

# Kathmandu School of Law Review

ISSN 2091-2110

Volume 6

Issue 2

November 2018

## FOREWORD BY EDITOR-IN-CHIEF

*Prof. (Dr.) Yubaraj Sangroula*

## FEATURE ARTICLE

A Critical View of Laws and Regulations of Artificial Intelligence in India and China

*Prof. (Dr.) Avinash Dadbich*

## ARTICLES

Paradigm Shifts in Internalization of International Law: A Case Study of Growing Human Rights Jurisprudence in Nepal

*Prof. Geeta Pathak*

Wartime Violence and Post-conflict Situation: The Nepalese Experience

*Dr. Gajendra Aryal*

Bangladesh-Myanmar Maritime Boundary Delimitation in the Bay of Bengal: An Analysis on the Development of International Law

*Md. Kamrul Hasan Arif*

Increasing Status of Criminal Gangs in Post-conflict Nepal: The Case of Kathmandu Valley

*Dr. Dipesh Kumar K.C.*

Water as Human Right: Impact of Thai Binh 1 Thermal Plant Project on Domestic Water Supply of Riverine People in Chi Thien Village, Vietnam

*Dinh Thi Thuy Nga*

## INTERDISCIPLINARY RESEARCH

Locating Nepalese Mobility: A Historical Reappraisal with Reference to North East India, Burma and Tibet

*Gaurab KC & Pranab Kharel*

Culture in Nepal: An Exploration of the Legacy and its Way Forward

*Mamta Sivakoti & Sanjay Adhikari*

Challenges Faced by Communities Moving Away from Chhaupadi in Far-Western Nepal

*Fiona Gui Xiang Wong*

## LEGISLATIVE COMMENT

Bangladesh's Take on Restoring the Parliamentary Control over the Judiciary: New Course through the 16th Amendment to the Constitution

*Syed Morshed Rahad Udin*

## STUDENT ARTICLES

Battered Women Syndrome: Need for Judicial Objectivity

*Dibya Shrestha & Nisba Bhandari*

Human Rights Violation of Transgender People: A Critical Analysis on Bangladesh Perspective

*Puja Mitra*

## BOOK REVIEWS

South Asia China Geo-Economics

*Dr. Atindra Dahal*

Right to Have Rights

*Arzoo Karki*

An Introduction to World Trade Organization

*Sagar Baral & Sampurna Basnet*



**Kathmandu School of Law (KSL)**

Suryabinayak-4, Bhaktapur, Nepal, Ph: 6634455, 6634663,

Email: [info@ksl.edu.np](mailto:info@ksl.edu.np), [www.ksl.edu.np](http://www.ksl.edu.np)

# Culture in Nepal: An Exploration of the Legacy and its Way Forward

Mamta Siwakoti\* & Sanjay Adhikari\*\*

## Abstract

*“I do not think we would conquer this country, unless we break the very backbone of this nation, which is her spiritual and cultural heritage, and therefore, I propose that we replace her old and ancient education system, her culture, for if the Indians think that all that is foreign and English is good and greater than their own, they will lose their self-esteem, their native culture and they will become what we want them, a truly dominated nation.”*

- Thomas Babington Macaulay

*This paper quotes the ever-controversial Thomas Babington Macaulay at the outset because it seems we have long forgotten the gravity our roots hold. It is, now, imperative that we, the Nepali people realize the gold mine we are sitting on, our unique identity and the heritage associated with it. We have already lost a lot; some in the name of development and some in the crevices of time. Our languages, education system, music, food, buildings, settlements, the uniqueness and practices which are associated with our civilization are the ones that set us apart from the world. While the researchers wholeheartedly agree that certain practices such as Sati, Chaupadi, Deuki, Jhuma were indeed violations of inherent human rights in the name of customs, culture and practices and had to be eradicated, we also equally raise voices for those aspects of our culture that we can celebrate, namely our cultural heritage. Now maybe the right time to decide what we want in the form of development? Another copy of a Western City or a Nepal that is unique in all its rights, a Nepal where road expansion is not synonyms to development, where speaking English is not the yardstick for assessing education and where we make our own rules for development. This paper aims to raise questions regarding the said issues. This paper is based on the doctrines related to cultural heritage in Nepal. The researchers carried out on-site surveillance but owing to the lack of technical expertise in the field, the researchers have based their conclusions and recommendations mainly on the reports of Department of Archaeology, experts in the field of cultural heritage in Nepal and government documents depicting the scenario of heritage in Nepal, pre and post the 2015 earthquake.*

## Cultural Heritage: An Introduction

A very simple, yet equally complex question; let us first start with the basics- the etymological meaning. In simplest sense, heritage are the ‘history, tradition and qualities that a country or society has had for many years and that are considered an important

---

\* Mamta Siwakoti is Research Assistant at Kathmandu School of Law.

\*\* Sanjay Adhikari is B.A.L.L.B. 5<sup>th</sup> Year student at Kathmandu School of Law.

The authors would like to thank Kathmandu School of Law for providing research grant for the paper.

part of its character' and culture is 'the ideas, customs or belief, art, way of life and social organization of a particular country or group'<sup>1</sup>. Summing up, we find cultural heritage to be those values or qualities that have evolved through the ideas, customs and social behavior of a particular group of society and have been passed down from generation to generation. Let us use this definition as a baseline to understand the pronounced (and somewhat confusing) concepts (discussed below) on cultural heritage that have been incorporated in the conventions, scholarly writings and judicial decisions today.

## Tangible and Intangible Cultural Heritage

In the preceding paragraphs, we divulged into the definition of cultural heritage in its fundamental form; "values and qualities evolved through social behavior and passed through generations". These values and qualities may be passed down in the form of tradition, a spiritual practice or link or they may be translated into a tangible object, a site, a monument, a building or a property of some sort, resulting in a distinction, the former being intangible cultural heritage and the latter tangible one.

Whatever their form be, the protection of both is imperative as both constitute cultural heritage of humankind.

At the onset, when norms of protection of cultural heritage were codified into conventions or statutes, the focus in protecting was directed more towards the tangible cultural heritage, 'building dedicated to religion', 'cultural property', 'World Heritage Site' and so on. It is easier to protect something one can see and touch. The positive and negative obligation associated with protection could be enforced relatively easily. This led to development of strong customs, laws and jurisprudence for tangible heritage, the intangible aspect was however overlooked leading to a loophole in law. During armed conflict, the hostile army would not destroy the building, site or property but they would restrict a population from practicing their traditions.<sup>2</sup>

The development and broadening of the concept of cultural heritage can be observed from the development of laws; from the 1972 *Convention on Protection of World Cultural and Natural Heritage*<sup>3</sup> to the 2003 *Convention for the Safeguarding of Intangible Cultural Heritage*<sup>4</sup>.

## The Culture of Nepal: A Legacy

Kathmandu Valley is a unique amalgamation of hundreds of years old art, architecture, religious, spiritual and political history. What we see today is the representation of our civilization, a civilization whose origin is shrouded by legends so vivid that they have evolved as genuine facets of Nepali history. Stories of Kathmandu Valley such as, a lake with a Golden Lotus, the *Bodhisattva Manjushri* of Tibet are dedicated to describe

<sup>1</sup> Joanna Turnbull et al, *Oxford Advanced Learner's Dictionary*, 8<sup>th</sup> ed., Oxford University Press, London, 2010, p. 370.

<sup>2</sup> *Blaškić AC, The Prosecutor v. Tihomir Blaškić*, Appeal Judgement, 2004, IT-95-14-T, ICTY, para. 124.

<sup>3</sup> *Convention Concerning the Protection of the World Cultural and Natural Heritage*, 1037 UNTS 151, adopted on 16 November 1972, entered into force 17 December 1975.

