasizes repairing the harm caused by criminal behavior. It is best accomplished through cooperative processes that allow all willing stakeholders to meet, although other approaches are available when that is impossible. This can lead to transformation of people, relationships and communities. ⁷

To review: RJ ⁸

- is a different way of thinking about crime and our response to crime
- focuses on repairing the harm caused by crime and reducing future harm through crime prevention
- requires offenders to take responsibility for their actions and for the harm they have caused
- seeks redress for victims, recompense by offenders and reintegration of both within the community
- requires a cooperative effort by communities and the government
- To put restorative justice in its simplest form: crime violates people and violations create obligations. Justice should involve victims, offenders and community members in a search to identify needs and obligations, so as to promote healing among the parties involved. ⁹

Transitional justice

Transitional justice (TJ) consists of judicial and non-judicial measures implemented in order to redress legacies of human rights abuses. Such measures "include criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reforms".¹⁰ TJ is enacted at a point of political transition from violence and repression to societal stability and it is informed by a society's desire to rebuild social trust, repair a

⁶ Ibid

⁷ Ibid

⁸ Ibid

⁹ E Barajas Jr, *Restorative Justice: the Concept (Movement Sweeping Criminal Justice Field Focuses on Harm and Responsibility)*, retrieved from < dhss.alaska.gov/djj/Documents/ReportsAndPublications/restorative-concept.pdf > on 24 June 2018.

¹⁰ *What is Transitional Justice?*, International Center for Transitional Justice, retrieved from <<https://www.ictj.org/about/transitional-justice>> on 24 June 2018.

fractured justice system, and build a democratic system of governance. The core value of TJ is the very notion of justice—which does not necessarily mean criminal justice. This notion and the political transformation, such as regime change or transition from conflict are thus linked toward a more peaceful, certain, and democratic future.

The TJ aims at:¹¹

- ongoing human rights abuses;
- Investigating past crimes;
- Identifying those responsible for human rights violations;
- Imposing sanctions on those responsible (where it can);
- Providing reparations to victims;
- Preventing future abuses;
- Security Sector Reform;
- Preserving and enhancing peace; and
- Fostering individual and national reconciliation.

Objectives of the Conference

The expected objectives of the conference were as follows:

- Overview of the concept of Restorative Justice and its application;
- Understanding the scope for applying Restorative Justice in the existing legal structures from South Asian perspective;
- Cross-sharing Restorative Justice perspectives in South Asia;
- Exploring the utility of RJ principles in GBV issues/cases;
- Assessing opportunities and challenges to apply RJ principles in GBV issues/cases within the existing legal structures;
- Understanding the role of RJ in addressing peace and conflict;
- Examining approaches in resolving conflict and reconciling parties through RJ;
- Identifying structural gaps/ challenges in applying RJ in formal and alternative justice delivery process;
- Examining the possibility of RJ in alternative justice delivery mechanism in South Asia.

¹¹ https://en.wikipedia.org/wiki/Transitional_justice

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INAUGURAL SESSION

A two days Conference on ‘Promoting the Application of Restorative Justice in Formal and Alternative Justice Delivery’ was organized on September 19-20, 2017 in Kathmandu.

Inaugural Session:

There was a formal inaugural session where prominent individuals graced the dais; Chairperson Hon. Keshari Raj Pandit, Executive Director of the NJA, Chief Guest Rt. Hon. Deepak Raj Joshee, then Acting Chief Justice of Nepal, Hon. Sapana Pradhan Malla, Justice Supreme Court of Nepal President SAARC LAW, Nepal, and Hon. Binod Prasad Sharma, Senior Academic Director/ High Court Judge, Dr. George Varughese, Country Representative, The Asia Foundation.



Hon. Binod Prasad Sharma, Senior Academic Director/ High Court Judge highlighted the objectives and overview of the conference, and welcome to the participants.

Dr. George Varughese, Country Representative, The Asia Foundation has puts his opening remarks as follows:

In his speech he stated that justice is based on rule of law and democratic practices. The main moto of justice system is protection



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and promotion of human rights. He highlighted for effective justice there must be easy access to the justice to justice seekers. The justice system may be formal and informal. Nepal had has adopted informal access to justice through community mediation. This community mediation is effective for access to justice in Nepal. We cannot get conflict free society. Conflict is not always negative. Conflict may bring positive change in the status quo. The conflict made us to realize the more embedded system of justice. The notion of self-governance should include the notion and justice formally and informally. Nepal had experienced internal conflict in the past. Jurisprudence needs to adjust in the post conflict paradigm. He stated that Restorative Justice is new concept for the effective justice. This Conference will be helpful to share experiences between the SAARC region countries. Lastly, he wished for the success of the Conference.



Hon. *Sapana Pradhan Malla*, President SAARC LAW, Nepal has given her opening remarks on the following issues related to RJ:

In Nepalese criminal justice system, the victim justice is always neglected. However, the Constitution of Nepal has guaranteed the victim justice as a fundamental

right. The Article 21 of the Constitution of Nepal has engraved the victim justice approach as a fundamental right of the victim. It is very significant step for victim justice system. Nepalese Judiciary is very proactive for effective justice. Judiciary is playing very positive role for the victim justice.

In Nepal there are very few have access to justice. So, state and non-state actor's cooperation is indispensable to ensure justice. In the traditional justice system victim are not getting justice. We need paradigm shift to insure justice. Restorative Justice is one of the concepts to assess and repair the harm of the victim. People have distrust toward the traditional justice system so they hesitate to court. So, we need changing the paradigm from retributive to restorative system of justice. The principle of non-repetition and effective participation of victims are some of the basic pillars of Restorative Justice.

Some concepts of RJ are embedded in the Truth Reconciliation Commission Act. There is a concept of reparation (financial, emotional and so on). We have some questions how can we realize and practice social harmony through restorative system? How can

offenders help the victims rebuild their life in the society? How can we address the needs of victim?

The Conference will be helpful to make easy to answer the above questions by sharing experiences about restorative justice between the countries of the SAARC Region. In Nepal there are some provisions for compensation to victims. However, there is lack of effective mechanism for determining the amount of compensation.



The traditional criminal justice system, which has been often criticized as too formal, punitive and adversarial, is clearly changing. The addition of restorative justice approach will enhance victim satisfaction in a process that was, by its very nature, rather unsatisfactory. For the effectiveness of Restorative Justice Approach stakeholders of chain of justice are high regarded. It is a system so all the parts must move towards the same direction.

RJ is crime victim-focused approach. In this approach, culprits are motivated to repair the harm caused by crime to the victim, her/his family, and community as a whole. RJ brings those who offend and victims into contact with each other. It aims to help victims to recover from the impact of the crime; to enable those who offend understand the implications of his or her actions; and to provide an opportunity to make amends. A RJ conference provides an opportunity for the victim to tell their story directly to the person who caused them harm, ask for answers to the questions they may have about the crime, contribute to a result that is meaningful to them for how the child should start making up for the harm, be involved in the justice process.

This Conference will be helpful to share experiences about RJ between the SAARC region countries. Lastly, I wish for the success of the Conference.

In the opening session chief guest of the conference then Acting Chief Justice Rt. Hon. *Deepak Raj Joshee*, had delivered a speech. The highlights of the speech are as follows.

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I think the Conference on 'Promoting the Application of Restorative Justice in Formal and Alternative Justice Delivery System' is significant for the betterment of criminal justice system in Nepal. The traditional criminal justice system is always victim oriented. It is focusing only on the right of perpetrators and punishment to the

culprits. This system never addresses about the pain and harm of crime victim. There is not any study or research has been undertaken yet by putting the crime victim, culprit and community in the same place. To address the above demerits of the present criminal justice system, restorative justice (RJ) has been emerged. It is expected that RJ will make criminal justice system more effective.

RJ is crime victim oriented system. In this system, culprits are motivated to repair the harm caused by crime to the victim, her/his family, and community as a whole. For this, the culprits insisted to realize their past wrong doings and made them ready to take responsibility for the same by the dialogues among or between the victim, affected community and culprits. Consequently, there will be reunion between victim and culprit in the community.

The traditional criminal justice system does not focus on harm or pain of crime victim. The concept of the traditional criminal justice system for complete justice by sentencing the culprit is seen to be incomplete. The traditional criminal justice system could not have adopted whether there is feeling of regret to the culprit, whether the culprit is ready to repay the harm caused by the crime, whether there is positive



change in the habit of culprit, whether the dependents of the culprit are protected and cared in the period of the culprit's imprisonment, whether the community is intended to reunion the culprit in the community etc.

The traditional criminal justice system could not address about how the community is affect by the crime, how the community anticipate resolving the crime and what the community expect to do for not repeating such crimes. For the purpose to fulfil the above weaknesses, vacuums and to reform the traditional criminal justice system according to the contemporary development in criminal justice system, RJ is establishing its significance from some decades past.



By changing the orthodox way of understanding about the harm caused by crime, identified needs to repair such harm and methods applying to address such harm are regarded as the main basis or views of the RJ. I think, it is trying to make criminal justice more effective applying the

above basis or views.

I don't think RJ is strange or very new subject. There is provision to repair harm caused by crime to the victim by the culprit in Nepal from the very long time back. We are practicing the same. In recently enacted laws provide for protection, care, remedy and restoration of the crime victims. For example, in Vehicle and Transportation Management Act, Consumer Protection Act, there are provisions regarding reparation of harm of victim caused by the crime in Nepal.

The Article 21(2) of Constitution of Nepal provides 'The victim of crime shall have the right to social rehabilitation and justice with compensation as provided by the law.' It insists that it is required to guarantee the fundamental right of crime victim in the practical reality. The importance of study and research on RJ is growing by provisions regarding RJ incorporated in the Muluki Criminal Code, Sentencing Code, adopting in the near future. Likewise, from the ancient time there are indigenous dispute resolution systems in Nepal. In such system there is a system of reparation of harm caused by crime

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from the culprit and restoration both in the community through the dialogue between reputed persons of the community, crime victims and culprits.

Recently, mediation is applying as a means of dispute resolution in the local government like village municipality and municipality by the dialogue between the disputing parties. Now, the principles of RJ are applying in the formal criminal justice as well as resolution of different disputes and social problems. RJ may be effective in dispute resolution between schools or universities and students, between development projects and affect persons, to resolve political or social dispute, transitional justice etc. In this context, to make the RJ more effective it is appropriate to discuss about formal and informal dispute resolution techniques, mechanism or institutions.

In the juncture of constitutional and legal provisions as discussed above, it is essential to discuss and exchange experience between or among the stakeholders of justice about to make RJ more effective. For this purpose, this Conference is very appropriate. I hope this Conference will bring a concrete conclusion about requirement and appropriateness of RJ in Nepal. With such expectation, I wish for the success of the Conference. Thank you!

Finally Chairperson Hon. Keshari Raj Pandit, Executive Director of the NJA, has concluded the inauguration session of the conference. During his conclude remark he focused in the following issues:

- Relevancy of RJ system in light of the new criminal code
- Judicial reform, new era in justice
- RJ system to complement the lacunas of the traditional criminal justice system
- Compensation to victims- victim oriented justice
- New codes adopt the concept of RJ
- Reparation and restoration- two aspects of RJ in the constitution
- Clear laws and methods of implementation still required

There were all together 27 participants from SAARC region who directly and indirectly related with justice sector actors including international guest experts.

(Refer Annex -1 for Work Schedule and refer to Annex -2 for List of Participants

4

PRESENTATION AND DISCUSSION

Session–One

4.1 Context Setting and South Asian Perspectives on the Understanding and Application of Restorative Justice

The objectives of this session

The expected objectives of the first session were as follows:

- Overview of the concept of Restorative Justice and its application;
- Understanding the scope for applying Restorative Justice in the existing legal structures from South Asian perspective;
- Cross-sharing Restorative Justice perspectives in South Asia

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The session was chaired by Hon. Kalyan Shrestha, Former Chief Justice, Nepal. It began with a brief overview on the conceptual framework of RJ, expanded on the normative principles that defined RJ and reflected upon the ways in which it is being applied in different contexts. Following the context-setting, the other panelists reflected on how legal structures in countries within South Asia are positioned in relation to the understanding and application of RJ in the formal and alternative justice delivery systems. It was followed by a facilitated discussion and Q&A amongst the participants. In this session four extensive papers had been presented by *Ms. Nandita Baruah*, Deputy Country Representative, and TAF-Nepal; *Hon'ble Pelden Wangmo*, Paro District Court, Bhutan; *Dr. Geeta Shekhon*, global expert of legal aspects of TIP and human Smuggling, India; *Mr. Bimal Poudel*, Registrar, High Court Patan, Nepal and the chairperson remarked on each paper. The papers are as follows:

4.1.1 Setting the Context for Restorative Justice and Its Application in South Asia

Ms. Nandita Baruah, Deputy Country Representative, and TAF-Nepal

Introduction

It is one thing to have ideas but it's another thing to have people pick it up. So while there have been ideas probably thrown around but the privilege has been that on the issue of Restorative Justice, the judiciary and it's the law enforcement officer and the community of Nepal who has picked it up and has decided that it is something important enough to follow up.

Howard Zehr is known as the father of Restorative Justice. He created a global concept on the issue of Restorative Justice. It is important to understand that justice really is the corner stone of every society. And the application of Justice evolves as the society evolves. It is also interesting to note as we look back at the application of justice through traditional mechanisms, it is found that it is focused on the concept of collective value of judgment and aimed at a collective good. To a great extent that very concept of collective value of judgment and collective good is somewhere today getting enshrined in what we call as restorative justice.

However, as we evolved as societies we started to get more governed by the set norms, set standards, and the legal system also wanted to be more universal. So to a great extent I think it is the western legal system which has got us engaged in addressing crimes and offences as something which is largely pre-defined and fixed where the ownership focuses on the individual and it's the state which feels to be violated. So it's the law of the state which gets violated, it's the state which is harmed, by certain individuals, by certain things that they do, though there could be a perpetrator and offender the current prescribed retributive system places the state at the centrality of the legal thinking.

However, years after there has been a growing understanding that somehow this concept where we look at individual, offender and look at how the offender has harmed the state and thereby also takes him at the center of the criminal justice system. It didn't seem somehow to meet the felt need of justice by the victim, by the society, by the community and by the offender. Not only did these parties who are critical offence that happens or anyone violation that happens stared this sense that is this we really mean when we say justice? And somehow the answer was we are not sure, maybe this is not exactly what I feel validated as a victim as a society as having received justice.

