**Paper presented at 9th Asia Pacific Mediation Forum(APMF) Conferance 1-3 November, 2019, Jeju Korea by Sarita Karki, Nepal.**

**Intersection of Community Mediation and gender based violence, experience of rural women in Nepal .**

This paper is based on experience collected from the different community in more than 50 districts of Nepal, working with saving credits groups, mothers groups, different women networks and groups, It intends to explain the implication of Mediation on lives of rural women, challenges they face to seek mediation services as alternative to increase access to justice.

**1. Community Mediation in Nepal.**

Nepal is one of the South Asian countries. It went through one decade’s long armed conflict (1996-2006). After the peace accord it got its republic status, new constitution with state restructuring. It is now divided into seven provinces, 6 metropolitan cities, 11 sub-metropolitan cities, 276municipalities, and 460 rural municipalities.

Nepal has introduced a Mediation Act and brought it into force in mid April 2014. Prior to the enforcement of the Mediation Act, 2011 and Mediation Regulation, 2014, no law in Nepal recognized informal mediation practices. But in recent years, informal mediation practices have obtained further state recognition: the Constitution of Nepal, 2015 (Article 51(k) (2) under the policies of the state) stipulates that the State shall follow policies to pursue alternative means, such as mediation and arbitration, for the settlement of disputes of a general nature. Informal mediation practices prevailed through group leaders, community leaders, social leaders in different parts of Nepal mostly led by men.

The new Medaiton Act has added a new momentum to the use of consensual dispute resolution tools **.** Several provisions in the Act tend to be substantive and precise. The provisions in the Act (Ain) are explained, clarified and elaborated through the supplementary rules and regulations.

Now, Mediation has since become a regulated profession, and the law acknowledges traditional community and indigenous dispute resolution mechanisms too. A committee constituted at the district level monitors community dispute resolution practices. The law provides for the Mediation Council as its centerpiece in the licensing, monitoring and supervision of mediators. The provision of the Mediation Council—served by the sitting justice of the Supreme Court as the chairman and the Registrar as the member secretary—has created a regulatory mechanism for the practice of mediation at both individual and organizational levels.

As with other professions in Nepal, a mediator must have a mediation certificate issued by the Council, which must be renewed every three years. Any institution providing mediation services is required to obtain a mediation certificate from the Council. The rules, procedures, and the training curriculum for mediators must be approved by the Council, which also monitors mediation activities and the implementation of a code of conduct for mediators.

There are community mediation centres provisioned under all municipalities and rural municipalites. The Ministry of Federal Affairs and Local Development (MoFALD), have also started to train its officials to foster the dispute resolution mechanisms through community medaiton centres.

Moreover, Local Governance and Community Development Program (LGCDP) – a multi-donor supported program, different projects during armed conflict and aftermath peace accord have been working on community mediation, promoting mediators as alternative dispute resolution to foster local peace in different parts and pieces of Nepal. At the same time Projects programs of NGO/INGO have introduced mediations as alternative dispute mechanism since 2000 and have trained mediators for community mediation.[[1]](#footnote-1). Many other peace building programs have taken Mediation as one component of their programs.

**Gender Based Violence in Nepal:**

**Gender Based Vioalnce (GBV): l**ike the global trend that one amongst three women faces different forms of violence in their daily lives, Nepalese women are of no exceptions. Given the context, be it family, community, work place Nepalese women do face different forms of violence. Government has different mechanisms set up to address GBV [[2]](#footnote-2)however the justice for the victims is still a dream as women faces different social, cultural economical challenges to seek justice. Committe is set up under Prime Ministers office since 2010, there is an increase in case reporting however success in seeking justice rate is still low. As Gender-based violence occurs as a result of the normative role expectations associated with each gender, along with the unequal power relationships between genders, class and caste within the context of a specific society family norms, social values and class of the family and women determines case reporting. Survivors of violence can experience both physical and psychological distress. They may suffer sexual and reproductive health consequences, including forced and unwanted pregnancies, unsafe abortions, traumatic fistula, sexually transmitted infections including HIV, and even death.(UNFPA , fact sheet prepared in 2016) ***48%,*** of women who had experienced violence had never told anyone about it . ***27%,*** of women had experienced sexual violence some time in their lives , ***25%,***f 20-24 year old women were married by the age of 18 , ***41% ,*** of 900 women surveyed were aware rape within marriage (IBID) is illegal.

 Nepal has a long history of settling disputes out of court. The traditional and indigenous system of dispute resolution involving village elders and social “gentlemen” in the resolution of community conflict has been common since time immemorial which has also not addressed GBV. These practices have a strong basis in the community resulting restriction for women to attend mediation and fostering imposed decision through family members, GBV cases to be reported is a social cultural taboo. Community mediation, the resolution of disputes by village elders and elected representatives, has long existed at the local government level also where women representation and participation is least which restrict women’s voices and issues.