<sup>4</sup> *Convention for the Safeguarding of the Intangible Cultural Heritage*, 2368 UNTS 1, adopted on 17 October 2003, entered into force 20 April 2004.

the beginning of this beautiful valley.<sup>5</sup> These myths, along with the beautifully intricate palaces, temples, stupas and abundant practices, rituals and customs are demonstrative of the spirituality, wealth, diversity and tolerance this place held since long-ago. It is to be noted that the development of monuments, shrines, sculpture and art in the period of *Lichhavi* and *Malla* were dedicated to not one but plural religions, including Hinduism, Buddhism and Tantrism.<sup>6</sup> Our legacy, thus, embodies religious pluralism and tolerance, the reflection of which can be seen in our society throughout time.

Historians attest to the fact and regarding prosperity, elaborate that Nepal's geographical location as the trade-route between India and Tibet<sup>7</sup> along with the climatic conditions contributed to Nepal's wealth resulting in its ability to invest in building palaces, temples, statues and festivals, which surviving the test of time have been passed down to generations to admire, cherish, conserve and subsequently to pass on to the next generation.

### Cultural Heritage and Religion

Protecting (conserving, prohibiting harm and ensuring respect to) cultural heritage is a long-standing norm in the world. Religious texts to modern conventions, state the same. However, we notice that texts in the past, whether they be scriptures or international conventions used the word “buildings devoted to religion” or “religious institutions”. The term “religion” was seen incorporated in most of the texts<sup>8</sup> protecting practices and sites we call cultural heritage today.

While religion is a sect of culture and not cultural heritage in its entirety, these terms are used interchangeably as can be seen in the numerous IHL Conventions<sup>9</sup> and judicial decisions<sup>10</sup>. The rationale behind this can be explained in twofold manner.

First, owing to the fact that religion largely guides the ideas, customs and social behavior of a society, religion is incorporated in sizable values we practice today. And in majority of the world, religion is passed down with generation. It is quite common to see a child born in Hindu family practice Hindu tradition even in the smallest of things in life such as greeting people and one born in Muslim family practice their respective tradition.

---

<sup>5</sup> Carl Pruscha et al., *Kathmandu Valley: The Preservation of Physical Environment and Cultural Heritage: A Protective Inventory*, Anton Schroll & Co. Publishers, Vienna, vol. 1, 1975, p. 10; See generally Micheal Hutt et al., *A Guide to the Art and Architecture of the Kathmandu Valley*, Adroit Publishers, New Delhi, 2010.

<sup>6</sup> Space Nepal, 'Religious architecture of Kathmandu valley- a result of Lichhavi period pluralist culture', 3 January 2016, *Architecture, Historic Preservation, Research Project*, available at <https://spacenepalblog.wordpress.com/2016/01/03/religious-architecture-of-kathmandu-valley-a-result-of-lichhavi-period-pluralist-culture/>, accessed on 20 September 2018.

<sup>7</sup> .R. Regmi, *Ancient Nepal*, Firma K. L. Mukhopadhyay, Calcutta, 1969, p. 8.

<sup>8</sup> *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II)* [AP II], 1125 UNTS 609, adopted on 8 June 1977, art 16; *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I)* [AP I], 1125 UNTS 3, adopted on 8 June 1977, art 53; *Rome Statute of the International Criminal Court* [Rome Statute], 2187 UNTS 3, adopted on 17 July 1998, art 8(2)(e)(iv).

<sup>9</sup> Ibid.

<sup>10</sup> Al Faqi TC, *Situation in the Republic of Mali in the case of The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Judgment and Sentence, Trial Chamber VIII, 2016, ICC-01/12-01/15, ICC, para 43; *Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković et al*, Trial Judgment, 2013, IT-04-74-T, ICTY, para 1282.

Second, certain values and qualities (products of religion) passed through generations have had huge significance on the development of art, exploration of history and civilization that they remain as precious relic of the past and are conserved as “cultural heritage of all” despite its origin being affiliated to a certain religion (same or different) from ours. So, a religious practice or object or site then, (of hundreds of years back) is a cultural heritage today. For example: the *Swayambhunath* of Nepal is a site dedicated to Buddhism, yet, it is celebrated as a Cultural Heritage, (and) a World Heritage Site.

Thus, a sect of our celebrated cultural legacy is a manifestation of the religious history, because, it is the mounds of dirt and piles of rocks that were worshipped as divinity, which forms the central idol of the major temples and stupas such as *Pashupatinath* and *Swayambhunath*, structures that have been enlisted as World Heritage Sites of UNESCO. Historically, these two religions were dominant in this region and today regardless of one’s faith these temples and stupas are celebrated as cultural heritage by all.

Thus, in recognition of such manifestation (the fact that religious structures of one sect can be cultural heritage of all throughout time), international conventions, too, are seen using the terminologies ‘cultural properties/heritage’ and ‘institutions dedicated to religion’ interchangeably at times.

Nepal today is the home of 103 different ethnicities and 92 different languages and each ethnicity have their own practices, custom and heritage and recognizing their utmost significance in art, history and architecture 6 sites of Kathmandu Valley have been enlisted in the World Heritage List.

## Cultural Heritage and Art and Architecture

Another facet prevailing in the cultural heritage of Nepal is the diversity of influence from various styles of art and architecture. This influence was introduced by the rulers of Kathmandu Valley. For instance: The oldest recorded scripture here is said to be a portrait of a king which dates back to 4<sup>th</sup> or 5<sup>th</sup> Century A.D. This era is when the *Lichhavi* dynasty was reigning over Kathmandu Valley. Annals suggest they remained in power from 3<sup>rd</sup> Century to 8<sup>th</sup> Century. Their ruling period shows ample development in terms of art and architecture. The primary examples of Nepali sculpture during this period (the *Garuda* and *Visbnu Visvarupa* of *Changu Narayan*, the portrait mentioned earlier) inculcate the influence of Mathura and Central India and of Gupta period in India.<sup>11</sup> The art and architecture of Lichhavi era is said to have enhanced these styles.

After the advent of Malla dynasty, these advances in art and architecture only increased. Malla dynasty is regarded as the most influential period in terms of building new temples and monuments. The Durbar Squares enlisted in the List of World Heritage Site are products of this era. During this time, one can find strong *Sena* and *Tantric* influence in the art-form.<sup>12</sup> The transition of material used for statues from stone to bronze is an

---

<sup>11</sup> Pruscha (n 5), p. 20.

<sup>12</sup> Ibid, p. 23.

excellent example of *Sena* influence and the growing Buddhist orientation in the art-form, to the extent where differentiating wholesome Buddhist art from Hindu art was challenging, serves as an example of *Tantric* influence in our heritage.

Thus, identical to our society, our cultural heritage developed through time; as a diverse amalgamation of art-forms around the continent being portrayed and heightened through our Newari craftsmen, traditional skillset and spiritual imagination.

### Exploring our traditional ways

The legacy of Nepali cultural heritage incorporates not just the final product, the monuments and sculptures and settlements we see today, but also the traditional knowledge, intuition and craftsmanship that is substantiated based on the topography of Nepal. These traditional methods are so scientific and unique that owing to this, entire settlements of Kathmandu Valley, such as Kirtipur, Sankhu are enlisted in the tentative list of World Heritage Site<sup>13</sup>.

One of the important traditional ways is the ‘sound land use policy’ that was employed by the inhabitants and craftsmen till the 17<sup>th</sup> century.<sup>14</sup> Also named as ‘unwritten zoning laws’, they are as follows<sup>15</sup>:

- 1) Human settlements were exclusively planned and built on non-irrigated lands on higher platforms, which was called the ‘Tar land or the hilltops such as Kirtipur but they were always close to running bodies of water.
- 2) It was imperative to ensure accessibility to arable lands and markets while building such settlements.
- 3) And fertile and irrigable lands were never misutilized as areas for settlements; they were exclusively used for farming purpose.
- 4) It was not allowed to encroach forests, they were considered to be sacred property of the community whose boundaries were to be protected against encroachments.
- 5) The temple sites-considered rural, were bordered by Guthi-lands, which provided income for their prosperity while also protecting them from haphazard plans of ‘development’.

