

CHILDHOOD CONSTRUCTED, CHILDHOOD LIVED: LAW AND SOCIAL HISTORY IN NEPAL

Lazima Onta-Bhatta

According to the country's civil code of 1854, i.e. the Muluki Ain (MA), marriage of a five-year-old girl was legally permissible in Nepal. By 1976, the Muluki Ain stipulated that a girl must be sixteen if she was marrying with her guardian's consent and eighteen if she was marrying without it. Obviously, the perception of the "appropriate age" for marriage had shifted from five to sixteen for Nepali girls within a period of about 122 years. Similarly, while the Children's Act 1992 prohibits penalizing children under the age of ten for all acts of crime, the "age of innocence" was eight according to the Muluki Ain of 1955.

What do these shifts in children's age in various laws tell us about childhood in Nepal? This essay seeks to explore these and similar other shifts in Nepali legal codes, and elucidates their implications for our understanding of childhood and the role of the state in constructing specific ideologies of childhood. It shows how the concept of childhood has varied historically and how it has appeared in Nepali state ideology. It also brings to light commentaries on the state ideology of childhood by examining the social history of childhood through popular writings, biographies and oral narratives. While a legislative history of childhood tells us about the ways in which the state has participated in the process of constructing specific notions of childhood, a social history of childhood as manifested in written and oral narratives of lived childhood experiences provide us with rich examples of what childhood meant, what it represented, and what constituted it in reality for individuals from different echelons of society. My effort here is to write a history of childhood in Nepal that encompasses perspectives of the state as well as those of ordinary Nepali people, and thereby elucidate how children and childhood can, and must, become a part of Nepali historiography.¹

Childhood as a subject of history emerged particularly after the publication of Philippe Aries' seminal work on the social history of

1 This essay does not analyze factors that must have influenced the specific changes brought about in the legal discourse in Nepal. A separate research project is needed for such a study.

childhood in which he argued that the concept of children as significantly different from adults did not develop in Europe until the seventeenth century (Aries 1962). Medieval society, according to Aries, perceived children as miniature adults, and hence did not recognize childhood as a distinct stage of human development. Although Aries' work has been criticized for its basic assumptions about medieval society (Calvert 1998) and for its generalized conclusions drawn from select sources of evidence (Pollock 1983), it has inspired numerous studies that point out how childhood is a cultural construct, and how it differs and changes cross-culturally and historically (e.g. James and Prout 1997; Kessel and Siegel 1983; Misri 1985; Super and Harkness 1980; The Norwegian Centre for Child Research 1988; Zelizer 1985). Childhood today, however, is also a collection of institutional rules defined by nation-states and international bodies to constitute a special status for children (Boli and Meyer 1987). Taking inspiration from these studies, I explore the social construction of childhood in Nepal by looking at state ideologies and social histories. My premise is that since childhood is created, experienced and re-created continually, writing about the social construction of childhood must encompass the shifting contexts, the various actors involved, and the intertwined social, cultural and political processes. Following David Archard (1993: 27), I maintain that the ways in which the boundaries, dimensions, and divisions of the period before adulthood are set, ordered and managed determine how a culture, a people, or a nation-state thinks about the extent, nature and significance of childhood. The processes of setting, ordering, and managing the period of childhood often involves a complex interplay of ideas, values, and beliefs of multiple actors from various levels ranging from the family, local community, state, and transnational entities. In order to flesh out these intricate processes, I maintain that it is necessary to trace the social construction of childhood historically.

The rest of this essay is organized into seven sections. This introduction is followed by a brief discussion on the relevance of law and social history for my study of social construction of childhood in Nepal. Following this discussion are three separate sections that focus on the concept of children as sacred and needy but materially useful beings as found in the provisions of the Muluki Ain and in the social history of childhood. The fifth section discusses the notion of crime and punishment and how they articulate with children. The focus is on tracing changes in the concept of the legal age of innocence historically. This is followed by a section exploring the changes in the social institution of marriage,

which has gradually been pushed out of children's domain in the legal discourse in Nepal. In all these sections, I move back and forth between different historical periods when presenting and analyzing the supporting materials. The seventh section concludes by bringing together various themes running through this essay and by highlighting the salient points illustrated in each section.

Relevance of Law and Social History

Among the high caste Nepalis who spent their childhood in the late nineteenth and early twentieth centuries, religion, religious texts, and caste-based values and practices probably played significant roles in shaping their childhood. However, it is difficult to assess the degree of the effects of these social and religious systems. Life histories suggest that it was quite common among the Brahman families to send their children, especially the sons, to study under a guru in order to learn Sanskrit at an early age, and then send them to India to obtain a formal degree as Nepal did not have educational institutions granting degrees until the late 1950s. Autobiographies reveal that boys of the Brahman families and those of the Rana aristocrats were initiated into learning at an early age, and verses from the religious texts were often used to teach Sanskrit. Studying such texts would continue with the material becoming progressively more and more complex. It is, however, difficult to assess the extent to which these texts have contributed to the social construction of childhood even among the elite males in Nepal. Oral traditions that became popular because of the dispersion of religious texts must have had a significant impact on shaping social norms and values in general; but again, the degree of this impact is not known. Even the Ramayana, the most popular Hindu epic in Nepal, was not dispersed in printed text until the 1880s in simple Nepali, and we know very little about the dispersion of this text (Onta 1996).

Given the difficulties in assessing the significance of religious texts and popular oral traditions on the historical construction of childhood, the availability of legal texts and their many amended versions from 1854 to the present provide us with one form of primary documents to explore state conceptions of childhood historically. The Muluki Ain (MA) is one of the main legal instruments used by the state to codify many aspects of social life in Nepal. Until 1951, this Ain, first promulgated in 1854, went through minor changes several times as Nepal remained under the Rana oligarchy which resisted social changes to ensure its political power.

After the end of the Rana rule in 1951 and during the period between 1951 and 1960 when Nepal experimented with multiparty democracy, the Muluki Ain once again met with only minor changes. The little attention given to bringing changes in the Muluki Ain during this period is perhaps due to the political instability Nepal was experiencing at that time. There were ten cabinet turnovers between 1951 and 1959 (Stiller and Yadav 1979:64), and hence no government was in power long enough to initiate and systematically follow through significant changes in any of the infrastructures—law being one of them. It was only in 2021 v.s. (1964 A.D.), after the partyless Panchayat system had officially grounded itself for almost three years, that the Muluki Ain was fundamentally transformed. This first amendment, as it has been called, removed the caste hierarchy as the organizing principle of MA, which nevertheless continued to be concerned with regulating social life. The versions of the Muluki Ains after the first amendment are called New Muluki Ain and the ones before 1964 are called Old Muluki Ain.

Much has been written about how the Old Muluki Ain has been an important state apparatus in codifying caste and integrating various ethnic groups in Nepal within a single hierarchical model based upon purity and impurity (Höfer 1979; Sharma 1977). While its role in national integration and ethnic identity construction has been critically analyzed by social scientists (e.g. Holmberg 1989, Levine 1987), the Muluki Ain has not been given due credit for the abundance of information it contains regarding the state's perception of its people in relation to the complexities of their social relationships, interactions and everyday lives.² The Muluki Ain is an important piece of historical document that functions like a window into various aspects of social life from the perspective of the state and members of the upper and middle-classes who were the primary agents of the state. However, there are no specific sections or sub-sections within the Muluki Ain that deal directly with children's lives. One has to go through the 166 different sections within the Muluki Ain of 1854,³ and selectively identify the ones that contain

2 Kate Gilbert's (1992) and Seira Tamang's (2000) articles are exceptions. A few examples of the topics from the Muluki Ain of 1854 that are directly related to the social aspects of people's lives are: inheritance, dowry, adopted son, physical conflicts, gambling, marriage, rape, and death.

