

## Compensation Rights of Crime Victims in Nepal: A Victimological Study of Murder Victims in Morang District

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### Abstract

United Nations Declaration on Rights of the Crime Victim, 1985 and Van Boven/Bassiouni Principles in 2005 were adopted for the justice of crime victims. In line with those international instruments, there have been various institutional developments to protect the rights of crime victims in Nepal. Article 21(2) of the Constitution of Nepal has guaranteed right to compensation of the crime victims as fundamental rights. Crime Victim Protection Act (CVPA), 2018 provides detail guidelines regarding compensation. The UN declaration has recognized Compensation as major victim's rights and Van Boven/Bassiouni Principles calls for adequate, effective and prompt reparation but it does not seem to be working towards achieving the goal set by the international legal instruments and Nepalese constitution. There is need to reform the law as it's imperative bring a positive change in the mechanisms of the victim justice system. In absence of such a robust reformation, Nepal's victim-centric legal framework may not be able to meet the objectives the legislations aim to achieve.

This paper delves to critically explore the challenges in regard to the implementation of compensation to the victims of murder in the context of fairness, reasonableness, adequacy and promptness in the Morang district of Nepal. Also, based on the findings from this study, which applies various research methods, the researcher humbly submits some of the suggestions for the reformation of victim justice mechanisms.

**Keywords:** Declaration, Van Boven, Victim, Compensation, Restitution

### 1. Introduction

Murder is a serious crime against a person as well as crime against the entire humanity. The act of murder does not only claim one's life, it even victimizes person(s). People who are victimized or affected by murder have to face many problems. The dependents of the murder victim may have to walk the tight rope for the basic needs. Globally, the civil and international laws both prohibit and punish the crime of murder. If data is something to standby, as many as 8451 cases of murder were reported during the fiscal year 2023/2024 in Nepal ([www.nepalpolice.gov.np](http://www.nepalpolice.gov.np), 2024) This is the highest number of cases amongst the violent crimes which that crime of murder is gradually increasing in Nepal. According to an annual progress report released by the Nepal Police, Koshi Province has recorded the highest number of violent crimes amongst the seven provinces of Nepal ([english.makalukhabar.com](http://english.makalukhabar.com), 2024) According to Informal Sector Service

Centre (INSEC), out of fourteen districts of Koshi Province, Morang district has the highest number of murders crime as compared to other districts (*INSEC, 2024*). As per the Annual Report of Office of the Attorney General (OAG), there were fifteen women and children victims of murder as well as attempt to murder in Morang district in FY 2022/2023 (*OAG, 2022/23*).

The law against murder is governed by Criminal Code (also known as Penal Code), 2017 in Nepal. Section 177 of the Code prohibits and punishes the crime of murder. Section 177 (2) of the Criminal Code provides for lifetime imprisonment to the offender of the crime but the goal of justice would not be achieved merely by keeping the criminal inside the prison. So, it demands a robust victim protection system. In this light, United Nations Declaration (UN Declaration) of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, for the first time, recognized several rights for victim. Those rights could be grouped in four broad categories which are *access to justice and fair treatment, restitution, compensation and assistance*. UN declaration is a step ahead in right direction in institutionalizing the rights of the crime victim in international Law. Although it is not a binding treaty, all members of the UN are under an obligation to ensure the compliance of these rights effectively (*Carlos, 2010*).