These unwritten laws when implemented gave structure to our settlements of Kirtipur, Kokhana, Bungmati, Sankhu, Thankot (See: Fig. 1) which were constructed on non-irrigable elevated lands with surrounding water resource and farmlands. They were fashioned in a specific method by using minimal horizontal space, however, with the propensity for vertical expansion. This design was the outcome of the tightly-woven family structure of Newar community.

<sup>13</sup> UNESCO, ‘Tentative Lists’, UNESCO Official Website available at [https://whc.unesco.org/en/tentativelists/?action=listtentative&pattern=&state=np&theme=&criteria\\_restriction=&date\\_start=&date\\_end=&order=](https://whc.unesco.org/en/tentativelists/?action=listtentative&pattern=&state=np&theme=&criteria_restriction=&date_start=&date_end=&order=), accessed on 1 September 2018.

<sup>14</sup> Pruscha (n 5), p. 42.

<sup>15</sup> Ibid.

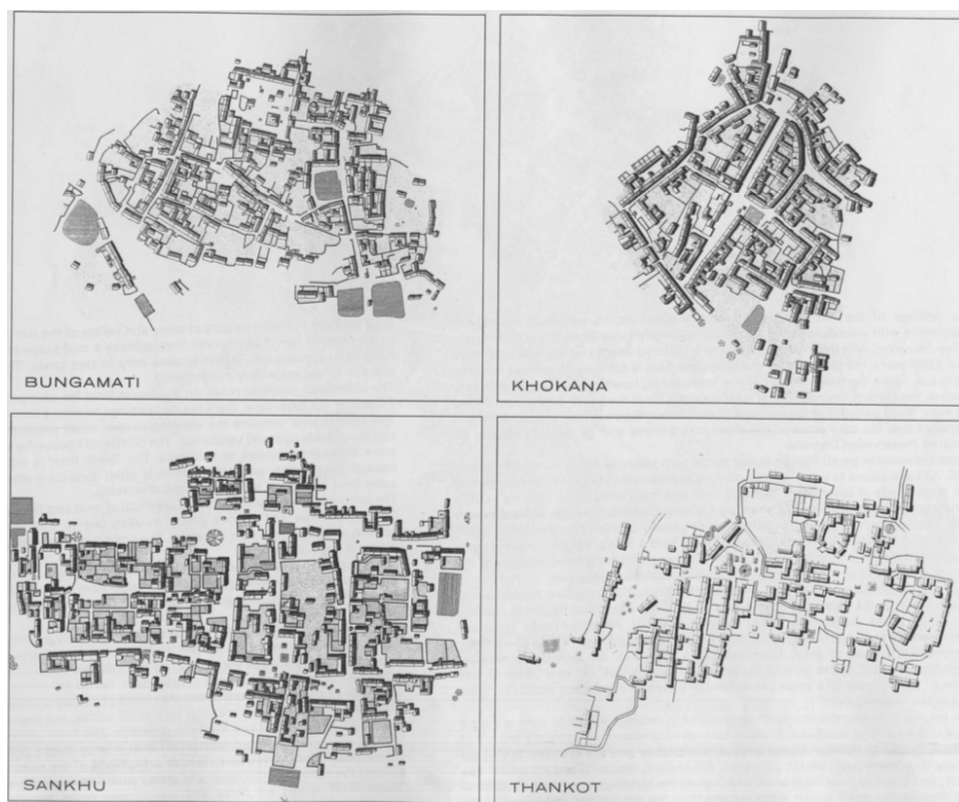


Figure (Fig. 1)

Source: *Kathmandu Valley: The Preservation of Physical Environment and Cultural Heritage Protective Inventory, Volume 1*

The second concept unique to our system is the *Guthi* Corporation, which incorporates the concept of Indigenous Approach to Heritage Conservation<sup>16</sup>. This system in Nepal is indigenous to the Newar community and has been employed to conserve our heritage for generations<sup>17</sup>. The term *Guthi* is derived from Sanskrit word *Gosthi*, which means an association or assembly, it refers to an association formed by people, specifically members of a family based on their lineage. This system is a reflection of the social solidarity people possess and the effect of such solidarity in the conservation of heritage, civilization, culture and identity as a whole. The concept of *Guthi*, though today has evolved to encompass cultivated lands, it originally subsisted for the divinity<sup>18</sup>. The *Guthi* and its members, called *Guthiyars*, worked to conserve the structures, monuments and sites dedicated for the protection of these Gods and also contributed in generating income for the purpose of their renovation and for carrying on their festivals.

<sup>16</sup> S.J. Chung, 'East Asian Values in Historic Conservation', vol. 11, no. 1, *Journal of Architectural Conservation*, 2005, p. 16.

<sup>17</sup> See generally D. Bajracharya, *Lichhavi kal ka abbilekh*, Centre for Nepal and Asian Studies, Kathmandu, 1978.

<sup>18</sup> Neelam Pradhananga, Krishna K. Shrestha & John Dee, 'Sustaining Indigenous Heritage: Learning from the Guthi System in Nepal', 17 November 2009, p. 9.

Some examples of the *Guthi* still existing in Nepal are

- 1) The Pashupati Guthi
- 2) The Namobuddha Guthi

Furthermore, any description of the traditional knowledge concerning the cultural heritage of Nepal is not possible without mentioning the traditional craftsmanship. The survey on the Traditional Techniques of Historic Buildings conducted by National Research Institute for Cultural Properties, Tokyo in a comprehensive manner describes the implementation of the traditional craftsmanship in the monuments. Firstly, the materials predominantly used in these structures were timber and brick. Deep eaves with inclined timber roofs, roof tiles, brick walls, windows with carved wooden frames, carved wooden pillars, and struts decorated with statues of gods are the common architectural style observed.<sup>19</sup> This architectural style is said to be original to South Asia.

Additionally, the timber and bricks used in these structures are quite unique in nature. The bricks used are called *maapā* and *dātiapā*.<sup>20</sup> They are traditional fire bricks, the production of which, although declining, is still in existence today.



**Figure (Fig. 2): Traditional Brick Industry**

*Source: Project for Investigation of Damage Situation of Cultural Heritage in Nepal, National Research Institute for Cultural Properties, Tokyo*

Secondly, the timber used are also from specific wood family, called *Sal* (*Shorea robusta*) and *Chir* Pine (*Pinus roxburghii*) which are locally known as *agrākh* and *sallā*. The *gyālchāsī* (*chirauni*) of the *Theaceae* family and the ring-cupped oak (*Quercus glauca*) of the *Fagaceae* family are also expended for this purpose. *Sal* is a hardwood which is known for its excellent resistant to water and its sturdiness, thus it is used for sustaining structures such as pillars, purlins, struts, and door leaves whereas *Chir* pine owing to its comparatively lighter nature is used for long members, such as floor joists, roof beams, and rafters.

Using these basic materials, our craftsmen built the monuments we revere today. Distinguishing features of these structures are Brick Masonry Walls<sup>21</sup>, timber structure

<sup>19</sup> National Research Institute for Cultural Properties, Tokyo, *Project for Investigation of Damage Situation of Cultural Heritage in Nepal*, Japan Centre for International Cooperation in Conservation, Tokyo, 2016, p. 37.

<sup>20</sup> Ibid.

<sup>21</sup> Wolfgang Korn, *The Traditional Architecture of the Kathmandu Valley*, Ratna Pustak Bhandar, Kathmandu, 2007, pp. 148-151.



which allowed displacements, and simple roofing technique.