3 The edition of the Muluki Ain of 1854 [1910 v.s.] that I am using has 166 articles, and also incorporates amendments and additions made up to the

provisions related to children. It is, hence, difficult to point out the criteria that constitute the definition of childhood in the Muluki Ain. Nevertheless, it is a rich source of information on how the state and its political agents conceptualized children and childhood.

In the absence of organized pressure groups or leading social reformers lobbying for specific changes during the 19th and the first half of the 20th century, the state played a very critical role in defining the boundaries, divisions, and dimensions of childhood in Nepal. During the oligarchic Rana rule from 1846 to 1951, information dissemination was centrally controlled, and education was a luxury that only the Rana families and a few others they favored enjoyed. Given this absence of materials and mechanisms to systematically disseminate state ideologies on childhood, I find the Muluki Ain to be a particularly useful primary source of information. Moreover, the complexity involved in the social construction of childhood calls for an analysis that encompasses various perspectives including those of the state, social institutions, and other social agents. My methodology, therefore, includes not only a close reading of legal texts since 1854, but also an analysis of newspaper writings, autobiographies, and oral histories of Nepalis who spent their childhood in the first three decades of the twentieth century. Hence, I have not only drawn extensively from the Muluki Ain, but have also utilized some of the other legal codes that refer to children's issues. In addition, I have also explored writings from the *Gorkhapatra* (a state newspaper founded in 1901) as a reflection of the state's perspectives as well as those of the elites whose writings, when not considered to be politically sensitive, appeared in this newspaper.

In order to broaden our understanding of how concepts of childhood have developed in Nepal in ways other than those of the state and its ruling class, I have also employed a social history perspective. A social history perspective forces us to rethink what is considered as the subject of history and to broaden its boundaries to include plural perspectives, histories of subaltern groups, diverse methods, and more encompassing interpretive frameworks (cf. Onta 1994). I have found biographies and oral narratives as rich sources for a social history of children in Nepal, as they provide important commentary of Nepali people on state ideologies as well as on social practices related to children.

Children as Sacred Beings

One of the underlying themes found in the laws, popular writings, and social practices of high-caste groups regarding children in Nepal is that they embody purity defined by their innocence, simplicity, and innate goodness. Purity in children is also viewed among the caste groups in terms of their ritual status that is considered to be less polluting and less polluted. Such sacralization of children is epitomized in the worshipping of young girls and boys as embodiments of certain deities, a practice found among Hindu and certain Buddhist communities. Unlike in the United States where sacralization of children in the early twentieth century replaced the economic value of children as workers (Zelizer 1985), the notion of children as sacred beings existed, and still exists, simultaneously in Nepali society with the notion of children as economic resources to the family. This concept of children as sacred beings with material utility is found in the Muluki Ain and in life histories.

As caste was the organizing principle of the Muluki Ain of 1854, the notion of purity in children up to a certain age comes out very strongly in its various sections. Caste affiliated purities and pollutions are perceived to affect children differently from adults. For example, it states that the caste of children under the age of twelve remains unaffected even when they eat rice, drink water, and live with their father or mother whose caste status was lowered after having sex, eating rice and drinking water with a person from a lower caste (Muluki Ain 1854, no. 30: 388). Since activities such as eating rice and drinking water with people of lower castes have the power to reduce adults to lower caste status, it is interesting to note here that the same activities are not considered to be polluting for children under twelve. The logic is that those under the age of twelve are "*agyān bālak*" (Muluki Ain 1854, no. 30: 388) which translates as children who are ignorant, unaware, and uninformed, thereby innocent and pure by nature.

The lack of polluting potential in children is also pointed out by the Muluki Ain sections that regulate social observance of death in a family. As Table 1 shows, the degree of pollution effected by a child's death corresponds with his or her age and ritual status in the family. Two implications emerge from this information. First, children up to a certain age or ritual status are less polluting to their parents and lineage relatives because they are not yet "full members" of the lineage. They become polluting once they are initiated into the lineage through *bratabandha* (male initiation rite) for the *tāgādharī* (high caste sacred thread wearers) sons and puberty rites for the unmarried daughters no matter what age they

**Table 1: Children's Age, Ritual Status, and Death
Pollution**

are at. Second, children are less polluting because they are assumed to embody purity expressed in their innate goodness and innocence as they are *agyān* or ignorant and unaware people. Although codification of ritual practices has been dropped since the New Muluki Ain was enacted in 1964, children continue to have special status as unpolluted, unpolluting, and pure in the worldview of the high caste groups such as the Brahmans, Chhetris and upper-caste Newars. For example, infants who are not weaned and have not been ritually initiated into eating rice (the ritual of *pāsni*) are perceived to be especially pure as mother's milk is considered to be an unpolluting and purifying substance. There is also the tradition of worshipping little girls as embodiments of deities in festivals and special pujas among the Hindu and particular Buddhist communities.⁴ Once the girls go through certain rites of passage, they cease to be eligible for the honored status of a goddess on special occasions.⁵ And, when they attain full member status in their lineage through specific rites of passage, they not only gain polluting potential but also become equally susceptible to ritual pollution as adults. The nature of a child's membership in its lineage determined by specific rites of passage hence seems to be much more important than the child's age in defining the threshold between childhood and adulthood manifested through Hindu ritual symbolism.

Children as Needy

The notion of sacredness hinged upon innocence, simplicity, and innate goodness in children is also connected to their natural incapacity and vulnerability. The perceived physical and mental limitations of children as cultural agents are used to validate their need for special care and protection for survival and development. The Muluki Ain has several provisions reflecting the recognition of children's need for special protection, care, and assistance from adults for their general well-being. The notion of children as needy and dependent beings emerges from these

4 See Michael Allen's (1975) account of the system of Kumari, a living goddess in Nepal. The most eminent and important Kumari is the royal Kumari of Kathmandu who is chosen among very young Buddhist girls of the Sakya Newar caste.

5 I used to be worshipped in my family as a goddess Kumari on the ninth day of the annual festival of Dasain until I was seven. I became ineligible after I went through the rite of *yihee* which is one of the rites of passage for Newar girls in which they are symbolically married to lord Bishnu, the god of protection in the Hindu pantheon.

legal provisions where age boundaries marking different degrees of neediness are inconsistent, and gender differentiations prevail.

In the Muluki Ain of 1854, several provisions point to children as needy of a mother's care. For example, separation of slave women from their children below the age of eleven by selling them off to another owner or giving them away as gifts was not allowed (Muluki Ain 1854: 362-363). Similarly, this Ain stipulated that children under the age of seven must not be separated from their mother even when the mother left the children's father and remarried (Muluki Ain 1854: 416). It also did not permit a widow to become a *sati* if her youngest son was below the age of sixteen or her youngest daughter was below the age of five (Muluki Ain 1854: 421), implying that her care was needed for the children. The disparity in age mentioned here for sons and daughters needing their mother's care not only illuminates the existing bias towards the well-being of the sons, but it also indicates that gender played an important role in determining the duration of childhood.⁶ The belief in the Muluki Ain that sons needed their mother's care for a significantly longer period than daughters suggests that childhood perceived as a period characterized by dependency on the adults for survival, protection, and care was much longer for male than for female children in mid-19th century Nepal.

The special status accorded to children is also illustrated by special provisions made to take care of children without guardians. The following provisions found in the Muluki Ain of 1854 demonstrate the concerns of the state as well as its investments on children without guardians.