In addition to this, the United Nations General Assembly has adopted the 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Van Boven/Bassiouni Principles) on 16 December 2005. The principles and guidelines are of pivotal importance from the perspectives of rights of the crime victims. When they were finally adopted, they evolved from being about three key forms of reparation (*i.e.*, restitution, compensation and rehabilitation) to thirteen Principles and Guidelines of a more general and comprehensive nature dealing with the right to a remedy and reparation for gross human rights violations and for serious violations of international humanitarian law (*Clara, 2017*). Although the UN declaration and the Van Boven/Bassiouni Principles are the continuation and elaboration of several international human rights instruments, only these two victim centric UN instruments (UN declaration and Van Boven principles), defines the term victim. If we read between the lines, we would come to a conclusion that the definition forwarded by UN declaration is also similar to that of Van Boven principles. Still, the difference lies in the scope of the instruments. While the declaration is concerned on the acts or omissions that are in violation of criminal laws operative within Member States, the principle's target is the acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Whatever may be the scope of implementation of both instruments, they have contributed significantly as a charter of rights of the crime victim. Due to the robust impact of these documents, the debate and discussion for the rights of crime victims started globally including in Nepal. As a result, important changes were made in the Constitution and several legislations of Nepal due to the continuous advocacy since several years.

Nepalese Constitution, Crime Victim Protection Act, 2018 (CVPA) and Criminal Code, 2017 have importantly provisioned for the social rehabilitation of the victim. Including compensation because International and national legal documents consider compensation as a very important tool of victim protection. Compensation is a measure that immediately empowers the victim

psychologically and ultimately heals the wounds of pain and enables them to fight for justice. In the case of the murder of a close loved one, compensation and restitution according to the guidelines provided by the UN declaration and Bassaiouni principle will help some victims to lead their lives smoothly. However, there is no research conducted on this issue in Nepal so far. With this background, present article aims to analyze the implementation status of fundamental right to compensation guaranteed to the victims of crime of murder. The article has selected Morang District as a sample. The objective of the article is to explore the fairness and adequacy of compensation and restitution compared to the physical and psychological effects of the crime of murder. Similarly, the article investigates the compliance with adequacy and promptness standard recognized by Bassaiouni principle and Nepalese Laws from the perspective of rehabilitation of the crime victims.

## 2. Methodology

The study is based on *Doctrinal Research*. It proceeds by first undertaking a review of the literatures concerning the restitution, compensation and social rehabilitation of the victims of crime. The reviewed literatures supported authors to develop concept and the aim of the article. The authors have collected nineteen adjudicated cases of murder through *Random Sampling Method* from the year 2019 to 2023 from the judgment execution section of Morang District Court to explore the compensation details. Among the selected nineteen cases, full texts of the verdicts of selected cases have been studied to understand the socio-economic status of the victim and ground of determination of compensation by the district court. As per the aim of the study only the restitution and compensation awarded cases have been selected. The victims represents from diverse location and community within the Morang district. The official consent letter from the judgment execution officer of the Morang District Court was taken prior to publish the received data from the court. The research has also applied *Case Study method* and has analyzed four relevant cases published in reputed Nepalese mass media with regard to victims' right to compensation and rehabilitation. The research has also applied *Comparative study* and *Descriptive Analysis* method. Based on the research, the article proposes some recommendations to make the victim compensation and rehabilitation system workable and trustworthy.

## 3. Review of Literatures

### 3.1 Victim Justice, Compensation and Restitution

One form of compensation for victims of criminal acts is restitution. Restitution (*restitutio in integrum*) is an effort that the victim of a crime must be returned to its original condition before the crime occurred even though it is based on the fact that it is impossible for the victim to return to his/her original condition (*Yapiter Marpi, 2023*). Admittedly, a civil order for compensation cannot precisely measure or put economic worth on a human life, nor injury caused to human dignity, honor, family, and community (Shelton, 1999: 193), but it can motivate victims to define and articulate grievances and organize to mobilize legal resources and claim monetary reparation as a legal remedy (Begicevic, 2016; Moon, 2012, 2013). However, if this concept is compared with the law of Nepal, it is found that there is no effective institutional mechanism for recovering the ordered compensation and not implemented strongly (*Bijay Khadka, 2024*). The Nepalese legal provisions lack incorporation of other forms of reparation, such as restitution, satisfaction,

rehabilitation, guarantees of non-occurrence as prescribed on the Van Bobhen Principles (*ohchr.org*).