What these features connote are:

- 1) The bricks (mentioned above) are attached to each other using simple mud mortar.
- 2) The timber structure, owing to its allowance for displacements shows lack of rigidity, which is very efficient in absorbing the “*earthquake energy through a vibration control system*”<sup>22</sup>
- 3) Third, the roofing technique, includes small-sized tiles laid on a simple clay layer. This design is thought to allow the tiles to fall down in case of an earthquake in order to make the roof load lighter.<sup>23</sup>

In addition, to this, the traditional method incorporates the practice of cyclic renewal, i.e. using the same materials (bricks and timbers) used in the original monument while renovating. The renovation carried out by Department of Archeology (DoA) in the aftermath of earthquake also demonstrates this method in majority. For instance, all the structures potentially harmed by the earthquake were, as initial measure, propped by long wooden members and for the purpose of recycling the materials used in the buildings. The process of collecting and stockpiling the members and bricks had been done by the DoA. In employing the traditional method, the process of curing these bricks with water before piling them up was then done.

However, a survey report from the National Research Institute of Cultural Properties, Tokyo, stated that in some instances, these brick masonry walls were found to be sloppily arranged. The bricks at the forefront of the buildings were evenly shaped and sized, however, the ones at the back which are not visible were uneven, unkempt and poorly placed. They presume this could factor in making the walls unstable and weak.<sup>24</sup>

Nepali government, in response to the concern from the World Heritage Committee, has stated in its report that earthquake are regular features of Nepal and it is the “cyclical renewal” carried out by craftspeople, using traditional processes and materials, has sustained the heritage values of the property for the past seven centuries, thus, reiterating the importance of the traditional knowledge.<sup>25</sup>

## Shaken by the Quake

It was in April 25 2015 that a major earthquake of 7.8 Richter magnitude scale (followed by hundreds of aftershocks) struck Nepal and caused substantial damage to the human lives and infrastructures.

The earthquake’s impact on the heritage sites was substantive inside Kathmandu

---

<sup>22</sup> National Research Institute for Cultural Properties (n 19), p. 44.

<sup>23</sup> Nippon Institute of Technology, ‘Research Mission for the Study of Old Royal Palaces of the Kingdom of Nepal’, *The Royal Buildings in Nepal: A Report on the Old Royal Palaces of the Kingdom of Nepal*, Chuo Koron Bjutsu Shuppan, Tokyo, 1981, pp. 107-111.

<sup>24</sup> National Research Institute for Cultural Properties (n 19), pp. 44-45.

<sup>25</sup> Government of Nepal, *Kathmandu Valley World Heritage Site*, 42 COM 7 B. Kathmandu Valley (Nepal) C 121, 2017, p. 6.

Valley which hosts hundreds of monuments dedicated to the unique Nepali culture (a mixture of Hinduism and Buddhism). Seven groups of monuments that have been listed in the World Heritage List, namely, Patan Durbar Square, Bhaktapur Durbar Square, Basantapur Durbar Square, Swayambhunath, Baudhanath, Pashupati Area and Changu Narayan sustained major damage and reports from the Department of Archaeology of Nepal state around 750 monuments were affected by the earthquake.

The structural formation of these heritage sites constitute traditional brick masonry and timber frames native to this region. The intricate details carved in these frames hold cherished and mysterious values and meaning to the people local to the area, in fact, their importance transcend the geographical boundary of the country as can be seen from the flock of tourists around these historic cultural sites. As beautiful as these structures are, their renovation is as painstaking and despite the attempts of the Kathmandu Valley Preservation Trust in renovating them, there were some that had not received professional attention in the recent years, and it was those that suffered the most in the 2015 quake.

The Kathmandu Valley Preservation Trust has been laboring to restore and retrofit many of the “architectural treasures” since 1991 and the aftermath of the earthquake displayed authenticity in their work of renovation as it was revealed that out of 45 renovated buildings in Kathmandu and Patan, three suffered (major or minor) structural damage. Reports reveal that these constant reconstructions are the reason the rich heritage of Nepal has survived over the centuries despite Nepal being one of the most earthquake-prone countries in the world.

### **After the Quake: Measures taken by Nepal**

The 2015 earthquake had great impact on the cultural heritage of Nepal, which as discussed above, has unique and ancient way of building and maintaining. Thus, any prompt action by the government, if not planned properly, would have catastrophic and irrevocable impact on these heritage weakened by the earthquake.

Before enacting any policy, rule or law which concerned the cultural heritage and its renovation, it was imperative that the Government falls in line with the existing legislations such as Ancient Monument Preservation Act/ Rules and the Public Procurement Act. Both of these, however, prohibit any ‘rebuild’ or ‘reconstruction’ beyond the tendering process, called *Punarnirman* when it comes to heritage. One is merely allowed to ‘renovate’, i.e. *Jirnodwar*. But the Department of Archeology, which serves as the major monitoring authority for all of the works related to cultural heritage under the given two Acts and their Rules, incorporated supplementary criteria (issue of Reconstruction as provided in The Post Earthquake Conservation Guidelines) which they presumed would be better for the protection of heritage and for enhancing the quality of the services provided by the contractors. This addition, however, was not accepted widely. World Heritage Committee raised concerns regarding the authenticity of the property after such addition<sup>26</sup> and experts deliberated on whether these additions, would pave way for Reconstructing a heritage in a manner that would destroy its originality.

---

<sup>26</sup> Ibid, p. 8.

The first step the Government took while regarding the Nepali tradition of cyclic renewal is The Post Earthquake Conservation Guidelines 2015<sup>27</sup>. The said guideline was drafted in collaboration with the locals, government stake authorities, site managers of the Kathmandu Valley World Heritage Property (KVWHP), Earthquake Response Coordination Office-officials, UNESCO Office in Kathmandu, ICOMOS Nepal and other related stakeholders, adopted by government of Nepal and implemented already. The guideline was the major basis for any ‘Reconstruction and Renovation’ works<sup>28</sup> and it is said to have been drafted in a way so as to avoid adverse impacts on the attributed, authenticity<sup>29</sup>, integrity<sup>30</sup> and management of the properties and their outstanding universal value (OUV)<sup>31</sup> as a whole. In addition, The Recovery Master Plan is working in close collaboration with the local groups such as *Guthis* in identifying the attributes of OUV that can be recovered. In addition, the Recovery Master Plan concerns the maintenance and management of the particular monuments in the future<sup>32</sup>.

One of the noted frameworks in regards to management of the KVWHP is the Integrated Management Framework, that was prepared by the DoA in close collaboration with World Heritage Centre and UNESCO-Kathmandu Office. The said plan was reassessed shortly before the earthquake of 2015. The Integrated Management Framework lays down an elaborative framework defining OUV, integrity, authenticity and identifying the key authorities in conducting maintenance, conservation, restoration, renovation of the heritage sites.<sup>33</sup> It provides for a Coordinative Working Committee (CWC) which is based in the DoA as the Head of the World Heritage Conservation Section.<sup>34</sup> They hold CWC meetings, which recently has been deliberating on the Coordination Plan for efficient coordination between the institutions provided in the diagram.

The implementation of the Integrated Management Plan (IMP) operated in a five-year cycles, with the mid July, 2007-mid July 2012 being the first cycle. At the end of every cycle, a thorough assessment of the Plan is done and considering the challenges faced during the cycle, provisions for amendment is also provided. The IMP also works on an annual basis as per the Annual Action Plan.<sup>35</sup>

---

<sup>27</sup> Ibid, p. 6.

<sup>28</sup> Ibid, p. 10.

<sup>29</sup> World Heritage Centre, *Operational Guidelines for the Implementation of the Convention on the Protection of World Cultural and Natural Heritage*, UNESCO World Heritage Centre, Paris, 2005, paras 79-80.

<sup>30</sup> Ibid, paras 87-88.

<sup>31</sup> Ibid, para 49.

<sup>32</sup> Government of Nepal 2017 (n 25), p 7.

<sup>33</sup> Government of Nepal, Kathmandu Valley World Heritage Site- Integrated Management Framework, KAT/2007/PI/H/3, 2007, pp 4-8.

<sup>34</sup> Ibid, p. 19.

<sup>35</sup> Ibid, p. 42.