Similarly, it was also the justice sector professionals, the prosecutor, the lawyers, the judges and the present staff who frequently felt challenged by the existing retributive process as in justice. As somehow it always did not respond to addressing what was seen as the harm. And without addressing harm it did not respond to social healing more peace. And in our days and times conflicts is complex. Conflict is not just about individual and his/her violation. Conflict has taken shape of state level conflicts, ethnic conflicts, multi country conflicts, where multiple individual's feels harmed or feel violated by actions of one party or the other.

So, the question arises how do we define justice? And in recent years they have really been this push and we hear a lot about making justice victim centric and to make sure that the systemic reforms in the justice sector, and the legislative development. They aim to promote the rights of the victim but at the same time also look at the society as a whole where the victim and the offender both prohibit. Neither the offenders nor victims are outside of a social system. So then there was this understanding where is the space to address this collective feeling of harm or this collective feel of violation in the present legal system and frame work.

And then the concept of restorative justice started gaining momentum. It became more and more relevant, and started looking at crimes related to sexual gender-based violence. The question that has been asked court across the world was is punishing an offender of sexual violence justice for the victim? Because the victim is left not just feeling that I want to punish this guy, she also wants to know why did he do this to me, what was the reason, what did I do to deserve this level of degradation of my identity and myself. And somewhere the question also arose what motivated the offender to do that? Answers to these are very hard to find and address within the spectrum of harm of the retributive system.

What is Restorative Justice?

Restorative justice (RJ) started in 20's giving it a brief historical point of view. RJ started as a concept gaining momentum. The reason it started gaining momentum was many western countries like Canada, Australia, New Zealand started coming into conflict with the rights and believes of indigenous people. There concept of justice, there concept of harm somehow did not match up with the modern western philosophy of justice and vindication. As a result, there was a closer look at is the indigenous understanding of justice and how can we incorporate that.

Strongly enough in south Asian and Asian countries we already have this experience of a collective justice through our traditional systems and mechanisms with so how

with the period of time we have lost out and I think now probably is the time to relook at what did exist and give it a slightly more advance more nuance and see it how we can apply it in our existing legal system.

Talking about restorative justice is a concept which is very philosophical and abstract to something which is so legalistic, so fixed so normative. But when you start working on it becomes easier and you start understanding that it's not really prescribing any set norms or it is not prescribing any set procedures. It is actually providing for all of us who work as justice providers a set of values, a set of principles.

So restorative justice thinking does is it looks at wrongdoing, it doesn't look at violation, it doesn't look at crime, it has a concept which looks at wrongdoing. Somebody has done something which is not right. When it looks from the perspective of wrongdoing it makes us question that wrong through a completely new set of questions.

So, when we look at wrongdoing from RJ's perspective we think about how to respond to that wrongdoing by looking at three core questions

1. How should society respond to that wrong? RJ does not say this person has done wrong and I need to punish that person because he is doing wrong. It actually puts the question in front of the practitioner and says how society should respond to the wrong doing. When a crime occurs or an injustice is done.
2. What needs to happen to address that wrongdoing?
3. What does justice require?

RJ tries to understand and respond to these questions for inclusive length of justice that is not really prescribed to predetermined framework of crime and punishment. It expands the length to say we need to look at the context of the crime, the harm that the crime has done, people who are affected beyond the individuals who are in the direct target of the crime and then say how we respond to that.

So the philosophy looking at RJ there are two things

1. What is the philosophy of the restorative justice?
2. What are the pillars on which it operates?
3. What most critically are the values?

So it gives us the philosophy, it tells us that there are three pillars in which these philosophies need to be address and there are couple of values which are integral to actually applying this.

Interestingly RJ where it has been applied is not understandable. It does not replace its existing RJ system. It happens actually alongside the existing legal systems and legal practices in every country except in certain countries where RJ has become a corner stone of crimes for e.g.: in New Zealand the entire Juvenile justice procedure is Restorative, in India some of it is being practiced.

So, what is the philosophy if it starts looking at crime it says crime is a violation of people and inter-personal relationship.

And that is a very interesting concept.

1. It says when any crime happens, it is a violation of the person and is also a violation of an interpersonal relationship. The relationship between the offender and the victim, the relationship between the offender and the state, the relationship between the offender and the community, the relationship between the victim and the community, all of those things are impacted when any crime happens that's the first philosophy.
2. It says when you violate somebody; you create a set of obligation. You violated something and therefore you have an obligation to set that violation right. And the central obligation is based on this principle of setting the wrong right. Underlying the wrongdoing is an assumption as earlier said that the society, the individual and community are actually interconnected and it does not perceive an individual outside of the community. So, what it says is when a problem or a crime happens in the restorative justice point of view it represents a wound in the community and tare in the web of its relationships. It is not just a rape, it is not just a burglary it is not just a conflict between state and non-state, it is actually impacted the entire relationship in that community and the society and the universe where we are individuals but we are not just ourselves.

We are interconnected. Therefore, interconnectedness is another principle of restorative justice. And therefore the primary obligation is to look at the crime from the point of view of the interconnectivity.

How is it different from the existing criminal justice system? When we look at the retributive justice system, crime is seen as the violation of the law of the state, so the violation creates guilt and the justice requires the state to determine the guilt and place a blame and impose a punishment. The key action is for the justice to punish the offender. And we follow that there is nothing wrong with that principle because in many cases we need to apply those. But nothing stops us from saying that while that exists, is there a parallel where we can also apply adjudicating on within justice sector

by various kinds of crime using a restorative scale. What then need to require is for those who are looking at addressing the crime or criminality to start viewing the harm that the crime has committed. Harm is an abstract concept not just physical. Harm has many multiple concepts. These cannot be addressed by punishing a perpetrator or holding somebody liable. It requires something beyond that, it requires that we start looking at the obligations of all the players who have felt harmed. That's a cornerstone of the philosophy.

Therefore, the concerned of RJ is towards healing. RJ request addressing the victims and offender of the community as a collective justice and working towards addressing that harm. The focus to address the victim's needs and the offender's responsibility that is the imp part it is not just the offender's guilt it is the offender's responsibility. It is the offender's responsibility in repairing the harm. When you say offender's responsibility what it means it getting the offender to understand the gravity of what he or she did. Now the question there is why did the offender do what he or she did? And somewhere down the line it can be observed that offender had been a victim sometime. The offender's sense of victimization could be real or perceived. In RJ perspective it needs to be looked at as why there is the victimization concept on the offender's mind and unless we first at least acknowledge even if we can't address the perspective of the offender unless we do that the offender would not be able to take the responsibility and liability.

In the *Nirbhaya* case in India a minor had been given lesser punishment due to the age factor. The questions were raised as to why this was done because he had committed a grave crime. The offender was trialed in the juvenile court so the offender was actually put in juvenile justice home and now he is about to get realized after completing his tenure. The issue here was people say that is what restorative justice tells you to do well maybe, maybe not. What it meant was also to look at the reality of that young 17-year-old boy as to what made him caught to be dehumanized that he could commit something like this on another human being and if we really wanted to restore we needed to sit with that child at that point and learn and understand his psych and help him recover as well. RJ does not take sides about recovery; it creates a platform where the offender has equal opportunity to recover as much as the victim.

It is easy for us to respond to victim's needs. Victims will not feel fully validated until the perpetrator says sorry or responds in a guilty manner giving reasons. Many rape victims come up to us and say that I don't know why he did that to me? This why needs to be answered in a collective manner and it is not the responsibility of sole justice system to do that. It requires the help of a larger community. Therefore, RJ requires inputs not from the justice sector player alone but from the entire community and justice sector has to open up its door to engage with that community.

Next issue is about the obligation that arises from that harm. The interesting part is RJ says obligation needs to be met even if the offender is not identified. How does this happen? E.g.: a young girl is trafficked she is rescued and brought back to Nepal. A trial happens she files a case there is a hearing but there is not offender because offender is absconding. What are we going to do? Where does the obligation lie? Some courts in Nepal actually have taken a stand where they said that is the state's obligation because she is the citizen of the country and state needs to protect her, the state needs to take responsibility as to what happened to her, it is not just the responsibility of one or two or three people who actually trafficked her, it is the responsibility of all the state players who lacked the responsibility that is why she ended up in this place. Now here court treys to understand what remedial accepts needs to be measured.

Another issue is whether the compensation is the only way to deal with the victim's harm? Because sometimes that money is not enough, and sometimes they do not even get the money. When applying RJ in this situation there is no specific way as to what can be done for eg referring to the offender to RJ center and so on.

1. Harm
2. Obligation
3. Engagement

These three things are important issue of RJ where Harm comes first obligation second and engagement third. None of these three can exist in isolation; they have to go hand in hand together. To her the most exciting part of RJ is actually the values. It is a very interesting question it says there are four critical values

1. *Honor*: Couple of years back SAARC LAW Nepal and regional SAARC LAW held a conference where experts had been called from other countries where restorative justice had been practiced. Judge Peter Rolo explained that it is very simple and easy to



explain restorative justice in his indigenous community; it is just restoring the mana. Mana is an indigenous word, and he deconstructed mana for us, he said mana means identity and dignity. This word mana is present in our language too which is known as Maan Saaman. Maana is identity and Samana is known as dignity. He said that all RJ does is restore Mana. You restore a person's dignity and his identity. Interestingly dignity and identity belongs to both the victim, and to the community. It is not that the perpetrator does not have mana and sammana, then it becomes imperative. Looking at it from the perspective of RJ we need to look at it by weighing maana and samana.

2. *Interconnection*: All people are inter-connected. Mana is not just a set of a particular individuals but it is about everyone's mana and samana.
3. *Particularity*: it is about appreciating diversity. For e.g.: there is no one shoe which fits all. It is about respecting individuality and words of each person, it is about taking seriously about context and situations. Justice must acknowledge both our interconnection and our individuality. The value of particularity reminds us about context, culture, and personality.
4. *Respect*: Ultimately it comes down to the basic value of respect.

Howard Zehr said RJ is the processes to evolve to the extent possible those who have stake in a possible offence to collectively identify and address harms needs and obligations. In order to heal and put things as right as possible, we can never completely do a right but put things as right as possible.

Chair's Opinion Synopsis

Hon. Kalyan Shrestha, Former Chief Justice, Nepal had chaired this session. He stated that Nepalese people and Nepalese justice system understand what kind of RJ that we have suffered from. There has been westernization of the Nepalese justice system. Knowingly or unknowingly the legal system has been adapting the western system and losing the very important fundamentals of their own system. There are certain problems that have been highlighted by Mr. Howard Zehr himself, some of which are:

1. Why has this happened? Why did the offence occur?
2. What situation led in the occurrence of this crime?
3. Who has been hurt?
4. What do they need?
5. Who is responsible?
6. Who has the stake in these situations?
7. What is the process of involving the stake holders in finding the situation?

These are the fundamental questions that the restorative justice system would like to find an answer to which is not at all easy. There are many pitfalls in the criminal justice system when it is observed from the perspective of Restorative Justice (RJ) System. These pitfalls are the signs of an urge to modernize the criminal justice system. RJ is an approach to reinvent the justice system. It creates a field to look at from a new lens in a situation between the wrongdoer and the community that has been harmed. For this a lot of creativity is required there is no particular formula. Everyone needs to be on board to look from the perspective of RJ. No alone person can do so. It is a very long journey. Need to be preparing to face the challenges. Not just in this conference but needs to be practiced outside after this conference too.

4.1.2 South Asian Perspective on the Understanding and Application of Restorative Justice

Hon'ble Pelden Wangmo, Paro District Court, Bhutan

Definition of Restorative Justice

A movement to address the needs and roles of victims of crime, offenders and communities, rather than the legalistic system that hold offenders purely in relation to violation of the state and law. (Howard Zehr)

Bhutan has adopted development philosophy of Gross National Happiness (GNH) – that is development with value. With this principle of GNH, Bhutan has accorded precedence to happiness, over outright economic growth and aspires to measure progress and development based on the happiness of the people. Therefore, I feel that RJ is in sync with our development philosophy, where it views “*criminal acts more comprehensively, rather than defining crime as simple lawbreaking, it recognizes that offenders harm victims, communities and even themselves.... involving more parties in responding to crime by including victims and communities.*”

In Bhutan, the principle of restorative justice has been in use though not in the modern sense. It has been used especially in solving community level petty crimes and domestic violence cases with the involvement of traditional mediators (*jabmis*). The modern day laws are primarily the following which has the principle of RJ.

(a) Constitution

Article 7(1) –All persons shall have the right to life, liberty and security of person and shall not be deprived of such rights except in accordance with the due process of law.

Article 7(15) – All persons are equal before the law and are entitled to equal protection of the law and shall not be discriminated against on the grounds of race, sex, language, religion, politics or other status.

(b) Penal Code of Bhutan

Section 25 Civil Commitment in lieu of imprisonment or sentence – if a defendant is found to be clinically insane or suffering from a mental abnormality or chronic condition that significantly impairs the defendant’s capacity to make sagacious judgments, a Court shall, in lieu of imprisonment, order the civil commitment of the defendant to a hospital or other institution for psychiatric or other rehabilitative treatment.

Section 28 Thrimthue – Except for the recidivist and accustomed or habitual offender, the Court may make an order to pay fine in lieu of imprisonment, if the offence is not a felony.

(c) Section 29 and 30 Commutation of sentences or conditional discharge

Section 29 – If the community is responsible for damaging the property of another community, or if the criminal act of the defendant affects the public property, the Court may order the community or defendant to restore the property damaged by rendering community service to the affected group.

Section 30 – The Court may order community service in lieu of the imprisonment, if the defendant is convicted of the offence liable for a petty misdemeanor or misdemeanor, provided that the defendant convicted does not pose potential threat to the society, the victim or there exists no likelihood of flight.

(d) The Child Care and Protection Act of Bhutan, 2011

Section 20 Decriminalization– All institutions or organization whether government or private shall protect the dignity of the child observing the principle of decriminalization, diversion and restorative justice.

Section 173 Restitution - If a child is responsible for damaging the property of another person, the Court may order the child, parents, or guardian to restore the property damaged.

