

CITIZENS IN SEARCH OF JUSTICE

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| SUMMARY

In a democratic governance system, it is the responsibility of the state to listen to the voice of the people and deliver justice and punishment. However, there are many examples of citizens being forced to draw the attention of the state by holding resistance programs such as protests, sit-ins, and hunger strikes because the state machinery has ignored or manipulated the investigation of individual cases and the delivery of justice. The case of the death of Aarti Sah of Janakpur, the case of amnesty for the murder of Chetan Manandhar alias Yograj Dhakal and the death of Nakunni Dhobi and the kidnapping and disappearance of Nirmala Kurmi of Nepalganj are the issues of this category. The victims brought attention to these cases by holding demonstrations in Maitighar Mandala after which there were signs that the government took steps to address these cases. However, not all victims have the ability and patience to organize such demonstrations. The government should implement mechanisms such that all citizens can get justice without following such practices. However, the government has introduced prohibitory orders which declare that protests have been outlawed in various places. It is not good for a democratic government to take such steps.

| BACKGROUND

The District court, High court and Supreme court are active in Nepal for the purpose of justice deliverance. The District Administration Office can also dispense justice in

certain specific cases. In addition, the local level judicial committees have authority to act in case of non-criminal offences. The police and administration are responsible for supporting the judicial bodies by monitoring whether the laws are being followed or disregarded. In instances where the Government of Nepal is the defendant, the police investigates the case and proceeds forward with by registering the case at the District court. In case of personal grievances, one can directly file a case at the courts.

When a person feels that they have been victims of injustice, they go to their local government, police, or court. If these bodies cannot perform their responsibilities and guarantee the feeling of justice, then the individuals will lose trust with the government. Few recent cases in Nepal have indicated that there has been a difficulty in achieving justice. These instances of injustice have occurred due to governmental bodies not performing their duties as required. There have been examples of the victim's side having to perform an arduous battle to raise their voices for justice in front of us. This Political Situation Update has tried to account for these victim's struggles and what such struggles signify. Maitighar which has become a synonym for the victim's to demonstrate has recently been declared as a protest free zone. This Political Situation Update does not contain information regarding demonstrations that have been done for professional rights, collective interests, or broader political demands. It is concerned with the individuals or their families who

have faced injustice and have raised their voices against it, and the direct result of such demonstrations, and what it signifies in the broader context of lack of trust between the government and citizens. During this study, interviews were conducted with human rights activists and representatives from civil society. In addition, a comprehensive review of news from newspapers and online portals was also done.

LATEST SERIES OF INCIDENTS

INCIDENT 1

Arati Sah, a 22-year-old from Thapa Chowk, Janakpur lost her life on May 21, 2023. Her family has been claiming that her death was murder and it happened due to lack of dowry whereas her husband's family has been claiming it as suicide. Arati's family say that despite giving 2.5 million rupees as dowry for her marriage, Arati used to receive physical and mental abuse from her husband's family for bringing insufficient dowry. As there were wounds in Arati's neck and cheeks and other parts of the body, her family tried to register a charge of homicide against four people including her husband and her father-in-law.¹

Arati's sister Manisha Sah says, "When we tried to file a FIR, the District Police Office in Dhanusha refused to do it. Even when we tried to report through post office, it was not accepted. Only when we put the dead body outside of the police office and started our demonstration, the police said that they would register a case against two people. We conducted the last rites only after the police declared their intent to register the case and start their investigation."²

When the police were taking down statements from Arati's family, it was found that there were discrepancies in between the verbal and written statements. Arati's family maintains that they demonstrated after they became aware of this fact and that her relatives were subject to beatings and torture from the police. They also allege that the police have been trying to weaken

the case.³ As they suffered further from police instead of receiving justice, they travelled to Kathmandu in hopes of getting justice. On June 16, 2023 they came to Maitighar Mandala and started their sit-in.