There are some distinguishing features in the mode of victim compensation amongst India, New Zealand (NZ) and Germany. In NZ and Germany, compensation is granted for all kinds of physical injury. In India, only for certain specific offences compensation is granted like rape, acid attack, death, permanent disability etc. and not for all kinds of physical injuries (*Elisha Kanungo et.al., 2020*). In Nigeria, the development of a system for state-funded compensation for crime victims is necessary in line with international guidelines such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Commonwealth Guidelines for the Treatment of Victims of Crime (*Imiera, Pius, 2017*).

According to Section 357 of Indian CrPC, the victim will not receive any compensation if the accused is acquitted or taken away on probation. Therefore, the second appeal will ensure the victim's right to compensation for the crime committed by the perpetrator (*Beulah Shekhar et. al. 2023*). The evolution of rehabilitative services for victims of crime in various countries indicates that the protection is centered on the issues that victims face as a result of the crime. So the goal of the recovery is to return the victim to his or her pre-victim condition. These efforts are carried out by providing various forms of protection aimed at restoring victims' financial, physical, and psychological conditions (*Petrus Reinhard Golose, 2023*).

### **3.2 Institutional Inefficiency**

In Nepal, for example, on the cases of case based discrimination and untouchability, most of the district courts were found to be releasing the perpetrators by taking a small amount of money as bail or even without any deposit and providing victim small amount as compensation. (*Samata Foundation, 2024*). Although first time in Nepalese constitutional history there is a fundamental right for the crime victim, still the law enforcement agencies have to work more for the protection of crime victims to maintain dignified life to all the victims as mentioned by the law (*Amar Bahadur Shah, 2015*).

Serious problem, among other, with the Nepalese judicial system lies in the non-implementation of the decisions rendered by the courts. For example, in rape cases, court discusses on the other aspects such as definition of rape, social stigma attached there upon while negates the process and mechanisms on the compensation to the victim (*Salina Kafle, 2016*). In India, compensation to victims, out of fines imposed, has been used sparingly and the amounts paid have been minimal (*Sarkar, 2010 in Dipa Dube, 2018*).

### **3.3 Role of the State government and Civil Society**

Insertion of S. 357A in the Cr.P.C. by Amendment Act, 2008 (India) has come into effect on 31/12/09 is welcoming steps where the responsibility of state for compensation and rehabilitation of victim irrespective of identification and prosecution of accused have been acknowledged (*Dr. R. Mangoli et.al. 2014*). Role of the victim advocate has been realized whose sole job is to provide support and advocacy for victims of crimes. Victim advocates are an integral part of the larger criminal justice response to crime victimization (*Lisa De La Rue et.al., 2023*).

### **3.4 Research gap from literature review**

Because the existing literature lacks victimological analysis regarding victim compensation in Nepal, this study has attempted to fill this gap. To address this research gap, the researchers have posed the following research questions, which are addressed in the study's subsequent sections:

- (1) What is the status of Implementation of Nepalese Crime Victim protection Laws in the context of Compensation and restitution?
- (2) What types of measures are necessary to make victim compensation system more effective in Nepal?

### **4. Discourse of Restitution and Compensation in Victimology**

Restitutive and compensation are considered an integral part of victimology since ancient (*Gajendra Keshari Bastola 1990 in Dr. Shankar Kumar Shrestha, 2001*). Without study of restitution and compensation; modern victimology becomes incomplete because victimology is the study of effect of crime to the victim and remedy for the harm suffered by the victim.