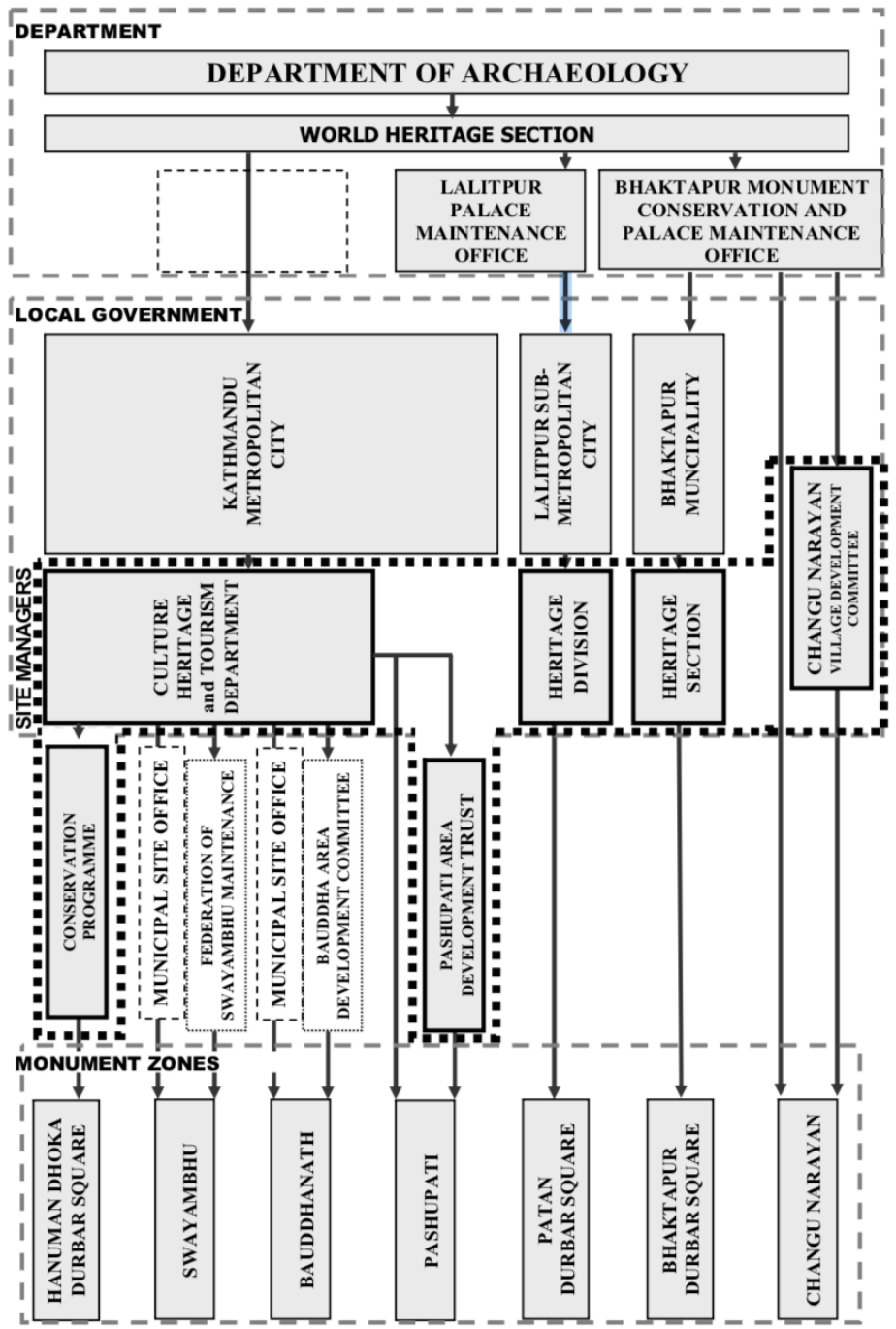


Figure 3 (Fig. 3): Institutional Framework

Source: Kathmandu Valley World Heritage Site Integrated Management Framework. Developed by DoA in collaboration with World Heritage Centre

For neutral assessment of the ongoing process of repairing the Heritage Sites, the Government of Nepal also invited 'A Joint World Heritage Centre/ ICOMOS/ ICCROM Reactive monitoring mission' which visited KVVHS during the 20<sup>th</sup>-25<sup>th</sup> March, 2017.<sup>36</sup>

Apart from these primary actions on repairing the Heritage, the Ministry of Culture, tourism and Civil Aviation, also conducted the following management and awareness activities<sup>37</sup>:

- 1) Establishing an Earthquake Response Coordination Office in DoA, for improved coordination between the Government of Nepal and UNESCO Office in Kathmandu. It served as a Communicating Agency between the Government and International Agencies that were engaged in the emergency salvaging, protection and further planning of heritage.
- 2) The Photo Exhibition Program for awareness among the locals regarding the positive and negative activities and approaches that residents have been doing in and around the heritage sites.
- 3) Training on Capacity Building has been carried out by different national and international organization with close coordination with DoA. Series of training program has been organized by ICROM and several other international organizations.

### **Institutions employed for rehabilitation, restoration of cultural heritage (Source: Department of Archaeology)**

#### **A. Hanuman Dhoka Durbar Square Monument Zone**

##### **1) Hanuman Dhoka Museum Development Committee:**

###### a) Panchamukhi Hanuman Temple

This was the 1<sup>st</sup> completion of repair work after earthquake. This Project, however, started before the earthquake and was undertaken by Joint fund of Hanuman Dhoka Museum Development Committee and American Ambassadors Fund for Culture Preservation under supervision of DoA. The conservation work was carried out using traditional material, technology and craftsmanship.

###### b) Degu Talezu Temple

###### c) Talezu Temple

The top and the second roof of the Temple was damaged by earthquake.

###### d) Sweta Vairab Temple

<sup>36</sup> Government of Nepal 2017 (n 25), p. 8.

<sup>37</sup> Ibid, p. 10.

Hanumandhoka Palace Museum has taken total responsibility of its conservation under close inspection of DoA.

e) Natyeshwor Temple

The temple was partially collapsed by the earthquake. The contractors replaced the mud mortars with lime mortar, however, it is claimed to be conserved with traditional method and material as used before.

2) DoA

a) Chyanin Dega

The octagonal multi-roofed temple, devoted to Lord Krishna was completely destroyed by the earthquake. The restoration project initiated under DoA. As the temple was built by the massive use of traditional brick, wood and terracotta tiles, full consideration was given to the traditional technique and materials reusing old wooden and other elements. *Surkhi* mortars, mixture of lime, sand and brick powder are accepted as traditional construction material, so *Surkhi* mortar was used instead of mud mortar.

b) Trailokya Mohan Narayan Temple

Also known as *Dasavatar* temple on north-west side of *Kumari* Temple (built in 18<sup>th</sup> century). This three-tiered multi roof system was completely destroyed by earthquake. After detail investigation, restoration work has already been started with the concept of utilizing wooden artistic and other same materials used in the damaged one (old materials are replaced by new but similar material are used).

3) Kathmandu Metropolitan City

a) Kasthamandap

Also called the *Maru Sattal*, a Wooden Shelter it is situated in the Hanumandhoka Protected Monument Zone. This temple was completely destroyed by the earthquake. Kathmandu Municipality has taken responsibility and detail approved drawing with feature documentation and conservation note is already handed over to Municipality. Under a project funded by UNESCO, all the remaining wooden and other materials of the temple are salvaged and well documented. On the restoration of the temple, all those salvageable reusable elements of the structure will be reused.

It is also interesting to note that the newly discovered objects during the rescue excavations suggests that the temple may have been built in the 7<sup>th</sup> Century during Lichhavi era and not in 12<sup>th</sup> century, as assumed before. Behind every grey cloud might there might, indeed, be a silver lining.

b) Nagaraghar

c) Singha Sattal

Also called, *Silyan Sattal* (Traditional Rest House). It was in a dilapidated condition for a long time, so under KMC and *Gutbi Sansthan*, it is being conserved.