During this, the District Attorney Office of Dhanusha registered a case against Arati's husband and father-in-law. After holding a bail hearing, the court ordered Arati's husband and father-in-law to be remanded into judicial custody. However, in October 6, 2023, the Janakpur High court annulled the district court's verdict and ordered them to be released.⁴ In December 6, 2023, the Supreme court ordered Arati's husband Motibabu Sah to be arrested, after which the police arrested him. The bail amount for Arati's father-in-law has been set as one lakh rupees.⁵

INCIDENT 2

Chetan Manadhar had died on July 13, 2015 after he had been injured due to attack by weapons. After investigation it was found that Rigal aka Yograj Dhakal had been involved in dealing the blows. While eleven other people involved in the attack had been arrested, Rigal had still been on the run. However, he turned himself in on August 24, 2015. He was a member of Tarun Dal, sister organization of Nepali Congress and was also involved in criminal activities.⁶ Once he had been convicted, he had been sentenced to life imprisonment. However, on the occasion of 'Constitution Day' in 2023, he received a presidential pardon. At the time of release, he had only served eight years of his sentence.

Bharati Manandhar, Chetan Manandhar's wife had staged a hunger strike starting from October 4, 2023 to protest the government's decision to pardon her husband's murderer. She had also filed a petition in the Supreme Court demanding that the court annul the presidential pardon. She had continued her hunger strike in Maitighar until the Supreme court's decision.

On November 2, 2023, the Supreme court issued an order annulling the decision to grant a presidential pardon to Rigal and ordered his immediate arrest. The

¹ <https://www.ratopati.com/story/369023/arati-shah-case->

² <https://www.youtube.com/watch?v=T0f2D0gvbKc&t=4254s>

³ <https://www.setopati.com/social/305325>

⁴ <https://www.ratopati.com/story/388839/high-court-janakpur>

⁵ <https://nepalkhabar.com/society/185119-2023-12-6-20-16-53>

⁶ <https://www.ukeraa.com/news/detail/139135/>

police have arrested Rigal and he has been continuing his sentence.

INCIDENT 3

In October 2021, 14-member team including 11 women, arrived at Kathmandu from Nepalgunj after walking for 20 days. Nakuni Dhobi of Newaji village from Banke had been found dead at her own home and Nirmala Kurmi of Paraspur village from Banke had disappeared. The team alleged that police had not conducted sufficient investigation into the issue and thus they had undertaken the long march to Kathmandu demanding justice.⁷

Nakunni Dhobi, of Newaji village, Banke had been found dead at her own home on July 20, 2021. Her family has alleged that she had been abused for not bringing enough dowry and for not bearing any children and that she was murdered. She had gone to the National Women Rights Forum on June 21, 2021. She had been pursuing justice after she had been a victim of domestic violence. The forum had been helping her prepare a police complaint. However, in the midst of this, she was found hanging at her home. Her family and Women Rights Activist Ruby Khan have claimed that although they have tried to use her complaint registered at the National Women Rights Forum to further her case with the police and the District Administration Office, they have been denied justice.⁸ Another case was related to Paraspur village of Banke's Nirmala Kurmi. She has disappeared since 2018. Her family have stated that she has been killed to take over her property and that even after a complaint had been on December 1, 2020, the police had been neglectful in their investigation.⁹ Ruby Khan added that since the accused individual is in the leadership position at Nepali Congress, the police had not been interested in this case. After the prevalence of extreme impunity, family members from the two affected families and a few human rights activists formed a team and started a march on foot from Nepalgunj to Kathmandu on September 17, 2021.

After the team arrived in Kathmandu on October 6, they staged a hunger strike for a few days.¹⁰

The government had finally created an investigative committee after meeting with the protestors after which they concluded their strike and went back to Nepalgunj. The government had suggested the committee conduct an in-depth investigation and bring all the accused to face justice. In November 9, 2021 the police arrested a few of the accused who had been on the run, however the main accused former Constituent Assembly member Badshah Kurmi had not been arrested. Feeling that Badshah had been given protection by the police and the government, the women's team had travelled from Nepalgunj to Kathmandu again on November 25, 2021.¹¹ Their demand was the implementation of the report of the investigative committee and arrest of Badshah Kurmi.

