

UNABLE OR UNWILLING?

*Nirmala Panta Investigation
Exposes Systemic Police Failures*



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Om Prakash Sen Thakuri
Executive Director
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INTRODUCTION

It has been three years since the brutal rape and murder of 13-year-old Nirmala Panta that took place in Bhimdatta Municipality, Kanchanpur district, a crime which has come to be considered emblematic of the inability of the state to investigate and prosecute crimes of this nature, and its unwillingness to hold the police, prosecutor and courts accountable for failing to deliver justice. Despite the attention garnered by this case it remains shrouded in mystery and Nirmala's family are a long way from understanding the truth behind the events of her rape and murder, let alone feel they can get justice.

Nirmala was raped and murdered on 26 July 2018 and her body was found the following day half naked in a sugarcane field not far from her home. The day her body was discovered, villagers and human rights activists placed pressure on the police to book the perpetrator by protesting throughout Bhimdatta Municipality and the rest of Kanchanpur. From the very beginning of the investigation there was concern over police negligence due to the delayed response to search for Nirmala the night she went missing, and video footage that went viral on YouTube showing Constable Chandani Saud washing Nirmala's trousers at the crime scene. This cast doubt on whether police had effectively protected the crime scene and the surrounding evidence.

Protests heightened from 20 August 2018 when police arrested a mentally disabled man named Dilip Singh Bista who had a previous criminal record. Local people and activists alleged that police tampered with evidence to falsely accuse him in order to cover for the real perpetrator/s, with various rumours circulating about the involvement of family members of high-level politicians and security officials. These protests took a dark turn on 24 August 2018 when police opened fire on the crowd in Bhimdatta Municipality 3 and 14-year-old Sani Khuna was killed and dozens were seriously injured.

Dilip Singh Bista and a number of other suspects claimed to have been tortured under interrogation in police custody both in Kanchanpur and in Kathmandu and forced to confess. None of their DNA samples matched the ones taken from items at the scene and therefore police were unable to charge any of them, regardless of their forced confessions.

Nirmala's mother, Durga Devi Panta, filed a complaint against eight of the police officers allegedly involved in tampering with evidence and obstructing justice, while Khadak Singh Bista, Dilip's brother, filed a complaint accusing four of the police officers of torture. However, the process of delivering justice has been full of obstacles. Human rights activists and legal representatives for the victims have received verbal threats and intimidation for their involvement in the case. Durga Devi Panta attempted to withdraw her charges against the police after receiving compensation and a job offer in the Municipality. Journalist Khem Bhandhari, who was covering the case from the beginning, faced 6 different charges including contempt of court. Both cases against police have ended in acquittal. Furthermore, the public prosecutor decided not to

appeal the decisions. Meanwhile, two journalists reporting on the case were successfully prosecuted calling into question the willingness of courts to prosecute crimes involving police and high-level officials.

The case has gained interest on a national scale and the momentum behind the tragedy has fuelled a movement of Nepal's civil society protesting against gender-based violence and the unwillingness of the government and courts to independently and objectively investigate police conduct and bring those responsible to justice.

The case that began as the rape and murder of a teenage girl, has taken a life of its own and turned into an accumulation of cases of torture; defamation; contempt of court; evidence tampering, moving the initial case far from its foundation. The numerous layers to this case, and its heavy politicization have made it hard for the general public to follow. In this report, we seek to highlight how Nirmala Panta's tragedy has showcased the systemic failures of the Nepalese State's ability to effectively investigate and prosecute these crimes, how these failures are a violation of human rights, and continue in turn to reinforce and perpetuate the culture of impunity in Nepal.

CHAPTER I

MURDER AND RAPE OF NIRMALA PANTA AND PRELIMINARY INVESTIGATION

THE SEARCH FOR NIRMALA PANTA

On Thursday 26 July 2018, at around 11am, Nirmala Panta went to the house of Roshani and Babita Bam. According to the Bam sisters, Nirmala left their house at around 2pm after eating some guava from their garden.¹ Nirmala's mother, Durga Devi Panta, returned to her house in the Bhimdatta Municipality—2 from work at around 1pm to find that Nirmala was not at home.² Her youngest daughter Saraswati told her that Nirmala had gone to meet the Bam sisters at their home.³ When Nirmala had still not returned by 6pm, Durga went to the Bam home to see if she was still there.

¹ INSEC, "Field Monitoring Study on an Incident of Nimala Panta", 15 September 2018, Accessed by: <http://inseconline.org/en/wp-content/uploads/2018/10/Field-Monitoring-Study-Report-on-an-incident-of-Nirmala-Pant.pdf>.

² The Record, "The Hunt for Nirmala Panta's Killer", September 18 2018, Accessed by: <https://www.recordnepal.com/nirmala-panta-murder-mystery>.

³ Ibid.

When Roshani and Babita Bam told Durga that Nirmala had left their house at around 2pm, Durga Devi Panta and her neighbour Laxman Bhatta called the Ward Police Office (WPO) in Mahendranagar at around 8pm. The NHRC report substantiates this claim; according to Sub-Inspector (SI) Jagadish Bhatta's statement, the WPO knew Nirmala was missing at around 8pm but they did not initiate a search or issue any instructions to subordinate police posts.⁴ In the meantime, Durga Devi Panta and members of the neighbourhood conducted their own search. According to the statement taken from SI Ram Singh Dhami, at around midnight they called at the Temporary Police Post (TPP) in Salghari where SI Ram Singh Dhami and his junior officers were prepared to help the search.⁵ However, at 12.35am, the TPP informed the District Police Office (DPO) about Nirmala's missing and argued it was too late to initiate a search.⁶ The police officer at Salghari told Durga to come back in the morning. According to SI Ram Singh Dhami's statement, Nirmala's mother and neighbours wanted the police to conduct a search of the Bam house because it was the last place Nirmala was seen. However, given it was late at night he said it would be inappropriate to go to a household of just girls without any female police officers, so it would be better to wait until the morning.⁷ This was also supported by statements from Luv Dev Awasthi, a neighbour who helped in the search for

⁴ NHRC, 27 January 2019, Accessed by: https://www.nhrcnepal.org/uploads/press_release/Recommendation_and_Direction_to_the_Government_of_Nepal_on_the_murder_incident_of_Nirmala_Pant.pdf.

⁵ COCAP Fact sheet, Unpublished, 2018.

⁶ NHRC, 27 January 2019.

⁷ Statement of Ram Singh Dhami, Offence Against Public Justice Court Judgement, 30 July 2020, page 16.

Nirmala, who claimed that they were told it was inappropriate to search the Bams' house at this time.

According to The Record Nepal, an online portal, at around 8.30am on 27 July 2018, Sadhu Ram Chaudhary who worked at Yagya Raj Bhatta's house found Nirmala's bicycle. An hour later, villager Dipak Negi discovered Nirmala's body in a sugarcane field in the Bhimdatta Municipality-19, a few metres from the location where the bicycle was discovered. It took more than half an hour for the team of officers deployed by the DPO to reach the crime scene, even though locals had notified them minutes after Negi had discovered the body. By the time the police had arrived many local people had gathered at the crime scene and taken photographs.

PRELIMINARY INVESTIGATION

Nirmala's body was found half naked from the waist down, with various visible injuries such as bruising and marks on her neck. She was found near several of her belongings such as her notebooks that were scattered around the crime scene. The police team that arrived on the scene consisted of Deputy Superintendent of Police (DSP) Gyan Bahadur Setti, Inspector Jagadish Bhatta, the Investigation Officer Inspector Ekindra Bahadur Khadka and Constable Chandani Saud.⁸ A video of the crime scene later went viral on social media showing Constable Chandani Saud washing Nirmala's trousers and then placing them over her genitals.⁹

⁸ NHRC, 27 January 2019.

⁹ Nirmala Panta, Crime Scene video, Available by: <https://www.youtube.com/watch?v=sRIS1gEABX8>.

Nirmala's body was taken for a post mortem at Mahakali Zonal Hospital. The cause of death was declared as asphyxiation after rape. After pressure from local people who began protesting the day that Nirmala was found, the district police team was joined by a team from the Central Investigation Bureau (CIB) in Kathmandu, who arrived in Kanchanpur on 29 July 2018. It was led by DSP Angur GC and was created to provide technical support for the district police team.¹⁰ The CIB team investigating the case concluded that Nirmala had been murdered before she was moved to the sugarcane field where her body had been found. This was based on information in the post-mortem and provided by the district team.¹¹

The police sought to cremate Nirmala's body the night it was brought to the hospital. However, this was postponed after pressure from human rights activists and local people who wanted to see the perpetrator arrested before Nirmala's cremation. This was only delayed until 30 July, when the family is said to have come under strong pressure from police to perform her final rites.¹² However, according to women's right's activist Maya Negi, while the activists were adamant not to cremate the body until the guilty party was booked, the body had begun to decompose so Nirmala's mother requested to be allowed to perform Nirmala's final rites.

¹⁰ INSEC, "Field Monitoring Study on an Incident of Nimala Panta", 15 September 2018.

¹¹ The Record, "The hunt for Nirmala Panta's Killer", September 18 2018.

¹² INSEC, "Field Monitoring Study on an Incident of Nimala Panta", 15 September 2018.