(e) Domestic Violence Prevention Act of Bhutan 2013

Section 22 - If the offence is of misdemeanor and below, and the defendant is not a recidivist, police personnel may release the defendant on surety if detained or may allow the matter to be settled mutually if the victim so desires, considering:

- 1) The nature and circumstances of the offence;
- 2) The frequency and severity of the abuse;
- 3) The age, maturity and state of mind of the victims;
- 4) The reparation of the Injury and compensation to the victims;
- 5) The Safety of the family; or/and
- 6) The best interest of the victim

Restorative Justice in Bhutan's Existing Legal Structures

(a) Criminal Cases

In a normal Bhutan legal setting, the role of a victim is often reduced to being a witness of the police and the prosecution at the trial. Many a time, victims are not even called to trial, if it is felt not necessary. The victims are not considered a party to the crime. The parties are the state and the accused. The purpose of a trial normally is to decide whether the accused is guilty according to the charge.

Exceptions are there. It depends on the ingenuity of the judges at times and will of the victims. While the punishment itself is not **NEGOTIABLE**, in situations *where compensation has to be paid in criminal cases* - The Bhutanese court allow and bring together the perpetrator, family members victim face to face and make them negotiate. The community being small, forgiveness is an important factor. (Underline that forgiveness is not the able result expected out of the restorative justice exercise)

(b) Open Air Prison System

In recent years, to reduce the overcrowding of prison and to reintegrate people back into the society, open air prisons are adopted. Studies have shown that court system and prison facilities do not necessarily address the fundamental needs of society. Incarceration usually does not cure the root of the problem that has caused criminal activity.

In the Bhutanese experience, it is felt that open air prison allows the incarcerated people to slowly get integrated into the society. Many prisoners who have

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completed certain numbers of years in prison are given an opportunity to redeem themselves and work in Dzongs and Lhakhags. (Prisoners of “Ku Sung Thukten cases- theft of cultural heritage). While they work in these projects, they are also given wages.

In more than 90% of the cases, it is known to have positive effect and has made it easy for offenders to reintegrate them back into the society. Easy integration is possible because they are paid for their labour. So when they complete their term, they are able to come out with some savings. The offenders normally regret for their action and in some cases they become guardian of these monuments. Disclaimer – a thorough review has yet to be undertaken to understand the long term impact.

(c) Civil cases – Section 150 of the Civil and Criminal Procedure Code provides for Adjudication without proceedings (Negotiated Settlement).

At any stage of the proceedings, it shall be open to the parties to take the help of a Chimi, Gup, Chipon, Mangmi, or Barmi as mediators for mutual settlement of a civil case in accordance with the requirements of the Code.

The importance of mediating issues has been recognized by the law and it is continuously encouraged and promoted for settling any kind of problems



between parties. The role of village elders and middle people are seen as creating social harmony and allowing local communities to live in peace and tranquility. The emphasis is on the nature of duties and obligations of all the people as belonging to

one community.

Environmental cases are examples where the offenders have been made to restore. – Polluter Pay Principle.

Conclusion

- 1) With the establishment of the specialization courts, (Family Benches), infrastructure set up may be improved and make the environment conducive for RJ.
- 2) While the laws are good and provisions are exemplary, much needs to be done. Judges and prosecutors have to be more proactive, trained with specialized knowledge. It shouldn't just be plain reading of the law.
- 3) People or the consumer of justice must take full recourse of the laws available.
- 4) There needs to be political will. There needs to be reciprocity from the State to provide the amenities and funding to create conducive environment and possibility for the dialogue between the criminal act and the offender for restorative justice.

Chair's Opinion Synopsis

The Chairperson of the session stated that the important highlight of the presentation was that though the punishment is not negotiable, compensation can be negotiated by referring to victim and offender's family to make them satisfied. There is the provision of open air prison in Bhutan. There is an alternative to the incarceration and bring out the solution that the criminal justice system has been thinking of. The main question that was brought in the presentation was about forgiveness, does RJ forgive? It may happen but it will not be the mission of the restorative justice system. The ultimate mission of RJ would be to repair, to compensate, to uphold the dignity and the wrongs being corrected.

We are at the very initial state of adopting the value of the RJ system therefore specially judges and the legal officers need to train themselves and build their skill towards adopting RJ. It is important to be a proactive judge.

4.1.3 Indian Perspective on the Understanding and Application of Restorative Justice

Dr. Geeta Shekhon, Global Expert of Legal aspects of TIP and Human Smuggling, India

Basic Principles on the use of Restorative Justice Programmes

A rape victim files the case in the court, after a hearing or two, the prosecutor and defense lawyer informs the judge that the rapist who is the offender has agreed to

marry the rape victim and the rape victim has also agreed to marry the rapist. The trial judge says that if everybody is in agreement what are we going to do with this case let's just close it and treat it as a negotiated settlement and we close the trial. This created a lot of questions to be raised. Is this Restorative justice that we traditionally understood? Is this the correction to the problem?

The bitter truth about restorative justice is that not every case is fit for restorative justice. Second fundamental truth is we have all inherited the formula is institutionalizing criminal justice system that it requests the traditional justice system like Panchayat.

Recently in Rajasthan India a man ran away with other women of a different man. This case came to Panchayat. Panchayat sat together with the offender and the victim. That was seen as the community problem affecting to all the community. So then the Panchayat decided that both of the spouses that were left behind should get married. There is no official divorce, no police case that was lodged. The man was very happy that he is getting a new wife. Had anybody asked the women? Is that restorative justice? It is therefore a difficult task to address that what do we mean and understand by restorative justice.

“Restorative process” means any process in which –victim and offender, and/ or other individuals or community members affected by a crime, where they participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Main resolution processes are mediation, conciliation, conferencing and sentencing circles.

Purpose of Restorative Justice

Restorative justice views crime as more than breaking the law – it also causes harm to people, relationships, and the community. So a just response must address those harms as well as the wrongdoing. If the parties are willing, the best way to do this is to help them meet to discuss those harms and how to about bring resolution. Sometimes those meetings lead to transformational changes in their lives.

Indian Context

In India, there is no precise concept of Restorative Justice, enshrined in any law. There are no laws, no legal definitions and no legal references. The only available resolution process in India is Alternative Dispute Resolution (ADR) mechanisms. Relating to ADR in India there is Arbitration and Conciliation Act, 1996, Legal Services Authority Act, 1987 where related cases are handled by *Lok Adalat* system.

There is a misconception in India where *Panchayat* system - *khap panchayat* is sometimes misunderstood as RJ process. Significance of RJ is seen when dealing with matrimonial cases where mediation is used as a first resource and for criminal trials plea bargaining is used. Supreme Court Held “Whenever a punitive response is awarded to an offender, it must be oriented to restorative measures and not just to deterrence” during prison reforms.

In Indian context the contemporary situation of justice system is bad. 30 million cases is pending in the system where the annual capacity of which is only half that number, 10 million or more cases are added every year, and whatever is left of the system is bound to collapse completely unless some radical alternatives are adopted urgently. This raises the question is RJ the solution? Which is difficult to answer right away?

Keeping RJ at the center Critique of Restorative Justice are victim, offender, community, criminal justice, professional, crime, class and gender, government, and value based. Focusing on child in conflict with law and restorative justice in India Juvenile Justice Act and Juvenile Justice Rules there is no mention of RJ.



But there are some related principles stated in law such as Principle of diversion, Principle of fresh start, Principle of repatriation and restoration, Principle of institutionalization as a measure of last resort.

The challenges are:

- 1) No guideline is provided as to what is RJ and how to implement the principles of RJ into the community and legal system.
- 2) There is unfettered discretion on a case to case basis

Some of the examples of the challenges faced by India are:

- 1) In Mumbai a child was caught stealing and he was convicted as guilty of theft. Since he was a juvenile he was asked to sweep roads for a month.

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- 2) In Bihar a minor was guilty of rape. The punishment that he got was to serve water to the lawyers for a month. Is that the only punishment that he is liable for? What does the victim's family feel about this? Is this how RJ is understood in India?
- 3) In Chandigarh a minor was accused of rape and as a punishment the minor had to do community service in a hospital which he refused.
- 4) In Mysore die to an accident caused by a juvenile an old man died. As a punishment the juvenile was punished by asking to perform community service in an old age home.
- 5) In Odisha a minor was accused of rape and had to serve orphans for a year.

In India restorative justice is welcomed particularly in Juvenile Justice, Property disputes and offences, communal conflicts, and family/ matrimonial disputes.

Restorative justice is it going to be effective in sexual violence? Gender based violence? Where the victim and offender are in trust. Where the victim and offenders are both minors. That is the question to be asked.

Chair's Opinion Synopsis

The Chairperson Hon. Kalyan Shrestha highlighted that Dr. Geeta Sekhon has highlighted a very important equation about the application of restorative justice where the application is only possible if the whole community accepts the system.

4.1.4 Restorative Justice and its application in Nepal

Mr. Bimal Poudel, Registrar, High Court Patan

What is Restorative justice?



Restorative justice is a theory of justice that emphasizes repairing the harm caused by criminal behavior. It is best accomplished through cooperative processes that include all stakeholders. This can lead to transformation of people, relationships and communities.

Basic idea behind it

Basic idea behind RJ is that crime causes harm and justice should focus on repairing that harm, the people most affected by the crime (victim) should be able to participate in its resolution, and the responsibility of the government is to maintain order and of the community to build peace and harmony.

Two different views

There are two different perspective forms which crime can be looked at and they are criminal justice and restorative justice system;

Criminal Justice: crime is a violation of law, violations create guilt, and justice requires the state to determine blame (guilt) and impose pain (punishment). Three different questions are asked what laws have been broken? Who did it? What do they deserve?

Restorative Justice: Crime is a violation of relationships, violation create obligation. Justice involves victims, offenders and community member in an effort to repair the harm to put things right. Three questions are asked who has harmed? What are their needs? Whose obligations are there?

Three pillars of restorative Justice

There are three pillars of restorative justice

- 1) Harms and needs of the parties.
- 2) Obligation or accountability and responsibility.

Restorative Justice is not...

Restorative Justice is not primarily about forgiveness or reconciliation. It does not necessarily imply a return to past circumstances. RJ is not mediation and it is not primarily designed to reduce recidivism or repeat offences. RJ is understood as a blueprint of a particular program but instead it is a compass not a map.

RJ is not limited to 'minor offenses or first-time offenders. RJ is not a new or North American/ Western Development (Panchayat, Bhadra Bhaladmi were there in our system). RJ is neither a panacea nor necessarily a replacement for the legal system. RJ is not necessarily an alternative to prison. RJ is not necessarily the opposite of retribution.

When is it possible to apply RJ approach?

- 1) RJ is possible to apply when offender/suspect accepts basic facts of a case,
- 2) Consent of victims and suspects to participate,
- 3) Availability of referral mechanism,
- 4) Availability of RJ facilitators and
- 5) Permitted by law.

Which one is the best word to use?

Restorative Justice System or Restorative Approach or Restorative Practice or Restorative Process or Restorative Programs or Restorative Outcome?

Some Examples

Four youths who were between 16 and 17 years of age were very interested in football and during the World Cup, the young guys who did not have any television with them stole one television set from the house of their neighbor with the intent of watching the football match. The guys were arrested by the police and a case was initiated against them. The guys accept the crime committed and want to repent for what they did. Does our law provide such opportunity to them?

Two friends studying in class 10 have a fight and one student picks up a stone and hits his friend and unfortunately the stone hits his friend in a sensitive area and the person dies immediately. The person throwing the stone realizes the mistake that he had committed and is concerned about his own future and requests the judge that he would repent for his action and that he would be a good citizen. Does the justice system of Nepal address such cause?

During the 10-year conflict and people's war, the rebels had pursuant to the orders made by their high command and pursuant to personal animosity had dragged the head of the family while they were sleeping and had tortured and killed them and now these people having realized and accepting their mistake have come before the court. Does our justice system assist such person?

Example of application of restorative justice in England

- Emma's real story with Steve and Harry (son)
- A true story of a girl working in a local pub and her boy friend
- Lived together
- Son was born
- When Steve did not reform himself, she went and stayed at her mother's place

- One day Steve called her on the pretext of taking her to the market and raped her in the car
- Case was registered and Steve was sentenced
- To remove the fear from Emma with the application of restorative justice.

Nepalese Context

(1) Nepal's Constitutional Provision

Article 21: *Right of victim of crime:* right to justice including social rehabilitation and compensation in accordance to law.

Article 51 (k): *policies relating to justice and penal system:* to pursue alternative means such as mediation and arbitration for the settlement of disputes of general nature

(2) Status of its Application in Nepal

The provisions prescribed in the prevailing laws of Nepal can be categorized into 4 classes:

- Compensation to victim to be recovered from the perpetrator (approximately in 15 Acts)
- Provision relating to suspension and rebate of punishment (approximately in 4 Acts)
- Involvement of community for reintegration (approximately in 5 Acts)
- Restorative justice approaches adopted (in 4 Acts including in the recently adopted Code, Disappearance Act and Mediation Act)

(3) Judicial Perspective

- Buddhi Bahadur Praja vs. Nepal Government, Date of decision 2065/1/30 (May 12, 2008): To provide compensation to the innocent through the State and to do pursuant to jurisprudence relating to victimology.
- Rabindra Prasad Dhakal on behalf of Rajendra Prasad Dhakal vs. Nepal Government, Date of Decision 2064/2/18 (June 1, 2007)
- Amrit Prasad Shrestha vs. Nepal Government, Date of Decision: 2072/10/7 (January 21, 2016), Constitutional Bench: Compensation to victims who have been under judicial remand but having been acquitted later.
- Through the FIR of Kalpana Rai Nepal Government vs. Mote aka Sabin Muktan

- Case: Human Trafficking
- Date of decision: 2072/11/4 (February 16, 2016)
- Content of decision: Provided, the defendant is unable to provide Rs. 100,000, as compensation to the victim, the said amount should be recovered from rehabilitation fund under Nepal Government and from the Office of Women and Children.