There are significant differences between restitution and compensation. Compensation takes the form of monetary payment and it is state's obligation. The "*failure to protect*" theory underpins the state obligation to compensate victims of crime (*Mahrus Ali et.al., 2022*). This theory dictates that an individual who become the victim of a crime is primarily caused by the failure of the society to eliminate crime and by extension, the failure of the law enforcement to prevent offenses (*Goldscheid, 2004*). In addition, there are two considerations as to why victims are entitled to state-provided compensation *First*; compensation is based on equity and social solidarity. The victim of crime is a victim of society who should be reimbursed by the community for the damages incurred. In a larger sense, the theory holds that the government owes compensation to the victims since law enforcement officers have failed to prevent crime from occurring. *Second*, other forms of compensation have been proven to be insufficient to proportionately compensate the victims (*Katsoris, 1990*). Restitution refers to monies or services paid by the offender to the victim, whether directly to the victim or through intermediaries such as insurance companies (*Laura Nader et.al., 1976*). Restitution is defined as "the act of doing good things or giving the amount equivalent to the victim's loss, harm, or injury" (*Mahrus Ali et.al., 2022*). Restitution might involve the restoration of a quantity of money or the value of an object taken by the criminal, burial expenses, salary loss, support and payment for medical bills, counseling, therapy, or finding the victim new employment (*Mahrus Ali et.al., 2022*). In another definition, it is a sanction imposed by an official of the criminal justice system requiring the offender to make a service payment or a monetary payment either to the victim or dependents of the victim of crime (*Burt Galaway, 2019 in Deepika Thapa Magar, 2019*).

Taking on an important shape in victimological debates and philosophies, international principles and guidelines are also adopted in which United National Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 (UN Declaration) and Van Boven principles take precedence.

Both UN instruments have referred the terms restitution and compensation aiming to rehabilitate the victims of crime whether it is national or international crime. Reparation has been accepted as a form of 'effective remedial measure' for the victim of human rights violations. Reparation encompasses different elements such as restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition (*Advocacy Forum, 2022*). Article 15 of the basic principles has stressed on adequate, effective and prompt reparation to promote justice and also prefers that reparation need to be proportional to the gravity of the violations and the harm suffered. Article 18 of the basic principles has included restitution and compensation under the scheme of reparation to the victim. On the other hand, UN Declaration is silent about reparation and includes the terms restitution and compensation for the crime victim which have been discussed in article 18 and 19 of basic principles respectively.

## 5. Discussion

The authors have divided this section into three segments i.e. (1) case study analysis, (2) status of implementation of compensation awarded to murder victims in Morang district and (3) study of selected judgments.

### 5.1 Case Study

According to Kathmandu Post (*kathmandupost.com, 2024*), in September 2020, a 12-year-old girl was raped and murdered in Masta Rural Municipality, Nepal. The accused has confessed to the crimes and sent to judicial custody. Following the incident, the locals protested for seven days in the district, demanding action against the culprits and compensation for the victim's family. The government had promised a compensation of Rs. one million as relief to the family. However, more than two years after the heinous crime, the family of the deceased was still awaiting compensation from the state. The news report mentions that the money could be of great help in taking care of victims family members including children. This case has confirmed the fact that the state has delayed in giving compensation even to the economically disadvantaged and socially backward crime victims.

Sabina Devkota has examined a case related to compensation (*cijnepal.org.np, 2024*). in which Bindabasini Kansakar (the victim) was attacked by two foreigners on April 22, 2013. She spent many subsequent years in treatment, from community and private hospitals in Nepal and India, undergoing surgeries, including plastic and cosmetic surgeries for her eyes. Her family spent over fifteen Million Rupees, of money borrowed from relatives and loans from banks, initially intended to expand the family's business, on her treatment. On February 26, 2020, District court sentenced to eight years in prison and fined one hundred thousand Rupees to main accused, while another accused was sentenced to two and a half years in prison and fined 40,000 Rupees. The court also ordered a compensation of Rs. 11.4 Million rupees for Kansakar's medical expenses, to be paid by the perpetrators. If they couldn't pay, the court ruled that the government provide the amount from its Victims' Relief Fund. However, the victim has yet to receive any compensation and her family unable to pay off the debt incurred during treatment, has had properties auctioned off by the bank. This case highlights the broader issue of neglect toward crime victims in Nepal's criminal justice system because Kansakar's compensation application is

now stuck in a bureaucratic loop, bouncing between the district court, the relief fund, the Ministry of Law and the Ministry of Finance.