PUBLIC RESPONSE

The news of the Nirmala Panta rape and murder case and the allegations of police failures in the investigation sparked a ripple effect of protests. These included local protests demanding police action against the guilty party, and nationwide protests against the police administration and an increased number of rape cases in Nepal. These protests came in many different forms such as sit-ins organized by her family, rallies, human-chains, and barricades, and gained momentum the longer the case remained unsolved.¹³

On the day that Nirmala's body was found, local people and relatives gathered and demonstrated at Mahakali Zonal Hospital, Mahendranagar Bazaar and the Municipality office.¹⁴ Members of the Nepal Student Union joined forces with human rights activists, women's rights organizations and sister organizations of the main opposition party Nepali Congress (NC) to stage further protests after a formal announcement that Nirmala had been murdered after rape.¹⁵ Some protestors attempted to enter the Bhimdatta Municipality office, which resulted in police attempting to control

¹³ The Kathmandu Post, "Nirmala Rape, Murder: Protests Continue in Several Places", 3 December, 2018, Accessed by: <http://kathmandupost.ekantipur.com/news/2018-12-03/nirmala-rape-murder-protests-continue-in-several-places.html>.

¹⁴ The Kathmandu Post, "Kanchanpur Tense after Girls Rape and Murder", 29 July 2018, Accessed by: <https://kathmandupost.com/national/2018/07/29/kanchanpur-tense-after-girls-rape-murder>.

¹⁵ The Kathmandu Post, "Kanchanpur Tense after Girls Rape and Murder, 29 July 2018, Accessed by: <https://kathmandupost.com/national/2018/07/29/kanchanpur-tense-after-girls-rape-murder>.

the situation by opening fire and using tear gas. This resulted in injuries to both police and protestors alike.¹⁶

The protests continued to increase due to the police's failure to identify those responsible. In the weeks after the murder, local people protested across Kanchanpur district with demonstrations taking place in Bhimdatta Bazaar including other places across Kanchanpur District.¹⁷ This ignited Nepal's #MeToo movement, called #Rageagainstrape.¹⁸

NHRC REPORT FINDINGS ON THE PRELIMINARY INVESTIGATION

Following an investigation, the National Human Rights Commission (NHRC) on 7 October 2018 released a press statement with an eight-point directive to the Nepal government after finding that there were numerous lapses in the handling of the investigation.

Firstly, the police showed a lack of urgency in launching a search upon hearing that a 13-year-old girl was missing. The NHRC found that several police statements corroborated the delayed

¹⁶ INSEC, "Field Monitoring Study on an Incident of Nimala Panta", 15 September 2018.

¹⁷ Setopati, "Demonstrations About Nirmala Panta Rape Case Continue", 23 August, 2018, Accessed by: <https://en.setopati.com/social/128780>.

¹⁸ Human Rights Watch, "#MeToo Hits Nepal's Government", October 11 2019, Accessed by: <https://www.hrw.org/news/2019/10/11/metoo-hits-nepals-government>.

response in searching for Nirmala's body until the morning after she went missing.

Secondly, the NHRC spoke to retired police officers who claimed that significant detail was lacking in the initial police report on the state of the crime scene and of Nirmala's corpse. Despite mentioning that there were various injuries seen on the body, crucial details such as the number of injuries and detailed medico-legal documents were not recorded. This extended to a lack of detail on the appearance of the crime scene. Whilst the police recorded the clothes that were seen, they did not record the condition of Nirmala's clothes – this was important information which would have indicated whether there had been a significant struggle. The presence of splattered blood was recorded but the police report did not indicate where this was found. According to the retired police officers, this level of detail is mandatory in murder investigations. And although the initial police report corroborates the post-mortem cause of death (asphyxiation), the lack of detail collected prevented the post-mortem from establishing an accurate time of death. The report found that the police also failed to respect the law requiring the responsible investigation officer to be present for the post-mortem.

The report also highlights the investigation's failure to protect the crime scene, risking the preservation of essential evidence. According to the report, before the police had arrived at the crime scene members of the public were already present. Once the entire investigation team arrived, the Scene of Crime Officer (SOCO) did not use the SOCO kit box to provide clear boundaries to contain the crime scene. The NHRC highlighted that the lack of proper crime scene management was shown in the viral video

of Constable Chandani Saud washing Nirmala's trousers and using them to cover up her body. The NHRC's report points to carelessness on the part of the police investigation regarding the collection of essential evidence such as a guava and a plastic packet that was found near the body. CIB Officer Angur GC claimed to have found a white and black shirt pocket on the site 22 days after the discovery of the body. According to the report, Superintendent of Police (SP) Dilli Raj Bista, the chief investigating officer, did not visit the crime scene for seven days after the discovery of Nirmala's body, which the NHRC argues shows a lack of understanding of the gravity of the crime.

In regard to the DNA sample acquired at the scene, the NHRC found that it was collected with a little stick covered with cotton, which is not a flawless method and can lead to issues such as DNA depreciation and destruction. On 31 July 2018 the Kanchanpur DPO sent a letter to the Central Police Forensic Science Laboratory in Kathmandu requesting to test the sample to see if male sperm was detected. The laboratory used Y-STR technology which only detects matches to male members of a specific descent but is not capable of detecting a specific individual. The Autosomal testing technology that is used to identify an individual was not used. In the collection of the sample, the female swab and male sperm were mixed and according to the NHRC findings were not able to be tested separately, and therefore it was no longer possible to use the Autosomal testing. In the breakdown of the DNA quantity the male count was extremely low and according to the report this meant that the 'perfect result is not possible'.¹⁹ Therefore even if there was a match, the report deems that the DNA alone would not

¹⁹ NHRC, 27 January 2019, p.5

be enough evidence to convict a suspect. The NHRC concluded that the only alternative given the lack of separated DNA was to test the rest of the vaginal swabs, however, this becomes less reliable the longer it has been left and therefore it is unlikely that the sample taken at the scene will provide accurate results.

Overall, the report concludes that the police failed to follow proper investigation procedures which included collecting essential evidence and using a sniffer dog to ensure all potential evidence was traced.

As a result of these findings, the NHRC issued the following recommendations to the government in their press release to ensure an effective and scientific investigation for the Nirmala Panta case:²⁰

- 1. The key responsibility to probe the crime within the district lies with the local police. The day Nirmala Panta went missing her mother wanted police to search but the police didn't show enough sensitivity, urgency and weren't accountable in acting to find out the culprit(s) and concluding the probe instantly to launch legal action to the culprit(s) and provide justice to the victims.*
- 2. It was found that local police did not safeguard evidence at the incident site (Sugar cane Plantation) when the police found the dead body and the evidence was found to be destroyed.*

²⁰ NHRC, "Commission's Directive for Scientific Investigation and Legal Action to the Culprit on Nirmala Panta's Murder Incident", 7 October 2018, Accessed by: https://www.nhrcnepal.org/uploads/press_release/Reexamine_the_Evidences_7_Oct__2018.pdf.

Sniffer dogs were not mobilized to find culprit(s) and the chief of the district police office was not present at the incident site to coordinate the investigation. Therefore there is a need for an additional probe to the chief of the district police office.

3. *When such grievous crimes occurred, there must be the cooperation of the locals, civil society, media, and the victims themselves, to find out the culprit(s) concluding the probe instantly and providing justice to the victims on time, ensuring that nobody poses obstacles in the investigation by exerting undue pressure.*
4. *The day Nirmala Panta went missing her mother wanted the police to search the house of Roshani Bam and Babita (Anita) Bam, but the cops dismissed the idea. Investigators should treat them as suspects.*
5. *Re-examine and re-analyze whether the laboratories where DNA tests were conducted had adequate equipment, chemicals and resources to store the vaginal swab and test semen.*
6. *The victim's family and locals were frustrated over the police probe because the scientific tests conducted by Nepal Police, which was supposed to give priority to the investigation, lacked credibility.*
7. *Local Police of Kanchanpur lacked coordination with victim's family and locals, which resulted in the present situation of violence. Thus, the police is recommended to play a coordinating role and exhibit readiness in ensuring the security of life and property of both victims and locals.*

8. *Demands action against Nepal police personnel responsible for firing shots at protesters resulting in the death of Sani Khuna and also demands free treatment for those injured in police firing.*

Secretary of the NHRC Murari Kharel stated that most recommendations have been followed.²¹ However, according to former NHRC commissioner, Mohna Ansari, all the recommendations have still yet to be followed.²²

ADDITIONAL INSPECTOR GENERAL'S PROBE REPORT FINDINGS

Additional Inspector General (AIG) Dhiru Basnyat led a nine-person probe committee formed on 16 September 2020 to investigate the role of members of the District and CIB police teams who oversaw the investigation. The report substantiates many of the claims made by the NHRC on evidence management in the case, however, it also places emphasis on police officers seeking to implicate a local person with mental health problems, Dilip Singh Bista, as their prime suspect.²³ (Dilip Singh Bista's torture and further allegations by other suspects will be discussed in detail later in this report).

²¹ Interview with Murari Kharel for AF, 20 July 2021.

²² Interview with Mohna Ansari for AF, 22 July 2021.

²³ The Kathmandu Post, "AIG's Blamed Senior Officers for Failed Nirmala Probe", December 22 2018, Accessed on: <https://kathmandupost.com/national/2018/12/22/aigs-report-blames-senior-officers-for-failed-nirmala-murder-probe>.

