General Background of Criminal Justice System and Research

The General Background of the Kingdom of Nepal

Topography

The Kingdom of Nepal is a landlocked country lying along the southern slopes of the Himalayan Range. The territory of Nepal covers an area of 147,181 square kilometers stretching for five hundred miles from east to west and on average one hundred miles from north to south. It is lies between 80 and 88 degrees East Latitude and 26 and 30 degrees North Longitude. The altitude ranges from 4,877 meters to 8,848 meters above sea level. Nepal thus has a range of climatic zones encompassing almost all those found on Earth - from sub-tropical jungle to the arctic conditions of the high Himalayas and the arid zones of the Tibetan Plateau. The country is divided into three ecological regions; the Terai, the Hills and the Mountains.

Administrative Divisions

Nepal has 75 administrative districts. These districts have been regrouped into five development re gions with a view of promoting equal distribution of resources and development activities. Each district has been further divided into several smaller sectors called Village Development Committees and Municipalities, which are regarded as grassroots administrative units. A Chief District Officer heads the administrative office of each district. They are mainly responsible for maintaining law and order and also coordinating developmental works conducted by different Ministries and local agencies at district level. Each district has a district court of law to adjudicate on civil and criminal disputes.

Population

Nepal has a population of nearly 24 million. Its population is growing rapidly, at a rate of 2.3% per year. Nepal's inhabitants belong to various racial, ethnic and linguistic groups, ranging from Aryan to Tibeto-Burmese and Austro-Dravidian. As many as three dozen different and sometimes mutually unintelligible languages of the Sanskrit and Tibeto - Burmese groups are spoken in Nepal.

The great majority of Nepalese people hold either Hindu or Buddhist faith, or a combination of both. The latest official reports state that Hindus make up 86.5% of the population, Buddhists 7.8% and Muslims 3.5%. A small proportion of Nepal's population are tribal, and are essentially animist in their religious beliefs. (CBS 2001)

Nepali is the national language as stated by the Constitution. It is thus the language of official communication. It is the mother tongue of Brahmins and Chettris, but is spoken by most Nepalese. However, the number of different languages that are spoken in the country shows Nepal's cultural diversity. Ethnic groups such as the Tharu, Newari, Maithili, Bhojpuri, Gurung, Tamang, Magar, Limbu, Bengali, Majhi, Sherpa, Rai, Dhimal and Abadhi all have their own languages.

Economy

The economy of Nepal is primarily based on traditional subsistence agriculture. Approximately 86% of the population is rural. The agricultural sector contributes significantly to national GDP, prov iding 76.1% of the nation's export products and using 90% of its manpower. Eighty -one percent of the total population is dependent on agriculture. The industrial sector is small, but increasing significantly. According to His Majesty's Government's (HMG) Central Bureau of Statistics, in 1991 the number of industrial establishments was 2,387. This sector provides employment for 3,18,264 persons. (1.72% of the population).

Politico-Legal History

A number of historical chronicles give information about the origins and earliest history of Nepal. The oldest and most reliable of these is the *Gopalarajavamsavalis* (the Chronicles of the Gopal Kings). These chronicles are the only source covering the earliest period of Nepali history, as no epigraphic or numismatic evidence is available. Inscriptions can only be found dating from the middle of the fifth century AD. From the 10th century AD onwards an invaluable source of

authentic historical information is available in the "colophons"; introductions to the manuscripts of various literary works[1].

Post-medieval history records Nepal as divided into more than three dozen feudal independent principalities. During the second half of the 18th century, Gorkha - one of these petty states in the central hills, managed to achieve pre-eminence over the other hill states through either direct conquest or the other states' acceptance of vassal status. In 1828 BS, the three kingdoms of the Kathmandu Valley - Patan, Bhaktapur and Kathmandu, were also annexed to Gorkha. The territorial expansion of Gorkha continued towards both the east and west, and eventually Tista, close to Sikkim, and Kangara, across the Jamuna River in India, were positioned as the eastern and western frontiers of Nepal respectively[2]. Its borders have changed, but Nepal has remained as an independent and sovereign state since that time.

Throughout its history Nepal has had several ruling dynasties. The present Shah dynasty are the successors of King Prithvi Narayan Shah who unified the country under the House of Gorkha in the eighteenth century. However, there have been many occasions when Nepal's kings were only titular rulers, and the Prime Minister ruled the country in reality. Especially, during the period between 1863 and 1894 BS, the government of Nepal was effectively in the hands of the Prime Ministers. This marginalisation of the monarchy continued even after the assassination in 1894 BS of Bhimsen Thapa, the most powerful Prime Minister of Nepal. On 12th September 1846 (1903 BS), Jung Bahadur Rana[3] established a dynasty of hereditary Rana Prime Ministers who ruled Nepal until their overthrow and the establishment of democracy in 2007 BS.

The Rana family oligarchy ruled Nepal autocratically for more than one century. During this time no democratic rights were respected, and most people were treated like slaves. The Rana Prime Ministers wielded unlimited powers with the legislative and judicial powers of the nation resting in their hands. Towards the end of the period of Rana rule, during the 1940s, a popular people's movement arose against the Ranas. In response, Prime Minister Padma Samsher Rana promulgated the Constitutional (*Baiddhanic*) Act, 2004. This was the first so-called constitution in the political history of Nepal, but its main purpose was to contain the people. This Act provided for a bicameral (two-house) legislature with the *Rastriya Shava* (National Assembly), and the *Bhardarishava* (Assembly of Courtiers). The former was the Lower House, and had 60-70 members, and the latter was the upper house, with 20-30 members. Both houses were permanent bodies, and were supposed to act like a parliament. However, they were merely symbols of the legislature, as both of them were fully controlled by and indeed acted as consultative institutions to the Rana Prime Ministers.