(4) Provisions relating to Compensation

- Libel and Slander Act, 2016
- Some Public (Offence and Sentence) Act, 2027
- Press and Publication Act, 1991
- Motor Vehicles and Transport Management Act, 1993
- Environment Protection Act, 1997
- Torture and Compensation Act, 1996
- Consumer Protection Act, 1998
- Copyright Act. 2002
- Electronic Transaction Act, 2008
- Various Chapters under the Muluki Ain, 1963

(5) Provisions relating to suspension of sentence, rebate of sentence or rebate in claim:

- Children Act, 1992
- Prevention of Corruption Act, 2002
- Senior Citizens Act, 2006
- Money Laundering Prevention Act, 2008
- Chapter on Punishment under the Muluki Ain, 2020

(6) Involvement of victim, perpetrator and community for rehabilitation

- Local Self Governance Act, 1999
- Human Trafficking and Transportation (Control) Act, 2007
- Domestic Violence (Offence and Punishment) Act, 2008
- Chapter on Theft under the Muluki Ain, 1963

(7) Recently adopted Criminal Offence (Determination of Punishment and Execution) Code, 2017

Section 13: While determining a punishment, the court shall take into consideration any or all of the objectives.

- Security to society or community
- To provide justice to the victim along with compensation
- To assist in social rehabilitation of the perpetrator or to reform such person
- To make the offender realize and repent towards his action and to make him/her realize that his/her action had caused damage to the victim or community

Section 16: While determining punishment to a minor the following should be taken into consideration:

- Overall interest of the child
- Personal condition of the child
- Compensation proposed to the victim
- Repentance towards the crime
- Interest to live a good and meaningful life

Section 22: Shall give an order for community service:

Where an offender has committed an offence and the punishment for such offence is up to six months, the court while determining the punishment shall take into consideration the offence committed, age of the offender, conduct, conditions at the time of committing the offence and the methods applied to commit the offence and provided, the court deems it inappropriate to keep the offender in prison or where the offender has consumed some prison sentence as deemed appropriate by the court, the court shall issue an order wherein the offender shall serve the community for the remaining period of the sentence.

Section 29: Shall be kept in Parole:

Provided, where an offender has been awarded imprisonment for more than one year and provided such offender has already served two-third of the sentence and provided such offender shows good conduct, the offender shall be kept in parole: Provided, the following offenders shall not be kept in parole

- Offenders receiving life sentence
- Offenders sentenced in corruption cases
- Offenders sentenced in rape cases
- Offenders sentenced in human trafficking and transportation cases
- Offenders sentenced in organized crime cases
- Offenders sentenced in anti-money laundering cases
- Offenders sentenced in cases relating torture, inhuman treatment

- Offenders sentenced in cases relating to crimes against humanity
- Offenders sentenced in war crime cases

Section 30: Shall be socialized

Provided, where an offender has been awarded imprisonment for more than one year and provided such offender has been serving the sentence and shows good conduct, the offender shall six months prior to serving the remaining period of imprisonment shall be allowed leave the prison on a monthly or daily basis for the following works:

- Reunion with family
- Establishment of social, cultural relation
- Social integration and rehabilitation
- Work or employment
- To receive skill oriented or employment-oriented training
-

Section 31: Shall labor in lieu of imprisonment

Provided, an offender who has been sentenced for three years or more than three years and is more than 18 years of age and is physically in good health if so desires shall be allowed to labor in public work.

Offender who has been subject to labor pursuant to Sub-clause (1), shall in lieu of every three days of labor receive one additional day as rebate in the sentence

Section 33: Shall operate reformative programs

In order to reform the conduct of prisoners serving their sentence, the prison shall operate reformative programs such as skill, educational and employment-oriented trainings, moral and meditational programs.

Section 37: Rebate in imprisonment

Provided an offender while serving sentence shows improvement in his/her conduct and provided such offender has already served three-fourth of the sentence, the offender shall receive rebate in the punishment. However, the following shall not receive any rebate:

- Offenders receiving life sentence
- Offenders receiving punishment in rape cases
- Offenders receiving punishment in corruption cases
- Offenders sentenced in human trafficking and transportation cases

- Offenders sentenced in organized crime cases
- Offenders sentenced in anti-money laundering cases
- Offenders sentenced in cases relating torture, inhuman treatment
- Offenders sentenced in cases relating to crimes against humanity
- Offenders sentenced in war crime cases

Section 38: Probation and Parole Board

There shall be a Probation and Parole Board for the purpose of assisting in the social rehabilitation and integration of the offenders serving the sentence. Similar provisions have been made in the Provinces.

Section 41: Shall Provide Compensation

Provided, any damages to the body, property or prestige of the victim occurs owing to the result of any crime committed therein, the court shall order to provide appropriate compensation to the victim in result of such damages and the compensation shall be recovered from the offender. However, provided separate provision of compensation in lieu of any offence has been prescribed in the law, it shall be pursuant to the law prescribed therein.

Section 44: Compensation shall be as agreed

Notwithstanding anything contained in this Chapter, the victim and the offender can reach any agreement relating to giving and receiving compensation in lieu of any offence committed.

Provided, such agreement is deemed appropriate, the court shall issue and order to provide compensation as agreed upon.

Section 48: Shall establish a victim relief fund

A fund shall be established to provide relief to the victim

Where penalty pursuant to the decision has been recovered and from among the amount paid by the offender in lieu of the punishment, fifty percent of the amount shall be deposited by Nepal government.

(8) *Recently adopted Criminal Procedural Code*

Section 34: Minor cases of particular nature need not be registered:

- Cases having claimed amount up to Rs. 1000

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- Pick pocketing, offence relating to begging and offenses having a penalty up to three thousand rupees or imprisonment up to one month or both and where the offense has been committed for the first time

Section 155: Shall provide amount in lieu of imprisonment: Provided, an offence carries a prison sentence of one year or less than one year and where the offender is a first timer, then such offender may not be kept in prison.

(9) Investigation of Disappeared Person, Truth and Reconciliation Commission Act, 2071

Section 22: Shall conduct mediation: The offender shall repent for his offense and seek forgiveness from the victim

Section 23: Shall recommend for reparation

- Shall be provided with free education and medical treatment
- Shall be provided with skill-oriented training
- Shall be provided loan without interest or shall be provided loan with reasonable interest
- Shall be provided with housing
- Shall be provided employment opportunities
- Section 26 has a provision for pardon

(10) What are the areas where restorative justice can be applied in Nepal?

- Small instances of theft
- Pick pocketing
- Crimes against the society
- Offences relating to consumption of drugs
- Public offences
- Offences relating to libel
- Offences relating to conflict
- Disputes relating to canal and boundaries
- Disputes relating to distribution of natural resources

Chair's Opinion Synopsis:

The Chairperson stated that the explanation made in during the session is known to be theoretically and practically highlighting the major provisions of the Nepalese system. If a person has a creative mind, then applying RJ is easier. From the pre-trial to the post trial stage it is important to apply RJ with a creative mind. If sentencing is to be modified and used in a manner of improving the situation of criminal and the victim the tools and principles of RJ need to be looked at in a depth manner.

The chair went to Australia and there he found out that he needed a different sentencing act asking out people to have a hearing sentencing. Nepal has a fully grown sentencing act which is an example for south Asia. Perhaps, for the parliament conference related to sentencing act needs to be done. Our system needs to work hard and create an infrastructure and be hopeful, more industrious, keep talking with one another and talk about criminal justice system which would be best understood by implementing restorative justice system.

Session–Two

4.2 Application of RJ Principles in Gender Based Violence Cases/Issues

Objectives of this session:

The expected objectives of these sessions were as below:

- Exploring the utility of RJ principles in GBV issues/cases
- Assessing opportunities and challenges to apply RJ principles in GBV issues/cases within the existing legal structures

The Session Proceedings

The session was chaired by Hon'ble Justice *Sapana Pradhan Malla*, Supreme Court Nepal. The session aimed to examine how RJ principles can become a more effective legal tool to address gender based violence (GBV) issues/cases. The panelists explored how well RJ principles had been applied in GBV issues/cases within both the formal and alternative legal systems. Panelists reflected upon the opportunities that exist, and major challenges that one needs to be aware of. The session also informed on specific skills and capacities that are required within a legal system to uphold principles of RJ with regard to GBV issues/cases. In this session two papers had been presented by *Senior Advocate Geeta Pathak Sangroula*, Professor of Law, Kathmandu School of Law, Nepal and *Mr Kunal Ambasta* Professor of Law, National Law School of India University, Bangalore. The Chairperson remarked over each paper.

Chair's beginning words:

When there is an issue relating to gender based violence (GBV) violence occur, crimes take place indiscriminately at times. But sometimes violence and crimes takes places discriminately. The offender targets certain group and people because of his/her gender. Especially when we talk about GBV, who is in unbalanced power relationship. When GBV takes places, expedition of violation of women and other gender is a bit different, the effect is different and need to address those violence is different.

4.2.1 Application of RJ Principles in Gender Based Violence Cases/Issues

Senior Advocate Ms. Geeta Pathak Sangroula, Professor of Law, Kathmandu School of Law, Nepal



Direction is an important element when it comes to providing justice. Interest of justice is the ultimate direction to be taken. Restorative Justice (RJ) is restoring justice to the victims and from the perspective of RJ media plays a very important and effective role. When media is present there is presence of proper communication between not just victim and

the offender but communication with the people as a whole.

When an individual is effective it is not just one individual who gets affected instead whole community gets effected because of the direct and indirect connection of the people. The context of the case is very important in order to make the right decision and providing justice. In short perspective approach from the victim's perspective is important to apply restorative justice.

There is polygamy in Nepal, an example a woman during a study session stood up and asked a man is bringing another wife while his current wife is still alive is it legal to bring another wife or not? Then she asked what do u think? She said if he brings another wife and he lets me stay with food, shelter and cloths to wear then she is fine with it. Though this example it could be understood that any GBV crime that is done needs to be looked into from the perspective of the individual himself/ herself. "If I were in that place" is the perspective from which the crime should be looked from. An individual should look the crime through different lenses then only s/he can properly understand the concept of RJ.

When we talk about crime control model it is very much essential to talk about the human rights model. Taking crime control model from the perspective of the human rights model would help the justice system to understand the crime from the

perspective of RJ. Restoring Justice is possible only through the restoration of the human rights of the individuals that have been violated during the crime committed by the individuals.

Another example an HIV affected women got deported from her own country and was staying in Nepal as an immigrant. Later the community found out about the women and wanted to kick her out of the society. This shows a discrimination that has been done towards that woman. Just because she has HIV she has been treated as a criminal who is poisoning the society. Therefore, through this example it can be understood that the problem of socialization and integration is an important part of RJ. Integration is not just in home; it must be in the community. RJ starts with internalization and realization of the community.

Restoration process is greatly influenced by the context and background of the victim and the offender. The offender might have led them to do such an offence due to the abuse that he/she might have felt. Therefore, context and background of the offender and victim is an important aspect from where RJ needs to be looked from.

Security System (Community surveillance system) is an important aspect of RJ. Where surveillance is done to observe the status of the community and its nature. Restoration of entitlement, self-respect, and relationship is the top most priority during the application of restorative justice.

Domestic violence is a result of Powerlessness and inferiority. In contemporary era Nepal is lacking behind the process of properly implementing the principles of RJ. It can be observed that principles of justice are not being implemented and followed in the manner it is supposed to. Creative mind is not applied during the decision making process. Complete Justice (Purna Nyaya) seems to be absent when it comes to justice delivery process.

How to make offenders realize the gravity of harm that they have caused? Under persecution and reporting of gender based violence. Offender's capacity to compensate is not determined instead a mechanism to measure the capacity of offender is in place and accordingly compensation is provided or required. International community has also not internalized the concept of RJ's contextual background. There are layers of barrier within a group due to diversity: these barriers must be realized in RJ; then only proper implementation of RJ can be observed as a final result.

Chair's Opinion Synopsis:

Unless an individual put himself/ herself in the shoes of both the offender and the victim we may not be able to internalize which is the first step. And second important step is within the gender based violence we need to look at intersection because there are different groups, cast, language and religious mind, and different people are differently marginalized. There is a compound of marginalization and as a result justice becomes impossible due to the layers of barriers within that group.

4.2.2 Application of RJ principles in Gender Based Violence Cases/Issues

Mr. Kunal Ambata, Professor of Law, National Law School of India University, Bangalore

It is his belief that a system of restorative justice has to necessarily institutionalize the idea of the agencies of the parties what he calls it the agencies of parties. Which is to see both parties in a conflict situation as complete personality



as complete agents who are capable of the entire personhood within and outside of the crime because of which he/ she might have come to the justice system? This is especially true in the context of sexual violence here it is seen that both the victim as well as the offender lose every other sense of identity that they have except that of being the rape victim or being a rapist.

They have inhabited several other aspects to their personalities which is forgotten. The legal system puts them into accused or victim's position. Now he believes the idea of agencies of parties is crucial to achieving the system of restorative justice. After the commission of an offence we have to look at the person as a whole.

Moving forward the current system of criminal justice looks at agencies in Indian law if it is a crime the accused is one party to the proceedings and the other party becomes the state which takes on itself the act of prosecuting the crime. The victim

now though slowly is being recognized as being given certain rights these rights are extremely limited. So victims have right to appeal in certain cases, and victims are right to get compensation. But as a status the victim is not one of the parties to a criminal trial.

In any criminal offence the victim is not a default party so in a way sort of erases the identity of the victim. Now all that is important is or the justice delivery mechanism is the case. Which involves the victim? What will be the formal position of the victim as a witness for example identifying the offender of the rape case?

In India the criminal justice system is bending towards more retributive justice system. If a legal system only focuses on retribution it cannot give full agencies to the party. It will look at the accused only as a perpetrator of the crime and nothing else and it will look at the victim as a person who has suffered and that is all. It will not acknowledge victim's other needs.

Nirbhaya case, the way people refer to the case is very instructive. Now why do we call it a *Nirbhaya case*? And several female scholars have written that calling the case *Nirbhaya* is itself taking out the personality of the victim. What does *Nirbhaya* mean in Hindi? It means fearless. But it is unknown whether she was fearless or not, whether she was fearful that night when she was attacked. But instead we have given her a position, an identity. We don't want to use her legal name of course there is a bar in using the name of the victim too. We don't even want to use the name of the case instead we want to call the case *Nirbhaya*. We want to have that one picture of the case when we talk about that case.