The probe committee report names 14 officers involved in gathering false evidence and the alleged torture of Dilip Singh Bista whilst in custody. They are SP Dilli Raj Bista; DSPs Gyan Bahadur Setti and Angur GC; Inspectors Ekindra Bahadur Khadka, Jagadish Prasad Bhatta and Ganesh Sapkota; SIs Ram Singh Dhami, Basudev Awasthi, Har Singh Dhami and Dikar Dev Panta; Head Constables Dharma Singh Bhat, Dharmendra Singh Bista and Dipak Bista; Constables Lal Bahadur Bista, Madhav Khatri, Surendra Singh Kunwar, Subharaj Mahatara and Chandani Saud.²⁴ The report summarizes the following principal failures of the police investigation: failure to use sniffer dogs for the investigation; the SOCOs did not perform their duties correctly; they did not gather essential evidence such as the victim's dress and guava taken from Bam's tree; they did not protect existing evidence by following a proper chain of custody, and senior officers such as SP Dilli Raj Bista reached the crime scene extremely late.²⁵

The probe committee report states that the Nepal police are trained in crime scene investigation and evidence management and therefore there is no excuse for the negligence or tampering that occurred during this investigation. Officers allowed Constable Chandani Saud to wash crucial evidence, and the report specifically accuses SP Dilli Raj Bista of showing a lack of concern in gathering evidence that did not implicate Dilip Singh Bista. Inspector Jagadish Bhatta was also personally accused of drinking beer instead of searching for Nirmala the night she went missing, and when he undertook a polygraph test, he was questioned about

²⁴ Ibid.

²⁵ Ibid.

whether he knew who was involved in the case and the results came back stating that he had something to hide.²⁶

Former NHRC commissioner, Mohna Ansari emphasized that despite the report, the case was filed late.²⁷ Though the committee began investigating on 16 September 2018, the AIG Dhiru Basnyet only submitted the report to then Inspector General of Police (IGP) Sarbendra Khanal on 17 December 2018.²⁸ These three months meant that the courts questioned whether the case should be considered given that it was filed after the statute of limitations had ended, threatening to undermine the legitimacy of the case (this will be discussed in more detail later in the report).

²⁶ Ibid.

²⁷ Interview with Mohna Ansari to AF, 22 July 2021.

²⁸ The Himalayan Times, “AIG Submits Report on Nirmala’s Case”, December 18 2018, Accessed by: <https://thehimalayantimes.com/nepal/aig-submits-report-on-nirmalas-case>.

CHAPTER II

INVESTIGATION AND ALLEGATIONS OF TORTURE

The attention of the investigation soon turned to the last people to have seen Nirmala alive, the Bam sisters. Several rumours circulated that Nirmala's body remained in their house until midnight, and that the family had chopped their guava tree to get rid of potential evidence.²⁹ There were also rumours circulating in the media that Babita Bam had a relationship with SP Dilli Raj Bista's son, Kiran Bista. The Bam sisters were remanded in custody on 27 August 2018 and remained there until 11 September 2018 when they were released due to lack of evidence.

On the night Nirmala was murdered Kiran Bista had a party at the Opera Hotel which some people claimed Nirmala attended. Rumours circulated that Kiran Bista and Aayush Bista, nephew of Bhimdatta Municipality Mayor Surendra Bista, were both involved in the crime. The CCTV footage was not recovered and a total of 17 CCTV cameras around Bhimdatta Municipality were found smashed or not working.³⁰ According to Kiran Bista's

²⁹ The Record, "The Hunt for Nirmala Panta's Killer", 18 September 2018.

³⁰ Setopati, "Nirmala Panta Rape and Murder Case: Police Ail to Recover CCTV Footage", 7 October 2017, Accessed by: <https://en.setopati.com/social/132008>.

statement as reported in the Joint Secretary's report, he was at the Opera Hotel with friends Aishwarya and Sishir Bista, and they were accompanied by another three unknown girls. He claims not to have known Nirmala, the Bam sisters or Aayush Bista. Aayush Bista also stated that he did not know Kiran Bista or the Bam sisters and that in the lead up to the incident and on the day itself, he was in Aripur playing football. Police took DNA samples from Kiran Bista and Aayush Bista and both did not match the partial DNA sample recovered at the scene.³¹ It is important to note that the DNA taken from suspects was tested against a sample that was considered inadequate by the NHRC and was potentially at risk of contamination.³² According to court dossiers, the two boys were not interrogated by police nor presented in court for their statement. Neither were Sishir and Aishwarya and the three unknown girls who accompanied them. Given the unreliability of the DNA sample, the failure to formally interrogate these suspects is one of the many failures in this police investigation.

On 20 August 2018, the DPO issued an arrest warrant for 41-year-old mentally disabled Dilip Singh Bista announcing publicly that he was their prime suspect. He had previously served a nine-year sentence for the murder of his brother-in-law.³³ According to Inspector Ekindra Khadka, Dilip Singh Bista was arrested by CIB

³¹ The Kathmandu Post, "New Team to Scan Officers for Faulty Investigation", 17 September 2018, Accessed by: <https://kathmandupost.com/national/2018/09/17/new-team-to-scan-officers-for-faulty-investigation>.

³² See Pg. 6.

³³ The Kathmandu Post, "Everything You Should Know About the Rape and Murder of Nirmala Panta", 25 July 2019, Accessed by: <https://kathmandupost.com/national/2019/07/25/everything-you-should-know-about-the-rape-and-murder-of-nirmala-pant>.

and DPO police officers near the crime scene on 20 August, and when asked about Nirmala's case he was said to have run away.³⁴ At noon the next day the police went to his house and seized some of his clothes, including a white and black striped shirt, which had a torn pocket.

On 22 August, the Public Prosecutors' (PP) office sent a letter to the DPO requesting a DNA sample from Dilip Singh Bista, a mental health check-up at Mahakali Zonal hospital, a forensic check of his house, and the cloth which had a black stripe found at the crime scene. On 24 August, the cloth was sent with the white shirt with a black stripe seized from his house to see if they were a match. The same day Dilip Singh Bista gave a statement to Inspector Ekindra Khadka refuting all allegations and stating that he did not know, nor had ever met Nirmala Panta. He claimed that he used to travel down the road near the crime scene every day, and on the day her body was found he noticed a crowd and asked what had happened. A man told him that a girl had been raped and killed nearby. He proceeded to meet a friend, Kamal Shah, outside Mahakali Hospital where there was another crowd and Kamal lent him 20 rupees before he continued to the bazaar. However, according to police, Dilip Singh Bista confessed to the crime during interrogation, and in recordings that had been obtained by The Kathmandu Post, a national daily English newspaper, Dilip Singh Bista's description of the crime matched police understanding of its nature.³⁵ On 5 September 2018, Dilip Singh Bista was diagnosed by Mahakali Zonal Hospital with

³⁴ Torture Case Court Judgement, 30 July 2020, p.9.

³⁵ The Kathmandu Post, "Everything You Should Know About the Rape and Murder of Nirmala Panta", 25 July 2019.

undifferentiated schizophrenia and prescribed 2mg of Risperidone, an antipsychotic drug.³⁶

However, statements from Dilip Singh Bista's brother, Khadak Singh Bista, and his sister-in-law, Tulsi Bista on the arrest vary considerably from those of Inspector Ekindra Khadka and DSP Angur GC. According to the FIR filed by Khadak Singh Bista his brother had been arrested on 18 August 2018, two days earlier than indicated in Inspector Ekindra Khadka's statement which said he had been arrested on 20 August, the same day he was allegedly found suspiciously near the crime scene.³⁷ Khadak Singh Bista stated that his brother was arrested near Saraswati Secondary School by four policemen deputed from the DPO, Kanchanpur. Dilip Singh Bista told him that he was taken to the upper floor where he was verbally and physically abused, kicked in the knees and various parts of his body and then waterboarded. The FIR also mentioned that he was forced to take intoxicating substances to make him confess.³⁸ This matches with Dilip Singh Bista's statement to Inspector Laxman Khadka from the DPO, Dadeldhura in which he claimed that on 18 August he was arrested by 4-5 policemen, detained, and tortured into confessing.³⁹ Tulsi Bista's statement to Inspector Maniram Bhatta at the DPO, on 21 January 2019, Kanchanpur also highlights discrepancies in

³⁶ Dilip Singh Bista's medical documents from the T.U. Teaching Hospital, on 21 October 2018.

³⁷ Statement by Ekindra Khadka, Torture Case Court Judgment, 30 July 2020, p.2.

³⁸ FIR, Filed by Khadak Singh Bista, 18 August 2018, p.2.