In 2006, a popular movement of the people overthrew the Rana family oligarchic system. This marked the dawn of the democratic era in Nepal. An Interim Constitution was promulgated in 2007. This constitution opened the gates for a democratic constitution, reorganization of the administration, and development activities. The Interim Constitution continued in place for eight years, in an exciting period for experimentation with democracy that saw the growth of many political parties. However, feuding between the political parties impaired the task of drafting a democratic constitution by a popularly elected constituent assembly. The political parties failed to act maturely. The change of Prime Minister brought about by a power hungry apolitical coalition for their own vested interests led the administration of the country into a state of fluidity and corruption. As a result, the plan to elect a constituent assembly did not materialize, and eventually a Constitution Draft Committee was appointed by the King to accomplish this task.

On 3rd Poush 2015, the Constitution Draft Committee adopted the first real constitution - the Constitution of the Kingdom of Nepal. However, the Constitution did not last long as it was scrapped through a coup-d'etat about two years after its promulgation. On 5th Poush 2019, a fresh constitution - the Constitution of Nepal, was promulgated. This constitution introduced two basic concepts, i.e. the sovereign monarchy and the *Panchayat* polity. The *Panchayat* system was a system based on "Vedic Polity" - a Hindu philosophy, interpreted as a combination of unity, stability and peaceful progress[4]. The democracy established by the popular movement in 2006 was abolished, and the *Panchayat* system continued for three decades, engulfing the nation in the tyranny of a party-less system of despotism and corruption.

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1 See for detail, Prof. Rishikesh Shah, *Ancient and Medieval Nepal*, Ratna Pustak Bhandar, 1992, First Edition, pp. 2-3.

2 David Seddon, *Nepal, A State of Poverty*, Vikash Publishing House Pvt. Ltd. Second Reprint, 1993, pp. 12-18.

3 Junga Bahadur Rana, a high-ranking military officer in charge of the security of the royalty, murdered his own maternal uncle, Mathabar Singh Thapa, then Prime Minister. After Mathabar Singh Thapa's death, Gagan Singh, a close aide of Queen Laxmi Devi, became a very prominent person in state affairs. He too was murdered. The murder of Gagan Singh shocked the Queen. The Queen passed an order that Junga Bahadur identify the murderer and bring him to justice. Junga Bahadur assured the Queen he would do so, and requested her to go to "Kot" - a place for the assembly of courtiers for deliberation. Junga Bahadur issued a notice for all high-ranking officials of the state to assemble in Kot at midnight of 12th September, 1846 (1903 BS). They all assembled unarmed, however, Junga Bahadur managed to call his brothers and supporters to appear with arms. A debate ensued over the identity of Gagan Singh's murderer. Eventually, Junga Bahadur, who had cleverly called his supporters to Kot with arms, slaughtered several dozen of his competitors. The same night, following the massacre, popularly known as the "Kot Massacre", Junga Bahadur succeeded in obtaining the consent of the Queen to declare him Prime Minister of Nepal. He subsequently converted the royalty to a titular monarchy, and established a hereditary Prime Ministership.

4 Vedic polity was introduced according to ancient Hindu socio-political and religious texts. Etymologically, "*Panchayat*" meant an assembly of five rational people. Earlier in the history of the "Aryan Tribe", political, legal and judicial matters were decided by a group of five rational people. The approach the five rational people adopted was copied to form a so-called model of democracy that regarded the monarchy as the source of executive, legislative and judicial powers. This put the monarch above the authority of constitution. As the Vedic polity emphasized unity, stability and progress, the multiparty system was not permitted. According to the principles of the Vedic polity, the existence of political parties jeopardizes unity, stability and progress.

From 2032, the discontented people, especially the students and workers, began agitating against the *Panchayat* system. In the mid-1980s, corruption and political suppression reached critical levels in Nepal. Violations of human rights became deplorable and an absolute Police state prevailed. From 2046 BS, political parties began to unite to fight for democracy. Intellectuals, professionals, students, workers and farmers came out to support the movement to restore democracy, demanding a multiparty system and constitutional monarchy. Eventually, the king was forced to withdraw the *Panchayat* system as a result of the *Jana Andolan* (people's movement), and a democratic constitution was promulgated in 2047.

General Scenario of the Criminal Justice System

Fair access to justice irrespective of sex, economic standard, political belief, caste and other differences is a basic right of every individual human being, and as such is guaranteed by the Constitution. The right to fair trial is available to both the victims of crimes and accused persons alike. Furthermore, article 9 of the Treaty Act, 2049, stipulates laws of Nepal should conform to the requirements of free, impartial and fair justice as laid down by international human rights instruments, which guarantee *inter alia* the right to fair investigation, prosecution and adjudication.

The preamble of the Constitution of the Kingdom of Nepal enshrines competent and independent justice as one of its basic features. The term "competent justice" indicates accessibility to, and availability of guarantees made by international instruments. Article 14 of the Constitution guarantees the fairness of criminal proceedings, which is one of the fundamental elements of the competent justice envisaged by the Constitution. The rules of fairness laid down by the Constitution in article 14 are inalienable and inviolable fundamental rights of individual persons.

Article 14 is inextricably connected with various other provisions of the Constitution.

1. Article 11, which guarantees equality in the application of general laws of the country.
2. Article 12, which protects the personal liberty and freedoms of every person.
3. Article 84, which guarantees the application of certain superior norms of justice that are universally applicable. By requiring the application of these norms, the article has endorsed the applicability of the international instruments in the domestic jurisdiction of Nepal.