*Onlinekhabar*, a reputed Nepalese news portal published a case story on August 7, 2018 titled 'After criminals' death, family of Bhaktapur murder victim not to get compensation' ([english.onlinekhabar.com](http://english.onlinekhabar.com)). The new criminal code has a provision that families of victims of abduction and murder cases get compensations from the perpetrators. However, with the death of perpetrators by police officials, there is no one to pay compensation to the family in the abduction and murder case. In principle, criminal justice system believes that a crime dies with its criminal. This principle will apply to the abduction and murder of eleven years boy as well. If the perpetrators were not killed, they would face imprisonment and fine as well as a liability to compensate the victim's family. It is clear from the facts mentioned here that even if the offender does not give restitution, the state authorities have not been able to convince the victim that compensation can be provided from the state relief fund.

Another prominent media 'The Record' has covered a feature article on August 12, 2020 on the heading 'Questionable compensation for Rukum victims' ([www.recordnepal.com](http://www.recordnepal.com), 2024). On May 23 2020, Nabaraj BK, 21, and a group of youths from Jajarkot district (Nepal) had gone to Soti Village, at the behest of his girlfriend, Sushma Malla, 17, to bring her back as a bride. But Soti's villagers attacked the youths with sticks and stones and chased them down to the Bheri River. At the riverbank, six youths, including Nabaraj, were brutally killed and reportedly thrown into the Bheri River. Angered by the murders, the victims and locals staged massive protests in the district, which ultimately spread all across the country. Then, the government of Nepal announced that they will provide a compensation of Rs one million to the families of the deceased and bear all the medical expenses of the twelve youths injured in the incident. The government's decision has been met with suspicion by the victims and their families. Urmila Nepali, mother of Nabaraj BK Said:

*"Since the case is under consideration at the court, we fear the case will be dismissed if we accept the money. For us, justice is more important than money. We are already poor, but we don't need money at this point,"*

What the victim said here should be taken seriously, especially by the court because the victims give priority to the justice including compensation given by the court than the relief given by the government. But the questions here are: will the court decide to provide the same or more compensation to the victim who rejected the one million relief amount given by the government? And the amount according to that judgment will be promptly handed over?

## **5.2 Analysis of Compensation Declared by Morang District Court**

All District Courts in Nepal are Courts of first instance. The court has the sole right to provide interim relief or compensation to the crime victim according to the law and the Morang District Court is one of the district courts. Authors have analyzed nineteen judgments where compensation has been awarded by the district court. For ease of understanding of the Compensation related data, it is presented in Table 2.

**Table 2**  
**Compensation details declared by Morang District Court on homicide cases**

F.Y.	Case No.	Amount in NRS.	Compensation received or not?	% of Implementation of Compensation
2019/20	0248	30,000.00	Received	10.53%
2019/20	0143	30000.00 <sup>1</sup>	Not received	
2019/20	0052	1,00,000.00	Not received	
2019/20	415	27,500.00	Not received	
2019/20	0209	1,00,000.00	Not received	
2020/2021	0090	15, 000.00	Not received	
2020/2021	0431	1, 00,000.00	Not received	
2020/2021	0508	50,000.00	Not received	
2021/2022	0096	50, 000.00	Received	
2021/2022	0788	73735.00	Not received	
2021/2022	1021	1, 00,000.00	Not received	
2021/2022	0530	1, 00,000.00	Not received	
2021/2022	0591	50,000.00	Not received	
2021/2022	0327	9,00,000.00	Not received	
2022/2023	0142	100000.00	Not received	
2022/2023	0083	25000.00	Not received	
2022/2023	0673	50,000.00	Not received	
2022/2023	0162	1500000.00	Not received	
2022/2023	0637	NRS. 5, 80,000.00 for reimbursement medical expenses	Not received	

The details of the cases mentioned on table 2 shows that maximum amount of compensation is RS. 100000.00. In three cases, it has been ordered to reimburse the medical expenses, but the victim has not received that either. It seems that victims of only two cases have received the compensation out of nineteen cases. The implementation rate of the compensation is only 10.53%. There is no implementation of medical expenses also. It proves that the court ordered compensation has not empowered the victims financially, socially and psychologically. As long as this situation persists, on the one hand, the national commitment of the social rehabilitation of the victim will not be fulfilled, and on the other hand, there is no compliance with the UN declaration and principles.