³⁹ Torture Case Court Judgment, 30 July 2020, p.2.

the police's version of events.⁴⁰ She says that on the morning of 18 August, there were a couple of plain clothed policemen who looked around the house claiming to be looking to buy land. The following day, 6-7 policemen arrived at her house asking about Dilip Singh Bista to which she said she had not seen him for two days. They proceeded to seize his clothes and perform a search. On 20 August, Tulsi Bista heard for the first time that her brother-in-law had been taken into custody through an announcement from the DPO. In her statement, she reported that when he was subsequently released, he was traumatized and had mentioned he had been tortured by members of the police.⁴¹ Dilip Singh Bista was released on 11 September 2018 after his DNA was found not to match the partial sample taken from the crime scene.⁴²

During 2018, seven other suspects accused police of torturing them during interrogation: Dilip Singh Bista, Hemanti Bhatta, Chakra Badu, Dipak Negi, Jeevan Gharti Magar, Bishal Chaudhary and Pradeep Rawal. Hemanti Bhatta was an 18-year-old girl from the same neighbourhood as Nirmala and was interrogated on 3 August. She described her initial experience on that day as psychological torture. When she was taken back to the DPO the next day she said they repeatedly threatened to pour hot water on her head when she denied involvement in Nirmala's murder.

⁴⁰ Statement by Tulsi Singh Bista, Torture Case Court Judgment, 30 July 2020, p.3-4.

⁴¹ Ibid.

⁴² The Kathmandu Post, "Kanchanpur Rape, Murder Case: Police Release Main Accused Bista and Bam Sisters", 11 September 2018, Accessed by: <https://kathmandupost.com/national/2018/09/11/kanchanpur-rape-murder-case-court-orders-release-of-main-accused-bista-and-bam-sisters>.

On 4 August, she claims a female police officer tied her hands and feet and severely beat her. A couple of days later she told her father, Gokul Bhatta, about her treatment at the hands of the police and wrote an official complaint to lodge against the police at the DPO with the help of her neighbours. SP Dilli Raj Bista apologized on behalf of the police and convinced her to drop the complaint. Finally, on 12 August, the police called Hemanti in to sign a document which she says she was not able to read before signing.⁴³ Hemanti Bhatta also claimed that police visited her at school on a number of occasions, impacting her image in front of classmates and teachers.

Bishal Chaudhary, from Bhimdatta Municipality-18, had been in custody at Salghari police post on suspicion of stealing his neighbour's hen the night Nirmala had been murdered. He was transferred that afternoon to the Ward Police Station. Despite being in police custody on the night of Nirmala Panta's rape and murder, Chaudhary claims to have been subject to forms of both physical and psychological torture during interrogation between 5 and 21 December 2018 in respect of the crime.⁴⁴ This included being handcuffed and blindfolded with a pistol held to his head, as well as being kicked in his back, sides and legs and continuously being threatened with death and having his house burnt down unless he confessed to her rape and killing.⁴⁵ According to a statement from Chaudhary, he was shown videos of his friend Pradeep Rawal

⁴³ INSEC, "Field Monitoring Study on an Incident of Nimala Panta", 15 September 2018.

⁴⁴ Bishal Chaudhary, International Rehabilitation Council for Victims of Torture.

⁴⁵ Bishal Chaudhary, International Rehabilitation Council for Victims of Torture.

confessing to the crime and naming him as an accomplice, but he still denied involvement in the crime. He was then threatened to be taken to the crime scene and shot. The police officers said they would say that Nirmala's killer had been shot trying to flee arrest. After giving a DNA sample, he was flown to Kathmandu where he was interrogated by the then police chief IGP Sarbendra Khanal.⁴⁶ He claims that whilst being detained at Singhadurbar Metropolitan Police Circle, Maharajgunj in Kathmandu, members of the CIB threatened to make him urinate onto an electric heater (which would electrocute his penis), shoot him and said that they feared that he may die from what was in his tea. Under these threats, he confessed to the crime in front of his father. The police took a polygraph test which was not taken with Chaudhary's consent. However, he was released on 21 December 2018, after his DNA was found not to be a match to the partial sample taken at the scene..⁴⁷

Pradeep Rawal was also accused of stealing Chaudhary's neighbour's hen on 16 July. However, he did not spend the night in custody. On 3 November 2018, Rawal was taken by two unidentified men in civil dress in Kathmandu and questioned about the Nirmala Panta case. He claims to have stayed in a CIB office on that day and was taken to Metropolitan Police Circle, Maharajgunj Kathmandu. Like Bishal Chaudhary, Rawal also claims to have been threatened that he would be forced to urinate on an electric heater and to be beaten during his interrogation.

⁴⁶ My Republica, "Nirmala Probe Started from New Hypothesis: IGP Khanal", 29 December 2018, Accessed by: <https://myrepublica.nagariknetwork.com/news/56213/>.

⁴⁷ Bishal Chaudhary statement to Advocacy Forum.

After a couple of days, some of the threats became real and for three days he was beaten with a plastic pipe on the soles of his feet. He named SI Rajesh Giri and Constable Sundar Nepali from the CIB as two of his torturers (he discovered their names when he was taken to hospital). He remembers the police saying, ‘He is not telling the truth. He should be made to run and be shot from behind. And make it public that Nirmala’s murderer was killed when he tried to escape police custody.’⁴⁸ Much like Bishal Chaudhary, he was interrogated by then Inspector General of Police (IGP) Sarbendra Khanal,⁴⁹ and forced to take a polygraph test. After days of interrogation, Rawal claims that the police said they really would force him to urinate on the electric heater, and out of fear he confessed. Again, the DNA test proved not to be a match to the one taken at the scene and Rawal was released on 26 December 2018.⁵⁰

On 6 August, Chakra Badu was taken to the Kanchanpur DPO for interrogation. According to his statement, he was wrongfully charged with abusing the police in public. For 10 days police used to come into his cell every day and put a gun to his head to make him confess to killing Nirmala Panta. He repeatedly denied he was involved and was eventually released on 16 August. He continues to fear the police.

⁴⁸ Pradeep Rawal statement to Advocacy Forum.

⁴⁹ My Republica, “Nirmala Probe Started from New Hypothesis: IGP Khanal”, 29 December 2018.

⁵⁰ INSEC, “Field Monitoring Study on an incident of Nimala Panta”, 15 September 2018.

THE TORTURE CASE

Khadak Singh Bista proceeded to file an FIR on 18 December 2018 on behalf of his brother Dilip Singh Bista accusing SP Dilli Raj Bista, Deputy SPs Gyan Bahadur Setti and Angur GC, and Inspector Ekindra Khadka of torture and coercing a confession.⁵¹ Bishal Chaudhary and Pradeep Rawal also sought an investigation into the torture they suffered, but police refused to register the FIRs they tried to file.⁵²

In Dilip Singh Bista's case, the FIR argued that these officers had violated Section 167 (1) of the Penal Code which prohibits torture specifically for those in police custody and should be prosecuted as per Section 167 (2) and (3), along with compensation for the plaintiff under Section 169.⁵³ The FIR was filed with the accompanying evidence of Dilip Singh Bista's treatment records from the Teaching Hospital and Koshish Nepal Correction Centre which highlighted Dilip Singh Bista's deteriorating mental state. Though some of the police were initially arrested, they were released on bail on 14 March 2019 in a hearing of the torture and offences to public justice case.

At the decision hearing on 30 July 2020, the defence lawyers argued that the plaintiff lacked credibility and that the facts alleged in the FIR were not consistent with other statements. According to the defendants, in his FIR, Khadak Singh Bista stated that Dilip

⁵¹ FIR, Filed by Khadak Singh Bista, 18 August 2018.

⁵² Interview with Puspa Paudel on 18 July for AF, 14 July 2021.

⁵³ The National Penal (Code) Act, 16 October 2017, Accessed by: <http://www.moljpa.gov.np/en/wp-content/uploads/2018/12/Penal-Code-English-Revised-1.pdf>.

Singh Bista was taken to the upper floor of the DPO in Kanchanpur, whilst he had also claimed at one point not to know where his brother was held. There were also questions brought up in court as to why the FIR was filed 4-5 months after the torture took place. Khadak Singh Bista claimed to have seen police officers kick his brother at the DPO.⁵⁴ However, defendants argued against this claim asking why they would torture a suspect so obviously in front of a family member.⁵⁵ According to the defendants, Dilip Singh Bista underwent a health check-up after his arrest (as per the legal requirements) and there were no indications of torture, which was corroborated in court by the doctor who conducted the examination. All defendants were acquitted the same day, based on insufficient evidence.

However, it is important to note that a lack of proper medical documentation is another common obstacle against legal punishment of torture. In Article 3(2) of the 1996 Torture Compensation Act, medical practitioners should examine detainees as they are taken into detention, and before they are released. Advocacy Forum has repeatedly highlighted how police presence during these check-ups often distorts the examination and therefore the medico-legal documentation.⁵⁶

There were several other judicial obstacles that call into question the ability and willingness of the courts to prosecute crimes of this nature. For instance, in cases such as torture, victims are

⁵⁴ Interview with Khadak Singh Bista, 15 July 2021.

⁵⁵ Torture Case Court Judgment, 30 July 2020, p.25.

⁵⁶ Advocacy Forum-Nepal, "Torture in Nepal in 2019", 26 June 2020, Accessed by: <http://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>.

often mentally unable to file a complaint due to fear and trauma for considerable amount of time. The court failed to take this into account, allowing the three-month gap in filing the complaint from the time the torture occurred to be one of the reasons justifying the defendants' acquittal. These factors work against victims rather than protect them, and especially in cases involving high-ranking officials, courts should take into account the level of pressure placed on the complainant.