If a child *under the age of twelve* with no parents, brothers, or uncles, and with no property came to the court, take note of his/her name, caste, and place of birth, and the court officer will take care of the child with arrangements made [...] for daily meals. Also make provision for two sets of clothes for the child from the cash income. Such Brahman, Chhetri, Vaishya and Shudra children shall be under the responsibility of the government officers in the Kumaarichok where they will be listed as employees and taught and trained in the work in this office. [...]. *Don't keep these children without work* (Muluki Ain 1854, no. 11: 155-56, emphases added).

⁶ It must be noted here that five years as the age marker for daughters in this particular article may be linked with the law in this Ain which allows daughters to be married at this tender age (Muluki Ain 1854: 444). Discussion on marriage appears later in this essay.

If a new-born infant thrown on the street is found and brought to the court, arrange a woman to nurse the baby, and make arrangements to provide two meals a day and two sets of clothes per year [...] for this woman who will take care of the child. Also, make arrangements [...] to give meals and clothes to the child until it reaches the age of sixteen. After the child becomes sixteen years old, find a job in the government that suits its mental ability (Muluki Ain 1854, no. 7: 419-420).⁷

The general concern for the protection of needy children, and the provisions made to ensure that they indeed received necessary basic care shows the interest and the willingness of the state for its children's welfare. The age boundary mentioned in the first of the above-mentioned two *mahals* from the Muluki Ain of 1854 suggests that children under the age of twelve were considered as most certainly needing protection, care and assistance from adults, especially women. The later versions of the Muluki Ain also have similar provisions to take care of abandoned and guardianless children under the section *Garib Kangālko Mahal* [On the Poor/Penniless]. Most recently, the Children's Act 1992 has outlined protection measures for children in special circumstances (such as abandoned, orphaned, drug addicted, and disabled children) to be implemented through children's guardians and/or the state funded Child Welfare and Rehabilitation Homes (Children's Act 1992, Chapters 3&4). Although very little has been done in terms of actually establishing such institutions, the issues of child survival, protection, and care continue to remain central in the discourses on children among the development organizations, child advocacy groups, and the state today. While children's vulnerability and incapability are acknowledged in the currently dominant development discourse on Nepali children, the emphasis on children's need for protection, care and survival has shifted from being an issue of welfare to that of children's rights and development.

7 The language used in these provisions does not show that they were based on gender. But in the 1952 version of the Muluki Ain, these provisions remain more or less the same except for the following statement at the end showing gender differentiation: "if it is a son, put him in a government job when he is sixteen; if it is a daughter, request the government for Rs. 25 to 30 for her wedding after she reaches eleven and marry her with a person from the right caste" (Muluki Ain 2009v.s., no. 2: 9).

Children as Economic Resources

The nurturant attitude towards children reflected through the emphasis on protecting them in both general and highly particular ways, is not delinked from the perceived economic value of children. The importance of teaching some skills to the children taken care of by the state as mentioned in the provision quoted above from the Muluki Ain of 1854 highlights the value of children as resources. Although the Muluki Ain does not speak directly about children's work and labor, evidence within it suggests that work was valued and was not considered to be inappropriate for children. In fact evidence, in addition to the one quoted above, shows that the state expected the children to work, and encouraged to put their labor and skills to use. For example, the Muluki Ain of 2022 v.s. as well as its tenth amendment of 2051 v.s. state that "Following priority shall be given when distributing alms and ration given out by His Majesty's Government: a) lepers, b) blind persons, c) physically disabled, d) *orphaned children who cannot earn a living through work*, e) elderly" (Muluki Ain 2022 v.s., no. 8: 109; Muluki Ain 2051v.s., no. 8: 110, emphasis added). One interpretation of the way children are characterized in this particular article is that the state expects children to work and earn a living, and it supports them only when they are unable to do so on their own.

Even the Children's Act 1992 states that "His Majesty's Government shall assist an abandoned child who has already obtained some sort of skill or knowledge to engage in vocational work suitable to his/her knowledge and skills" (no. 37(ii)). In 1955, however, the Citizens' Rights Act mentioned that "No children below the age of fourteen shall be employed in factory or mining work or any other hazardous work" (Nagarik Adhikar Ain 2012 v.s., no. 14:1222). More recently, the Children's Act 1992 and the Labor Act 1992 also maintain that a child under the age of fourteen years shall not be employed in any work or establishment as a laborer (Children's Act 1992, no. 17(i); Labor Act 1992, no. 5(i))⁸. The Children's Act 1992 only permits children between the ages of 14 and 16 to work up to a maximum of 6 hours per day and 36 hours per week between 6am and 6pm in any work that is not considered to be hazardous to their health and life. It is important to note that all these laws pertaining to children's work explicitly prohibit working in

⁸ It must be pointed out that the definition of a child in the Children's Act is "those children who have not completed the age of 16" (Children's Act 1992, no. 2 (a)).

establishments but are silent about working within the family or working on one's own. An underlying assumption here is a distinction between work (*kām*) and labor (*śram*). Labor as compensated and alienated work is considered to be inappropriate for children under fourteen. The conspicuous absence of a definition of other forms of work, however, suggests that domestic and agricultural work within the family, assisting in family owned enterprises, and other tasks that children perform to contribute to the family income or to earn an independent living, are not perceived as inappropriate for children even under the age of fourteen.

Working within one's family or for someone else was, and still is, a significant part of the everyday reality of Nepali children. Life histories reveal that children worked for others for money as well as within their own families in the early part of the twentieth century. Shukraraj Shastri, one of the four anti-Rana activists executed in 1941, writes the following about his days in Birgunj, a town in southern Nepal, where his family lived after his father was imprisoned for political reasons and he and his brothers were expelled from the Durbar School in Kathmandu:

After we reached Birgunj, we survived for a few months by pounding paddy of the Kainla Shahebju. Mother was very good at sewing. Women therefore used to come and give her different kinds of clothes for sewing and thereby helped us out of generosity. They used to be sympathetic to our difficult situation. And my brother Amarraj and I used to go to the government office and earn some money, which used to help a little bit, but we barely survived. In this way we somehow spent eighteen months in Birgunj (Pradhan 2046 v.s.:29-30).⁹

What we find here is a twelve-year-old boy in 1905 working and helping his family to survive. It may be argued that the extraordinary situation of displacement and disruption in Shukraraj's family made it necessary for him to work. In fact he does not mention working for money when he was attending school in Kathmandu. However, other examples of work experiences in childhood in the first few decades of the twentieth century suggest that work was very much part of the everyday reality of even children who had regular homes and families with relatively decent sources of income.

The following excerpts from Basupasa's autobiography capture how work shaped his childhood since he was about five or six years old. He came from a relatively wealthy Newar family who owned a vegetable and

9 This is a direct quote from Shastri's book *Mādhabrāj Jośiko Jīvan Caritra* quoted here by Shastri's biographer Bhuvanlal Pradhan.

fruit shop in Kathmandu. He remembers a day when he was about five or six years old (therefore either in 1930 or 1931) which transformed his childhood significantly:

One day I was playing in the courtyard. A Khardar Sahib [government officer] of my neighborhood came and took me shopping with him in Kathmandu. He gave me fifty paisa after I carried his stuff up to his house. I took it, ran up to my mother, and showed it to her saying "look mother, a fifty paisa." As soon as she saw that, she flushed with anger, grabbed my hands with her left hand, and being ready to spank me said, "Tell me, where did you bring this from? Do you think I will take it just because you brought it?" She took it only after I told her the details. Then she said, "now do not wander around; cows might eat the vegetables from the shop," and she gave me a stick. From that day on, I was deprived of playing and started staying in the corner of our shop. When I became capable of carrying some load, I started going with my second brother, Kumar, with a load of fruit that were not sold from the shop. It was a good practice of that time that mothers controlled their children to keep them away from getting into bad habits (Basupasa 2044 v.s.:3-4).