Ever since that case has happened a lot of laws dealing with sexual offence and GBV have changed. Not all of these changes are good. In face the Justice Verma Committee report which created several changes was not fully adopted. It had several avenues in which it looked at a fixing responsibility on particular parties who till now have immunity under it. For example, it said the armed forces special powers that they have immunity regard to sexual offences must go, but the government rejected that proposal. If government accepted that it would have been an unpopular change.

Other change which the committee did not recommend was implemented in law. For example, The Juvenile Justice (Care and Protection of Children) Act, 2015, Sections 15, 18(3), and The Protection of Children from Sexual Offences Act, 2012, Section 29. it says between the age of 16-18 years if the child commits a crime then the justice sees if the child has understood what he has done or what the act is meant and if it is found that he did know what he was doing then he would be prosecuted as an

adult though he will not be given death penalty. But he may be given a heavy prison sentence.

RJ in gender based crime or sexual offences can only occur in a system which does not rely on retribution as a default. That for anything that happens, any social change that needs to be brought in and any ill that needs to contain then the first response is to hike the punishment, and make more people punishable. As long as India is doing that RJ really cannot be applied to India.

Chair's Opinion Synopsis

Chairperson Hon'ble Justice Ms *Sapana Pradhan Malla* stated that India is still in the process of accepting the RJ concept but not fully agreeable. Comparing India with Nepal, Nepal has made remarkable changes in the field of restoring the justice and applying the RJ principles than India. RJ is also important to recognize from different identity. Decriminalization by the law is sometimes important, for example decriminalization of prostitution, abortion, etc.

One of the biggest problems is that the victim cannot and is not a party during the decision making of the offence done which is a huge draw back in relation with RJ. Sometimes sentencing policies is also problematic when it comes to RJ. There should not be any blind approach when it comes to application of RJ in gender related issues.

Session-Three

4.3 Role of Restorative Justice Principles in Addressing Peace and Conflict

Objectives of the Session

The expected objectives of these sessions were as below:

- Understanding the role of RJ in addressing peace and conflict
- Examining approaches in resolving conflict and reconciling parties through RJ

Session Proceedings

The third session was chaired by Hon. Kalyan Shrestha, Former Chief Justice, Nepal. This session examined the efficacy of RJ as a tool to redress conflict related rights' violation within the South Asian context. It looked at how RJ can contribute to peace building in a post conflict situation. The panelists provided insights into just and peaceful reparations where survivors, offenders, and the community have been or can be brought together in the healing process. This session also looked at formal mechanisms such as truth and reconciliation commission set-up in post-conflict countries and how RJ can be integrated into such mechanisms. In this session two papers were presented and the Chairperson remarked in each papers.

4.3.1. Role of Restorative Justice Principles in Addressing Peace and Conflict

Mr. Hari Phuyal, Former Attorney General of Nepal

There was an armed Conflict in Nepal for 10 years (1996-2006) where 17,000 people were killed 3,000 missing, huge destruction of private and public property, displacement, kidnapping and hostage taking, illegal arrest and detention, rape and other sexual violence, extra judicial killings, torture and enforced



disappearance took place. Comprehensive Peace Accord (CPA), Interim Constitution, Supreme Court decisions have shaped the scope of Transitional Justice (TJ) in Nepal.

From the perspective of Nepal's Transitional justice system Nepal has established TJ mechanisms: TRC and CIEDP have been functioning since two and half years. Since, the Supreme Court (SC) decision is not complied and amendment in enabling law is not made, and due to these reasons stakeholders are not happy with the TJ process in Nepal. Victims along with their allies are struggling for truth, justice, reparation, guarantee of non-repetition and followed by reconciliation.

Reparation is recognized in CPA, Interim Constitution of Nepal, 2007 Supreme Court's decision and in new constitution and emerging new legislation such as Torture Bill. In *Rajendra Dhakal's* Case the SC of Nepal recognized victims of enforced disappearance and ordered the government to provide interim relief as part of reparation to seek whereabouts of their loved one and for right to remedy.

In *Liladhar's* case the SC issued mandamus and directive to provide reparation to conflict victims. The current law to establish TRC and CIEDP has provision of reparation but not as a right of victims but something commissions recommends and government provides them.

Reparation in Nepal legal arena and jurisprudential scope comes from international human rights law from UN principles on right to remedy and reparation and comparative practices. It has changed the concept of narrow compensation to reparation as a broad word with umbrella concept. Introduction of reparation is the beginning of recognition that crimes are committed against individual and community and they must be redressed by keeping the view of individual, his/her family and community.

Now Article 21 of the Constitution recognizes crime victims' rights including of reparation and government is mulling over to produce a legislation to protect rights of victims. The NHRC has also expanded its scope of compensation to reparation with wider coverage.

The Government had to establish Peace and Restructuring Commission under the CPA, but a Ministry was established in 2007. That Ministry collected data (with criticism) and provided money (not even compensation) to the victims, largely to internally displace in the beginning.

The Ministry's program depends on who the minister is and so far billions of NRS has gone to 'victims' as 'money' and that does not have any connection with the TJ

process. The NHRC is provided with monitoring power whether or not victims receive reparation, but it would be difficult to link current distribution of money with the TJ process reparation.

Reparation is also extended to institutional and legal reform so as there will be guarantee of non-repetition. It also includes long term services to victims, their family and community. It is fundamental that perpetrators come down and recognize victims and pay them along with the state. It is important that reparation is well received in the legal framework of Nepal. These all depend on how the TRC commissions in Nepal ends up.

Therefore, in the human rights landscape there are exceptions in reconciliation. Victims of gross human rights violations receive reparation and also there would be prosecution, sentencing and even pardon is not granted to such offenders. That is for the larger interest of the individual victim, family and community. Apology from the perpetrators in gross and non-gross human rights violations is always expected. Victims' express consent is must.

4.3.2. Role of Restorative Justice Principles in Addressing Peace and Conflict

Hon'ble Surya Kiran Gurung, Chairperson, Truth and Reconciliation commission, Nepal

Background

International Humanitarian Law is activated during the period of war or conflict in Nepal started with the name of people's war in the year February 13, 1996 and ended with the signing of Comprehensive Peace Accord (hereinafter CPA) on November 21, 2006. The CPA, signed between the Nepal Government and the then Rebels, amongst others called for the establishment of transitional justice bodies to address the atrocities or gross violations of human rights committed during the conflict period. The "Truth and Reconciliation Commission" (henceforth TRC) was supposed to be established within a period of six months from the date of signing the Comprehensive Peace Accord (henceforth CPA), however it was constituted after eight years. For this purpose, a selection team headed by a former Chief Justice with chair or representative of National Human Rights Commission and three experts representing diverse discipline to include one-woman member was appointed by the Government of Nepal to form the TRC. The selection team invited applications from interested candidates and also enlisted names of potential candidates who did not respond to the application call. The names collected and shortlisted were published in national newspaper for public scrutiny.

The five-member TRC was established on February 10, 2016 and started its work when the Nepal Government had already formed the Ministry for Peace and Reconstruction (henceforth MoPR) and the Secretariat of Commission. The Ministry had created all political party 23-member Local Peace Committees (henceforth LPCs) in all 75 districts of Nepal. And, interim relief programs had already been initiated for the conflict victims by the Ministry. The Commission took a briefing from the Ministry on the programs being launched. In the meantime, the Commission through its sub-Committees drafted the Rules of Procedures to Conduct the Meetings of the Commissions, a Code of Conduct for the Members of the Commission, its staffs and experts/specialists to be engaged in the Commissions work and other required internal procedures. The Commission studied the practices followed by other transitional bodies in different parts of the world and reached a conclusion that the conflict in Nepal was unique compared to other conflicts.

In the above mentioned backdrop, TRC decided to visit the Districts to gain insight of the overall situation. Visit program was structured to meet the District level officials engaged in interim relief process to learn of their problems and constraints, likewise interaction was organized with local intellectuals'/media persons/civic society to gain knowledge on overall situation of the District and thirdly exclusive meeting was held with the victims to learn of their sufferings during the conflict and in post conflict period, their satisfaction/dissatisfaction with interim relief program. The other purpose was to make the stakeholders aware about mandate of TRC and also learn needs/expectations of the victims.

TRC also took note of the fact that as conflict had adversely affected 73 of the 75 Districts, it was not feasible for all five members to travel together to all the Districts. Hence to maintain uniformity, all five members decided to travel together to visit the Dadeldhura, Baitadi and Darchula Districts in the Far Western Region of Nepal.

In a nutshell, TRC when formed had to face a very hostile environment from stakeholders'/human rights defenders, little trust or no trust from the victims and a big question on establishment of TRC as its delayed formation had the society already reconciled and living in harmony.

Making understand principles of restorative justice:

Clinching awareness on principles of restorative justice and criminal justice was a daunting task for TRC not only with the victims and other stakeholders but also with senior government office bearers and politicians. The need to know the truth, to seek reparation/ reconciliation/prosecution, to cause amnesty/pardon and reasons for non-

recurrence is unknown not only to society of Nepal but almost all conflict affected countries.

In fact, exercise of restorative justice was practiced at the end of Second World War with Nuremberg and Tokyo Trial. The Allied power exercised their victory on Axis power by prosecuting those involved in gross violation of human rights abuses with impunity granted to people from victorious force. It was surmised that the process initiated shall free this planet from the scourge of war. The presumption was a big failure as war and conflict still persists. Hence, as a new phenomenon the concept of transitional justice has been introduced to end war and conflict that too in conflicts prone countries with varying conditions. The conflicts in Rwanda and Burundi cannot be compared to South Africa nor Nepal or Sri Lanka or Cambodia. The case of Sudan is another different type of conflict that may be to a certain extent compared to the recent incidents taking place in Myanmar against *Rohingyas*. Nevertheless, conflict in Sierra Leone and Liberia may be of comparison with Nepal conflict to a certain extent.

Hence setting a universal parameter for restorative justice and making them understand is not an easy task. Yet, one thing in common is the victims do suffer because of the interests of conflicting parties to which they have no part/interest to play. Therefore, whatever the results of the conflict or war maybe - do the victims deserve the right to restorative justice or not? If the answer is affirmative, what kind or type of justice is required? Is another big query to be answered? Globally, the process of transitional justice is ongoing with varied mandates for human rights violation which today now is a universal jurisdiction issue rather than a State related offense. But, that national context or the ground reality be taken into consideration has been undermined.

Glancing towards practices of restorative justice different countries have adopted different patterns of actions. South Africa was more focused on truth seeking, Chile for reconciliation and States with ethnic cleansing for ethnic harmony.

Case about Nepal:

Nepal, had its own experience of conflict, there was no ethnic cleansing, no religious divergence, no capture of natural resources but the conflict encircled within the spheres of political, social, economic, legal, caste based discrimination issues. The rebellion movement gained momentum more aggressively than expected.

After, ten long years of conflict the parties reached an agreement in the name of CPA. The process was unique as it did not follow the accepted UN procedure in submission of arms and army re-integration. Creating of places to keep the then

militants, their arms, verifications and reintegration were the first priority of both parties. Unknown to the UN system a double lock system to keep the arms submitted by both the parties was agreed. The then rebel force joined the Interim Legislature Parliament and issued the Interim Constitution.

The then rebel force participated in the Constituent Assembly election and the Constitution making process. The government was also formed by the then rebel forces. Coalition governments were formed between different political parties and the then rebel force. To the astonishment of many, electoral alliance in the local level election was formed between the Nepali Congress and the United Communist Party of Nepal (Maoist). The developments viz., political, legal and reparative justice taking place in Nepal is very unique when compared to other conflict prone countries.

Legal Arrangements:

Act on the Commission of Investigation on Enforced Disappeared Persons, Truth and Reconciliation 2014, adopted on May 11, 2014 (henceforth “TRC Act”) enlists nine different types of incidents as “gross violation of human rights” such as;

1. Murder,
2. Abduction and physical captivity,
3. Disappearance,
4. Causing bodily harm or to make disable,
5. Physical or mental torture,
6. Rape and sexual violence,
7. Looting, capturing, destruction or arson of personal or public property,
8. Forced eviction from property or displacement by any means, or
9. Any inhumane act or act against humanity committed against International human rights or humanitarian law.

The TRC Act after enactment was challenged in the Supreme Court of Nepal that it granted impunity to the perpetrators. The court of Feb 26, 2015 ruled that the TRC shall not grant amnesty to perpetrators involved in crimes of rape and crimes of serious nature. The irony in the provisions of the Act and verdict of the court is the failure to encapsulate the principles of transitional justice. The Act nowhere defines the term crimes of serious nature nor was it interpreted by the verdict of Supreme Court. TRC is therefore in a dilemma as where to recommend for amnesty and where to seek prosecution. Provided every act as enlisted under “gross violation of human rights” is to be understood “crimes of serious nature” where is the room for

reconciliation? Therefore, where is the very essence of transitional justice? Likewise, if every act in the course of conflict is to be recommended for prosecution what is the difference between criminal justice and transitional justice? And, why is there a need for TRC?

This however, does not mean that TRC will not abide by the Supreme Courts' verdict. The only contention is understanding the principles of transitional justice to put an end to the peace process.

Above mentioned are serious issues that need to be given thought to. Therefore, the core principle of transitional justice is understanding the need of the victim who has been affected by the conflict. It has to do with meeting the need of the victim rather than imposing the provisions of legal instruments.

The concern of TRC has also been on statute of limitation, the provisions of prevailing Torture Act, amendments in line with the Supreme Court verdict and some of the discrepancies observed in the Act.

Activities of TRC:

- Taking into consideration the number of complaints (almost 63,000), TRC decided to decentralize the investigation process.
- TRC established a three-member investigating team in each seven federal provinces headed by joint attorney general that has one women member. The seven federal provinces are working effectively by identifying the victims who filed complaints, taking statements from the victims and witnesses to seek truth, asking for any other evidences or documents if any from the District level offices, visiting places of incidents to verify the truth.
- Taking into consideration the number of complaints registered members of TRC has principally agreed to extend its offices to different Districts to expedite the investigation process.
- Likewise, on September 3 2017, TRC held an interaction with federal provincial investigation teams to ascertain that investigation is moving ahead as envisioned by TRC, ensure that practice and standard defined by TRC is maintained, seek uniformity in investigation process of all seven federal provinces, to learn about the challenges, difficulties and obstacles if any in executing the investigation process. Members of TRC make frequent visits to the seven federal provincial offices to monitor the investigation process, give necessary directives and learn of the problems if any.
- TRC, wants to assure it works in line with the desire/needs of the victims and that the new allegations received on lack of impartiality/ independence of the

Commission members are false and without any ground. TRC, shall be more than glad to receive any evidence or ground to prove the new allegation that some members hold public positions in political parties as TRC seeks to maintain independence and impartiality.