These provisions are applied in practice through statutory laws and regulations. The fairness of justice is determined by fairness of procedures and fairness of mechanisms to apply those procedures. In practice the fairness is largely tainted, and as such the standard of the criminal justice system is far below that of competent justice. Victims of crimes, especially women, are subjected to extreme vulnerability. Acts of torture in custody are still a problem, and generally occur in order to extract a forced confession from suspects. This practice can lead to two consequences, either;

1. The confession oriented investigation ignores the discovery of objective evidence, which increases the likelihood of the prosecution of wrong or innocent persons and affects the credibility of the justice system as a whole, or
2. Offenders may escape the course of justice, as confessions are not always accepted as independent evidence for conviction and courts are obliged to give the benefit of doubt to the accused.

In either case, violations of human rights are phenomenal.

A brief overview of the criminal justice system of Nepal exposes a number of weaknesses. These seriously jeopardize the achievement of fair and impartial justice. Some such weaknesses are as follows:

1. the investigation of crime has so far not been recognized as a professionally specialized job,
2. the tendency of delegating or shifting the responsibility for investigation over to inexperienced and junior Police personnel is a common practice,
3. Police personnel are largely insensitive to the human rights of both victims and detainees,
4. the common practice of ignoring victims as important witnesses of the prosecution is widespread,
5. random prosecution is a common phenomenon,
6. the interests and rights of victims are rarely considered while prosecution is made,
7. courts are unconcerned with the situation of victims,
8. victims' lack of representation does not bother judges when dispensing justice,
9. the course of justice is subjected to more formalities and technicalities than should be found during the dispensation of justice in a true sense,
10. delays in justice are a common phenomenon, and
11. the impact of miscarriages of justice on Nepalese society are never assessed.

These weaknesses severely impair the fairness of justice. The possibility of miscarriage of justice for marginalized groups like women, Dalits, children and ignorant non-Nepalese linguistic communities is extremely high. The following illustrations give more insight into the situation:

1. victims of rape, trafficking and sexual assaults are subject to the risk of violence for seeking justice, and the stigma of the crimes to which they are victim, which makes their lives difficult,

2. the unethical and corrupt practices of actors of the criminal justice system often make a mockery of judicial proceedings,

3. victims' rehabilitation has not been a concern of the State. For example, fines paid by offenders go to the State's exchequer rather than victims. Thus, crime is a source of revenue for the State, and

4. the State's responsibility is confined to declaring a judgment rather than dispensing justice; hence, no further investigation is further carried out if a person prosecuted is not found guilty.

The above discussion presents a bad picture of the criminal justice system in Nepal. Unfairness of procedure is a great problem. The consistent delay in procedures due to the criminal justice system's internal formalities is largely responsible for frustrating the achievement of procedural fairness. Although many of such formalities can be addressed without great trouble, actors in the criminal justice system lack the skill to conduct fair trial. This seriously mars the course of fair justice.

The apathy of actors towards the provision of fair access to justice also looms large. The lack of skill to conduct fair trial results from, among other things, a lack of sensitivity to the fundamental rights of victims and accused to fair trial. There has been a tendency in Nepal to treat women and suspects as inferior people. The situation of women offenders is particularly serious. They are often treated inhumanely, as can be seen from the ill treatment of woman offenders accused of infanticide and abortion.

The splitting of procedures into several non-consecutive sessions is defective and can cause miscarriages of justice. The procedure applied not only exposes victims to a cumbersome process of trial, but effectively barricades them from access to fair hearing. This procedure, for its never-ending process, condemns victims to severe mental torture. Moreover, the procedure is vulnerable to corruption. Court clerks intentionally prolong the proceedings to force the offenders as well as the victims to pay bribes.

Judgments do not critically analyze evidence collected. The judgments of the courts are largely subjective. A large number do not stand at superior courts. The language used in judgments is ambiguous, susceptible to multiple interpretation, and often unreadable. Clerks frequently prepare judgments according to subjective guidelines. The need for objectivity of the evidence is ignored, which in general, severely affects the dignity of victims.

Participation of victims during trial is not considered important. There is a belief among judges that the absence of victims during trial makes no difference to judgment. Often, victims know nothing of decisions made by the courts. Obviously, victims are simply forgotten during the trial.

Confidential hearing of cases concerning private matters is so far not a practice in Nepal. Even the most heinous crimes such as rape, which are most deserving of sensitivity, are tried in open court, subjecting victims to terrible sexual harassment. Closed camera courts are never used in the trial of cases where the issue of sexual relations is a matter for decision. In such circumstances, victims are shy to talk about what happened to them, and unfortunately their reticence is used against them. This situation is evidence of gender biases in justice, and denies women access to criminal proceedings. Their situation alone prevents the realization of impartial justice.

The trial of criminal offences by quasi-judicial tribunals is still phenomenal, leading to departmentalization of the criminal justice system. The violation of principles of fair procedure is phenomenal in such tribunals. These institutions even refrain from securing basic minimum rights for suspects. The same institution is involved in the investigation, prosecution and adjudication of offences, and thus the potential for bias is always great.

Cumulatively, these factors force women victims, accused and their families, to hide injustices and the truth. This is one of the major reasons for the fall in the number of crimes reported to the Police. The confidence of women victims and accused in the courts is seriously weak. The impartiality of justice is therefore a major problem in the criminal justice system of Nepal.