<sup>1</sup> Initially, Morang district court has declared Rs. 20,000.00 but the High Court, Biratnagar awarded additional Es. 10,000.00

### 5.3 Analysis of Selected Judgments

The authors have also studied eight full texts of the verdicts out of nineteen cases which are available on the website of the Supreme Court of Nepal. The main objectives of studying the full text are to know the family details and financial situation of the victim and the family and to confirm the grounds of declaration of compensation by the Morang District Court. Results of the full texts of the verdicts have been presented as following:

#### A. Case No. C1-0209 (Decided on 2020/02/09)

In this case, the deceased victim was a nineteen years old boy. There were eight accused and most of them were child. The prosecutor has demanded for life imprisonment and to provide appropriate compensation for next of kin of deceased. In this case, the court has discussed the weak economic condition of the accused but has not mentioned anything about the victim and his family. Similarly, it has not been made clear on what basis the court has decided to award a total of Rs 100,000.00 compensation from six criminals. It is also not understood why the court did not want to pay the compensation from the government victim relief fund if it would be difficult to get the compensation due to the weak financial condition of the accused.

#### B. Case No. C1-0090 (Decided on 2021/02/26)

In this case, the deceased victim is twenty-six years woman. She was murdered by her husband. The prosecutor had demanded for life imprisonment for the accused and to provide appropriate compensation to the next of kin. In this case, the court has not analyzed the economic condition of the victim and her family. There are two survivors (minor children) but the court could not pay attention to the food, clothing and education of the children. Rs.15,000.00 has been awarded as compensation but the ground of the determination of the compensation is not clear.

#### C. Case No. C1-0096 (Decided on 2021/03/18)

The deceased victim was forty-eight years old husband of the case informant. He was working as laborer in rice mills. The offender was his co-worker. The prosecutor claimed for life imprisonment for the accused, to reimburse Rs. 43,000.00 as the medical expenses and Rs. 33,000.00 as ambulance cost and to provide appropriate compensation. The court has not discussed about socio-economic condition of the victim's family. The court has not disclosed the ground of the determination of the compensation. The judgment mentioned the sentences "compensation should be provided if the victim's family demand within the timeframe of the Act." It is quite problematic for the poor and uneducated victim to demand the awarded amount and to know the deadline for seeking compensation.

#### D. Case No. C1-0508 (Decided on 2021/05/06)

In this case, the deceased victim was twenty-eight years old woman. The offender was her boy friend. The prosecutor had demanded for the life imprisonment to the offender and to provide appropriate compensation from the offender to the next of kin of the victim. In this case, the court has neither analyzed the economic aspect of the victim nor the basis for determining compensation has been clear.

**E. Case No. C1-0591(Decided on 2021/11/30)**

In this case, the deceased victim was the wife of the informant of the case. The offender was son-in-law of the deceased. The prosecutor had demanded for the life imprisonment to the offender and to provide appropriate compensation from the offender to the next of kin of the victim. In this case also, the court has neither analyzed the economic aspect of the victim nor has the basis for determining compensation been clear.

**F. Case No. C1-0327 (Decided on 2021/12/29)**

In this case, the deceased victim was an old peasant. First, he was seriously beaten by the accused and after some days of medical treatment, he had died in the hospital. The defendants were three neighbors. The prosecutor had demanded to punish the offender on the charge of homicide but there was no claim of the compensation. Among three accused, one was declared for ten years imprisonment. In this case, the court has not analyzed the economic condition of the victim's family. The court also did not order to pay compensation as a victim. It has only ordered for the reimbursement of the medical expenses which was borne by the victim themselves. The court could have paid the expenses of the medical treatment during the preliminary hearing of the case as interim relief from the offender rather than ordering only in the final judgment, but the court did not adopt that measure.