Community Mediation can to address a variety of types of disputes or conflicts[[3]](#footnote-3) through Community Medaition Centre (CMC) however the cases loads success is very nominal. Mediation in Nepal offers a space to resolve interpersonal and collective disputes, which transforms adversarial tensions into cordial relationships based on mutual respect. Mediation is able to fill this void in judicial assistance by providing immediate, affordable, and locally accessible dispute resolution services. but does not address gender based violence or domestic violence that most girls and women face hence the intersection of GBV and Community Mediation has to be understood.

**Why we need to understand the Intersection of GBV and Community Medaiton;**

1. **Under representation of women in decision making structure:**

Women are under represented across all the local bodies and government structures and their voices and issues are unheard, they have less leadership capacity to participate and inflcuance decisions in their favours. Most of the decision makers are men, the attitude who are confined in the relative issues only but not sensitive issues of GBV. Even if they represented their capacity to take up positions still dominated my men. Mediators are mostly men , women will limited information only with men hence the depth of the issues will not be understood properly to create win win situation.

**2 .Understanding the GBV sensitivity by trained Mediators.**

Trained mediators are mostly men, mediation curriculum does not include GBV issues. Not all mediators tend to seek understanding on the depth of GBV and DV sensitive cases to enable women to seek related justice. This can further the victim's sense of personal responsibility for the abuse, and it undermines the accountability of the abuser due to the unequal bargaining power between victim of DV, GBV and her abuser who can further afford further opportunities to exercise more power over the victim. Furthermore there are less women mediators trained compared to men.

**3. Economic independence of women:**

Women have low decision making influence in the family income decisions, in most of the families male members decide. To seek mediation service women have to be economically sound to manage all related cost to seek justice. One example from one visit to the community in the 2014, I do want to report the violence I am going through in my family but I hve to go back to the house as I do not earn much as my husband, I cannot negotiate with my family for their behaviour so why should I report the case.

**4.Restricted mobility :**

Most of the women are confined with their household chores, agriculture work, animal husbandry and other informal group meetings, at one hand they lack time, on the other hand they cannot leave their house to seek services, they may not be able to walk alone, they can be too far from mediation centre, it can be several hours walk from their house up and down, in some cases it is one day go and one day come, for women to leave their house for one nght is a social and family taboo if they are alone. Time poverty at the same time geographical settings restricts women to seek services towards justice.

**5. Access to related information understanding of the process:**

Since women are indulged and confined within their household roles their access to mediation services and process will be limited, they will have to depend on others to seek related information this can cause delays to seek justice and victims suffer.

**6. Affordability of seeking medaiton service**

Poverty s one of the root cause through structural conflict in Nepal, caste discrimination and class stratification guides the mediation practice in the community. The informal practice of arbitration is the general feature and obeying social leaders and community leaders is a must in most of the communities, some caste have language barriers too. Hence rather going to centres as it cost implication they follow leaders, they go for daily wage work so do not have time to seek services suffering is perpetuated.

**7. Social and cultural boundaries for men and women**

 Understanding that women are subordinate, wife are to follow husbands rules, men are the decision makers of the family, case reporting is a social taboos and insult for the family still restrict women to report cases, conflict of husband and wifes is like ash of hey which just cools in minutes, its my wife community should not interfere in our business, and many more guides women to think and rethink before reporting cases, even if it is a land dispute between brothers in the family women do not have their say, and remain with fear of violence from family members. One group members during my field visit shares during group meeting we have to raise issues, discuss GBV which we can be addressed by our group members but members do not share openly, what will happen if we share we will not have time to go and have our say, no one will listen to us is the general sharing, hence GBV is not easily addresses by mediation.

At the same time what about my family if I share it will be an insult for our family, do not care I will keep up my silience is some expressions

**8. Empirical Studies on Community Mediation**

In-depth empirical studies on community mediation in an academic manner are rare in Nepal; however, there are plenty of publications by donor agencies and their partner organizations. Those publications mention community mediation as a cost effective, easy, popular, effective, and neutral dispute resolution mechanism as well as a way of providing access to justice for socially marginalized people (CVICT, 2007; CeLRRd, 2009/2010;JICA, 2011; Paudel, 2010; CVICT, 2001). As Shah and Thapa (2009) critically emphasize the community mediation program as an effective mechanism of dispute resolution within the parameters of the community, easier means to resolve disputes, helpful to reduce the court case load, support to cultivate social harmony it does not recognize its implications on lifes of women sepcially those who go through different forms of violance in their daily living.