Despite these problems, the criminal justice system possesses the potential for reform and standardization without much trouble. The following factors show indications of improvement in present conditions:

1. The Constitution has explicitly endorsed the concept of fair, impartial and competent justice.

2. The independence of courts is fully secured.

3. Legislation to check and balance the power of various actors is fairly clearly worked out.

4. All institutions have shown an inclination to improve their work and reform their practices. Through a project conducted by CeLRRd[5] with the cooperation of all actors of the criminal justice system, a single platform for deliberation on the system's problems and solutions has been created. The active involvement of all actors in this process has been helpful to concentrate efforts for the overall reform of the system in a collaborative way.

5. Research on the criminal justice system has been intensified, and some organizations have emerged as professional institutions to gear up the process of reform.

[5] The project is being financially supported by Danida/HUGOU. In the course of this project, criminal procedural guidelines were developed, which were implemented by the Attorney General's Office, Police Headquarters, Nepal Bar Association , Ministry of Law and Justice and the Judges' Society. CeLRRd acted as the Project Secretariat.

Research Introduction

The research has been undertaken by CeLRRd as part of its continuous efforts to reform the criminal justice system, and thus help consolidation of the right to fair trial. The facility for fair trial is essential for the protection of the human rights of every person.

Objectives of Research

The prime objective of the study is to help strengthen the conditions of the criminal justice system of Nepal. Specifically, the objectives can be outlined as follows:

1. To identify weaknesses and strengths of the criminal justice system in its filtering and funneling processes, to analyze caseload patterns and types, logistic facilities, resource mobilization patterns and the State's investment trends in justice, conviction and acquittal situations, and overall, to assess the condition of the performance of the criminal justice system.
2. To examine physical and logistic capacities and their impacts on fairness of procedure and the quality of judgments.
3. To assess the impacts of the existing system on the promotion of human rights, the rule of law and the democratization process.
4. To set areas of prioritized intervention for reforms.

Research Design and Planning

CeLRRd has been constantly involved in research on multiple aspects of the criminal justice system of Nepal. "Analysis and Reform of the Criminal Justice System in Nepal" was its first comprehensive research into the criminal justice system, which identified a number of weaknesses thwarting fair justice. However, the research was selective in its analysis of cases, and did not make an attempt to provide longitudinal analysis to help identify trends, shifts in trends over time, or identify causes behind such weaknesses. Hence, it was thought that the previous work needed to be built upon, to provide a more thorough understanding of precisely what the criminal justice system had been doing nationwide. It was therefore thought necessary to expand the scope of what had been previously achieved. This was with the objective of uncovering persisting and emergent problems and weaknesses of the system, but furthermore, to sharpen focus on problems within the system, and to help identify strategies for effective interventions. The present research also provides an opportunity to cover the universe of crimes that have entered the formal system since the inception of the new constitution and the restoration of democracy in 2047.

Delays in justice are one of the serious causes of dwindling confidence in the criminal justice system in Nepal. The investigation system lacks a suitable filtering device. Hence, generally all complaints are investigated, irrespective of objectivity, grounds or adequate legal basis. Random prosecution is also a phenomenon. These factors cause a large influx of cases into the courts. In the absence of an effective funneling system of cases through the courts, trial courts are generally left with a large number of pending cases. To date, the effects or impacts of a lack of effective filtering and funneling devices on the performance of the criminal justice system have not been examined. This research was therefore thought necessary to look into these aspects.

Accordingly, CeLRRd designed a research proposal for The Asia Foundation (TAF). After various meetings at different levels, a group of three experts was made available by TAF to develop research protocols. The team was comprised of lawyers and financial experts with extensive knowledge of the judicial system in SAARC regions. After a series of meetings with the CeLRRd coordinator and staff, judges, Police officers, Government Attorneys and lawyers, the team developed a concrete research design, focusing on the following protocols:

1. An overview of previous research works.
2. The accomplishment of a national quantitative analysis of civil and criminal caseload and distribution among districts and judges, to be followed by a field survey in selected sample districts.
3. An analysis of cases in the criminal justice system, focusing on why and how they are funneled and filtered.
4. An explanation of the high "failure rate" in cases prosecuted.
5. The completion of a time and motion study of District Court judges.
6. The provision of answers to a few key questions, for instance:
    - What patterns emerge from the data collected?
    - What types of cases tend to be weeded out and at what stage?
    - Is there an effective filtering mechanism at the investigation stage, or do the overwhelming majority of FIRs result in prosecution?
    - If that is the case, but the conviction rate is relatively low, where does the fault lie?

- Are certain crimes more likely to result in conviction than others?
- What is the effect of the actions of the defense counsel on the proceedings?
- Is there a noticeable drop in conviction rates where a defense counsel is involved?
- Does it vary with the type of defense counsel (retained or appointed)?
- Who are the appointed defense counsels in each district?
- Do they tend to be young and lacking experience?
- Lastly, are there sharp variations among districts regarding this data? If so, why?

7. The completion of an incentives-based analysis of the legal system. In relation to the financial analysis of the judicial system, the protocol focuses on the following aspects:
   - Population per judge.
   - Total expenditure on judiciary versus other branches of government.
   - Detailed breakdown of budget in per capita terms for each of the budgetary heads identified.
   - Intra-judicial budget - Supreme Court, Appellate Courts and District Courts.
   - Ratio of judges to support staff.
   - Ratio of judges' salaries to total expenditure on salaries.
   - Trends in expenditure on the judiciary.