These are a few representative cases. There are many more examples of cases where individuals have protested their demand for justice citing the lack of justice they have received from the government. Telbahadur Ghale from Barpak, Gorkha had staged a sit-in at Maitighar after his home had been demolished by the Nepal Army while constructing a road. Kailali's Birendra Jaisi had been injured by a bullet when he helped police personnel. Even though he had been promised financial help from the police, he had not received the promised amount, which had caused him to stage a sit-in at Maitighar. When people have felt that they have suffered a miscarriage of justice due to government apparatus' fault, they have travelled to Kathmandu from different parts of the country to vocalize their protests. Such a list of citizens who have travelled to receive justice is long.

KATHMANDU CENTRIC PROTEST AND ITS DIMENSIONS

Kathmandu's Maitighar has been a safe spot for victims who want to fight for justice. After institutions close to themselves failed to deliver the promised justice, these individuals

⁷ <https://www.bbc.com/nepali/news-59611432>

⁸ <https://nepalsamaya.com/detail/61082>

⁹ <https://www.setopati.com/politics/253357>

¹⁰ <https://www.bbc.com/nepali/news-59611432>

¹¹ <https://www.setopati.com/politics/258650>

travel to Kathmandu with great hope for achieving justice. According to the data from Kathmandu's district police office over a period of approximately four months from April 14 to August 7 2023, 183 various demonstrations, 248 sit-ins and 22 rallies were held at Maitighar.¹² The media in Kathmandu is centric and governmental and non-governmental organizations that work in the human rights field are in Kathmandu. Singha Durbar, often referred to as the country's power center, is also in Kathmandu. The incidents mentioned above also got increased coverage after the protestors came to Kathmandu. It was not a newsworthy issue for the Nepali media when Arati Sah's family were protesting at Janakpur or when human rights activists including Ruby Khan were protesting at Nepalgunj. However, only after travelling to Kathmandu, they got prominent space in the media and gained attention from human rights organizations which forced Singha Durbar to listen to these issues. Former Commissioner of National Human Rights Commission and lawyer Mohana Ansari says, "There has been a Kathmandu centric mentality for a long time, which has still not changed. To change this perception, the government should have been able to create trust that citizens' issues would be solved from local and provincial level, which has not happened. Political parties have also not been able to support this process. This is why victims have been travelling to Kathmandu in hopes of getting their voices heard."¹³

Further expounding on the reason why they travelled to Kathmandu Arati Sah's sister Manisha Sah says, "When any incident happens, police administration are the first one to ask for help. However, we suffered beatings and torture from police administration themselves. There was no one who spoke up on our behalf. Our issue should have been solved in Janakpur. After feeling that we would not get any justice there, we travelled to Kathmandu."¹⁴

After coming to Kathmandu, the media made news about Aarti's death and the protest by her relatives. Representatives of the National Commission for Women as well as representatives of other human rights organizations met the victims' families and raised their

voices in their favor. Aarti Sah's family's sit-in was discussed in the House of Representatives itself. The police officer who was said to be torturing the victims' family members and trying to make the investigation of the incident weak was removed from his responsibility. And Home Minister Narayan Kaji Shrestha called Aarti Sah's family members to the ministry and listened to them.¹⁵ In the case of two women, the government promised to investigate the two incidents and formed an investigation committee to the team of Ruby Khan who came to Kathmandu on foot from Nepalgunj and went on a fast.