Basupasa's experience indicates that parents made their children work from a very young age in order to discipline them. By the age of eight, Basupasa was carrying a basket full of fruit and selling it on the street with his brother as a daily activity (Basupasa 2044 v.s.: 4). He did not have to do this work for two years when he was sent off to a teacher to study between the age of eight and ten. But his work load became much heavier when he was brought back to work after he had learned basic literacy. Basupasa describes his new responsibilities at the age of ten in 1935:

My eldest brother Ganeshman said, "enough studies for you now", and made me sell mangoes and sometimes oranges in a basket. Meanwhile my grandfather got a contract to supply a rupee of fruit for the puja-room in the Narayanhiti Palace [the current royal palace]. In those days, a rupee was worth a basket full of fruit. I was given the responsibility to carry that fruit on my head and deliver it barefoot in the winter to the puja-room through the Narayanhiti door which was on the side of the jungle. I used to get four paisa after I made the delivery. Then I would go to the shop after having the morning meal. My brother would send me with a basket full of bananas, mangoes, or sometimes oranges to sell. After I would hand in the money from the sale, he would say, "deliver rice and vegetables at home and come

back,” and send me home. After returning from home, I had to stay at the shop until 9 or 10 at night. I would close the shop when my brother said “close the shop,” and would return home with him. After having dinner, I would put a small mattress on top of a small straw mat, and sleep under a blanket in the attic.

When I realized that I must study, I became determined to do so. I used to start studying in that attic on my bed covering myself with a blanket after having done the day's work, eaten dinner, and everyone else was already in bed. It used to be about ten o'clock at night. After studying for three hours, I would fall asleep. Then I would wake up in two hours and study again. At six o'clock in the morning, I would get up and go to do the same work (Basupasa 2044 v.s.:6).

This description suggests that as a ten-year old boy, Basupasa was working for about fifteen to sixteen hours a day in the family owned business. Work and responsibility was expected of him in the family. While Basupasa's childhood experience may not be typical of the majority of the Newar children in Kathmandu or others with similar socio-economic background, it elucidates that work was part of the growing up process and was not perceived to be inappropriate for children even among the relatively well-to-do families.

Another example of working in a relatively young age comes from Narapati Sharma Pokharel's autobiography. He was from the village of Kachide in Dhankuta in eastern Nepal. He claims that his family was not rich, but earned enough through agriculture and priestly services as his father was the priest of an exiled Rana family who had moved to Dhankuta (Pokharel 2035 v.s.:4). Pokharel started his school education in Dingla near his home village when he was ten years old. After being in this school for three years, thirteen-year old Pokharel and his two friends decided to run away in search of another school they had heard of in Hanumannagar in south east Nepal. On the way at a shop, Pokharel met his father who suggested that he return home and take all necessary things with him. The Newar shopkeeper, his father's friend, however, convinced his father not to stop them and instead to give them some money to support themselves as they were heading to school. Pokharel's father agreed, and gave eleven Indian Rupees to the group of three. Although no further details are given regarding Pokharel's father's views on his son going off somewhere to study, the implication here is that the idea of young people traveling through difficult terrain by themselves with the aim of getting an education was socially permitted and supported by parents. In this particular example, Pokharel's father's supportive gesture

must be understood in the context of his Brahman family where learning and getting an education was highly valued for the sons.

Pokharel writes the following about how he worked to support himself while he went to school in Hanumannagar at the age of thirteen in 1911:

[W]e headed towards Hanumannagar. A friend of mine hinted to me that I may be able to get admitted to the school there, and so only I stayed on and all those other [...] friends went home. There was a Newar from Jaisidewal, Kathmandu who was an officer in the local tax office. He was a kind gentleman and had his whole family there. I became a cook in his family and also continued to study (Pokharel 2035 v.s.:16)

Pokharel further writes about similar situation when he went to Kathmandu a year later and continued his studies:

The person I knew there [in a school in Kathmandu] was Mr. Muktinath who had been to Janakpur when I was there. [...]. He was happy to see me and said, "The cook in Khardaar Ratnaman Shrestha's house left just yesterday. He [...] will be happy. I will take you there. You will have a lot of free time after cooking two times a day. You will get to study." And he immediately took me to his home in Kamalachi. Khardaar was happy and he took me in. I studied in the school in Ranipokhari for six months while being a cook at his home (Pokharel 2035 v.s.:19).

Pokharel's work experiences described above provide us with a lens into understanding some aspects of childhood for a Brahman child in the early twentieth century. It appears that getting a formal education was a priority in his life, but it was possible to attain this goal only because he worked for others, including lower caste families, as a domestic servant while attending school.¹⁰

Written and oral life histories also suggest that the capability of children to work, their age, and the work itself determined and transformed how time was spent in childhood. Children as young as five or six were

10 It is interesting to note that Pokharel was a Brahman working as a servant in a Newar household to support himself while attending school. This evidence compels us to give due attention to social class as a vector in understanding the complexity of caste relationships in Nepal. With increasing rural to urban migration, it has become quite common for children from high caste groups to be working as domestic servants in urban middle-class homes of lower caste families today. However, it is yet to be studied how caste relationships, identities, and status have been shaped by individuals' class positions in the society.

perceived as being able to do small domestic tasks in most communities. The semi-structured interviews conducted in May and June of 1995 by my research assistant with persons older than sixty years have revealed interesting insights into how work interplayed with childhood during the first half of the twentieth century.¹¹ When asked what kinds of work children had to do in the past, a seventy-three-year-old man from the untouchable caste of Kami (blacksmith), who grew up in Dang in south western Nepal said:

We were poor. We had to do small things at home. I had to help my father and brothers in making sickles, *khukurīs*, and ploughs. I also had to make deliveries to Bista's homes. I used to baby-sit my younger brothers and sisters too. Children were asked to do all kinds of work that they were able to do.

Children's capability to work was emphasized by a seventy-eight-year-old Brahman man who grew up in Kathmandu: "Children would be asked to do any domestic work that they could do. Daughters had to do more domestic work than sons. Sons were generally encouraged to study." Similarly, a sixty-five-year-old Rai man from Okhaldhunga in the eastern hills reflected on what constituted childhood when he was growing up:

Children were called children only up to the age of seven or eight. They would be asked to baby-sit younger brothers and sisters. As they grew up they would have to go and work in other people's houses and bring two to four *mānā*¹² of grain. When they were about eight or ten years old, they would be grown; it would be time for them to marry, and they would be able to earn by working for the *sahu* [landlords or wealthy families], and go to the jungle alone. I used to go with my father to hunt in the jungle with a gun since I was ten. We would kill anything we found such as deer, rabbit, boar, etc., and bring it home where we would all cook together and eat it. There were jungles everywhere. They are all gone now. [...]. In our days, there were no schools. Only those from the higher classes used to study. Brahmans used to learn to read religious texts and do puja. But when we were kids we had to look after our younger brothers and sisters, graze the animals, cut grass for them, and do other small chores at home.

11 I gave my research assistant a list of questions to be asked to individuals over the age of sixty. The interviews were based on these questions.

12 *Mānā* is a unit of volume. One *mānā* is equivalent to approximately 0.8 liter.

A sixty-six-year-old Brahman man met in June 1995 in Sarlahi, south-east Nepal, gave an interesting insight into how the conception of childhood varied across different social classes:

In the old days, children were called children up to the age of about five to seven. After that they were generally considered as grown ups. However, time then was like this. For the ones who were very poor and hence had to work or live at other people's houses, they were considered grown ups at about five to seven because they had to work, earn, and bring it home at that age. But for those from the higher classes, ten to twelve year olds were still considered children.