Research Methodology

The research is based on an analysis of both secondary and primary data. The secondary data has been mainly obtained from annual reports of the Police Headquarters, Attorney General's Office, Supreme Court and other concerned institutions. The primary data was obtained from a field survey in the sampled districts. The survey was primarily concerned with an exploration of existing practices of trial in courts of first instance, hence, the District Courts. The survey made an attempt to uncover information on the behavior of judges during the dispensation of justice. In addition, the survey made an attempt to obtain specific information in the following areas:

1. The situation of physical facilities of courts, such as the condition of court buildings, benches, equipment, amenities, etc.
2. The availability of human resources, including judges.
3. The management of trial, such as practices concerning remand, record of deposition of suspects, bail hearings, testimony of witnesses and pleadings of lawyers.
4. The standard of judgments.
5. Sentencing policy.
6. Condition of execution of judgments, etc.

Sampled Districts and Rationales

Identification of Sample Districts: Out of 75 administrative districts of Nepal, the following 10 districts were chosen for the survey:

1. Kathmandu	2. Rautahat
3. Rupandehi	4. Rukum
5. Rasuwa	6. Jhapa
7. Terhathum	8. Kanchanpur
9. Surkhet	10. Gulmi

This is the first such study in Nepal into the behavior of the judiciary. Although there has been a need for a nationwide survey of this kind for many years, the study was limited to only 10 districts due to constraints on resources. However, it is believed that the survey will be a fair representation of the national situation. The following rationales guided the selection of survey districts:

Geographical Division: The identified districts are distributed in the five Development Regions as follows:

S.N.	Districts	Zone	Region

1.	Jhapa	Mechi	Eastern
2.	Terhathum	Koshi	Eastern
3.	Rautahat	Narayani	Mid
4.	Rasuwa	Bagmati	Mid
5.	Kathmandu	Bagmati	Mid
6.	Rupandehi	Lumbini	Western
7.	Gulmi	Lumbini	Western
8.	Rukum	Rapti	Mid-Western
9.	Surkhet	Bheri	Mid-Western
10.	Kanchanpur	Mahakali	Far-Western

Highest Number of Cases: The selected districts can also be justified in accordance with the number of the cases represented. Jhapa, Kathmandu, Rupandehi, Surkhet and Kanchanpur District Courts (respectively from the Eastern to Far Western Regions) have the highest number and varieties of case on trial. These courts also try the highest number of cases regarding offences against women.

Ethnic Diversity: Out of 10 sample districts, in five districts there are multiple ethnic communities of different race, class, language and religion. For example, Terhathum and Rasuwa have the largest number of people from the Limbu and Rai communities. The majority of the population in Rautahat is made up of the Maithali linguistic community. Rupandehi has an equal proportion of people who have migrated from the hill region and the Terai. Gulmi largely holds people from Brahman and Chettri communities.

Nature of the Cases: These districts can also be viewed in accordance with the nature of the cases filed in the trial court. The districts bordering India and China (in both northern and southern Nepal) have been a particular focus. For example, Jhapa district was chosen for study. It is situated on Nepal's southeastern border with India. The border between both countries is open, and many cross-border transactions take place. A high number of criminal cases have been recorded in this district. In F/Y 2056/57, 7 cases of rape were filed, and in 2057/58, the number increased to 23.

Rasuwa district is a complete contrast to Jhapa. It borders Tibet, an autonomous region of China. Unlike Jhapa, the Rasuwa District Court has a very low number of cases. Such diversity in case type and load between districts will provide informative quantitative and qualitative findings.

Political Influence: As we know, since F/Y 2053/54 some of the districts of Nepal have been severely affected by the Maoist insurgency. One aim of this research was to understand how courts have been functioning in such circumstances. Thus, Rukum and Rasuwa districts were selected for the study, as districts particularly affected by the Maoist problem.

Remote Districts: The sample districts were also selected according to criteria such as access to transportation, the socio-economic condition of people and other physical facilities. According to the "Report of the Judicial Council for Reformation of Courts", Srawan, 2058, Terhathum, Rasuwa and Rukum have a very low caseload. The reas on behind the selection of these districts was to learn if judges in these areas are interested in following formal justice procedures, and whether they render qualitative judgments or not. An analysis of practices in these District Courts, which try a low number of cases, will be informative for a consideration of how the national budget of courts is utilized.

Research Team

The research has been a team effort. The roles and responsibilities of the team members were as follows.

S.N.	Name	Designation	Responsibilities
1.	Yubaraj Sangroula	LL.M., Advocate, Associate Professor (KSL). Coordinator.	Advise and guide the team to: • identify research tools. • develop a questionnaire. • conduct a review of procedural laws. • analyze and write report.

2.	Geeta Pathak	LL.M., Advocate, Lecturer (KSL). Project Director.	• Coordinate research activities. • Prepare the questionnaire, supervise development of computer software and data entry. • Analyze data. • Look after overall administration of the research.
3.	Rachana Shrestha	B.L., M.A Sociology, Advocate, Project Secretary.	• Look after the general administration of the research. • Assist as a sociologist to identify research tools and develop questionnaires. • Compile secondary data.
4.	Kumar Ingnam	B.L., M.A. Political Science, Advocate, Lecturer (KSL). Researcher.	• Develop questionnaires. • Conduct a survey in Rasuwa and Kathmandu. • Analyze the Supreme Court's Annual Reports on cases over 10 years from 2047, and make a comparative analysis of the caseload of 75 District Courts.
5.	Sudeep Gautam	LL.M., Advocate, Lecturer (KSL). Researcher.	• Develop questionnaires. • Conduct a survey in Jhapa and Kathmandu • Analyze the Attorney General's Annual Reports on cases over 10 years from 2047, and make a comparative analysis of the crime trends nationwide.
6.	Balkrishna Dhakal	B.L., Advocate, Counselor (KSL). Researcher.	• Develop questionnaires. • Conduct a survey in Rautahat and Kathmandu. • Analyze the criminal cases at District Courts and make a comparative analysis of the crime trends nationwide.
7.	Sunil K. Pokharel	B.L., M.A. Political Science, Advocate. Researcher.	• Develop questionnaires. • Conduct a survey in Rupendehi and Kathmandu. • Analyze the Police Headquarters' annual reports from 2052, and make a comparative analysis of the filtering process used in cases by the Police and Attorney General's office.
8.	Mohanmani Lamsal	LL.M., Advocate, Lecturer (KSL). Researcher.	• Develop questionnaires. • Conduct a survey in Surkhet, Kanchanpur and Kathmandu. • Analyze caseload in Appellate Courts and make a comparative analysis of Supreme and Appellate Courts.