**9. Power relation**

Mediation presumes that the parties have equal bargaining power and an equal voice in decision-making, focuses on future behavior, and many mediators do not allow the victim to address past issues of violence in the case of women. Women household gender relation(father in law, mother in aw elderly brother in law) determines mediation success. If women is not economically sound, is dependent on her husband then she will not win the case. Medaitors do not assess these aspects during sessions as it ooks into success rate only. At the sometime and there are no sufficient trained women mediators to understand the deapth of sensitive issues women faces to the cases reprted to increase women’s access to

Imbalance of power and its acknowledgement is least pririties of the mediators, women lack resources and access to information so do the mediators take into account the power relatiosn between the parties Standard mediation assumes that both parties are equal, meaning “that the parties should have relatively equal power in the relationship, full information about the resources available to each person and any outstanding or future financial obligations, sufficient independent economic capacity…and the ability to protect their own interests in the process of mediation.”

Women who are battered may be unable to participate fully or freely in mediation.  They routinely assess the risks or costs of noncompliance with their abusive partner's demands, particularly related to disclosure of abuse. In mediation or in legal proceedings, battered women may not appear intimidated or fearful, but they may nonetheless be doing quick mental calculus to avert danger, achieve safety, and gain some authority to manage their lives. They may be weighing whether to assert their legal interests against the likelihood that doing so may compromise their safety. the victim is often afraid and reluctant to voice her concerns when her abuser is present.

**10.Screening and identifying Sensitive GBV cases by Medaitors**

It is necessary to screen and identify the sensitive cases. It is a necessary component of mediation programs. Court systems should utilize a uniform screening tool for all couples who face voluntary or mandatory mediation. While some courts utilize written questionnaires to screen for domestic violence, research indicates that mediators prefer in-person—or at least face-to-face—interviews in order to establish trust, build rapport, and observe party interaction. Skilled domestic violence advocates should implement the screening process, not professional mediators who have a financial interest in the outcome. Each party should be screened separately. justice,

Questions such as can the screener/mediators properly identify cases of GBV?

How do they respond to the cases they have identified?

Is their confidentiality well managed, is the process fair, is it a win win situation for the both parties, results are fare, is there safety measures analysed for the victim ?......Screening questions should address physical and psychological abuse of the past and of the present and fear of future abuse, using behaviourally specific questions.

**Conclusion:**

Nepal is to take up Mediation as one of the formal mechanism to address disputes and limit case loads in the court creates opportunity for future. At the same time if the GBV sensitivity is not considered by the mediators then justice for rural women remains as a mere dream.

More advocacy is required for more empirical studies to be done, train more women mediators, Government to take more safety provisions for women victims are some areas still needs more work s from the government.

Projects and programs need to include GBV sessions in the mediation training to promote GBV sensitive mediators. Train more women mediators.

Local government need to raise awareness on the importance of seeking mediation services by women mobilizing different networks and women only community groups.

Community mediation program has to move towards GBV integrated under different dispute settlement to increasing social harmony for a self protected community creating safe space for men, women, girls and boys through improved respect, communication, and cooperation between caste, class, and gender relations.

Referance Cited

<https://thehimalayantimes.com/opinion/mediation-in-nepal/>

<https://asiafoundation.org/resources/pdfs/CommunityMediationinNepal.pdf>

<http://www.mediationcouncil.gov.np/assets/uploads/Mediation_Journal1.pdf>

<https://www.academia.edu/3769290/Community_Mediation_in_Nepal>

<https://weinsteininternational.org/nepal/nepal-bio/>

<http://www.jica.go.jp/nepal/english/activities/peace.>

*Sajhedari Bikaas Project (ref: AID-367-C-13-0003) GBV Assessment November 2013*

1. THE ASIA FOUNDATION PROGRAM The Asia Foundation initiated its community mediation program in early 2002 by supporting the Ministry of Local Development to introduce and pilot community-based dispute resolution.

Since 2005, the McConnell Foundation’s support has further deepened the practice of community mediation. The main objectives of the Foundation’s mediation program are: • Strengthening the ability of mediators to transform conflict • Increasing public awareness and official support of community mediation • Establishing a professional organization of mediators to institutionalize the peace and conflict transformation process • Fostering a strengthened and sustainable community mediation program [↑](#footnote-ref-1)
2. Domestic violence, marital rape, rape, dowry-related violence, child marriage, polygamy, female infanticide, witchcraft accusations, Chhaupadi, and trafficking of women and girls for sexual exploitation and discriminatory social practice like untouchbility are common GBV issues in Nepal. [↑](#footnote-ref-2)
3. CeLRRd one Nepali NGO recorded the following numbers of cases in the following categories in 2011/2012: land (1,221), transaction (765), physical assault (468), defamation (706), domestic violence (866), marriage/divorce (151), partition/alimony (243), wages (63), roads/byways (234), irrigation (88), crops damaged (207), animal husbandry (84), community forest (41), and miscellaneous (194). [↑](#footnote-ref-3)