These narratives suggest that the necessity to work curtailed the duration of childhood especially for the poor who perceived their children as economic resources. When the children became capable of contributing to the processes of production within or outside the household, it heralded a new period in their lives, which demanded less play and more work and responsibilities of them. Work was therefore one of the elements defining the social boundary between childhood and adulthood. However, for children from the higher social classes, capability to work and the nature of the work itself were far from important in determining their time in childhood. For example, Balkrishna Sama's autobiography presents an engaging account of his childhood in his grandfather's palatial home in Kathmandu where working or taking any responsibility around the house was out of question for him as they had a total of 230 employees to manage the daily activities in the house (Sama 2023 v.s.:3). Being a descendent of the aristocrat Rana family, Sama's childhood days were filled with leisure in the form of luxurious activities such as horse riding, music, plays, dances, painting, studying, and pursuing his hobbies such as writing poetry and plays. Obviously, leisure instead of work was central in the everyday life of children of the aristocrats, which illustrates the point that social class played a very critical role in not only determining the duration of childhood but also constituting it in very specific and distinctive ways.

Children in Crime and Punishment

The ways in which acts of crime and consequent punishments are associated with the age of the offender in legal codes can provide us with insights into how the boundaries between adulthood and childhood are constructed. What constitutes crime and punishment in law can shed light on how children are socially positioned vis-à-vis adults who invariably set

Table 2: Crime and Punishment in the Legal Codes

Cont. Table 2

the terms that define children's actions and justify their own reactions. In the case of Nepal, as in most other countries, the degree and nature of punishment has historically depended not only on the nature of the offense but also on the age of the offender.¹³ The 1989 United Nations Convention on the Rights of the Child has emphasized that the state must establish "a minimum age below which *children shall be presumed not to have the capacity to infringe the penal law*" (United Nations Convention on the Rights of the Child 1989, no.40 (3a), emphasis added). Given the emphasis on the concept of the age of innocence in the current discourse on child rights, my aim in this section is to trace the changes in this concept historically, and to also explore the concepts of crime and punishment found in Nepali society as portrayed in newspaper articles and life histories.

Table 2 gives a listing of different types of crimes and corresponding punishments that varied according to the age of the offender. In the Muluki Ain of 1854, there is no general article that speaks about the general punishment for all acts of crime. Penalties corresponding with the age of the offender are found only in specific acts of crime such as stealing, beating, and gambling. Looking at the variability in punishments for these specific acts of crime according to the age of the offender, I infer that the age of sixteen was the legal boundary that marked the beginning of adulthood. The period before the age of sixteen is also fragmented into several age divisions each of which is subjected to a different degree of punishment. These differentiations vis-à-vis punishments accorded to adults indicate that childhood as the period before the age of sixteen was granted a special status in the legal codes.¹⁴

13 The caste of the offender was another criteria that differentiated the nature and amount of punishment under the Old Muluki Ain.

14 The Muluki Ain provisions on providing care and protection to abandoned or orphaned children that I discussed earlier also assume that the dependency of these children on adults ends at the age of sixteen. The Children's Act 1992 also requires Child Welfare Homes to provide care to abandoned children up to the age of sixteen (Children's Act 1992, no. 36). It, however, also recognizes that support might be necessary up to the age of eighteen in which case it shall be provided. It must be noted that this extension of dependency up to the age of eighteen corresponds with definition of children as those under the age of eighteen in the 1989 United Nations Convention on the Rights of the Child, which directly influenced the formulation of the Children's Act 1992.

In the Muluki Ain of 1854, there is no clear mention of a minimum age under which children were not subject to punishment for any act of crime. This absence implies that the concept of the age of innocence that presumed a lack of capacity in children to break the law had not yet entered the legal discourse in 1854. A century later, by 1955, a general section on punishment was added to the Muluki Ain which introduced the clause that children below the age of eight would not be charged if nothing specific was mentioned in the law regarding their punishments for specific crimes (Muluki Ain 2012 v.s., no. 6: 190). This clause was, however, not valid for instances when the law specified punishments for children. The New Muluki Ain introduced the concept of the age of innocence by declaring that children under the age of eight shall not be subjected to punishment for all acts of crime (Muluki Ain 2022 v.s.: 72). The legal age of innocence was increased to ten when the Children's Act, a legislation inspired by the 1989 United Nations Convention on the Rights of the Child, came into effect in 1992. As the legal age of innocence defined in the Convention assumes that children lack the capacity to break the law (United Nations Convention on the Rights of the Child 1989, no. 40 (3a)), the association of children with purity and innate goodness up to a certain age appears once again. The consistent increase in the degree of punishments corresponding with the increase in age of the offenders as indicated in Table 2 shows that the notion of purity and goodness in children was also ranked, with the youngest at the top of the hierarchy. And if the age of innocence or the presumed age for not having the capacity to commit a crime is taken as a marker of childhood, then we find that between 1964 and 1992 the duration of childhood has been extended from the first 8 years of life to 10 years.

Although an acknowledgement of children's lack of maturity must be the defining force behind the notion of the age of innocence, such legal recognition does not mean that children are not punished at home. To the contrary, parents and guardians do not hesitate to punish children in a variety of ways. Even the Children's Act 1992 allows "[T]he act of scolding and minor beating to a child by the father, mother, member of the family, guardian or teacher for the welfare of the child" (Children's Act 1992, no.7). Similarly, taking measures such as depriving a child of the facilities of a child welfare home for up to three days at a time is also granted under the Children's Act 1992 to the chief of the children's welfare home when it is necessary to discipline any child living in such state facilities (no.39). Punishing a child physically by minor beating has

historically been an ordinary tool of implementing and maintaining discipline in Nepali cultures. The terms which characterize an act as a wrongful deed and those that justify the punishment, needless to say, have always been defined by adults. Sama's following recollection of an incident of being punished around 1912 when he was about ten years old exemplifies how meanings of offense and punishment were totally subjective to adults' perception of morality and discipline:

One day we (my brother, cousin Fiste, and myself) were running around in the courtyard and balcony playing with the pieces of tracing paper. Apparently our teacher Pundit Tilmadhav had already arrived in the room downstairs, and grandfather was secretly watching us. We, however, did not sense these two things. When suddenly asked why we had not gone to study, we said that the teacher had not come. Infuriated by some familial matters, our grandfather came to the study room with a cane, and beat us severely telling Tilmadhav that that was the way to discipline us. Even my brother got one blow on his back, I got six, and [...] Fiste got more than fifteen (Sama 2023 v.s.:25).

My elderly interviewees also confirmed that it was common in their childhood to be scolded when children committed petty wrongful acts; but in cases of bigger acts of offense, parents used physical punishments such as beating severely and tying up the children. The following piece from the *Gorkhapatra* of 1980 v.s. [1923 A.D.] also represents the popular practice of punishing children as a means of disciplining them:

Forbidding children who do not fear [adults'] anger to see their friends is a kind of punishment. Some children can be controlled just by this punishment alone. Punishments such as making them sit or stand in one place, or locking them up in a room [...] for some time must be executed with due consideration to children's general state. Among these, beating is the biggest punishment that only heartless persons can give. This punishment must be given to only those very bad ones who cannot be controlled by any other means. In other words, this is the last punishment; but it can possibly lead to bad results if wrong parts of the body are hit in rage (Gorkhapatra 1980 v.s.).

This is part of a long article entitled *Strī Sikṣā* or "Lessons for Women" that was published in parts in a period of two months. The fact that various ways of punishing children are included as necessary lessons for mothers implies that punishment as a disciplinary measure was perceived as an integral part of child rearing in early twentieth century Nepal.