9.	Ram Prasad Aryal	B.L., Advocate, Legal Aid Counselor (KSL). Researcher.	• Develop questionnaires. • Conduct a survey in Gulmi and Kathmandu. • Analyze caseload in Appellate Courts and make a comparative analysis of Supreme and Appellate Courts.
10.	Ram Bahadur Khatri	B.L., M.A. Economics, DSP (retired). Field Research Coordinator.	• Develop questionnaires. • Conduct a survey in Therathum and Kathmandu. • Compile Police data.
11.	Keshav P. Acharya	M.A. Economics, M.Sc., Financial Studies. Financial Consultant.	• Compile financial data and analysis. • Conduct an economic and financial analysis of the judicial system.
12.	Anita Koirala	M.A. Economics, Lecturer (KSL). Financial Analyst.	• Conduct an economic and financial analysis of the judicial system.

Institutional Framework of the Criminal Justice System in Nepal

Police Organization

Nepal's Police force is organized under the Police Act, 2012 and Police Rules, 2049. The Home Ministry is the immediate line ministry of the Police. The organization is headed by a career Police officer - the Inspector General of Police (IGP). The Crime Investigation Department, headed by a Deputy Inspector General of Police (DIGP) is one of the most important and publicly concerned branches of the Police. It contains the national level Dog Section, Narcotic Control Unit, and Crime Investigation school. Also, functioning directly under this department, is the Foreign Branch, the Anti-Terrorist Branch, the Scientific Resources Coordination Branch, the Crime Investigation Group and the Crime Research Branch. The Foreign Branch is divided into three sections; namely Foreign Politics, Interpol and Telitex. The Anti-Terrorist Branch has two sections - the internal terrorist section and the external terrorist section. The sections relating to Conduct of Criminals, Fingerprints, Photography and Forensic Science are organized within the Scientific Resource Branch. Finally, the Central Women's Cell, the Record Section, the Research Section, the Crime Investigation Information Section, and the organized and white-collar Crime Section have been established under the Crime Research Branch[6].

Crime Investigation Department: The Criminal Investigation Department operates through 5 Regional, 14 Zonal and 75 District level Police Offices. The Regional Offices are headed by an officer of the rank of Deputy Inspector General (DIGP), the Zonal Offices by a Senior Superintendent of Police (SSP) and the District Offices by a Superintendent of Police (SP) or Deputy Superintendent of Police (DSP). The District Police Offices are the grassroots law enforcement units, entrusted with the responsibility to investigate crimes within their territorial jurisdiction. Due to a lack of trained manpower and other resources, not all District Police Offices have separate investigation departments. Usually, Police officers also have many other law and order responsibilities to carry out, apart from the investigation of crimes.

District Police Offices are directly involved in the investigation of crimes under their territorial jurisdictions. The investigation is carried out by a Police officer especially designated for the purpose. Although there is no specific division of work for this post, and as such the investigating officer is also involved in the maintenance of general law and order, the pressure for the establishment of an independent unit for crime investigation is progressing towards accomplishment. Currently, an exercise for allocation of 10% of the total Police force budget for CID is heading towards realization. However, the responsibility of Police regarding investigation is limited only to offences under Schedule 1 of the State Cases Act, 2049. In offences beyond the said schedule, quasi-judicial bodies viz. the district forest office, tax office, custom office, immigration office, etc. are responsible for investigation, prosecution and adjudication. This system is vulnerable to departmentalizing the criminal justice system.

Office of the Attorney General of the Kingdom of Nepal

In Nepal, the prosecution of crimes is a constitutional responsibility of the Attorney General of the Kingdom. Article 110(2) of the Constitution provides for representation of cases wherein the rights, interests or concerns of His Majesty's Government are involved. This article further states that the Attorney General has the power to make the final decision as to whether or not to initiate proceedings in any case on behalf of His Majesty's Government in any court or other judicial authority. The Attorney General's Office functions through its subordinate offices.

Pursuant to this article of the Constitution, section 17 of the State Cases Act, 2049, has given the district Government Attorney the authority to decide whether or not to initiate judicial proceedings against suspects. Hence, the Attorney General of the Kingdom of Nepal functions as the sole prosecution agency in Nepal.

Article 110(5) has enabled the Attorney General to delegate his or her functions, duties, and powers to his/her district subordinates, corresponding to the Police investigation units in districts, and appellate subordinates corresponding to the Appellate Courts. There are 75 district level offices and 16 appellate offices to discharge the responsibilities entrusted in the Attorney General by the Constitution.

Judiciary

Nepal does not have a separate system of courts for the hearing of civil and criminal cases. The same sitting judge presides over the same court, hearing both civil and criminal cases. The present Constitution recognizes the District

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[6] See CID (Criminal Investigation Department) Magazine. Annual Publication, Vol. 3, 1997, p. 6. A Publication of the Police Headquarters.