The pressure and fear in this case also extended to the legal team representing victims. Due to the sensitivity of the case lawyers commuted from Kathmandu to Kanchanpur because local lawyers were reluctant to represent Dilip Singh Bista against the police. The decision hearing was held amid lockdown where legally Dilip Singh Bista's representation in Kathmandu were not allowed to travel to Kanchanpur. According to lawyer Pushpa Paudel working on the case, they were only given notice of the 30 July 2020 decision hearing date two days before it was scheduled, giving lawyers little time to prepare and request permission to travel during the pandemic.⁵⁷ They submitted a letter requesting to postpone the hearing (along with letters from Khadak Singh Bista and HURON lawyer Indra Prasad Aryal) - which is common practice in many cases - on the grounds that Dilip Singh Bista would be unable to receive proper legal representation; however this was denied. On 27 December 2020, AF lawyers Bikash Basnet and Bir Bahadur Bista went to the District Attorney Office, Kanchanpur and met with Assistant District Government Attorney Bishnu Prasad Gauli who confirmed that on 30 July 2020 Khadak Singh Bista requested to postpone the hearing but

⁵⁷ Interview with Puspa Paudel on 18 July for AF.

that he had been instructed by the Attorney General, Kathmandu not to postpone the case. The Court decided the case on 30 July, acquitting all defendants.

OFFENCE AGAINST PUBLIC JUSTICE CASE

According to a Ministry of Home Affairs' press statement of 25 October 2018, SP Dilli Raj Bista and Inspector Jagadish Bhatta were dismissed from their jobs given the accusations in reports of the NHRC, a probe team of Ministry of Home Affairs and human rights organizations, and general public concern.⁵⁸ On 18 December 2018, Durga Devi Panta, mother of Nirmla Panta, filed an FIR (First Information Report) on grounds of evidence-tampering/obstruction of justice. Durga Devi Panta brought this case against SP Dilli Raj Bista, DSP Angur GC, DSP Gyan Bahadur Setti, Inspector Jagadish Bhatta, Inspector Ekindra Khadka, Sub-inspector (SI) Har Singh Dhami, Assistant Sub-Inspector (ASI) Ram Singh Dhami and Constable Chandani Saud.⁵⁹ This evidence-tampering was brought in respect of the mismanagement of the crime scene, lack of proper handling of evidence, loss of vital evidence, attempts by police to frame Dilip Singh Bista and failure to maintain a proper chain of custody for the evidence. On 7 March 2019, the public prosecutor of

⁵⁸ The Himalayan Times, "Government Ousts Suspended SP Bista, Inspector Bhatta from Police Service", 25 October 2018, Accessed by: <https://thehimalayantimes.com/nepal/govt-ousts-suspended-sp-bista-and-inspector-bhatta-from-police-service>.

⁵⁹ CESIF, "Rape: A Political Discourse", <https://cesifnepal.org/rape-a-political-discourse/>

Kanchanpur District charged these eight officers with an offence against public justice.⁶⁰

The jail bail hearing for the offence against public justice took place on 14 March 2019, in which the court focused on two major factors. Firstly, whether the case had been filed within the three-month statute of limitations as per Section 103 of the Criminal Code 2017,⁶¹ and secondly, whether the defendants should be charged on the basis of the National Code of Nepal (*Muluki Ain*) or the new Criminal Code that came into effect on 17 August 2018.⁶² The defendants argued that the YouTube video of the crime scene that was used to substantiate the claim of evidence-tampering went viral long before Durga Devi Panta filed the case; and therefore, the case had not been filed within the three-month statute of limitations. The court rejected this argument on the basis that government officials only came to find out about the evidence-tampering after Durga Devi Panta informed the DPO in Kanchanpur, and determined that therefore the FIR had been filed within the statute of limitations. The court also decided that, regardless of which legal code police were subject to, destruction of evidence undermines the whole purpose of having an investigation and to condone it would undermine the

⁶⁰ The Himalayan Times, “Eight police personnel charged with evidence tampering in Nirmala Panta case”, 7 March 2019, Accessed by: <https://thehimalayantimes.com/nepal/eight-police-personnel-charged-for-tampering-evidence-in-nirmala-panta-case>.

⁶¹ Offence Against Public Justice Case, Jail/Bail Hearing, 14 March 2019.

⁶² The Kathmandu Post, “Free Press on Edge as New Laws Come in Force Today”, 17 August 2018, Accessed by: <https://kathmandupost.com/national/2018/08/17/free-press-on-edge-as-new-laws-come-into-force-today>.

purpose of the legal system itself.⁶³ The court determined that even without the new criminal code, the crime would still have been prosecuted; and on that basis District Judge Dr. Rajendra Kumar Acharya ruled that the case would be considered under the new Criminal Code.

The jail/bail hearing covered some of the controversies of the police handling of the case. According to court documents on the hearing, Constable Chandani Saud defended her act of washing the victim's trousers and covering her genitals because she (Constable Saud) felt "uncomfortable" seeing the public exposure of Nirmala's body. However, the court claimed they found it hard to believe that not a single police official thought that the trousers could provide essential evidence. The court questioned the role of Investigation Officer Inspector Ekindra Khadka in failing to protect the scene. It also questioned his responsibility for any torture at the hands of his senior officers, even if he was not personally involved.⁶⁴

The prosecutors claimed that Inspector Jagadish Bhatta was negligent in his lack of an immediate search for Nirmala. ASI Ram Singh Dhami had called him from the Salghari TPP, however he did not pick up the telephone despite being on 24-hour duty. The Scene of Crime Officer (SOCO) SI Har Singh Dhami was accused of not taping off the crime scene and being both irresponsible and unprofessional in his management of essential evidence.⁶⁵ He had

⁶³ Offence Against Public Justice Case, Jail/Bail Hearing, 14 March 2019, p. 28.

⁶⁴ Offence Against Public Justice Case, Jail/Bail Hearing, 14 March 2019 p.30.

⁶⁵ Offence Against Public Justice Case, Jail/Bail Hearing, 14 March 2019, p.30.

a previous record of presenting false evidence and conducting a biased investigation against the defendant in a previous case.⁶⁶ DSP Gyan Bahadur Setti was accused of failing in his position as second in command to delegate crime scene responsibilities amongst his officers which resulted in a failure to protect crime scene evidence.⁶⁷

The police in question were all released on bail of varying bail amounts. DSP Gyan Bahadur Setti and Inspector Ekindra Khadka were released on bail of Rs 900,000 (approximately 7,500 USD) each; Constable Chandani Saud was released on Rs 400,000 (approximately \$3350 USD); SI Har Singh Dhami was released on Rs 350,000 (approximately 2,930 USD); ASI Ram Singh Dhami was released on Rs 300,000 (approximately 2,510 USD).⁶⁸ SP Dilli Raj Bista, DSP Angur GC, Inspector Ekindra Khadka and DSP Gyan Bahadur Setti were also being accused of torture and therefore, their increased bail amount reflected the culmination of both cases and their status in the police. However, DSP Angur GC and SP Dilli Raj Bista were on the run and did not appear before court.⁶⁹ As a result, the court issued warrants for their arrest. SP Dilli Raj Bista turned himself in on 19 March 2019 and was released on bail of Rs 1.05 million (approximately 8,780

⁶⁶ Ibid. The case was *Government of Nepal v Laxman BC*, a case involving a dispute over a lottery ticket.

⁶⁷ Offence Against Public Justice Case, Jail/Bail Hearing, 14 March 2019, p.29.

⁶⁸ The Kathmandu Post, “Nirmala Panta Rape and Murder: court orders release of six police officers on bail”, 14 March 2019, Accessed by: <https://kathmandupost.com/national/2019/03/14/nirmala-panta-rape-and-murder-court-orders-release-of-six-police-officers-on-bail>.

⁶⁹ Ibid.

USD),⁷⁰ and DSP Angur GC faced court on 24 March 2019 and was released on a bail of Rs 900,000 (approximately 7,500 USD).⁷¹

On 30 July 2020, the defendants faced Kanchanpur district court for the final hearing. Regarding evidence-tampering, they claimed it was impossible to collect fingerprints and footprints from both Nirmala's body and the surrounding area because the area was muddy. The defendants argued that the mud was worsened by the presence of the public. In terms of the questions over the legality of Dilip Singh Bista's house search, the court stated that the search did not break protocol, and that some aspects of police work involve undercover operations, and therefore cannot be publicly revealed. Inspector Ekindra Khadka and SP Dilli Raj Bista's defence argued that, while they may have been unable to protect the evidence, this fails to prove that this was to protect an unknown criminal and without a basis for the claim that they were protecting someone, there is no explanation as to why would they have tampered with evidence. In respect of the fact that Nirmala's trousers and underwear were lost after being taken from the crime scene, the defendants' lawyers argued that this was a result of the hundreds of locals launching violent protests in which police struggled to protect themselves let alone any evidence. The court hinted that in Nepalese society if a teenage girl is missing there is an assumption that she has eloped, and therefore, the lack of urgency by the police officers may have been based on this

⁷⁰ Online Khabar, "Nirmala Panta murder: court to release Bista on bail", 24 March 2019, Accessed by: <https://english.onlinekhabar.com/nirmala-pant-murder-court-to-release-bista-on-bail.html>.