Marriage: A Transition to Adulthood?

From earlier discussions, I have established that despite the use of inconsistent age as markers of separation of children from adults, age has been an important signifier of differentiating children from adults in Nepali legal codes. Age, however, has not necessarily differentiated children from adults in terms of what they are allowed to engage in in the social realm; for example, in 19th century Nepal, it was legal for girls to be married at the age of five (Muluki Ain 1854: 444). I find the social institution of marriage especially useful for understanding the social and historical processes of constructing childhood in state ideology. My aim in this section is to discuss the issue of child marriage with a focus on how the legal age for marriage has changed over the years, and what marriage meant for those who experienced it as a child. By looking at the laws on marriage historically, I intend to show how marriage was gradually delinked from childhood and transferred to adults' domain. Such a separation of marriage from childhood found in the legal discourse today, however, does not reflect the social reality where marriage of persons as young as ten or eleven still continues, and child marriage remains as one of the many battles that child rights activists are fighting against.¹⁵

In order to give an overall picture of the laws on marriage and when and how they have changed over the years, I have tabulated the legal age of the bride and the groom, and the corresponding penalties for the violators as stipulated by the laws in Table 3. As it shows, the importance of the girl's age at marriage was marked by the corresponding increase in the degree of severity in punishment for the people involved in arranging the marriage if the girl was between thirty months and five years, and below the age of thirty months, suggesting that the younger the girl at marriage greater the crime became. This discrepancy in penalties implies that a girl of thirty months was certainly perceived as more of a child than a girl at the age of five, although it must be emphasized that a girl married at the age of five was not necessarily expected to be like other married adults.

15 *Ujeli*, a documentary drama on child marriage, for example, was produced and televised in mid-1990s with support from UNICEF. It was successful in drawing the attention of the mass media and hence contributed to the debates on children's rights, the state's responsibilities towards children, and the civil society's role in educating the public through advocacy and right-based development activities.

**Table 3: Changes in the Legal Age for Marriage in the
Muluki Ains, 1854-1994**

Table 3 cont.

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Table 3 cont.

We can only speculate on the logic behind age boundaries for marriage. The Ain of 1854 was certainly inspired by Hindu orthodoxy, the influence of which had progressively increased after the Shah dynasty came into power in 1768.¹⁶ Hence, the Hindu belief that parents earn dharma (*punya*) by giving the gift of a virgin girl before her puberty in what is known as *kanyācān* in Hindu weddings suggests that this belief may very well have been the guiding force behind the age boundaries set for marriage. It is important to note that although the marriage of girls below thirty months or five years of age was punishable, it was not considered to be legally invalid once it was complete. Another important point here is that this Muluki Ain is silent about the age of the bridegroom, and in fact states that he could be an adult who represents his family. There is no stipulation in this Ain regarding the age gap between the bride and the groom. This absence is not surprising given that this Ain was influenced by Hindu religious texts in which stories about marriage of girl children as young as five to seven years to men in their sixties and seventies abound.¹⁷ Even in practice too it was not uncommon for men in their thirties and forties to marry girls as young as ten years old up to 1930s as I will show below.

Although the Muluki Ain of 1854 went through minor changes, it was not until 1934 [1990 v.s.] that a significant change in marriage stipulations took place. This amendment shifted the legal age for marriage from five in 1854 to eleven for Brahman girls and fourteen for girls from other *tāgādhārī* groups, but did not specify such limitations for other non-*tāgādhārī* groups. And it also laid out restrictions on the groom's minimum (i.e. sixteen) and maximum (i.e. sixty) age for marriage. The concept of age difference between the bride and the groom was also introduced in this amendment, but the logic behind this is difficult to decipher since the largest allowable age gap was forty years. Looking at the types of punishments enlisted for violations of age limits for marriage, it appears that marrying a seventy-two-month-old (i.e. six years) girl was considered to be as great a crime as it was in 1854 for marrying a

16 See Sharma (1977) for examples from the Muluki Ain and royal decrees before this Ain that point to the close association between the Muluki Ain and Hindu beliefs and practices.

17 For example, *Swasthānīko Kathā*, a mythical Hindu story, the text of which is read daily for a month every year in Hindu homes even today includes the story of Goma who was married at the age of seven to a seventy year old man.

thirty-month-old girl. This suggests that by 1934, a six-year-old girl child was as valued as a thirty-month-old girl child in 1854 in terms of her relationship with the social institution of marriage. Similarly, the punishment of the groom if he was above sixteen when married to an under-age bride suggests that sixteen was considered to be the line of demarcation between childhood and adulthood for boys in terms of their relationship with marriage. This same logic, however, did not apply to girls as they were not held responsible even when they were of legal age and the grooms were under age (see Table 3).

In 1964 [2021 v.s.], the New Muluki Ain was introduced by eliminating the caste-based hierarchy that had been the organizing principle of the Old Muluki Ain. The previous discrepancy in age limits for brides from different caste groups was eliminated, and a standardized age of at least fourteen years for brides and eighteen years for grooms across the nation was declared (Muluki Ain 2022 v.s.: 218). This new Ain also placed a maximum age difference of not more than twenty years between the bride and the groom—a significant change from the MA of 1990 v.s. when forty years of age difference was allowed. Punishments for violations particularly when the bride was under the age of fourteen were also outlined with increasing severity of punishment corresponding with decreasing age of the bride (see Table 3). The law did not nullify a marriage despite violations of fixed age limits, but only punished the violators probably to protect the married children (especially girls) from the shame and ostracism they would be subjected to if their marriage was annulled.

The sixth amendment of MA (2033 v.s.) differentiated legal age for marriage depending on whether it was done with the guardian's consent or not. Bride had to be sixteen or above and groom eighteen or above when marrying with their guardians' consent, and eighteen and twenty-one respectively without guardians' consent (Muluki Ain 2034 v.s.: 208). This suggests that the age of eighteen for brides and twenty-one for grooms was looked upon as clear thresholds into adulthood when they were perceived as capable of making their own decisions. The flip side of this logic also implies that childhood—as a period of incapacity for decision making—was longer for boys (up to age twenty-one) than for girls (up to age eighteen). The most serious violation (which was given the severest punishment) was when the bride was below the age of ten ((Muluki Ain 2034 v.s.: 208). This reflected an increase of three years in bride's age from 2021 v.s. when persons involved in the marriage of a bride under the age of seven received the most severe punishment (Muluki

Ain 2022v.s: 218). This stipulation on marriage is still intact although the MA has gone through several amendments.

In sum, the minimum age for marriage without punishment, especially for girls, consistently increased from five to sixteen years in a period of about a hundred and twenty-two years (between 1854 and 1976). This trend suggests that marriage has deliberately been linked with higher age in the law thereby gradually pushing it away from children's world and making it an activity in the domain of the adult world. The minimum age of the bride in cases of violation, which received the most severe punishment also increased from thirty months to ten years suggesting that these age boundaries defined "absolute children" who should not have been associated with the institution of marriage at all. The gradual shift of marriage from children's to adults' domain through a slow but deliberate increase in the legal age for marriage has meant that the duration of childhood has also been gradually extended over the course of a hundred and twenty-two years at least in the legal discourse.

There is some evidence in newspaper writings and life histories that suggest that marriage was viewed as an inappropriate event in childhood, and child marriage was cast as a social evil to be uprooted. An editorial from the *Gorkhapatra* from 1959 v.s. [1902 A.D.] is particularly interesting here to get insights into how certain critics viewed the practice of child marriage.