**G. Case No. C1-0083 (Decided on 2022/12/14)**

This case is associated with case no. c1-0209 mentioned above. The court had declared for eight years imprisonment to the defender. The court has also mentioned about the poor economic condition of the defendant which has an implication on the compensation to be paid to the victim's family. In this case, the court has not decided to pay the compensation to the deceased family. The reason behind that may be the poor economic condition of the defendant but the court could have ordered to pay the compensation from the state's fund.

**H. Case No. C1-0637 (Decided on 2023/05/31)**

In this case, the victim is a twenty nine years old boy. There are five defendants. The prosecutor had demanded to punish the offender on the charge of homicide but there was no claim of the compensation. Among five accused, two were declared for life imprisonment. In this case, the court has ordered for only reimbursement of the medical expenses. The court did not order for the compensation either from the offender or from the victim relief fund. On the other hand, in this case too, the order to payment of medical expenses from the offender came only in the final judgment.

It can be seen from the above section that the basis of determination of compensation prescribed in section 31 of CVPA has not been followed while determining compensation. CVPA's provision regarding Victim Impact Report (VIR) is crucial to determine the compensation but it has also been overlooked by the court.

**6. Conclusion**

The Crime Victims Protection Act, 2018 (CVPA), which is also regarded as a charter for crime victims in Nepal, embodies the spirit of the Constitution. The Act is pregnant with the provisions

relating to justice to crime victims by incorporating measures for social rehabilitation and compensation to the victim through several sections. Of many such progressive provisions, Section 19 is of natural import which states that the victim shall have the right to obtain compensation for the damage he or she has sustained. More specifically, Chapter 4, section 29 to 40 provides detailed provisions regarding compensation of different forms such as interim compensation from the state fund, indirect restitution from the offender, restitution from the offender after final Judgment of the court, and compensation after final Judgment of the court. However, Nepal struggles to implement the legal provisions in letter and spirit.

From the above discussions, the researchers are of humble submission that the trial courts are yet to prioritize awarding interim compensation to the victims from the Victim Relief Fund. Moreover, there is not a usual practice to claim the interim restitution from the offender. These instances give gloomy picture of court's reluctance in full-fledged implementation of the Act. There are several crimes, including that of attempt to murder, where a person, who is seriously injured, has to be treated in the hospital. The victim may have to invest a huge sum of money for treatment. S/he may have to invest hundreds of thousands of rupees before he succumbs to death. But, the victims have to wait for months to get compensation. There is practice of fixing the amount of compensation on the final day of hearing. The judgment of trial court is subject to be challenged before the High Court.

The lengthy procedure, often, brings frustration among the victims. In fact, receiving compensation is a tough nut to crack in Nepal. As a result, due to state's incompetence to provide interim relief or compensation, in line with principles of victimology and international and national laws, the victims, often, complain of being overburdened with heavy financial loans and expenses. The constitutional guarantees of social rehabilitation and justice with compensation as well as Van Boven principles' standard for *adequate, effective and prompt* reparation in proportionate to the gravity of the violations of and harm suffered remains unrealized in Nepal. Section 31 of CVPA has guided for detail situational analysis of the victims before determining the amount of compensation. However, Morang District Court struggles to follow the guideline as it has grossly failed to award fair and adequate compensation. Over the five years, it seems the compensation amount declared by the court is very low which is not proportionate to the gravity of crime. It seems that the minimum amount has increased recent years compared to previous years. However, the compensation amount is not satisfactory for the victim's family. This tendency of the court gives a depressing reality. The trial courts are there to declare minimal compensatory amount. It's tough for the victims to rehabilitate with such a poor sum of compensation amount. This way, the trial court is yet to take steps for *Restitutio in integrum*.

The present research has also studied the rationality of the compensation. Police and the Public prosecutor are the principal representative agencies of the victim in the victim justice system but the claim of the prosecutor always remained vague and unclear. In Nepal's case, the prosecutor uses the term '*Appropriate Compensation*' in the charge-sheet, which goes to disrespect of Section 48 of the CVPA. They did not act in line with the system of Victim Impact Report according to the law.