#### 4) JFIT-UNESCO Project

- a) *Jagannath Temple*
- b) *Shree Krishna Maha Vishnu Temple*
- c) *Aagan Temple and Western long of the Palace*

National Research Institute for Cultural Properties, Tokyo had had a detailed structure with approval and close cooperation of DoA and Hanumandhoka Palace Museum Development Committee.

#### 5) Kathmandu Valley Preservation Trust

- a) *Kageshwar Temple Restoration*

The temple of the west of *Taleju*, originally built in 1681, restored after the earthquake of 1934 and lastly restored by KVPT before 10 years was partially damaged so restoration responsibility was taken by KVPT themselves.

- b) *Laxmi Narayan Temple Conservation*

It was partially destroyed. Although falling inside Hanumandhoka palace square, KVPT took the responsibility to conserve it.

#### 6) Local Community

- a) *Tairani Devi Temple*

The temple is conserved in initiative of local community with the mutual fund of municipality and community under close inspection of DoA.

#### 7) Miyamoto Global Disaster Relief, Nepal

- a) MoU between GoN and Miyamoto, was done for the conservation of *Gaddi Baithak*, one of the significant part of Hanumandhoka Palace.
- b) It was in vulnerable condition due to the earthquake
- c) This repair work of *Gaddi Baithak* evolved as a matter of controversy in the latter phase.

The Patan Durbar Monument Zone, Bhaktapur Durbar Square Monument Zone, Swayambhu Monument Zone, Bouddhanath Monument Zone, Pashupati Area Protected Monument Zone and Changu Narayan Protected Monument Zone are being done in similar manner, the details to which can be found in the DoA.

## The Preservation Laws Concerning Cultural Heritage

Nepal has always been at the forefront in recognizing cultural sovereignty<sup>38</sup>. Having the liberty and ability to exercise control over one's cultural heritage and history and the capacity to protect it, is a part of Nepal's cultural legacy. This can be deduced from the fact that Nepal enacted a law for protection of its ancient monuments in 1956 AD<sup>39</sup>, 16 years before UNESCO enacted its Convention on Protection of World Cultural and Natural Heritage on 1972<sup>40</sup> and if we are to discuss the traditional land use policies of Nepal, the first preservation policies can be traced back to the 17<sup>th</sup> century (discussed in Chapter on traditional knowledge) The said legislation 'Ancient Monument Preservation Act, 1956 AD' inculcated provisions for the preservation of ancient monuments<sup>41</sup>, regulation of transfer, transaction, export or collection of ancient monument and archeological object<sup>42</sup> and restriction on excavations which may cause potential harm to the cultural heritage.

For the purpose of efficient conservation, the Act provides the Government of Nepal with the authority to declare any area a 'Preserved Monument Area', where Department of Archeology<sup>43</sup> exercises full authority in regards to permission for installation of new structures such as buildings, houses, telephone poles.<sup>44</sup> This law ensures that any addition within such Preserved Monument Area does not violate the integrity, appeal of such monuments and cause probable damage to its foundations.

One of other legislations exercising authority on this area is the Local Self-Governance Act, 1999 which is an excellent example of decentralization. It provides the elected local government bodies, to a certain degree, the authority to record, maintain and preserve the tangible and intangible heritage within its jurisdiction.<sup>45</sup> Other legislations in the same milieu include; *Town Development Act, 1988*, *Pashupati Area Development Trust, 1987*, *Guthi Corporation Act 1964*, *Building Bylaws and Guidelines-2048 for Kathmandu Valley Protected Monument Zone*, *National Building Code 1994*.

Meanwhile, the world was also realizing the gravity cultural heritage held for one's civilization and identity.<sup>46</sup> After the horrific destructions brought in by the First and

<sup>38</sup> See Generally, G. Toffin, 'From kin to caste: The role of guthis in Newar society and culture', 2005; Ulrike Müller-Böker, 'Spatial Organization of a Caste Society: The Example of the Newar in the Kathmandu Valley, Nepal', vol. 8, no. 1, *Mountain Research and Development*, 1988, pp. 23-31.

<sup>39</sup> *Ancient Monument Preservation Act, 1956 (Pracheen Smarak Samrakshan Ain 2013)*.

<sup>40</sup> *Convention Concerning the Protection of the World Cultural and Natural Heritage* (n 3).

<sup>41</sup> *Ancient Monument Preservation Act, 1956 (Pracheen Smarak Samrakshan Ain 2013)*, ss 3-3G.

<sup>42</sup> *Ibid*, s 13.

<sup>43</sup> Established under the Government of Nepal in 1953, Department of Archaeology is a major branch under Ministry of Culture. The department oversees all the archaeological activities to the protection of the cultural heritage in the country. It also functions as a core implementation mechanisms body as per the provision of the 'Ancient Monument Preservation Act, 2013' (A.D. 1956). Ramshahapath, Kathmandu, Nepal available at <http://www.doa.gov.np/>, accessed on accessed on 1 September 2018.

<sup>44</sup> *Ancient Monument Preservation Act, 1956 (Pracheen Smarak Samrakshan Ain 2013)*, s 3.

<sup>45</sup> *Local Self-Governance Act, 1999, (Sthaaniya Prashaashan Ain 2028)*, ss 43, 96, 189, 195.

<sup>46</sup> Sir Seretse Khama, 'A nation without a past is a lost nation, and people without a past are people without a soul'; Marcus Garvey, 'A people without the knowledge of their past history, origin and culture is like a tree without roots'.



Second World War, the international community, after much deliberations, established a World Preservation Trust<sup>47</sup> and called upon the citizens of the world to actively engage in preserving entities that carry religious, cultural, historical and natural significance.

Furthering the campaign, in 1972, the United Nations' in support of UNESCO (United Nation Education, Scientific and Cultural Organization) adopted a Convention on Protection of World Cultural and Heritage Site. This became the first binding document which adopted the idea of protection of heritage that transcended national boundaries<sup>48</sup>; also known as 'international or cosmopolitan view of heritage'. This view looks at the cultural property, monuments and sites, not as an object but as a heritage of humankind, as an organic entity with an intangible living character. This approach levies responsibility to protect the heritage on the international community as a whole, and this approach of protection has been defined by the ICJ as **erga omnes** obligation<sup>49</sup>. Many authors have gone on to reiterate *erga omnes* obligation vis a vis cultural heritage protection in their works.<sup>50</sup>

For instance, the 1972 *World Heritage Convention*, enlists select heritage of most outstanding example from around the world as World Heritage Site or World Heritage Site in danger and provides that it is incumbent on the international community as a whole to participate in the protection of heritage of "outstanding universal value"<sup>51</sup> by the granting of collective assistance, although not taking the place of action of the State concerned. The Convention further elaborates on the national and international protection, the primary obligation to identify, protect, present, preserve, conserve and transfer rests on the State and only when the State fails to take these measures, the international community springs into action for protection. To date, 187 countries have ratified this Convention.

As a nation with proactive approach in protecting cultural heritage, Nepal, shortly after the adoption of the said 1972 *World Heritage Convention* ratified it in 1978 AD and a year later enlisted 8 heritage, including the seven from Kathmandu Valley:

(1) Hanumandhoka Durbar Square, (2) Patan Durbar Square, (3) Bhaktapur Durbar Square, (4) Changu Narayan, (5) Swayambhunath, (6) Boudhanath, (7) Pashupatinath

And Lumbini in the List of World Heritage Site. As of now, there are 4 other sites designated in the Tentative List of World Heritage sites:

---

<sup>47</sup> World Heritage Convention, 'Brief History', UNESCO available at <https://whc.unesco.org/en/convention/>, accessed on 3 September 2018.

<sup>48</sup> See generally *Convention Concerning the Protection of the World Cultural and Natural Heritage* (n 3).

<sup>49</sup> *Barcelona Traction, Light and Power Company, Limited, Belgium v. Spain*, Second Phase, 1970, ICJ Rep. p. 3.