Since there are no auspicious dates for weddings after the month of *Aṣāḍ*, there were many weddings this month. With no regard to the religious texts, and driven by the belief that marriage should be held before the age of eight, the practice of marrying as early as possible is prevalent these days. This practice is particularly prevalent among the Brahmans. But if we think through properly, this was not the case in the old times under our Hindu Dharma. It is learnt from the religious texts that because the Brahmans were learned, their sons and daughters would have superior ability to learn and remember teachings than those of other castes; and they would, according to the religious texts, enter *brahmacaryāśram* [student life characterized by celibacy and full devotion to studies] at the early age of eight, and marry at sixteen and enter into *grihasthāśram* [family life]. Chhetris used to initiate learning at the age of ten and learn until they were twenty before starting a married life. Similarly, Vaishyas used to learn between the ages of twelve and twenty-four, and then only enter into family life.

It is sad that today parents start making preparations for weddings when their children have not even been weaned completely. This

practice particularly harms employment possibilities. In addition, being with women in an early age makes men weak; the children created from their weak sperms will be very weak too, and they will have short life. Because the parents marry their sons in their childhood, many don't like their wives when they become older, and marry another woman. A home with two wives will never be well managed. [...].

Even if men manage to be educated somehow, women will not get this chance. Such uneducated mothers will be managing homes. Since children interact with the mothers more than with the fathers, they will not receive good training from mothers who are not trained themselves. Napoleon, the founder of the European civilization, said that mothers must be educated to develop the country. Since the dispersion of education is equally reaching the Brahmans, Chhetris, Vaishyas and Shudras today, everyone should initiate learning at the age of 10, study until 20, and then only marry. And women must study from the age of 8 to 15 and then only marry. This nation will develop with such a practice (Gorkhapatra 1959 v.s.).

Writing at the beginning of the twentieth century the above critic claims child marriage to be against the teachings of Hindu religious texts that emphasize a significant period of learning called *brahmacaryāśram* characterized by full devotion to studies and maintenance of total celibacy in an early age before one enters into *grihasthāśram*—a period marked by marriage and a family life. These two periods are followed by *sannyāsaśram*, the period of retirement in which the person focuses on spiritual contemplation even while maintaining residence in his home, and *vānaprasthāśram* in which social life and relations are renounced for spiritual contemplation in a conducive environment completely free of social obligation such as *vana*, the forest. This periodization of the life course into four neat stages under the philosophy of *Varṇāśram* in Hinduism is not found in the Muluki Ain of 1854, which is claimed by scholars to be influenced by Hindu religious texts. It is interesting to note that the above critic has drawn from this philosophy of life stages, but has assigned specific age thresholds that seem to suggest that the period before one starts learning at the age of eight (for girls) and ten (for boys) is childhood.

The above editorial is testimony to the prevalence of child marriage in Nepal at the beginning of the twentieth century. Similarly, the following excerpts from Chavilal Pokharel's autobiography points to the conspicuous presence of child marriage in Nepal:

During those days, the practice of child marriage was rampant in the society. I was married at the age of eleven to Udayanarayan's eight-year-old daughter from Dhankuta. [...]. My third brother was married at the age of eight with Pundit Baral's daughter of the same age. I have some recollection of my eldest sister Gayatri's wedding at the age of eight to Gogane Neupane. My second younger sister Chandrakala was married to [...] Amritlal's son. But by the age of sixteen/seventeen, my eldest sister Gayatri, third sister-in-law, and younger sister Chandrakala became widows (Pokharel 2038 v.s.:4).

Pokharel, born in 1962 v.s. [1905 A.D.], is referring to the first two decades of the twentieth century. He writes the following regarding the practical difficulties encountered in his efforts to protect his youngest brother, sister and niece from child marriage:

Now my youngest brother Shivaprasad, youngest sister, and my brother's daughter were left to be married. I and my brother Narapati decided to not marry these three before the age of sixteen. Our surrounding neighbors said that we were doing this senseless thing. Our father said that he would not say anything on this issue since there were three child widows in the family. When she [sister] became sixteen, we started looking for grooms; but we could not find grooms older than eight to ten years. We faced a situation where she had to be given either to someone who already had a wife, or to someone who had lost a wife. When my brother heard that pundit Narayan Khanal of Solma, Tehrathum, had lost his wife and was eligible for marriage, he sent someone. But people told him that the bride was old [...]. But my brother convinced him and my sister was married. My niece was married to Laxmiprasad Nepal from Jaljale who already had a wife. We wandered many places in search for an older bride for our brother when he was nineteen. But we did not find anyone above eleven (Pokharel 2038 v.s.:5-6).

A similar situation where older brides were not available for marriage is reported in 1930 when Narapati Sharma Pokharel looked for a bride for his second marriage (Pokharel 2035 v.s.:45-46). He ended up marrying a ten-year-old girl when he was thirty-two. Many of my elderly informants who had spent their childhood in different parts of Nepal during the first three decades of the twentieth century, also talked about the difficulty of finding brides because daughters typically were married off between the ages of six and ten. For example, a sixty-five-year-old Rai man who had spent his childhood in the district of Okhaldhunga in the eastern hills of Nepal said that "It was common to have daughters married off at the age of six or

seven, and sons to be married when they were eight or ten. I was married late at the age of twelve." Another seventy-one-year-old Tamang woman who grew up in the district of Sindhupalchok in central Nepal said the following: "Brides couldn't be found even if you looked in ten villages. Therefore, when daughters were six or seven, they will be sought after, and their parents would marry them off. But boys would have to sometimes wait until they were ten or twelve because of the difficulty in finding brides. I was married when I was five to a twelve-year-old boy. I didn't know. I found out after I was about eight or ten."¹⁸ The prevalence of child marriage up to the 1930s was also noted in a brief news piece entitled *Bāl-Bidhuwāharuko Saṅkhyā* (The Number of Child Widows) that appeared in the *Gorkhapatra* of 1994 v.s. [1937 A.D.]:

From a comparison of the population census of 1931 and 1921, it is found that the number of child widows in 1931 has not decreased significantly. In the last census [i.e. 1921], widows under the age of fifteen were more than 300,000. In 1921, 9 out of 100 girl children between the ages of five and ten were married; but in 1931, 19 out of 100 such girl children are found to be married (*Gorkhapatra* 1994 v.s.)

Marriage in childhood did not necessarily mean that everyday life for the married girl changed dramatically. But a certain amount of restriction on her activities would be imposed as she would be perceived as someone in transition to adulthood. According to most of my elderly informants, the married girl child typically stayed with her parents for the first two to three years after marriage. During this transitional phase, her parents would teach her what she needed to learn to become a good wife and a daughter-in-law. She would not be allowed to play as much as before. A sixty-six-year old Brahman informant, who was married when he was nine years old, said that once the married child moved to her husband's house,

She would go through a lot of changes. She would not be allowed to play at home. Being the daughter-in-law of the family, she would have to work although she would be still very small. And if she did not know housework, she would be taught. She could wear anything before, but after marriage, she would have to wear sari and blouse. Her responsibility would be to please her husband and parents-in-law. But

18 These narratives from a Rai man and a Tamang woman suggest that child marriage was not a practice found only among the Bahuns, Chhetris and high-caste Newars, but also among other ethnic groups. As information on child marriage is seriously lacking, it is difficult to say to what extent it was (and still is) prevalent among various ethnic groups.

for the married boys, things would not be very different from before. However, they would not play as much as other children, and they would feel a greater sense of their responsibility. Hence they would gradually change too.

Another seventy-six-year-old Brahman informant who had spent his childhood in the eastern district in Ramechhap said the following:

I was married when I was eleven. But girls used to be married when they were seven to nine years old. Parents used to get worried about how to marry off their daughters if they were eleven or twelve.