⁷¹ My Republica, "District court orders Dilli Bista to pay Rs 1 Million, 24 March 2019, Accessed by: <https://myrepublica.nagariknetwork.com/news/district-court-orders-dilli-bista-to-pay-rs-1-mil/>.

assumption.⁷² However, the courts should hold police accountable if they jump to these conclusions, as there is no excuse not to take the disappearance of a teenager seriously.

The defendants were acquitted by Judge Gopal Prasad Bastola on the basis that there was insufficient evidence to convict them for offences against public justice.⁷³ The court also considered the fact that on 15 March 2019 Durga Devi Panta had sought to retract her statement against the officers, claiming that she was put under pressure by human rights activists to file the FIR in the first place. Nirmala's father was against this decision and deemed it to be a result of 'coercion'.⁷⁴

Due to the potential and frequency of coercion, the retraction of a victim statement is not an adequate basis for acquitting defendants, especially in an evidence tampering case. In particular cases where powerful people have been accused of a crime and have the means to incentivize a complaint retraction or in worst cases, threaten a victim's safety. Human rights defenders who were involved with Durga Devi Panta claimed that she received

⁷² The unofficial translation: When a young girl of 13-14 years old is lost, our society has a way of thinking otherwise. It could have been said that policemen did not show readiness if they had a doubt that the case was serious one. But that night it had rained heavily, and it was already 10-11 pm and the only information that the police had was the missing of a daughter and there was not any document to make an identification so they had told the plaintiff that they will start the search the next morning, to which the plaintiff and others accompanying her agreed as well. In such context, to say that the police did not show readiness in searching would be seen as playing with human sentiment.

⁷³ The Kathmandu Post, "Nirmala Panta rape and murder: court orders release of six police officers on bail", 14 March 2019.

⁷⁴ The Himalayan Times, "She's scared: Yagyraj", 15 March 2019, Accessed by: <https://thehimalayantimes.com/nepal/shes-scared-yagyraj-panta>.

financial compensation of Rs 1,8 million (approximately 15,000 USD) and was offered a job in the municipal office.⁷⁵ This was also confirmed by Indra Prasad Aryal who also said that he noticed her change of mind after speaking to one of the accused police officers.⁷⁶ The decision to release the police on bail given that they all live in the same area as Nirmala's mother, also placed Durga Devi Panta in a position of potential threat. Therefore, statement retractions do not categorically signify that the victim no longer believes a crime took place, but can actually be a result of pressure, incentive or guilt and should not be used as evidence in court to determine whether the defendants are guilty, as is considered the case by Nirmala's father and human rights activists.

⁷⁵ Interview with Sarada Chanda for AF on 20 July 2021.

⁷⁶ Interview with Indra Prasad Aryal for AF on 16 July 2021.

CHAPTER III

PUBLIC PROTESTS AND EXCESSIVE USE OF FORCE

Protests intensified after the arrest of Dilip Singh Bista due to claims that the police had tampered with evidence to frame him. On 24 August 2018, police fired live ammunition to break up a crowd burning tyres during a protest in Bhimdatta Municipality resulting in the death of 14-year-old protestor Sani Khuna. Khuna was hit in the chest in front of the District Administration Office and died on his way to the hospital.⁷⁷ Dozens of others were seriously injured. On 26 August 2018, the government announced that they were offering Khuna the status of martyrdom and proposing to give Rs 1,000,000 (approximately 8,350 USD) to both Khuna's family and Panta's.⁷⁸

Shani Khuna's father, Bir Bahadur Khuna, was initially told the family would receive Rs 3 lakhs (approximately \$2519 USD) for the family and a daily wage job for Shani Khuna's mother

⁷⁷ The Himalayan Times, "Protesting teenager killed in police firing", 25 August 2018, Accessed by: <https://thehimalayantimes.com/nepal/protesting-teenager-killed-in-police-firing>.

⁷⁸ My Republica, "Child martyr Khuna cremated" 26 August 2018, <https://myrepublica.nagariknetwork.com/news/child-martyr-khuna-cremated/>

Manju Raji Khuna at the Municipality Office. Later they received Rs 500,000 (approximately \$4200 USD) and then Rs 1 million (approximately \$8400 USD) from the Federal government respectively, and Manju Raji Khuna was appointed as support staff in the Education Section of Bhimdatta Municipality from 17 September 2018.

No investigation has been initiated into the excessive use of force. Umesh Deuba, a 17-year-old who was injured during the protest has not received any compensation. He sustained a bullet injury on his left thigh and under his left calf. He was rushed to the hospital for further treatment, and later stayed in Kathmandu for 2 months in the Teaching Hospital. He has since recovered but suffers from recurring problems. He cannot fold his leg or move his little finger. The expenses he incurred were reimbursed. According to Bir Bahadur Deuba, his father, he needs further treatment but the family is unable to arrange it as they lack the money to cover the expenses.

According to a joint submission to the United Nations (UN) Universal Periodic Review (UPR) on behalf of CIVICUS and Freedom Forum, the circumstances that led to the death of Khuna highlight the Government of Nepal's failure to 'ensure that freedom of assemblies are guaranteed and lift all restrictions on peaceful protests'.⁷⁹ This shows a non-compliance on behalf of the government with Article 21 of the International Covenant on

⁷⁹ CIVICUS, "Nepal Joint Submission to the UN Universal Periodic Review", 9 July 2020, Accessed by: <https://www.civicus.org/documents/NepalUPRSubmission.EN.2020.pdf>.

Civil and Political Rights (ICCPR) which guarantees the right of peaceful assembly, to which Nepal is a State Party.⁸⁰

Excessive use of force in crowd control is a long standing problem in Nepal. This was highlighted in a number of incidences of killings in the Terai region in particular. For example, during the Consultation Assembly's (CA) feedback meeting on 20-21 June 2015 regarding the draft constitution in the Terai at least 129 people were known to be wounded during police attacks on Madhesi people trying to enter the consultation meeting.⁸¹

Under the 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, police and law enforcement must only use force that is necessary for the aim of legitimate law enforcement and must be proportionate to that aim.⁸² In regard to the appropriate use of firearms the UN Basic Principles state that in violent assemblies law enforcement officers may only use lethal force against an individual in order to confront an immediate serious threat of death.⁸³ If an assembly turns violent and police cannot control it then the Chief District Officer (CDO) can take measures to control it or if necessary depute it to a subordinate officer. These measures can include batons, teargas, and blank fire.⁸⁴ However, if it is not possible to maintain peace

⁸⁰ Laws on the Rights of Peaceful Assembly Worldwide, Accessed by: <https://www.rightofassembly.info/country/nepal>.

⁸¹ Nepal Monitor, "THRD Alliance Report on Human Rights Violations during consultation on the draft Constitution in Terai", 27 July 2015. Accessed by: <https://nepalmonitor.org/reports/view/6500>

⁸² Laws on the Rights of Peaceful Assembly Worldwide, Accessed by: <https://www.rightofassembly.info/country/nepal>.

⁸³ Ibid.

⁸⁴ <https://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/statutes-acts/local-administration-act-2028-1971>.

and it is deemed necessary, then police may open fire to warn the crowd and if more is still deemed necessary then the police may open fire with an order from the CDO given in writing and can fire below the knee.⁸⁵ However, the day after Shani Khuna was shot, women's rights activist Sarada Chand went to the former CDO, Kumar Kharkha, and asked about the shooting. He denied giving an order. He was then transferred to another ministry the next day.⁸⁶

The lack of inquiry into Shani Khuna's death highlights the need for an impartial investigation mechanism with powers to establish whether the force used by police was necessary and proportionate to the threat from the demonstrators. Thus far, the government has failed to conduct an independent and impartial inquiry into this and similar incidents. This calls into question Nepal's willingness to investigate potential violations of international human rights standards to which Nepal is a party. The death of 14-year-old Shani Khuna may have resulted from illegal force and must be investigated in order to deliver justice for his family, but also to ensure that citizens are able to assemble peacefully without fear for their lives.

⁸⁵ Ibid.

⁸⁶ Interview with Sarada Chanda for AF on 20 July 2021.

CHAPTER IV

SEXUAL VIOLENCE IN NEPAL

The police's failure to deliver justice in the case of Nirmala Panta is emblematic of the demoralizing fight that survivors of sexual violence in Nepal often have to confront without success. Home Minister Ram Bahadur Thapa's reaction to this case illustrates the government's apathetic response towards gender-based violence in Nepal on an institutional level. During a press conference on 23 July 2019, he stated, 'Nirmala Panta's rape and murder was a gruesome crime, but it isn't a new phenomenon. (These things) used to happen in the past, they are still happening now and will continue to happen in the days to come as well. We cannot completely control these kinds of cases'.⁸⁷ Thapa's comments not only undermine the severity of the crime, but they attempt to remove government responsibility in preventing their continuing occurrence.

⁸⁷ The Kathmandu Post, "People are furious after home minister says Nirmala Panta's rape and murder isn't a new phenomenon", 23 July 2019, Accessed by: <https://kathmandupost.com/national/2019/07/23/people-are-furious-after-home-minister-says-nirmala-pant-s-rape-and-murder-isn-t-a-new-phenomenon>.