Citizen activist Gobinda Chantyal says, "The victim has struggled a lot to get justice. They run to their family, village, society, nearby government, people's representatives and plead. They come to Maitighar only after it is not possible from there and everyone pay attention to them only after they come to Kathmandu. No one sees or listens to the days of struggle before that. That is why the victims were forced to come to Kathmandu."¹⁶ Another citizen activist, Sanjeev Upreti, also holds the same opinion. He says, "The public's trust in the justice system is decreasing. There is a case in the court, the police is investigating. Now the people have stopped believing that justice has been done. The victims do not believe that the court will listen to them. Being poor, they do not have access to the justice system and they come to the streets hoping that they will get justice if they go to the streets. Also, after coming to Maitighar, the victims' movement has increased in the hope that the media will also cover it."¹⁷ Only when the media raises the topic of the incident, other bodies become interested. It is because of this psychology that Bharati Manandhar not only filed a writ petition in the Supreme Court against the government's decision to grant amnesty to Rigal, who was involved in the murder of her husband Chetan Manandhar, but also went on a fast in Maitighar.

CAUSES AND EFFECTS OF CITIZENS' RESISTANCE

¹² <https://ekantipur.com/opinion/2023/08/13/169189075687379078.html>

¹³ Conversation with Ansari.

¹⁴ <https://www.youtube.com/watch?v=T0f2D0gvbKc&t=4254s>

¹⁵ <https://www.onlinekhabar.com/2023/11/1389750>

¹⁶ Conversation with Chhantyal.

¹⁷ Conversation with Upreti.

There should be no doubt that in a democratic system, state agencies provide fair justice to citizens. However, recent examples have raised doubts about the state's ability to do so. Even after the sit-in in Kathmandu, the voices of the victims of injustice have been heard, questioning the functioning of the state and the justice system. This trend may have created a sense among ordinary citizens that they will not receive justice unless they go to Kathmandu and demonstrate. It is not true that judicial bodies outside Kathmandu have completely ignored these incidents. Even in the above-mentioned incidents, the police administration might have its own opinion. Despite initial indifference, the state mechanism has taken action after the protests, sending a message that protests must be made in such incidents and specifically in Kathmandu. On the other hand, if people feel that the justice system is not meeting their expectations, there is a growing inclination to protest. Alongside these events, it appears that there is a belief in the civil society circle outside Kathmandu that resistance activities there will not achieve anything. The emergence of such commentary means that faith in justice is also diminishing among marginalized citizens who have limited social, economic, and political access.

In the case of Aarti Sah, the victim's family believed that they suffered injustice because they were poor. According to them, Aarti Sah's husband and father-in-law came from a wealthy family and had previous connections with the police administration. Rigal, the accused in Chetan Manandhar's case, was an active member of the Nepali Congress Party. It was reported that under pressure from Nepali Congress Chairman Sher Bahadur Deuba and Deputy Prime Minister Purna Bahadur Khadka, his release file was taken to the Cabinet.¹⁸

Similarly, Badshah Kurmi, the accused in the Nirmala Kurmi incident, is a Nepali Congress leader and former assembly member. After a group, including Ruby Khan, staged a sit-in at Maitighar in Kathmandu, claiming that the police had neglected the incident, the government formed an inquiry committee led by Joint Secretary Hiralal Regmi from the Home Ministry. In its report, the committee stated that Nirmala Kurmi was abducted and disappeared by Badshah Kurmi and others to take ownership of her property, but no action was taken

against him. Although his accomplices were arrested, the main accused, Badshah Kurmi, was not apprehended.¹⁹

These examples indicate that the Nepali justice system is influenced by political power and money. Most of the victims are poor, less educated, and vulnerable. They struggle to access the appropriate authorities for justice. Not all victims have the capacity and strength to go to Kathmandu and protest when faced with injustice. Aarti's family is still grieving and has been protesting in Kathmandu for seven consecutive months, and they have not only suffered a lot, but also they are paying a heavy price economically as well as socially for their actions.

Not everyone can fight like Ruby Khan's team, who walked from Nepalgunj to Kathmandu demanding justice for the two women. Those victims who cannot do the same are forced to remain silent without receiving justice. In a democratic system of governance, it is natural to criticize the government and engage in street struggles and protests. However, in the cases mentioned here, such protests should not be necessary.