After marriage, very little changes in the beginning because the children would not understand it. The wedding would be like playing. And the girl would stay with her parents for 2-3 years even after marriage. The parents would, however, teach the girl and she will gradually change. But because boys used to be older and more mature, they would become more serious after marriage, and start feeling that their responsibility has increased.

After my wedding, we both used to go to the forest for work. There, we used to leave our work and play. We used to fight with each other too, but we would make up and return home. Then later I thought that I should not be doing this, and gradually stopped playing. She also grew up and started to feel embarrassed to play with me. Then we completely stopped playing.

The oral narratives suggest that although marriage did not necessarily convert children into adults overnight, it did herald a transitional phase during which children were gradually socialized into becoming adults with gender specific roles. Hence, while married children would be perceived as children with respect to their inability to carry out certain tasks, they would be expected to learn and practice specific social demeanor in consonant with the new identities marriage entailed.

Historicizing Childhood: Legal and Social Boundaries

Although children have become the subject of history in Europe and the United States as I have mentioned earlier, they are yet to become part of Nepali historiography much of which is about the state and the class that holds power. My effort here has been to write a history of childhood in Nepal that encompasses perspectives of both the state and ordinary Nepali people. As law is one of the state apparatuses through which specific notions of children and childhood are constructed by those in power, a legislative history of childhood represents views of the ruling

class. In the case of Nepal, this is especially true as the first Muluki Ain came into existence during the Rana oligarchy when ordinary people had absolutely no participation in the political process. Moreover, the fact that the Muluki Ain consisted of regulations for various aspects of social living—such as marriage, divorce, inheritance, and adoption—made it a powerful tool through which the state became increasingly interventionist and the ruling class became culturally more dominant as its high-caste ideologies were the foundations upon which the Old Muluki Ain was built. Even though caste-based ranking and penalties have been removed from the New Muluki Ain, the assumptions underlying it continue to be influenced by high-caste beliefs, practices and worldview. Hence, what the Muluki Ain tells us about the extent, nature and significance of childhood in Nepal is partial and represents the views of those in politically powerful positions. Nevertheless, the Muluki Ain is an important document for historical studies of the state and the role of politically dominant classes in regulating social life in Nepal. The information it contains on various aspects of children's lives is, as I have shown, crucial to our understanding of how the state conceptualized children and childhood in Nepal since the mid-nineteenth century.

From the legal evidence I have discussed in this essay, it is difficult to conclusively say what exactly constituted childhood according to the Muluki Ain. While it does use children's age as a marker to separate them from adults *vis-à-vis* various legal stipulations, there is no single consistent age that functions as a clear boundary between childhood and adulthood in all the articles of the Ain. However, I would argue that the way in which age is used as a way of legally marking capacities or incapacities of children for various tasks is a very useful index for an analysis of the social construction of childhood. The age under which children are presumed to be legally incapable of committing a crime, for example, has increased from eight to ten between 1964 and 1992. As ignorance and innate goodness are perceived as natural characteristics of children, the increase in the age of innocence suggests that the duration of childhood has also been increased historically. In other words, making children under ten, instead of eight, not punishable by law is extending the time when children are assumed to be innocent by nature, thereby implying that they are "absolute children". Similarly, the legal age for girls to get married gradually increased from five to sixteen years between 1854 and 1976 illustrating an effort to deliberately disassociate children from the institution of marriage. This shift in the concept of marriage as an event that should occur in adult life implies that the period before the

legal age for marriage is conceptualized as childhood. Hence, while there are no clear age-based definitions of children and no single consistent age that clearly separates childhood from adulthood in all relevant legal provisions of the Muluki Ains, age is used inconsistently to give childhood a distinct status from adulthood. It is also used to mark the divisions within childhood as seen in the categorizations of age groups in laws pertaining to marriage as well as criminal activities. The Children's Act 1992, however, uses an age-based definition of children as those who are under the age of sixteen.

Age, however, appears less salient as a boundary marker between childhood and adulthood in the everyday lives of ordinary Nepalis. The biographical narratives I have presented in this essay suggest that emphasis was more on the process of maturing marked by multiple turning points instead of a strict dichotomy between childhood and adulthood based on a particular age. For example, biographical accounts have pointed out that for the pre-pubescent married children it was not biological maturity but being married that not only changed their membership status in their families, but also brought upon them a new set of values for propriety, responsibility, and social interaction. Furthermore, according to the Old Muluki Ain and in the social customs of caste groups today, the extent to which children could pollute their families and lineage relatives upon death was not determined by their biological maturity and age but by their ritual status attained through specific rites of passage that symbolically transformed children into adults and defined their lineage membership status. Hence, the notion of a specific age and the idea of puberty being the threshold separating childhood from adulthood are challenged through social practices where the process of maturing and cultural notions of childhood and adulthood prevail over biological or legal conceptualizations.

The social history of childhood has also illustrated that it was not age per se, but rather the ability of the children to work that indicated a shift in the way they spent their time and what was expected of them in the family. Work certainly curtailed, and sometimes ceased, children's participation in play—an activity perceived to be in children's domain. Since work entailed taking responsibility, being accountable for the consequences, and making decisions, participating in work whether at home or outside often brought about changes in the nature of children's membership in the family. Autobiographies and oral narratives suggest that working was an integral part of growing up as children were perceived

to have the ability to carry out various household chores from as early as age five. However, children's social class played a critical role in whether or not work became part of their childhood experiences. For example, upper class children had longer childhood filled with play and leisure, while middle and working class children worked for long hours every day.

Along with class, childhood experiences were also shaped by gender and caste. While high-caste sons, especially Brahmins, were taught to read and write and were even sent to schools away from home, becoming literate let alone getting a formal education was typically not a part of their childhood for girls of all castes in nineteenth and early twentieth century Nepal.¹⁹ Daughters had to do more household tasks than sons because becoming skilful at household operation and management was the central focus of socialization for girls. Marriage at a very young age, typically before puberty, required daughters to carry out tremendous amount of household work, meet social obligations, and change their behaviors and activities that were perceived to be appropriate only for children. While marriage at a young age did affect boys too, the change in their activities, responsibilities, and obligations were not as drastic as it was for girls who had their childhood shortened after marriage and were typically transformed into "little women".

Class, gender, and caste as well as cultural ideologies, social institutions, personal biographies, and many other less tangible factors contribute to constructing diverse childhoods. Notwithstanding the historicity of children's varied experiences as revealed by social history, the trend in the legal discourse has been towards standardization that tends to level differences among children. Law is one of the technologies that the Nepali state has used to construct normative standard for all children despite the existence of culturally very diverse ethnic communities in the country. Centrally controlled school education with textbooks standardized throughout Nepal is yet another way in which a homogenized notion of children and a "national" childhood have been constructed (see Onta-Bhatta 1999 and Onta-Bhatta 2000). While it is imperative to analyze the role of the state in constructing, propagating and reproducing specific notions and ideologies of childhood in order to understand its political and cultural

19 Even today, daughters are discriminated against sons when it comes to their education. The literacy rate for men was 54.5% and that for women was 25.1% according to the 1991 census (Central Bureau of Statistics 1998). Results of 2001 census are not available yet. Similarly, data for school enrollment rates show that total enrollment for girls in 1997 was 71.8% compared to 86.9% for boys (Ministry of Education 1998).

implications, we need to be mindful of the fact that childhood is configured, understood, and experienced differently by people from different class, ethnicity, gender and geographical locations. It therefore makes sense to talk about childhoods in the plural and employ plural methods to access the diverse source of relevant information. Writing a history of childhood hence entails crossing disciplinary boundaries both in methods and interpretive frameworks.

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