- As stipulated by Section 17.6 of the TRC Act, TRC has developed a child, elderly citizen, physically disabled and persons suffering from sexual violence friendly investigation policy and procedure to facilitate the investigation process. As per the verdict of 26 February 2015, rape and human rights violations of serious nature cannot be given amnesty or pardon and TRC has adhered to the said verdict in framing its policies and procedures. Similarly, TRC, has engaged the victims at different levels in policy formulation and drafting of procedures.
- TRC, is firmly committed to ensure the implementation of its international obligation arising from International Covenants and Conventions that Nepal has acceded to on different dates and years.
- TRC, sought complaints from the victims beginning April 16, 2016 to August 10, 2016 but not a single complaint has been received at the Commission on threats and intimidations to victims. In fact, victims have been told to contact the members of TRC directly should any urgency arise. Cell contact numbers are available to the victims and members receive calls at any hour of the day or night. Likewise, pursuant to Section 17, provided the victim or any other person present before the Commission to record his/her statement requests the Commission for security or even if a request is not made the Commission feels that security has to be provided the Commission shall make necessary arrangements in consultation with Nepal Government. Pursuant to Section 17 (4), the travel expense and per-diem cost of persons called upon to testify before the Commission is to be borne by the Commission.
- About Nepal Police demanding copies of complaints, TRC learned about the issue from media and inquired with the Nepal Police which they denied. As TRC had no substantial evidence to establish the news report the issue was not pursued further.
- TRCs', federal provincial offices have been in operation in most provinces for more than three months but not a single complaint has been received on confidentiality and protection of the files. This nature of concern was also raised when complaints were invited. Likewise, a security work plan has been prepared by TRC in consultation with Ministry of Home Affairs for protection of victims, witnesses, files, members of TRC and those affiliated with the Commission and its works. Similarly, installation of CCTV is in progress.

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- After eventual dissolution of the Commissions archives and documents are handed to the Nepal Government as per Section 39.2 (not 39.1 as mentioned in communication) of TRC Act however, the report given by TRC pursuant Section 27.1 is to be tabled in Parliament by the Nepal Government within 30 days. Similarly, pursuant to Section 30 the National Human Rights Commission has been given jurisdiction to monitor implementation of report and also issue directives to Nepal Government for implementation.
- On the issue of victim consultation, TRC has been proactive in consulting victims from initial stage at the central to local levels. As an example, prior to the establishment of the Commission, Ministry for Peace and Reconstruction had been created so were the all-party Local Peace Committees (henceforth “LPCs”) in all 75 Districts and the Nepal Government had with support from LPCs initiated Interim Relief Program for Conflict Victims. For the Rules for TRC Act had not been approved by the Cabinet, the Commission decided to visit different districts to make itself aware of situation at hand.
- After visit to 52 Districts submitted an Interim Report to the Nepal Government on suggestions received from the victims and other stakeholders on Interim Relief program. Some of the recommendations made by TRC has been implemented.
- Pursuant to Section 19 (3) of TRC Act, the Commission may under Rule 9 (1&2) that any complaints not within jurisdiction of the Commission shall be referred to concerned institution and the person filing the complaint shall be informed accordingly.
- The overwhelming number of complaints registered with TRC is testimony to the trust and confidence of victims in transitional mechanism of Nepal. Similarly, as required by TRC Act the victims are always aware of status of his/ her complaint/s. And, though the period for filing complaints has already expired TRC is still receiving complaints from the victims.
- TRC has developed its own computer software program to register and classify the types of incidents district wise.
- Investigation is conducted to identify the pattern of incidents committed, seeking truth and to make recommendations on non-recurrence.

Constraints:

- TRC was mandated to accomplish the task entrusted within two years with an extension of one year. Yet, due to unforeseen circumstances, like earthquake, constitution making process, undeclared embargo, local level election, natural calamity had an adverse impact on TRC’s work.
- Non availability of governmental staff and funds delayed the action plan of TRC.

- Amendment of TRC Act has caused non-cooperation of the United Nations and other international partners.

Challenges:

- Amendment of the Act is the foremost challenge of TRC.
- Addressing the complaints of every victim.
- Gathering evidence and establishing incidents.
- Gaining cooperation from stakeholders.

Conclusion:

- The task so far performed by TRC has been fairly satisfactory. No cases of threat or intimidation have been reported by the victims filing complaint with TRC.
- The victims are inquisitive of the progress made on complaints filed with TRC.
- The number of complaints filed is a testimony to the victims' confidence on TRC.
- Members of TRC are in close contact with the victims as cell phone numbers are public.

Chair's Opinion Synopsis:

Chairperson of the session stated that from the perspective of addressing RJ principles in peace and conflict situation. The questions are raised as to how RJ principles are to be implemented in commissions present in Nepal; such questions are yet to be answered.



Session-Four

4.4 Identifying Opportunities and Challenges in Mainstreaming RJ Approaches in Formal and Alternative Justice Process

Objectives of the Session

The expected objectives of the session were as below:

- Identifying structural gaps/ challenges in applying RJ in formal and alternative justice delivery process
- Examining the possibility of RJ in alternative justice delivery mechanism in South Asia

The Session Proceedings

This session was chaired by Hon. *Keshari Raj Pandit*, Executive Director, NJA. The plenary session had one lead discussant and a chair to moderate the discourse which explored the opportunities in applying and promoting RJ principles in the formal and alternate justice processes such as community mediation, regional dialogues, *jirgas*, council of elderly to name a few. After the lead discussant's presentation, the floor opened for speakers wishing to contribute. This session also reflected on the challenges in informing the state structure/system to be responsive in applying this principle, and whether principles applied in the formal justice delivery process can be translated into the alternative process or not.

4.4.1. Identifying Opportunities and Challenges in Mainstreaming Restorative Justice Approaches in Formal and Alternative Justice Process

Hon'ble Justice Dr. Anand Mohan Bhattarai, Justice, Supreme Court of Nepal

When history is reviewed it can be observed that Penance and purification of the wrongdoer – one important component of CrJ (Criminal Justice) in South Asia-Dharma to cohere with justice. Crime signified a journey that was against the wish of God and after repairing the harm, penance and *Patia* the mortal would be exonerated of the evil effect of crime or "*Paapa karyā*" Penal law of our ancestors was not the crimes but the law of wrongs or torts.- Sir Henry Maine.

Later many wrongs treated as crime- focusing on deterrence and retribution. Scope of torts narrowed down to civil wrongs- in Nepal it was not even in existence. Victim was made an object in the CrJ process. CrJ is a tool in the hand of power holder. Dehumanizing effects and reform approaches and their limits movements were seen in 70s and 80s. Prison reform and recidivism was also observed.



In today's situation loose links and disorientation among the pillars of CrJ are observed. There is lack of clarity on the objective of justice. Failure of ROL (Rule of Law) and perpetuation of injustice results in conflicts and social discords.

The challenges and current reforms of ROL are:

- Shortcoming of law felt while drawing up the Strategic Plan
- Making justice socially relevant – was one of the objective of reform
- Problems on coverage of CrJ, its orientation, appropriateness of punishment,
- Post sentencing situation not in the cognizance of the Judiciary
- Anarchy created by frequent withdrawal
- Piecemeal approach
- Current reform- looking for a paradigm shift.

There are some provisions which signify the presence of RJ and deals with the crime from the perspective of RJ. Provision for criminal torts e.g. libel and defamation, crimes against privacy and provision for compensation is now a part of law of obligation in the Civil Code. Individuation of punishment by fixing upper limits of punishment leaves the judge to use discretion and reason. Insertion of general chapters in criminal law that describe and require judge to take note of the mitigating and aggravating factors and determine the right sentence.

Now compensation has been taken as one inalienable part of the criminal justice system, provisions are also made for interim compensation. Provisions for plea

bargaining, room for telling the truth, repenting, cooperating the investigation-the investigating authorities may propose the remission of up to 50 percent punishment (except in a few crimes)

Provision for pre-trial conference is an alternative to imprisonment to a non-serious offence where community service, probation and parole (after completion of two third punishment) is now possible.

Rationalization of Pecuniary sentence is done where economic status of the offender, his/her earning capacity, extent of harm caused to the victim, benefit received from the crime by the offender and his family, the liability on the if the offender does not pay fine, and in case of organizations- their size and strength should be taken note of.

Provision for victim relief fund is created so that compensation and fines can now be paid in installments. Court may pre-sentence reports in heinous and serious crimes. Documentation of crime data is done in a systematic manner. There is presence of strengthening of and coordination among investigating, prosecuting, adjudicating and sentencing authorities.

In Nepal there are opportunities where RJ are highlighted and given importance. Constitution promises an independent and accountable judiciary. Victim's position is now elevated-victims of crime and victims of environmental pollution. System now accepts collaboration of relevant actors. A process of humanizing justice has started where paradigm shift in the offing. Adequate discretion has been given to the judges in individuation of crime and wrong. Restoration, reparation, restitution are principles accepted in other stream of law and justice- environmental law, contract, torts etc.

Currently RJ needs to fit within the premise of Right to Justice, how to tame power, Element of coercion, distortion, politicization and hijacking??? Equality v status quo ante, internalizing values of RJ in other areas of justice- community mediation, Collaboration and Money matters, who is to pay? These are the main challenges of RJ in the contemporary era.

Role of judge in this perspective is to Understand in perspective the values propagated by RJ movement. Identify areas of convergence on the basis of constitutional mandate, the rights enumerated in the constitution.

Hence, RJ is not a single narrative. There are perspectives both in theory and practice. It is an approach/response to crime that has an eye on outcome. There are attempt to humanize justice which is most laudable effort that synchronizes with overall objective of legal reform.

4.4.2 Identifying Opportunities and Challenges in Mainstreaming Restorative Justice Approaches in Formal and Alternative Justice Process

Ms. Preeti Thapa, Senior Program Officer, TAF-Nepal

The question first that needs to be answered is what is a conflict and what are the nature of conflict in order to understand more about Restorative Justice in Alternative Justice Mechanisms. Conflict is the natural existence of differences. Conflict is inevitable in human relationships. Conflict affects our relationships



when differences result in disagreement or erosion of relationships between two or more people.

One of the important elements of implementing RJ is through the alternative approach to dispute resolution. To increase access to justice and establish a culture of conflict resolution at the local level through enhanced community mediation services in Nepal. To enhanced the relationship between and among the state and the society in the program locations.

One of the important approaches is facilitated mediation which is known as a hybrid approach. The mediators do not make decisions; the parties involved can constructively explore ways of resolving a dispute. The process focuses on the ability of mediation to satisfy disputants' needs and interests. Mediators play an active and evaluative role to balance the power between and among the parties. Work on empowerment and recognition to transform historic tension into cordial relationship uses restorative justice principles.

There are 8 main principles of Restorative Justice and they are:

- 1) Dialogue
- 2) Respect

- 3) Dignity
- 4) Responsibility
- 5) Participation
- 6) Balance
- 7) Voluntariness
- 8) Solidarity

Land, monetary transaction, defamation, physical assault, family disputes, between husband wife – separation, divorce, alimony, polygamy, with family members – property, dowry, interpersonal, use of alcohol and drugs, and multi-stakeholder disputes are known as criminal cases which are against the state. Such cases cannot be mediated.

Restorative Justice Practice/ techniques are as follows:

- 1) Victim Offender Mediation
- 2) Victim Offender Conferences
- 3) Victim Offender Reconciliation
- 4) Prisoner Rights and alternative to Prisons
- 5) Family Group Conferences
- 6) Restorative Circle Process (Healing Circles/Sentencing Circles)
- 7) Community mediation
- 8) Shuttle mediation

Restorative Justice principles applied in community mediation provides safe space for the parties to talk about how to make things as right as possible between themselves. It provides opportunity to acknowledge that a dispute exists and are able to share how they experienced the dispute with each other. Addresses the harms and needs created by and related to wrongdoing. Restorative justice seeks to repair the harm seeking various options and reintegrate as much as possible and builds a healthy relationships and communities in a cost-effective manner.

Mediation deals cooperatively and constructively with disputes, preferably at the earliest possible time. It holds the wrongdoer accountable to recognize and repair the harm as much as possible. It empowers less powerful parties to take central roles in recognizing and repairing the harm and creating a healthy community.

RJ principles are applied to GBV cases in community mediation through careful screening of the cases. There are structured processes such as first understanding each party's experience, second repair the impact of the past behavior and lastly develop a plan for the future. Victim safety, victim's voice and need, and victim's

empowerment is equally important while applying RJ principles. A space is created where the perpetrator's obligation towards the harm done and victim is emphasized.

Restorative Justice Process applied to dialogue forums circles provide a space for encounter between the victim, offender, and community in the decision making process. Community participants may range from justice system personnel to anyone in the community concerned about the crime address harms, needs, and causes.

The process to enlarge the circle of participants is value driven: *respect, honesty, listening, truth, sharing, and others*

- to bring healing and understanding
- to reinforcing the goal of healing is the empowerment of the community
- to address underlying problems that may have led to future violence/crime

Chair's Opinion Synopsis

The Chairperson Hon. Keshari Raj Pandit stated that breaking the revenge cycle is an important aspect which had been highlighted and also needs to be focused more. RJ and mediation is linked in such a manner that it helps in the implementation of RJ in the community.

Session-Five

4.5 Using Existing Regional Legal for a Such as Judicial Academies and SAARC LAW to Promote Restorative Justice in the Region

The Session Proceedings

The fifth session was chaired by Hon. Kalyan Shrestha, former Chief Justice, Nepal. The session synthesized the information and learnings from the previous sessions and explored how existing national and regional legal networks and institutions such as judicial training academies and SAARC LAW can be utilized to promote RJ. In this secession Hon'ble Ananya Bandhyopadhyay, Director, West Bengal Judicial Academy, Kolkata had made presentation.