<sup>50</sup> Sebastián Green Martínez, 'Locus Standi Before the International Court of Justice for Violations of the World Heritage Convention', vol. 5, *Transnational Dispute Management*, 2013 available at <https://ssrn.com/abstract=2356102> accessed on 5 September 2018; O'Keefe, Roger, 'World Cultural Heritage: Obligations to the International Community as a Whole?', vol. 53, no. 1, *The International and Comparative Law Quarterly*, 2004, pp. 189–209 available at [www.jstor.org/stable/366314](http://www.jstor.org/stable/366314), accessed on 5 September 2018.

<sup>51</sup> Operational Guidelines (n 29), para 49.

(1) Nuwakot Palace Complex, (2) Kirtipur (medieval settlement of Kirtipur), (3) Sankhu (*Vajrayogini* and early settlements of Sankhu), (4) Khokana (Khokana, vernacular village and its mustard - oil seed industrial heritage), and *Bungmati* adjoining it.

Today, more than ever, the world has the need for international cooperation in protecting its heritage. The importance associated with heritage puts their status in great danger as we have encountered in the attacks following rise of terrorism. The last decade showed rapid increase in terrorist activities, leaving numerous shambled heritage in its wake. The destruction of Buddhas of *Bamiyan* in Afghanistan, the *Tetrapylon* of *Palmyra*, *Timbuktu* of Mali are but few examples of such.

United Nations Security Council, in recognizing this pattern has adopted SC Res. 2347 where it regarded destruction of cultural heritage as an integral thing that needs preservation, noted the ongoing atrocities around the world against culture and acknowledged and labelled cultural heritage to be a target of terrorism.<sup>52</sup>

### Where are we headed?

At a glance, the situation surrounding the conservation of cultural heritage in Nepal seems ideal. The prevailing laws coupled with the traditional methods would, indeed, have led to an ideal situation for conservation, however, unfortunately that is yet to be realized. The lack of implementation of the said legislations, the unclear and colliding authorities of DoA and the local government authorities, corrupt authorities, unchecked restoration of Heritage by foreign as well as local agencies and the legal lacuna in the area of privately owned historic buildings (which have been target of the practice of hereditary division of property which allows the historic buildings to be divided vertically to allow all parties to own part of the land] poses a severe threat to the integrity of the cultural heritage). The situation, really is, anything but ideal.

It is only a few months back that the authorities in charge of ‘reconstruction’ of Rani Pokhari were all set to concretize the area, columns, slabs and tiles were recommended in its construction. Would that really be modernizing? After cries of protests from the concerned locals, the reconstruction came to a halt and DoA finally showed enough concern.

Similar was the situation in Kasthamandap, our traditional craftsmanship (discussed above) which used area, topography specific engineering since the 7<sup>th</sup> century was deemed ‘unworthy’, owing to which concrete materials and rigid structures were planned on being introduced. What would, then, have happened? Would the revered Kasthamandap then survive next earthquake, which is inevitable, given that Kathmandu is known to be an earthquake-prone zone. After protests from a concerned group these acts did come to a halt but protection of entirety of our cultural heritage to the extent of enabling intergenerational equity will not be possible from one group alone, a comprehensive understanding of cultural heritage and a larger voice backing it, is necessary (More in Conclusion).

<sup>52</sup> UNSC, Resolution 2347 (2017) S/RES/2347 (2017), 24 March 2017 [UNSC Res 2347], para 13.

Another major example of such threat is the *Baghdurbar*, for the protection of which, one of the researchers is involved in filing a writ petition in the Supreme Court.

### The story of *Baghdurbar*

In the second volume of the book *Kathmandu Valley*<sup>53</sup>, a detailed description of *Bagdurbar* is provided:

*‘Among the earliest palace estates established in the valley was the one built by Prime Minister Bhimshen Thapa on the south-eastern fringe of Kathmandu City. Its appearance reflects the influence of middle eastern Moslem architecture and shows Bhimsen Thapa’s great admiration for the Taj Mahal. .... severely damaged during the earthquake of 1934, it was not used until 1940 when its restoration was completed and it became the residence of Hari Shumsher. Since then it has been known as Haribhawan’*

The book states that the said *durbar* was built in 1805 AD and it shared cultural and historical importance with, inter alia, *Dharahara*, *Taleju* temple, *Bagguthi ghar*. This structure was one of the many which bore the brunt of the 2015 earthquake. With the damage, now, comes the issue of repairmen. And the point of contention that arose here, is the matter of its complete restoration via destruction of the existing structure or conservation via renovation and retrofit.

In midst of the crumbling structure of *Bagdurbar*, and the impact that followed after the 2015 earthquake, the Kathmandu Metropolitan commenced to build a new structure in its periphery. As per the *Ancient Monument Preservation Act*, however, building any additional structure in the periphery of monuments with rich history and art is prohibited and shall be carried out only after much deliberations and permission of the DoA.<sup>54</sup> The DoA on numerous occasions had written to the Metropolitan prohibiting any such act of construction<sup>55</sup>.

Despite frequent written communications from the DoA, the Metropolitan called for tender to deconstruct *Bagdurbar* following which DoA, re-sent notices to stop the said act. However to the surprise of onlookers, on 2075/02/15, DoA, in contradiction to its statement in 2074/07/15, allowed the said destruction of *Bagdurbar*.

This decision of DoA, completely negates the purpose of the *Ancient Monument Preservation Act* and the theories of conservation of cultural heritage, which states that any such monuments should not be ‘reconstructed’ unless such a feat is the only way to salvage the heritage.

In this case, the said requirement is not met. The Society of Nepalese Architect, through their research, have given a statement to *Janabit Sanrakshyan Manch*, which provides

<sup>53</sup> Pruscha (n 5), p. 10.

<sup>54</sup> *Ancient Monument Preservation Act*, Nepal, 1956 (*Pracheen Smarak Samrakshan Ain 2013*), s 3; *Ancient Monuments Preservation Rules*, Nepal, 1989 (*Pracheen Smarak Samrakshan Niyamaawali 2046*), rule 4.1.

<sup>55</sup> Communication from DoA to Kathmandu Metropolitan, 2073/01/20; Communication from DoA to Kathmandu Metropolitan, 2074/07/08.

that the current status of *Baghdurbar* does not warrant complete reconstruction. As *Baghdurbar* is a unique example of Neo-Classical architecture, it should rather be conserved through retrofitting. Corroborative evidence of *Baghdurbar's* historical and architectural value can be found in many writings<sup>56</sup> including that of Historian Purshottam Shumsher.<sup>57</sup>

Thus, this issue of destruction in the name of development and modernization in the form of erecting new and western buildings is seen growing in today's Nepal. The controversial issue of *Ranipokhari* and *Nepal Mandak*, where the former was almost converted into a commercial poolside area in the name of modernization and the latter was subject to destruction for the purpose of road expansion.

The researchers thus poses this question and leads to another debate or a concern: What is development?

### **Voice of the people: Just a glance**

In an attempt to understand the on-goings of today's mind, researchers prepared a google form where researched asked questions related to heritage, mainly, focusing on perceptions regarding preservation of heritage and development. The major aim of the researchers was to deduce a) If people perceive heritage conservation and development as mutually exclusive? And, b) If they do, which do they prefer?

Altogether 52 responses were received, the findings to which were as follows:

First, we found that majority (in fact, all except one response) believed that Heritage Conservation is indeed important.

Second, in regards to whether heritage conservation and development is mutually exclusive, majority believed that it was not and that heritage conservation and development could be taken hand in hand. There were very less (2 responses) who submitted that one had to choose between either heritage conservation or development as the latter might hinder the former and vice-versa.

Given this outcome in the first two major questions, it is interesting to note that, in regards to questions related to Rani Pokhari and whether it should be renovated in traditional sense or reconstructed with a slight commercial approach, the response was a perfect 50% on both fronts. 50 percent of the submissions elaborated that although they support heritage conservation, certain commercial changes could be made in order for the site to support itself. Some responses, however, were on extreme ends such as **a)** complete reconstruction in commercial manner **b)** renovation in pure traditional manner without any changes.