Court to be the court of first instance. Therefore, original jurisdiction for most judicial matters belongs to the District Courts, and as such, the District Courts possess jurisdiction over both civil and criminal matters.

The highest court in Nepal is the Supreme Court, which is constitutionally a court of record. Decisions of the Supreme Court strongly influence and act as the precedent for many important policies and practices, especially relating to the interpretation of the Constitution and Nepal's system of governance. These judicial decisions are of prime importance for litigants, lawyers, judicial, quasi-judicial bodies and all of HMG's administrative machinery, as they are of binding authority for all.

The Supreme Court is composed of a Chief Justice and a maximum of fourteen associate justices, all of whom are appointed by His Majesty the King, on the recommendation of the Judicial Council. The Judicial Council is the statutory body that maintains a record of judges and makes recommendations for their appointment. If the number of existing judges becomes insufficient at any time due to escalation in the number of pending cases, a number of ad-hoc judges can be appointed for a fixed term. These judges can hold office until they reach 65 years of age. His Majesty appoints the Chief Justice for a tenure of seven years, on the recommendation of the Constitutional Council. Supreme Court justices are removed from office by a resolution of impeachment passed by the House of Representatives with a majority of two thirds of its total membership. The resolution becomes effective upon its approval by the King. The Supreme Court is located in Kathmandu, the capital city of Nepal.

Article 88(2) of the present Constitution has awarded the Supreme Court vast extraordinary jurisdiction in order to reinforce the fundamental rights of citizens. This jurisdiction can be exercised under the following three conditions:

- If the fundamental rights of an individual are subject to violation by any machinery of the State.
- If the legal rights of an individual are subjected to violation, and no alternative remedy is available.
- The alternative remedy exists, but it is not adequate.

Article 88(1) gives a very significant jurisdiction to the Supreme Court. This provision entitles the Supreme Court to declare legislation void for being inconsistent with the provisions of the Constitution. The Supreme Court can make such declarations to be effective *ab initio* or from the date that the order was made.

Immediately below the Supreme Court in the judicial hierarchy lie the Courts of Appeal, located in various parts of the country. They are 16 in number at present. On the recommendation of the Judicial Council, His Majesty appoints the Judges of the Courts of Appeal to hear all writ petitions, except for writs of *Certiorari* (writ to quash an illegal decision of the government) *Quo Warranto* (writ to remove an unauthorized person from post) and *Prohibition* (writ to stay the operation of illegal decisions). Like the Supreme Court, the Court of Appeal does not have a larger bench. Any dissenting opinion passed by a division bench is referred to a third judge, whereby he/she concedes to the opinion of one of the justices.

As mentioned above, at the lowest level in the court hierarchy lie the District Courts. The District Courts are also referred to as the “Courts of First Instance”, and are located in each of Nepal's 75 districts. All cases in the District Court, whether civil or criminal, are tried by a one-judge bench.

Article 85(1) of the Constitution of the Kingdom of Nepal has provided for the establishment of the courts of law in accordance with the above-mentioned hierarchy. Article 85(2) allows the State to create special courts and tribunals to undertake judicial proceedings and judgment in especial categories of case. However, the same article explicitly prohibits the State to establish a special court to adjudicate on a particular case. This provision has been incorporated in the present Constitution in consideration of the misuse of justice made by the preceding system, which allowed the Government to create special courts to undertake the proceedings of a particular case, and thus deprive the District Courts of their usual jurisdiction. With this practice, there was a potential for the executive government to influence judgments. The system was abolished by the present Constitution, to protect the independence of the judiciary.

Ministry of Law and Justice

The Ministry of Law, Justice and Parliamentary Affairs is the line ministry for framing governmental policies concerning matters of law and administration of justice. This ministry plays a vital role in formulating legislation, and through the process of formulating legislation and policies, it is directly concerned with the matter of review and reform of the administration of justice. The Ministry, pursuant to His Majesty's Government (Work Division) Rules, 2047 performs, *inter alia*, the following responsibilities:

- Providing consultation to HMG on the formulation of legislative Bills, Ordinances, Rules and Orders.
- Helping the various Ministries to draft Bills, Rules and Orders.
- Conducting research into existing laws, the administration of justice and international legal instruments.

- Making recommendations on amendment of statutes and formulation of new laws, and the reform of the administration of justice.
- Providing opinion on legal issues.
- Providing consultation to HMG regarding ratification, acceptance, and accession to multilateral treaties and agreements.
- Playing a role in the appointment of judges through the membership of the Minister in the judicial council, an independent body that recommends candidates to His Majesty the King for appointment as judges.
- Administering the government's free legal aid service scheme.
- Liaising with the National Forensic Science Laboratory.

Some other institutions, which are concerned with the administration of justice, function in coordination with the Ministry. They are as follows:

Judicial Service Training Center: The Judicial Service Training Center, founded in 2038, functions in coordination with the Ministry to cater for the need for various fresh and in-service training facilities in matters of law for civil employees, in particular, for the personnel under the judicial service.

Law Books Management Committee: The Law Books Management Committee was established under the Ministry of Law and Justice pursuant to the Development Committee Act, 2013. The main responsibility of this committee is to manage the publication and distribution of the Bare Acts and other law books according to the need. The committee is also responsible for translating laws in Nepali into English and vice versa.

National Forensic Science Laboratory: The National Forensic Science Laboratory Development Committee was established under the Royal Nepal Science and Technology Academy in 2042 as per the recommendation of the Royal Justice Reform Commission appointed by the King in 2038. As per the National Forensic Science Laboratory Development Committee (Formulation) Order, 2051, the National Forensic Laboratory operates under the liaison control of the Ministry of Law and Justice. The function of the laboratory is to conduct research, tests and analysis on matters pertaining to forensic science. In addition, the laboratory conducts scientific tests of living and non-living things, into forensic evidence, and physical and chemical matters in relation to justice. The laboratory also conducts training courses on forensic science for the employees of concerned governmental and non-governmental institutions.