4. 5.1. Using Existing Regional Legal for a such as Judicial Academies ad SAARC LAW to Promote Restorative Justice in the Region

Hon'ble Ananya Bandhyopadhyay, Director, West Bengal Judicial Academy, Kolkata

The word 'restorative' means to restore, which means to bring back to an original condition. On the other hand, justice is the quality of being just in an equal atmosphere. RJ is an emerging concept which is vital for human society. It is impossible to be silent to its imperative need for justice where a just response must address the harm. While addressing parties themselves sit and discuss the problem and solve them.



Punishments are a customary response to crime, it neither looks at the needs of the victim nor the perpetrator. On the other hand, restoration looks at the reestablishment of dignity and promotes social harmony, this opportune the victims get closure, and enable communities to understand the underlying reasons of crime.

Principles that need to be looked at while addressing the crime from RJ perspective are as follows:

- 1) To attain fully to victim's needs (material, emotional and all)
- 2) To enable the offender to reintegrate into society
- 3) Rehabilitation of victim and offender
- 4) To avoid repetition of the same crime

Working and functioning of TRC needs to be observed more and how RJS has been taken into account parallel to the existing CJS. Until such evaluations are not done practicability of RJS in the society is unknown because we do not know the consequence of the TJ.

From the perspective of India, Juvenile Justice (Care and Protection) Act 2015 of India children in conflict with law is also the children who are in need of care. They are presumed innocent until proven guilty.

Principle of dignity is acknowledged until proven guilty. Adversarial or accusatory words not to be used in case of child, right to confidentiality and privacy, detention as a last resort, principle of repatriation and reintegration with the family and community are some of the examples of presence of essence of RJ in the justice system of India. Hence, India is trying its level best to build its justice system from the perspective of RJ but is unable to reach its goal like Nepal and Bhutan.

Chair's Opinion Synopsis

The Chair of this session stated that for the effective implementation of RJ there should be effective coordination and cooperation between and among the judicial academies within the SAARC region. They should share best practices and experience with each other by organizing different program for the authorities and stakeholders involving in the RJ.

5

CLOSING SESSION

The closing session was chaired by Hon. Keshari Raj Pandit, Executive Director, National Judicial Academy. Closing remarks had been delivered by Hon. Keshari Raj Pandit, Executive Director, National Judicial Academy. In his speech he stated that RJ is a newly emerging subject. As RJ is very important subject, which is



guaranteed by the present Constitution as a fundamental right. It was regarded necessary to know the application of the RJ principles in the neighboring countries for the successful application of the RJ principles in Nepal. So, this Conference was organized to

fulfill the objective. In this Conference experiences of neighboring countries like Bhutan and India in RJ had been exchanged and it would be so useful to Nepal for applying RJ principles in the practical reality.



He also stated that the Judicial Academies of the neighboring countries can work together to

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enhance RJ and other related matters. He expressed his sincere thanks to the Chief Guest, panelists, resources persons, participants, for their active participation and positive cooperation to complete this Conference successfully. Lastly, he stated that NJA has a plan to establish restorative justice resource center in NJA in the near future and expected for constructive cooperation from the stakeholders.

In the closing session Advocate Ms. Anju Upreti Dhakal, the Secretary of SAARC LAW Nepal expressed her sincere thanks to Chief Guest, panelists, resources persons, participants, for their active participation and positive cooperation to complete this Conference successfully. She also expressed gratitude to the Asia Foundation, NJA for hosting this Conference.

6

CONCLUDING REMARKS

The traditional criminal justice system, which has been often criticized as too formal, punitive and adversarial. Within the framework of retributive justice, crime is understood as an offence against the State and is defined as a violation of law. It represents the punitive approach of reaction to crime, where the offenders are considered as an unwanted group who should be punished. However, with the development of criminology, offenders are identified as the persons needing rehabilitation and reintegration into the society as law abiding citizens. This novel thinking has paved the way to the establishment of the concept of restorative justice where crime is



understood to be an infringement on man and human relationship. It involves reintegration of both the offender and victim within the community. The RJ principle could be found in community service orders, probation, parole, and other noncustodial measures as alternatives to the traditional incarceration, victim offender mediation, sentencing, peacemaking and healing circles, police cautions, and active participation of victims in the criminal justice process, and so on. RJ reflects a crimino-victim balanced justice system where equal justice to offenders and victims is ensured. The main features of RJ are to repair, restore, reconcile, and reintegrate the offenders and victims to each other and to their shared environments and communities. It aims to help victims to recover from the impact of the crime; to enable those who offend understand the implications of his or her actions; and to provide an opportunity to make amends.

RJ brings those who offend and victims into contact with each other. RJ conferencing can have positive benefits for all involved. The process acknowledges the impacts and consequences of crime on victims and the community. RJ approach provides an

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opportunity for everybody involved to be heard and understood. It also allows those most affected by an offence to be a part of the process of deciding. It provides an opportunity for the victim to tell their story directly to the person who caused them harm; to ask for answers to the questions they may have about the crime; to contribute to a result that is meaningful to them for how the child should start making up for the harm; and to be involved in the justice process.



In RJ victims can be empowered through regaining their confidence, optimism and sense of safety. The victim's recovery from an offence is also assisted by being able to have support people, including family and friends, participate with them. Benefits for victims can involve the payment of restitution as well as

psychological benefits. The psychological benefits, such as less anger or fear, are particularly important for victims of violent crimes. The victim-focused RJ will have significant benefits to victims, and it will also support the availability of RJ to offenders because of its potential in reducing recidivism. There are thus two separate claims: that restorative justice provides benefits for victims and that there are also benefits to offenders in discouraging reoffending. RJ also provides health benefits to victims. RJ also helps to alleviate post-traumatic stress symptoms for victims. It can have therapeutic benefits for the family members of homicide victims. RJ can provide value for money by both reducing reoffending rates and providing tangible benefits to victims.

RJ approach will enhance victim satisfaction in a process that was, by its very nature, rather unsatisfactory. Moreover, this response to criminal behavior has a strong impact by encouraging more offenders to take responsibility for their actions and repair some of the harm they have caused through restitution. RJ will reduce recidivism for those who choose to participate. The proliferation of RJ approach worldwide is, therefore, not surprising. Both the theory and empirical research tend to offer support for such a response to criminal behavior.

RJ is the process that brings those harmed by crime, and those responsible for the harm, into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward. The fundamental element of RJ is

a dialogue between the victim and offender. RJ can provide victims an opportunity to be heard, have input in the resolution of an offence and achieve closure. It provides offenders the chance to face the consequences of their offending and in some cases make amends. RJ can take place at any part of the criminal justice system, from being part of an out of court disposal, through to taking place while an offender is serving a custodial sentence.

In this conference experiences of RJ have been shared from Nepal, India, Bhutan etc., which is the significant outcome of the conference. Such experiences may lead the pave for the SAARC region countries to advancing RJ approach to their criminal justice system. It is more beneficial for Nepal to learn more on RJ because Nepal is realizing RJ principle more extensively through the National Codes in the very near future. We conclude that RJ, particularly victim-offender conferencing, has the potential to offer clear and measurable benefits to the criminal justice system and to wider society.

Suggestions

From the discussion as above the following suggestions should be given for the betterment of RJ in the SAARC region.

- (1) These are the fundamental questions that the restorative justice system would like to find an answer to which is not at all easy.
 - Why did the offence occur?
 - What situation led in the occurrence of this crime?
 - Who has been hurt?
 - What do they need?
 - Who is responsible?
 - Who has the stake in these situations?
 - What is the process of involving the stakeholders in finding the situation?
- (2) There are many pitfalls in the criminal justice system when it is observed from the perspective of RJ System. These pitfalls are the signs of an urge to modernize the criminal justice system. For this a lot of creativity is required and there is no particular formula. Everyone needs to be on board to look from the perspective of RJ. No alone person can do it. It is a very long journey. Need to be preparing to face the challenges.
- (3) While the laws are good and provisions are exemplary, much needs to be done. Judges and prosecutors have to be more proactive, trained with specialized knowledge. It shouldn't just be plain reading of the law. We are at the very initial state of adopting the value of the RJ system therefore specially judges and the legal

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officers need to train themselves and build their skill towards adopting RJ. It is important to be a proactive judge.

- (4) For the effective RJ there needs to be political will and commitment. There needs to be reciprocity from the State to provide the amenities and funding to create conducive environment and possibility for the dialogue between the criminal act and the offender for RJ.
- (5) There is no guideline is provided as to what is RJ and how to implement the principles of RJ into the community and legal system. So such guideline has to be furnished for the effective practice of RJ in the SAARC Region.
- (6) The areas where restorative justice can be applied in Nepal are small instances of theft, pick pocketing, crimes against the society, offences relating to consumption of drugs, public offences, offences relating to libel, offences relating to conflict, disputes relating to canal and boundaries, disputes relating to distribution of natural resources etc. The other countries of the region shall indentify the specific area for the application of RJ
- (7) Creative mind is inevitable for the effective implementation of RJ. If a person has a creative mind, then applying of RJ is easier. From the pre-trial to the post trial stage it is important to apply RJ with a creative mind. If sentencing is to be modified and used in a manner of improving the situation of offender and the victim the tools and principles of RJ need to be looked at in a depth manner.
- (8) Nepal has a fully grown Sentencing Act which is an example for south Asia. Our system needs to work hard and create an infrastructure and be hopeful, more industrious, keep talking with one another and talk about criminal justice system which would be best understood by implementing RJ system.
- (9) One of the biggest problems in RJ is that the victim cannot and is not a party of the case during the decision making of the offence done which is a huge draw back in relation with RJ. Sometimes sentencing policies is also problematic when it comes to RJ. There should not be any blind approach when it comes to application of RJ in gender related issues.
- (10) RJ in gender based crime or sexual offences can only occur in a system which does not rely on retribution as a default. That for anything that happens, any social change that needs to be brought in and any ill that needs to contain then the first response is to hike the punishment, and make more people punishable. In the present scenario RJ really cannot be applied to most of the other SAARC countries. So conducive environment for the RJ shall be developed.
- (11) The task so far performed by TRC has been fairly satisfactory. No cases of threat or intimidation have been reported by the victims filing complaint with TRC. The victims are inquisitive of the progress made on complaints filed with TRC. The number of complaints filed is a testimony to the victims' confidence on TRC.

Members of TRC are in close contact with the victims as cell phone numbers are public. So the principles RJ shall be applied effectively as far as possible. From the perspective of addressing RJ principles in peace and conflict situation, the questions are raised as to how RJ principles are to be implemented in commissions present in Nepal; such questions are yet to be answered. So such questions should be effectively answered.

- (12) Role of judge in this perspective is to understand in perspective the values propagated by RJ movement. Identify areas of convergence on the basis of constitutional mandate, the rights enumerated in the constitution. Hence, RJ is not a single narrative. There are perspectives both in theory and practice. It is an approach/response to crime that has an eye on outcome. There are attempt to humanize justice which is most laudable effort that synchronizes with overall objective of legal reform.
- (13) For RJ alternative dispute resolution methods are appropriate. RJ and mediation shall be linked in such a manner that helps in effectively implementation of RJ in the community.
- (14) The Laws relating to criminal justice system of SAARC countries shall be reconciled and harmonized by inserting good provisions and best practice within the region as well as the World at large.
- (15) For the effective implementation of RJ there should be effective coordination and cooperation between and among the judicial academies within the SAARC region. They should share best practices and experience with each other by organizing different program for the authorities and stakeholders involving in the RJ.
- (16) RJ is not possible without positive support and active participation of the Bar Association (association of lawyers). So lawyers have to be aware about RJ.
- (17) For effectiveness of RJ the positive cooperation of government is inevitable. Government of the SAARC region should be aware about the benefits of RJ and supportive towards RJ. Likewise adequate budget should be provided by the government for execution of RJ.
- (18) RJ should focus in the local level. RJ is not possible without support of the local level individuals and communities. Restorative justice service providers should offer restorative justice awareness training to the police and other local agencies that will come into contact with victims of crime on an ongoing basis (to take account of the turnover of staff). The sessions should highlight the benefits of restorative justice to the organization receiving the training.

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- (19) Wherever possible, restorative justice services should remove access restrictions based on whether a case is initiated by the victim or offender (or the agencies working with them) to maximize the number of eligible cases to work with.
- (20) There must be continuity in restorative justice provision through the justice system (especially in pre- and post-sentence provision) so that a victim can develop a relationship with a service while they consider and prepare for restorative justice. Where there are multiple providers, clear protocols must be put in place to ensure continuity in provision for service users.
- (21) While there would be benefits to higher levels of public awareness, practitioners should not place too great an emphasis on the need for public awareness in order to increase take-up.
- (22) Restorative justice service providers should work with the police to encourage them to put systems in place to ensure that they provide information about restorative justice and how to access it to all victims. This information for victims should be provided by the restorative justice service provider.
- (23) A decision on whether restorative justice is appropriate for a particular victim or offender should be made by a trained restorative justice facilitator following consultation with criminal justice professionals with full knowledge of the case.
- (24) Restorative justice facilitation training should have a greater focus on victim engagement and the skills required explaining the process to victims.
- (25) Restorative justice service providers should identify potential mentors from the victims who they work with and invite them to consider supporting others to take part in restorative justice.
- (26) Where restorative justice as part of an out of court disposal is delivered by an external provider on behalf of the police, clear guidance on which cases are suitable for referral should be provided to the police.
- (27) Restorative justice service providers should work with court staff to develop processes that enable timely access to information about cases.
- (28) When offering pre-sentence restorative justice, facilitators should ensure that victims are provided with clear, accurate information on the impact that participation will have on sentencing.
- (29) Restorative justice service providers should conduct awareness-raising training with prison staff to ensure they understand the process that prisoners are taking part in. Restorative justice service providers should provide prisons with information to distribute about restorative justice to every prisoner on induction and at the end of victim awareness programs.
- (30) When a victim wants to take part in restorative justice while their offender is in custody, the restorative justice service provider should ensure that the victim is

familiarized with the prison environment, including a preparatory visit to the prison where possible.

- (31) Some principles of RJ have been adopted by the Criminal Offence (Sentencing and Execution) Act, 2017 in Nepal. However they are not enough for effectiveness of RJ. There is lack of mechanism for implementation of RJ in Nepal. So, appropriate mechanism should be made for the effective implementation of RJ in Nepal.