<sup>56</sup> Damodar Neupane, *Baghdurbar, k Cha, K Chaina?* available at [https://www.kantipurdaily.com/news/2017/11/01/201711\\_01162920.html](https://www.kantipurdaily.com/news/2017/11/01/201711_01162920.html), accessed on 3 September 2018 ; Dr. Sudharshan Raj Tiwari, Heritage conservationist to protest against Baghdurbar demolition plan, available at <http://kathmandupost.ekantipur.com/news/2018-07-19/heritage-conservationist-to-protest-against-baghdurbar-demolition-plan.html>, accessed on 3 September 2018.

<sup>57</sup> Purshottam Shumsher, *Ranakalin Pramukh Aitibasik Durbar Haru Amar Singh Thapa Dwara Nirmit Baghdurbar*, pp 7-9.

Analyzing this answer along with the one regarding road expansion, the researchers deduced that majority of the applicants were positive regarding heritage conservation, but heritage conservation, in their understanding is including a touch of modernity as well, either it be in form of technology or materials.

Overall, the response of the applicants did come as a pleasant surprise to the researchers. Initiating with a hypothesis that the young generation does not quite care about the heritage, we encountered a finding, albeit it being representation of 52 youths (30 aged 21-25, 19 aged 15-20 and 3 aged 26-30), that was positive and solution oriented. Suggestions such as, *“A road is never wide enough for people with narrow mindset. There are ways to manage traffic”* were definitely noteworthy.

Another application highlight was a criticism where an applicant called road expansion “uneconomic” and “non-environment friendly” as we were destroying our identity (in reference to heritage) to expand a road that would host expensive vehicles imported from foreign land (uneconomic) and uses petrol and diesel which first of all, is an additional burden to the country’s economy as we also have to import them and second, completely contributing to environmental issues. We thought that was an interesting stand as well.

It was however, disheartening to note that even among these 52 applicants more than 75% were not aware of the laws regarding heritage or the current affairs relating to the same. Also, the turnout of 52 applicants via google form still excludes us from reaching a lot of people who do not have access to internet.

In that regard (to reach students without internet access), the researchers visited 2 schools (Grade 9 and 10 of one Government School and one Private School) in Budhanilkanta Municipality Ward no. 10, where, majority of the students were not even aware of the current scenarios, events and debates regarding heritage conservation. Under such circumstances, it was not within the capacity of the researchers to explain the entirety of situation and get comprehensive answers from the students.

### **Concluding Remarks and Recommendations**

After a thorough reading of the reports published by the Government Authorities, Foreign Institutions, independent experts from Nepal and current affairs, the researchers have identified the following as the major steps needing prompt address, if we are to work for the conservation and sustainability of cultural heritage:

#### **1) The need to reach our younger generation**

The first recommendation, though generic it may seem, but during the time of our research, this is the one issue we have found to be the primary concern needing address in our society. When we mention conservation of heritage, renovation instead of reconstruction, protecting our traditional knowledge, we mean to pass it on from one generation to another; to maintain sustainability and intergenerational equity. However, during our time in the field and the interviews the researchers conducted among the young generation (10+2 students of

colleges in Budhanilkantha Municipality ward 10), concern for cultural heritage was very rare. In fact, 40% of the students were not even aware of the ongoing crisis regarding cultural heritage in Nepal. Thus, our first recommendation would be to organize awareness programs regarding the importance of cultural heritage. The researchers also recommend adopting the marketing schemes (described below in point no. a) used by Japan and Korea in promoting their culture and practices around the world. As unconventional as it may sound, we have to use the language that is understood by the younger generation. We can adopt these two major schemes in grabbing the attention of our younger generation:

- a) Using art, in the form of music, songs, paintings, exotic food for attracting the attention of younger generation. We could hire young and popular artists to endorse such campaign.

**For example:** *In light of the Olympics 2020 being held in Japan, it released a music video where it demonstrated its traditions, Bon dance culture, languages, major attractions, and even the minute of details such as how Japanese people pronounce certain English words so that the tourists can imitate it to communicate with the locals of Japan. The song has more than 48 million views on YouTube.<sup>58</sup> Nepal has a similar goal Visit Nepal 2020 and we should be able to adopt something similar in order to reach out to the younger generations.*

**Recently, in December 8 2018, Budhanilkantha Municipality (in specific a team named Yuwanilkantha-a youth-led organization) organized a Cultural Festival, where the mayor, ward chairpersons, and the people of Budhanilkantha municipality along with guests from other municipalities, showcased the traditions of the area. The highlights of the programs included demonstration of ethnic wears, traditional dance and music performance and even a performance from Karate students in a modern Nepali song.**



From left: Ward Chairpersons of Budhanilkantha ward 1 to 13 in traditional wear (Daura Surwal), Cultural Performance in traditional wear

Source of pictures: Yuwanilkantha (organizers of the Cultural Program)

<sup>58</sup> 'Tokyo Bon 2020', 19 November 2017, Youtube available at: <https://www.youtube.com/watch?v=zhGnuWwpNxl>, accessed on 5 September 2018.

- b) Promoting job opportunities that require traditional knowledge. For instance: a girl who is impeccable in playing their traditional musical instrument and a boy with excellent skills of *Lakbe* dance should feel that she has a proper career in pursuing this very skill. The government and society must make such jobs appealing, well-paying and respected.

**2) The need to adhere to our traditional methods of renovation**

From the aforementioned accounts of the traditional methods employed for the construction of cultural heritage, it is clear that the buildings made through such tactics are better suited to the environment of Kathmandu Valley, which is prone to earthquake. This recommendation falls in line with the former because it creates job opportunities for the young generation, specifically, those who are familiar with the traditional style of engineering we employ in our monuments.

**3) The need to maintain finesse in our traditional method and incorporate technologies friendly to these methods**

The efforts of existing authorities in the aftermath of earthquake must be appreciated, we cannot, however, breathe a sigh of relief just yet. As stated, Nepal is one of the most earthquake-prone countries in the world and reports post the disaster have revealed that some cases of damaged buildings suffered said unfortunate fate because the repair methods employed by the craftsman did not make the building sufficiently sound<sup>59</sup>. Further, the same report stated that within the Patan Durbar Square premise (one of the World Heritage Sites that sustained major damage), the *Baba Bahi*, which had been restored by the Nippon Institute of Technology, did not suffer damage.

This could be an important take away for the Department of Archeology of Nepal. While traditional methods of renovation are imperative in conserving the authenticity of the cultural sites, one must also embrace technological developments that could improve the quality of repair works, leading to minimal damage or prevention thereof even in event of disaster. Collaboration, with the countries facing similar circumstances (example: Japan is another earthquake-prone country and hosts a large number of historical and cultural heritage sites), through joint training programs for the craftsman/engineers, exchange programs, among others, could provide newer insights and technical and construction knowledge regarding renovation and restoration of cultural sights in disaster prone areas, while retaining their cultural authenticity.

**4) Understanding the topography even within Kathmandu Valley while making renovations.**

The damages caused by earthquake displayed typical pattern, such as inclination and collapse of the uppermost parts of towers and inclination of brick walls for structures taller than three storeys. However, for the same magnitude of earthquake some areas showed major destruction while some areas escaped

<sup>59</sup> National Research Institute for Cultural Properties (n 19), p. 27.

unscathed (examples include comparative reports on destruction of historical towns of Kirtipur and Sankhu.) This indicated regional difference in the strength of the ground and the intensity of the earthquake. A detailed report on the same must be procured and referred to while establishing new structures or renovating old ones.

Thus, the need of today's Nepal in terms of preservation of its cultural heritage and practices is reaching out to and seeking the support of the younger generation, analyzing topography while carrying out any renovations and devising a method that can incorporate the traditional methods in an efficient way with the assistance of modern technology. Only then can the essence of its culture be preserved in the fast paced world we are living today. The researchers would again emphasize on adopting the aforementioned methods used by other countries in similar context.