However, Thapa is unfortunately not wrong about rape being commonplace in Nepal. According to the Nepal Police reports on violence against women in 2076/2077 (April 2019-March 2020) there were 2144 reported rapes, 687 reported attempted rapes and 232 reported child sexual abuses cases.⁸⁸ There is a daily average of three rape complaints across the country, however, many human rights activists maintain that the vast majority of incidents of rape are still not reported. This is also emphasized in a 2020 report by Anti Slavery International which stated that only around 5 in 100 cases of child sexual exploitation in Nepal were reported to the police, with few making it to trial.⁸⁹

A considerable obstacle to access to justice or survivors of rape and other gender-based violence is the culture of local settlement or mediation in the name of ‘reconciliation’ in which the survivor is prevented from taking legal action by their local community in return for a job or financial compensation.⁹⁰ For example, on 15 September 2020, a teenage rape survivor committed suicide in Saptari district after being forced to take an out-of-court settlement by her unofficial village council on the basis that making the case

⁸⁸ Crime Investigation Department, Nepal Police, “Women, Children and senior Citizen Service Directorate”, Accessed by: <https://cid.nepalpolice.gov.np/index.php/cid-wings/women-children-service-directorate>.

⁸⁹ Anti Slavery, “Reaching out for Justice”, September 2020, Accessed by: https://www.antislavery.org/wp-content/uploads/2020/09/ASI_Nepal_CSE_Justice_Report.pdf.

⁹⁰ Deutsche Welle, “Surge in Nepal rape cases triggers death penalty discussion”, 12 October 2020. <https://www.dw.com/en/nepal-women-protest-surge-in-rape-cases/a-55248955>.

public would shame the community.⁹¹ She was forced to agree to a settlement of Rs 55,000 (approximately \$460 USD) after having been raped by four men.⁹² These community-based settlements not only deter women from going to the police, but in some cases the police put pressure on survivors to accept them.

Another crucial legal barrier to prosecuting rape cases is the narrow window to file complaints resulting from the statute of limitation. Despite increasing the statute from 35-days to a year under the Muluki Ain (National Code) to a year in Section 229 (2) in the National Penal Code in 2017, this timeframe fails to consider several factors that are still prevalent in deterring people from seeking prompt legal action.⁹³ Even though a year is an improvement on the 35-day window, it is still one of the shortest in South Asia.⁹⁴ Survivors face shame, stigma, and fear that can prevent them from feeling safe to report the crime soon after the event and the trauma of the attack itself can be so severe that they may not be ready to recount their assault for years to come. This fear is exacerbated in many cases when a survivor is less powerful

⁹¹ The Kathmandu Post, Women lawmakers lobby for harsher penalties for rape, 5 October 2020, <https://kathmandupost.com/national/2020/10/05/women-lawmakers-lobby-for-harsher-penalties-for-rape>.

⁹² The Record, “Rape laws in Nepal insufficient inconsistent and unenforced says new report”, 21 April 2021, Accessed by: <https://www.recordnepal.com/rape-laws-in-nepal-insufficient-inconsistent-and-unenforced-says-new-report>.

⁹³ Trial International and Human Rights Justice Centre, May 2020, Accessed by: https://trialinternational.org/wp-content/uploads/2020/05/Reports-and-publications_Nepal_submission-to-SRSV_202004.pdf.

⁹⁴ The Record, “Rape laws in Nepal insufficient inconsistent and unenforced says new report”, 21 April 2021.

than those around him or her, especially when a survivor is much younger and more easily coerced into silence.

Finally, the shame that is placed on survivors by their communities is another reason many stay silent about their experience. An aspect of the Nirmala Panta case exemplifies the role of shame in denying rape victims justice: Constable Chandani Saud justified washing Nirmala's trousers and covering her genitals because she felt awkward at the fact that many people were surrounding Nirmala's body. While arguably Constable Saud knew that she should not interfere with the crime scene, she felt that this cultural stigma trumped the risk of contaminating the crime scene and essential evidence for her case. This is indicative of a patriarchal mindset in which the shame surrounds the girl and in this case the victim as opposed to the attacker. Arguably this was one of the major errors on the part of the police in this case.

The United Nations Special Rapporteur on Violence against Women, its Causes and Consequences published a report on her country visit to Nepal in June 2019. She noted that Nepal fails on several counts to meet international standards on criminalizing and prosecuting gender-based violence.⁹⁵ Under Section 219 of the National Penal Code, rape is considered gender and age specific - it does not account for male or transgender victims of rape, or the potential for the perpetrator to be female. The provisions also do not account for all forms of penetration to be considered rape, excluding the insertion of objects in any other part of the body other than the vagina. Age and marital status of the victims also impact

⁹⁵ OHCHR, "Special Rapporteur on violence against women, its causes and consequences", 19 June 2019, Accessed by: <https://www.ohchr.org/en/issues/women/srwomen/pages/srwomenindex.aspx>.

the severity with which the crime is punished.⁹⁶ These provisions undermine and, in some cases, exclude several experiences that under international legal standards would be prosecuted as rape.

It is important to note that in this case the lack of justice is a result of police negligence in the investigation. The state of the Nirmala Panta case is another example of the climate of state impunity in Nepal. Many criminal cases fail in Nepal due to a lack of proper investigation. Therefore, there is less incentive for thorough diligence in their investigations. This extends beyond the lack of justice for Nirmala in her rape and murder case. The conflict era between 1996-2005 saw thousands of cases of rape, torture, and unlawful killings for which there have hardly been any successful prosecutions.⁹⁷

The length of time for justice to take its course discourages and often traumatises rape victims and is part of the reason that survivors/victims' families either do not report the rape or accept an out-of-court settlement. The Nirmala Panta case has garnered much needed public attention and helped to incite Nepal's #MeToo equivalent: the #rageagainstrape movement. However, in media reporting, the lack of outcome and the painful legal cases that the family have had to endure has overshadowed the Panta's family loss of Nirmala in a brutal crime that to this day has remained unpunished. The continual lack of justice for Nirmala Panta reinforces not only fear and anguish among women in the society but also the perception that it is futile to pursue justice.

⁹⁶ Ibid.

⁹⁷ Human Rights Watch and Advocacy Forum, "No law, No Justice, No State for Victims", 20 November 2020, Accessed by: <https://www.hrw.org/report/2020/11/20/no-law-no-justice-no-state-victims/culture-impunity-post-conflict-nepal>.

CHAPTER V

EXERTION OF LEGAL AND EXTRAJUDICIAL PRESSURE

In the three years since Nirmala's rape and murder, the case has reached every corner of Nepali society, from civil society members to high-level politicians in the Nepal government. However, a number of those involved in questioning the police investigation and government action in the case, have come under both legal and extrajudicial pressure to refrain from further involvement in fighting for justice for victims of the case.

On 28 January 2019 during a press meet at the Reporters' Club, the Bam sisters accused the then President of the Human Rights Organization of Nepal (HURON), Indra Prasad Aryal, of creating a false report on the Nirmala Panta case which made references to their involvement.⁹⁸ HURON had conducted a field investigation with a team and interviewed police and activists in the area.⁹⁹ The report claimed that police officers SP Dilli Raj Bista, Deputy Superintendent of Police Gyan Kumar Setti, Inspector Ekindra

⁹⁸ Setopati, "Bam sisters deny their involvement in Nirmala Panta rape and murder case", 28 January 2019, Accessed by: <https://en.setopati.com/social/138469>.

⁹⁹ Interview with Indra Prasad Aryal for AF, 16 July 2021.

Khadka, the Bam sisters, Nirmala's uncle Tirtharaj and the personnel in the Nepal Army Barracks in Kanchanpur are privy to information on the case.¹⁰⁰ Currently, Indra Aryal has been facing an on-going defamation case filed by the Bam sisters who claim this to be a false narrative.

Khem Bhandhari is a journalist and editor for 'Dainik Manaskhanda', a daily newspaper, followed the Nirmala Panta case from the very beginning and published a number of articles critical of police conduct in the case.¹⁰¹ According to Bhandhari, the article which caused the most controversy questioned why the court allowed an *amicus curiae* (an impartial advisor to the court on any given case) in the offence against public justice case from Harendra Bista, a relative of the defendant SP Dilli Raj Bista.¹⁰² On 19 November 2019 Khem Bhandhari was convicted in a contempt of court case, in Kanchanpur District court for 'sensationalizing' the murder and rape of Nirmala and was fined Rs 1 and sentenced to an hour of jail time. Bhandhari is facing a total of 6 cases against him related to his reporting on this case (3 decided and 3 on-going). Bhandari also reports that information from his newsportal was hacked and was disabled. The Federation of Nepali Journalists (FNJ) described his arrests as a contravention of the press and

¹⁰⁰ Rake News, "Local army barrack, Nirmala's kin may have information on Nirmala's death: HURON Report", Accessed by: <https://rakesnews.blogspot.com/2018/10/local-army-barrack-nirmalas-kin-may.html>.

¹⁰¹ <https://kathmandupost.com/miscellaneous/2017/06/17/fnj-objects-journalists-arrest>

¹⁰² Interview with Khem Bhandhari on 15 July for AF report.

freedom of expression.¹⁰³ These cases are incredibly discouraging, and are effective in intimidating journalists into not publishing articles that may be controversial.