GOVERNMENT'S ATTEMPT TO SHRINK THE CIVIC SPACE

The family of Aarti Sah, who arrived in Kathmandu seven months ago in search of justice, is constantly struggling. Initially, they protested at Maitighar, but the police have now relocated them to Shantiwatika in Ratna Park. On November 20 to December 16, 2023, the Kathmandu District Administration Office declared places like Maitighar as prohibited areas, targeting protests announced by the Rashtriya Yuva Sangh Nepal (the sister organization of Communist Party of Nepal – United Marxist-Leninist) and the campaign led by Durga Prasai. After this, Aarti's family and other victims who were protesting there moved to Shantiwatika overnight. They are reportedly being pressured to leave that location as well. When they felt pressured by the police to vacate Shantiwatika, the protesting citizens and the Brihat Nagarik Andolan demonstrated on December 15, 2023, demanding the removal of the ban on demonstrations in various places.

But on December 22, 2023, the Kathmandu District Administration Office issued another notice, extending

¹⁸ <https://www.onlinekhabar.com/2023/10/1378097>

¹⁹ <https://www.setopati.com/politics/258650>

the ban on protest activities in those areas for another two months.²⁰

Public places like Maitighar and Baneshwar, which have become spaces for citizens to voice their resistance, have been declared prohibited areas. This has narrowed the civic space, and civil activists and human rights activists are speaking out against it. Declaring places of peaceful sit-ins and protests by ordinary citizens as prohibited areas is undemocratic. Former Chief Justice and former Chairman of the National Human Rights Commission, Anupraj Sharma, has condemned this decision as a violation of the fundamental and democratic rights provided by the Constitution.²¹

Similarly, on April 13, 2018, the District Administration Office in Kathmandu had also banned protests at various places. However, a writ was filed against it at that time and the Supreme Court ruled that citizens have the right to peaceful assembly without weapons, the right to hold opinions and express themselves, and the right to demonstrate anywhere in Nepal. It should not be restricted.²² At one point, the current Prime Minister, Pushpa Kamal Dahal, also participated in a protest on the streets of Maitighar. The increasing government interference in public places where ordinary citizens hold peaceful sit-ins and protests is shrinking both the civic space and the democratic system.

²⁰ <https://ekantipur.com/news/2023/12/22/expanding-the-restricted-area-to-reduce-the-civil-forum-20-02.html>

²¹ <https://ekantipur.com/news/2023/12/22/expanding-the-restricted-area-to-reduce-the-civil-forum-20-02.html>

²² <https://www.setopati.com/social/309361>

| CONCLUSION

Impunity has no place in a democratic system. The institution of justice should provide justice to the victims and punish the perpetrators impartially. However, when citizens lose faith in the institution that is supposed to deliver justice, they have nowhere to turn. It is the responsibility of the state to ensure that ordinary people have access to justice. But when state agencies hinder justice, it weakens the democratic system. If the justice system continues to be influenced by politics, money, and privilege, impunity will prevail. Denying justice based on social, economic, and political factors goes against the principles of democracy.

The fact that protests have to be held for individual incidents and that action is only taken by the state after protests indicate that the path to justice is difficult. Even after the introduction of the federal system, the need to come to Kathmandu to voice demands has not disappeared. This is due to the centralized mindset of the entire state apparatus along with media and non-governmental organizations.

Furthermore, the government has imposed restrictions on public gatherings where citizens can raise their voices. In a democratic governance system, citizens should be able to peacefully assemble, express their opinions, and protest without obstacles. However, this right of citizens has been repeatedly challenged in Nepal's democratic system.



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Democracy Resource Center Nepal

Kupandole, Lalitpur, Nepal | Tel: +977-1-5902286
info@democracyresource.org | <https://www.democracyresource.org/>