Annex 1

WORK SCHEDULE

Overview of the conference:

The conference aims to brainstorm ideas surrounding the notions of RJ, and its particular relevance within the formal and alternative justice delivery system in South Asia. In doing so, the conference will reflect upon different initiatives that are gaining traction to foster the understanding and application of Restorative justice (RJ) principles, in both the formal and alternative justice delivery structures in Nepal and across South Asia. The conference will further explore the opportunities and challenges of applying RJ within the existing legal system to specific transgression relating to GBV; and explore if RJ can be applied as a normative justice delivery tool to the broader area of peace and conflict. The conference aims to unpack the conceptual framework and the principles of RJ, with the aim of influencing jurisprudence, from being applied solely through a retributive lens.

The conference will commence with an inaugural session led by Honorable Deepak Raj Joshee, then the Acting Chief Justice of Nepal. This will be followed by five working sessions. The first session will provide a brief overview on the conceptual context of RJ and expand on the principles of RJ, followed by reflections on how legal structures in countries within South Asia are positioned in relation to the understanding and application of RJ in the formal and alternative justice delivery systems. The conference will have three thematic sessions namely: RJ and gender-based violence (GBV), RJ and peace and conflict, and identifying opportunities and challenges for mainstreaming RJ in the formal and alternative justice delivery process. The way-forward session will synthesize the information and learnings from the previous sessions and explore how existing national and regional legal networks and institutions such as judicial training academies and SAARC LAW can be utilized to promote RJ. The working session will have a panelist or discussant, where each speaker shall be given 20-25 minutes for their presentation which can be through speaking notes or power point. The floor will be opened for Q&A and discussion for thirty minutes after each session.

The role and responsibilities of the chair shall include, but not be limited to:

The chair will begin by introducing the panelists followed with an overview of the respective session. She/he will initiate the discussion by providing opening comments reflecting on how that topic can contribute to the discussion on RJ. The chair can also lay out some guiding propositions which would contribute towards enhancing the understanding of RJ on the issue at hand. After the presentation, the chair will sum up the discussion by identifying key issues that emerged from that session and then open the

session to the floor for question and answers/clarifications and additional comments.			
Day 1: September 19, 2017			
<u>Inaugural Session</u>			
Time	Activity	Speaker/presenter	Session Chair
9:00-9:30	Registration/Tea-coffee		
9:30-9:40	Welcome, objective, and overview of the conference	Hon. Binod Prasad Sharma, Senior Academic Director, NJA/Judge, High Court, Nepal	Hon. Keshari Raj Pandit, Executive Director, NJA
9:40-9:45	Inauguration of the conference/lighting the lamp	Rt. Hon. Deepak Raj Joshee, Acting Chief Justice of Nepal	
9:45-9:50	Remarks	Dr. George Varughese, Country Representative, The Asia Foundation	
9:50-10:00	Remarks	Hon. Sapana Pradhan Malla, President SAARC LAW, Nepal	
10:00-10:20	Inaugural remarks	Rt. Hon. Deepak Raj Joshee, Acting Chief Justice of Nepal	
10:20-10:30	Remarks from Chair	Hon. Keshari Raj Pandit, Executive Director, NJA	
10:30-11:30	Hi-Tea		
<u>Working Session</u>			

Session 1: Context setting and South Asian perspectives on the understanding and application of RJ

The session will begin with a brief overview on the conceptual framework of RJ, expand on the normative principles that define RJ and reflect upon the ways in which it is being applied in different contexts. Following the context-setting, the other panelists will reflect on how legal structures in countries within South Asia are positioned in relation to the understanding and application of RJ in the formal and alternative justice delivery systems. This will be followed by a facilitated discussion and Q&A amongst the participants.

Objectives:

- Overview of the concept of RJ and its application
- Understanding the scope for applying RJ in the existing legal structures from South Asian perspectives
- Cross-sharing RJ perspectives in South Asia

Time	Session	Panelist	Chair
11:30-12:10	Setting the context for RJ and its application in South Asia	Nandita Baruah, Deputy Country Representative, TAF-Nepal	Hon. Kalyan Shrestha, Former Chief Justice, Nepal
12:10-13:10	South Asian perspectives on the understanding and application of RJ	Hon. Pelden Wangmo, Paro District Court, Bhutan Dr. Geeta Shekhon, Global expert of legal aspects of TIP and Human smuggling, India Mr. Bimal Poudel, Registrar, High Court Patan	
13:10- 13:40	Discussion / Q&A		

13:40-14:40	Lunch		
<p><u>Session 2: Application of RJ principles in GBV Cases/Issues</u></p> <p>The session aims to examine how RJ principles can become a more effective legal tool to address GBV issues/cases. The panelists will explore how well RJ principles have been applied in GBV issues/cases within both the formal and alternative legal systems. Panelists shall reflect upon the opportunities that exist, and major challenges that one needs to be aware of. The session will also inform on specific skills and capacities that are required within a legal system to uphold principles of RJ with regard to GBV issues/cases.</p>			
<p>Objectives:</p> <ul style="list-style-type: none"> • Exploring the utility of RJ principles in GBV issues/cases • Assessing opportunities and challenges to apply RJ principles in GBV issues/cases within the existing legal structures 			
14:40- 15:40	Application of RJ principles in GBV Cases/Issues	<p>Senior Advocate Ms. Geeta Pathak Sangroula, Professor of Law, Kathmandu School of Law, Nepal</p> <p>Mr. Kunal Ambasta, Professor of Law, National Law School of India University, Bangalore</p>	Hon. Sapana Pradhan Malla, President, SAARC LAW, Nepal
15:40- 16:10	Discussion / Q&A		
16:10-16:40	Tea break		
16:40-17:00	Summary of Day 1		NJA/SAARC LAW Nepal

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18:30 pm onwards	Dinner		
Day 2: September 20, 2017			
<u>Session 3: Role of RJ principles in addressing peace and conflict</u>			
<p>This session will examine the efficacy of RJ as a tool to redress conflict related rights' violation within the South Asia context. It will look at how RJ can contribute to peace building in a post conflict situation. The panelists shall provide insights into just and peaceful reparations where survivors, offenders, and the community have been or can be brought together in the healing process. This session shall also look at formal mechanisms such as truth and reconciliation commissions set-up in post-conflict countries and how RJ can be integrated into such mechanisms.</p>			
Objectives:			
<ul style="list-style-type: none">• Understanding the role of RJ in addressing peace and conflict• Examining approaches in resolving conflict and reconciling parties through RJ			
8:00 -9:00	Breakfast and registration		
9:00- 10:00	Role of RJ principles in addressing peace and conflict	Hari Phuyal, Former Attorney General of Nepal Hon. Surya Kiran Gurung, Chairperson, Truth and Reconciliation Commission, Nepal	Hon. Kalyan Shrestha, Former Chief Justice, Nepal
10:00-10:30	Discussion / Q&A		
<u>Session 4: Identifying opportunities and challenges in mainstreaming RJ approaches in formal and alternative justice process</u>			

This plenary session will have one lead discussant and a chair to moderate the discourse which will explore the opportunities in applying and promoting RJ principles in the formal and alternate justice processes such as community mediation, regional dialogues, *jirgas*, council of elderly to name a few. After the lead discussant's presentation, the floor will be open for speakers wishing to contribute. This session shall also reflect on the challenges in informing the state structure/system to be responsive in applying this principle, and whether principles applied in the formal justice delivery process can be translated into the alternative process or not.

Objectives:

- Identifying structural gaps/ challenges in applying RJ in formal and alternative justice delivery process
- Examining the possibility of RJ in alternative justice delivery mechanism in South Asia

10:30-11:30	Identifying opportunities and challenges in mainstreaming RJ approaches in formal and alternative justice process	Hon. Dr. Anand Mohan Bhattarai, Supreme Court, Nepal Preeti Thapa, Senior Program Officer, TAF- Nepal	Hon. Keshari Raj Pandit, Executive Director, NJA
11:30 -12:00	Discussion / Q&A		

Session 5: The way-forward session

This session will synthesize the information and learnings from the previous sessions and explore how existing national and regional legal networks and institutions such as judicial training academies and SAARC LAW can be utilized to promote RJ.

12:00-12:30	Using existing regional legal fora such as judicial academies and SAARC LAW to promote RJ in the region	Hon. Ananya Bandhyopadhyay, Director, West Bengal Judicial Academy, Kolkata	Hon. Kalyan Shrestha, Former Chief Justice, Nepal
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12:30-12:40	Closing remarks		Hon. Keshari Raj Pandit, Executive Director, NJA
12:40-12:50	Vote of thanks		Advocate Anju Upreti Dhakal, Secretary, SAARC LAW Nepal
12:50 onwards	Lunch		

Annex: 2

List of Participants

S.No.	Name	Designation	Office
1	Hon. Udaya Prakash Chapagain	Chief Judge	High Court Janakpur
2	Hon. Sushma Lata Mathema	Judge	High Court, Patan
3	Hon. Ram Prasad Adhikari	Judge	High Court, Patan
4	Hon. Bishnu Prasad Gautam	District Judge	Kaski District Court
5	Hon. Iswor Parajuli	District Judge	Bara District Court
6	Hon. Dr. Ramesh Rijal	District Judge	Kathmandu District Court
7	Hon. Dal Bahadur K.C.	District Judge	Banke District Court
8	Mr. Man Bahadur Karki	Registrar	High Court Janakpur
9	Mr. Bhadrakali Pokharel	Joint Registrar	Supreme Court
10	Mr. Achyut Kuikel	Joint Registrar	Supreme Court
11	Mr. Hari Raj Karki	Director General	Judgment Execution Directorate
12	Ms. Shobha Basnet	Member	Mediation Council of Nepal
13	Mr. Yagya Prasad Adhikari	Deputy Director	NHRC, Nepal
14	Mr. Ram Prasad Shrestha	SSP	Police Headquarter
15	Mr. Binod Sharma Ghimire	SSP	National Police Academy
16	Mr. GobindaThapaliya	SP	Police Headquarter
17	Mr. Bijul BK.Dulal	Member	Commission of Investigation on Enforced Disappeared Persons (CIEDP)
18	Mr. Murari Prasad Poudel	Joint Govt. Attorney	Special Govt. Attorney Office
19	Mr. Dilip Maden	Advocate	Supreme Court Bar Association
20	Mr. Mohan Bikram Thapa	Victim	Local Peace Citizen
21	Ms. Kripa Shrestha	Lawyer	Pioneer Law Association
22	Mr. Prajil Rijal	Student	Kathmandu School of Law

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23	Dr. Narendra Man Shrestha	Visiting Professor	Chakribarti Habi Education Academy
24	Mr. Matrika Niraula	Sr. Advocate	Mediation Council of Nepal
25	Ms. Shruti Kumari Regmi	Advocate	Supreme Court Bar Association
26	Mr. Nani Babu Dahal	Advocate	Supreme Court Bar Association
27	Mr. Kriti Nath Sharma	Representative	Supreme Court Bar Association

Invitees

SN	Name	Designation	Office
NJA Team			
28	Hon. Keshari Raj Pandit	Executive Director	NJA
29	Hon. Binod Prasad Sharma	Senior Academic Director	NJA
30	Mr. Gajendra Bahadur Singh	Registrar	NJA
31	Mr. Shreekrishna Mulmi	Deputy Director	NJA
32	Mr. Paras Paudel	Deputy Director	NJA
33	Mr. Kedar Ghimire	Deputy Director	NJA
34	Mr. Rajan Kumar KC	Program Manager	NJA
35	Mr. Arjun Paudel	Officer	NJA
36	Ms. Smriti Bhatta	Research Assistant	NJA
37	Ms. Sanjita Karki	Administration Assistant	NJA
SAARC LAW, Nepal Team			
38	Hon. Sapana Pradhan Malla	President	SAARC LAW, Nepal
39	Ms. Anju Upreti Dahal	Treasurer	SAARC LAW, Nepal
40	Ms. Kamala Chhetri Upreti	Treasurer SAARC LAW, Nepal/ Advocate	High Court Bar Association
41	Mr. Baburam Dahal	Member	SAARC LAW, Nepal
42	Mr. Om Aryal	Lawyer	SAARC LAW, Nepal

43	Mr. Ishwori Bhattari	Executive Member	SAARC LAW, Nepal
44	Mr. Bal Krishna Dhakal	Executive Member	SAARC LAW, Nepal
TAF Team			
45	Dr. George Varugheese	Country Representative	The Asia Foundation
46	Ms. Nandita Baruah	Deputy Country Representative	The Asia Foundation
47	Ms. Preeti Thapa	Senior Programme Officer	The Asia Foundation
48	Ms. Reena Pathak	Programme Manager- CTIP	The Asia Foundation
49	Ms. Nischala Arjal	Programme Officer	The Asia Foundation
50	Mr. Namit Wagley	Programme Officer	The Asia Foundation
51	Ms. Sirjana Nepal	Programme Officer	The Asia Foundation
52	Ms. Grishma Bista	Intern	The Asia Foundation
Experts & Resource Persons			
53	Rt. Hon. Deepak Raj Joshee	Acting Chief Justice of Nepal	Nepal
54	Mr. Kalyan Shrestha	Former Chief Justice of Nepal	Supreme Court Nepal
55	Hon. Dr. Anand Mohan Bhattarai	Justice	Supreme Court Nepal
56	Ms. Sapana Pradhan Malla	Justice	Supreme Court Nepal
57	Mr. Hari Phuyal	Former Attorney General of Nepal	Nepal
58	Hon. Surya Kiran Gurung	Chairperson	Truth and Reconciliation Commission, Nepal
59	Hon. Pelden Wangmo	Judge	Paro District Court, Bhutan
60	Dr. Geeta Shekhon	Global Expert of legal aspect of TIPs and Human Smuggling	India
61	Mr. Bimal Poudel	Registrar	High Court, Patan
62	Ms. Geeta Pathak Sangroula	Professor of Law, Senior Advocate	Kathmandu School of Law, Nepal

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63	Mr. Kunal Ambasta	Professor of Law	National Law School of India University, Bangalore
64	Ms. Preeti Thapa	Senior Program Officer	TAF- Nepal
65	Hon. Ananya Bandhyopadhyay	Director	West Bengal Judicial Academy, Kolkata, India

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