The analysis of District Court verdicts shows that the courts didn't conduct necessary socio-economic analysis of the victim and their dependants. While determining the compensation, judges, often fail to be sympathetic and sensitive towards harm caused to the family members. Even the family victims' plights, including children, have not been taken into account while rendering the judgment. Judges always used their discretionary power to award compensation. The compensation should be determined according to section 31 of the CVPA but judges always remained silent to implement this provision.

There are various state agencies working for the protection of the victims but they don't have effective coordination on the implementation of the court orders regarding compensation. Although Nepal is a federal country having three tiers of government i.e. federal, state and local, there is no defined role of the state and local governments for the protection of victims of crime. Like India's victim protection scheme, there is no law, policies and programs endorsed by state government in Nepal. Section 19(2) of CVPA provides that federal, province and local government shall formulate, with mutual coordination, plan and programs for the social rehabilitation of the victims but those governments are yet to bring any scheme public.

Moreover, the provincial governments would also have a meaningful role to play. Section 44 of CVPA 2018 has a system of Victim Protection Suggestion Committee (VPSC) under the coordination of Attorney general. This mechanism is yet to bring robust schemes. The VPSC is supposed to make arrangements of coordination among all tiers of governments. Nonetheless, the legal mandates remain limited on paper.

Likewise, administrative hassles and procedures without time limits in the civil service are so widespread that not only suffers common victims, the victims sitting at the highest levels of the state are also suffering. Public do not trust on law and policies. It should not be forgotten that the victim relief fund is not working properly because of the non-implementation of the law. Major source of amount of the fund is compensation levy which need to deposit by the offender in accordance with section 41 of CVPA. The amount of levy is very low and the strength of the fund is very weak.

The researcher humbly submits that the crime victims are in want of timely judicial remedy with compensation at the order of court, not at the discretion of administrative authority. The award of compensation appears to be the subject matter of administration. So, the role of the district courts becomes much important. The depressing realities as discussed here gives a picture that the courts and other state agencies struggle to work in line with the international principles and constitutional spirit.

## **7. Recommendations**

Based on the data analysis and conclusion of this research, authors humbly submit some of the recommendations to bring reformation in the existing problems encountered by the victims of murder.

1. Since the Victim Relief Fund has low economic strength, section 41 of the CVPA relating to compensation levy deserves to be amended to increase the capacity of the fund which is the major source of victim relief fund.

2. The Ministry of finance could allocate a separate fund for victims' relief under a separate budget heading in line with article 21 of the constitution.
3. The Federal parliament may amend the CVPA to empower province governments to launch victim protection scheme like India.
4. The Supreme Court of Nepal could organize orientation programs to judges of all district courts. Such orientation programs could have impact on victimological principles the judiciary understands. This would bolster the constitutional spirit of social rehabilitation and compensation. Ultimately, the state would turn sympathetic and it would succeed to enforce the interim compensation and interim restitution relating to the provisions of the CVPA, 2018.
5. The Office of the Attorney General could issue circular to all prosecutor office to submit Victim Impact Reports compulsorily before submitting the charge-sheet in the district court.
6. The VPSC needs to be active to implement the CVPA and other legal and administrative measures and should coordinate with ministry of law of all provincial governments to enact special laws for the victim protection within respective provinces.
7. Special Coordination Mechanisms could be established within district attorney offices so that the victim can obtain information about award of restitution and compensation timely and regularly.
8. High courts could monitor the function of judgment execution of the district courts.
9. Over and above all this, it would be tough for the state to implement victim justice regime in actual sense without the support of human rights activists and social workers. Their collaboration and cooperation is a must for bringing reformation in existing depressing situation.
10. In order to develop a victim-centric justice system and to end up the bureaucratic hassles, the office chiefs involved in dispensing criminal justice system could be directed to come up with an annual report stating the actual facts and figures regarding award of compensation to the victims.

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