On 10 September 2018, a high-level government probe committee member, Birendra KC, resigned from the committee after facing a number of threats and claiming that the deadline of the report had been extended by 15 days in order to prevent the guilty party from being identified.¹⁰⁴ The deadline was also a point of concern highlighted by former secretary Mohna Ansari in preventing justice.¹⁰⁵

The common concern amongst these cases is that members of civil society are finding it increasingly difficult to work independently. In a healthy democracy, these civil society members such as journalists, lawyers and activists are crucial in the process of holding state actors to account and therefore it is imperative that they should be able to work free from threat to their personal safety or state intimidation.

¹⁰³ The Kathmandu Post, “FNJ Objects journalists arrest”, 17 June 2017, Accessed by: <https://kathmandupost.com/miscellaneous/2017/06/17/fnj-objects-journalists-arrest>.

¹⁰⁴ COCAP, Violence Monitoring Report, 2018, Accessed by: <http://www.cocap.org.np/assets/uploads/publication/1576047458-Violence-monitoring-report-2018.pdf>.

¹⁰⁵ Interview with Mohna Ansari for AF, 22 July 2021

CONCLUSIONS AND RECOMMENDATIONS

This case is emblematic of the failure of the Nepal State to uphold the rights of its citizens to have any crime against them subject to an adequate investigation and prosecution. The problems in this case started from the outset of the investigation: the crime scene was not secured; critical evidence was tampered with and some of it was lost from the very beginning. The police also relied on torture rather than professional investigations to identify the perpetrator. Investigations by more qualified police were initiated after widespread public protests, which themselves resulted in serious human rights violations, including excessive use of force. The role of the public prosecutor and the courts also have come under scrutiny, the way they assessed evidence, reached conclusions and decided not to appeal the cases involving torture and evidence tempering further undermine accountability and reinforcing the longstanding climate of impunity in Nepal.

DUTY TO INVESTIGATE AND PROSECUTE

The way the police handled the crime scene exposes negligence and/or a notable lack of knowledge and skills in investigating serious crimes. As many criminal prosecutions fail in Nepal,

preventing justice for victims and providing impunity for perpetrators, this has been lowering public confidence in state mechanisms. The police's skills, knowledge, training and tools used for investigation need to be re-assessed. It is important not only to put necessary training in place but also a structure and system of accountability.

Structural reforms in police institutions, enhancement of investigation-related training for police need to be strengthened. However, the situation will not improve only by teaching the police how best to do an investigation. The best learning would be through a system that makes investigators accountable for any negligence and lack of due diligence during their investigations and issuing adequate sanctions against them, including removing them from investigation work, if they are proven to be incapable of upholding their duties. Instilling accountability is the best way to deter and prevent them from repeating any mistakes or deliberate failures during investigations. Having a system of accountability within the police (in addition to normal criminal proceedings) is important.

The report highlighted how the rape and murder of Nirmala outraged the public. This sort of public outrage is also the result of police inaction in many of such cases. Despite pressure on the State in general and the police in particular to step up the investigation of the incident, due to the lack of due diligence in the early phase of the investigation, critical evidence was lost already. This made the task of the police investigation teams which were established later more challenging.

A case of this nature warrants a thorough, exhaustive and independent investigation that could examine all the information, clues, and evidence available with the view of bringing all suspects under the purview of investigation and to bring those responsible to justice. However, despite the public pointing fingers at the sons of the then Home Minister Ram Bahadur Thapa Badal, SP Dilli Raj Bista's son and a relative of the Mayor, they were not questioned. The dossier that police submitted to the court provides no information about police taking their statements or putting them under investigation. Because of the lack of this investigation, the public continues to suspect these two young men to be responsible and that the police are working to cover up the case and protect them. This undermines the rule of law, and further erodes the public trust in the institutions of the state.

TORTURE

This case has also once again exposed how police use torture to make innocent people confess to crimes they did not commit, while letting the actual perpetrators escape justice. One of the main barriers in strengthening scientific methods/tools of investigations in Nepal is the police's continuous reliance on torture and courts accepting enforced confession as evidence. AF has been highlighting this problem for the last two decades in Nepal. However, the efforts of the State in general and police in particular to end torture are still negligible. Although police claim

zero tolerance to torture in detention, no procedures, mechanisms and efforts are in place to demonstrate that in practice.

EXCESSIVE USE OF FORCE

Use of force by police to suppress public protests against the police handling of the case has caused a death of 14-year-old Shani Khuna lives and left dozens with serious injuries.

Although there were pieces of evidence to show police using excessive use of force, no investigation was carried out into this. As standard practice, an executive decision was made to provide ex-gratia monetary compensation for the victims, without undertaking any investigation to bring those responsible for excessive use of force, causing death and injuries of many civilians, to justice. This has been a persistent problem in Nepal, promoting impunity and making the police and other forces consider they can repeat such serious human rights violations without being held to account.

AF recommends the establishment of an independent investigative mechanism to investigate allegations of human rights violations involving public officials, mainly law enforcement officials, as directed by the Supreme Court. In Nepal the lack of independent investigative mechanisms are a critical factor in failing to ensure accountability. According to the Attorney General's Annual Report there were 16 cases filed in district courts between 2012-2016, 27 in 2016-2017, 19 in 2017-2018, and 8 in 2018-2019.¹⁰⁶ The

¹⁰⁶ National Report, Nepal. Submitted to the United Nations Human Rights Committee, Working Group for Universal Periodic Review, Page 6, Part E § 29. 37th Session, 18-29 January 2021 (citing Annual Report

report claims that 158 police personnel and 22 army personnel faced departmental action, however there was no mention of what these actions consisted of.¹⁰⁷ Previous AF reports have found that departmental action can consist of a transfer.¹⁰⁸

THE ROLE OF THE COURTS

The Kanchanpur district court has used a statement by the mother of the victim as the ground to acquit all defendants in cases regarding evidence tampering. Victims and witnesses being subject to threats, intimidation and undue influences are not that uncommon in Nepal especially in cases where State officials or people in power are involved. It is on public record that the mother of the victim was offered money and a job. There were wider allegations that this was done to make her retract the statement she lodged with police in the beginning, demanding investigation against the defendants for tampering the evidence.

The NHRC had also concluded that the police did not follow proper investigation procedures which included collecting essential evidence. The police's own internal investigation concluded that there had been tampering of evidence and sought investigation against some of those defendants. In such a context,

of Office of the Attorney General, FY 2015/17, 2016/17, 2017/18 and 2018/19).

¹⁰⁷ Ibid.

¹⁰⁸ Advocacy Forum-Nepal, Torture in Nepal in 2019: The Need for New Policies and Legal Reform (26 June 2020), available from: <http://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>.

it was important for the court to consider the power balance of victims and perpetrators in the interest of justice. As the case is not only against the victim/petitioner but is also against the public, society and the state at large, therefore the investigation has to be ex-officio. The court seems to fail to weigh the balance between contexts, nature of crimes, and state's responsibility.

The courts have shown no sensitivity to the practice of torture and the impact it has on the overall outcome of this case. In many torture cases, it takes a long time for victims to be mentally prepared to file a case against police officers involved in torture. Unfortunately, in this case, the court has taken the fact that victims came after three months to report the case as one of the grounds to acquit the defendants. The rush the judge expressed to decide the case on the particular day while the country was still under lockdown, also ignoring the request of the lawyers representing victims has also raised some questions.

Nepal's Judicial Council should also pay some attention and start scrutinising decisions of the district courts involving public officials and those in power to prevent any undue pressure on the courts and also to prevent any potential mal-practices in the lower court. It is also recommended that the curriculum of judges' training should be reviewed and amended to make them more aware of the impact of torture and how to analyse circumstantial evidence in cases involving torture.

THE PUBLIC PROSECUTOR'S ROLE

The public prosecutor's decision not to appeal against the decisions of the district court in both the cases involving crimes of obstruction of justice (tampering of evidence) and torture also deprives victims of their rights and further promotes impunity. AF has highlighted this being the problem in many other cases where State institutions or people in power are involved. The investigating institution and prosecutors need to put all their resources into and show due diligence in investigating crimes of this nature and to bring those responsible to justice. Reform of legislation is needed to make a mandatory appeal after acquittal when it comes to crimes involving public officials and people in power. Locus standi for bringing the complaints and the right to appeal could be provided to any interested party working in the interest of justice to prevent state institutions from colluding to cover up cases, depriving victims of justice and offering impunity to perpetrators.

THREATS AGAINST HUMAN RIGHTS DEFENDERS

The use of contempt of court and defamation charges against human rights defenders (HRDs), demanding accountability in this case presents a worrisome trend. In cases involving public officials and those in power, if HRDs, journalists and civil society do not speak, it is very hard for victims to raise their voices. Considering the power balance between victims and alleged perpetrators, it is important to encourage civil society to represent victims, not

discourage them. A strong legal framework for the protection of HRDs, lawyers and civil society organizations needs to be adopted, a recommendation, which Nepal stated it will consider during the UPR of January 2021.



Advocacy Forum (AF) is a leading non-profit, non-governmental organization working to promote the rule of law and uphold international human rights standards in Nepal. Since its establishment in 2001, AF has been at the forefront of human rights advocacy and actively confronting the deeply entrenched culture of impunity in Nepal.

AF's contribution in the human rights advocacy in Nepal has been recognized by Human Rights Watch (HRW) in terms of "One of Asia's most respected and effective human Rights Organization". AF is a recipient of a number of awards including "Women In Leadership Award" (conferred by Swiss Agency for Development and Cooperation).