Prison System

The history of the prison system in Nepal began in 1971 BS, when the present Central Jail was established in Kathmandu. It was called "Sadar Jail", meaning a prison situated at country headquarters. In 2019, the Prison Act was promulgated to govern the affairs of prisons. The Prison Regulations were adopted in 2020 in order to systematize prison administration according to the changed political context. However, these legal instruments brought about no substantial improvement in the general conditions of the prisons and the respect of prisoner's rights.

The prison system of Nepal has 73 prisons, established in all districts except Bara, Dhanusa, Bhaktapur and Sunsari. The inmates from these districts are taken to jails in other districts. Kathmandu and Dang districts each have two prisons.

Prisons are placed into four categories. Prisoners are divided into two groups, i.e. those receiving food allowance of either "Category A" or "Category B". Convicted persons and those under trial are distinguished as "prisoners" and "detainees" respectively. There is a provision for keeping prisoners and detainees in separate blocks, yet that is just impossible considering the present provision of institutional facilities. The facilities of most jails are severely stretched. Most have meager space, are poorly lit, and lack minimum facilities like toilets, beds, common rooms and so on.

For maintaining peace and order, good discipline and carrying out the daily affairs of the prison, such as the cleaning of the compound and dormitories, the Prison Regulations provide for the appointment of various functionaires from amongst the prisoners themselves. These are as classified as follows:

- **Gateman** (*Choukidar*) **:** The Gateman helps the prison administration to supervise the daily affairs inside the jail. He/she regulates the meeting of the prisoners with their relatives, and manages the distribution of food and allowances. For serving as a Gateman, he/she obtains curtailment of their prison term by the rate of two months per year of service.
- **Leader** (*Naike*): *Naikes* function as assistants to the Gateman. They delegate responsibilities to prisoners for cleaning the jail, inform the jailer about the behavior of each prisoner, and help the Gateman to arrange the meeting of prisoners with their relatives. For carrying out these services, the *Naike* obtains exemption from their prison term by a rate of 1.5 months per year of service.

- **Deputy Leader** (*Bhai Naike*): He/she carries out the same function as the *Naike*. He/she assists the *Naike* in discharging his/her responsibilities. For this, he/she is benefited, gaining exemption from the service of their prison term at the rate of 1 month per year of service.

Legal Profession in Nepal

In 2007, with the ousting of the autocratic Rana regime, attempts were made by the government to model the new Nepalese democracy along the lines of the system as implemented in India after 2005. For example, the holding of popular franchise for the constituent assembly was thought to be a means of adopting a constitution. Although, the idea of electing a constituent assembly could not be put into practice, the principles of constitutional government and the institutions of liberal democracy were enshrined by the Constitution of the Kingdom of Nepal as promulgated in 2015. The basic tenets of the Common Law System were imported from India in the shape of the *Pradhan Nayalaya* (the Apex Court).

This was designated to be the court of record and to remain independent from other organs of the State. The impact of Common Law as developed by the British remained only indirect, as the British had never colonized Nepal. However, because of the acute absence of educational facilities in Nepal, many Nepalis went to India for their formal education, and on their return became the main channel through which the influence of the British Common Law system was brought to Nepal. Nepalese political and administrative procedures and machinery were designed to a considerable extent as per the British Model[7] and the influence of the British Model was prominent in the field of law and justice.

One of the prominent factors responsible for this was the appointment of Mr. Hari Prasad Pradhan as the first chief justice of the Apex Court, who had been trained in the Common Law legal system and had been a career judge in India for a long time.

Though the Nepalese legal profession is not patterned on the lines of the English Bar, English traditions and influences have strongly shaped its evolution. Nepalese lawyers of past and present that have been trained in expatriate educational institutes, in particular in Indian universities, have imported these traditions and influences to Nepal. The credit for introducing the modern legal profession in Nepal goes to those law graduates who fought hard to introduce the practice of law as an independent profession during the nineteen fifties and sixties.

Prior to the emergence of a modern independent judiciary, a clause of the Section on Court Procedure of the *Muluki Ain* permitted litigants to appoint a proxy in their cases. The proxy had the authority to appear in court on behalf of the litigant and answer the queries of the judge. The proxy was called *Bokaha*, which in Nepali means - the person who carries the case for the other. The *Bokaha* could appear in court to examine and cross-examine the witnesses. However, this system lost its credibility as the *Bokaha* often became involved in counterfeiting evidence for and against the litigant. When the Law Practitioners Act, 2025 was enacted, the remnants of the *Bokaha* system were fully eliminated.

The concept of an independent judiciary was first introduced in Nepal by the Interim Constitution in 2007. Article 32(1) of the Interim Constitution enshrined the provision for the establishment of a *Pradhan Nayalaya* (Apex or Supreme Court), the powers and functions of which were to be determined by law. By incorporating the concept of an independent judiciary, the Interim Constitution recognized the need of a bar (lawyer's association), judicial review of legislative instruments and jurisdiction for prerogative writs (e.g. *Habeas Corpus)*. Subsequently, these concepts have been developed, and form the most notable characteristics of the Nepalese judicial system.

The State Cases Act of 2049 was promulgated to codify procedures involved in the investigation and prosecution of criminal cases. Nepal's judiciary, subsequent to the enactment of the State Cases Act, assumed the role of umpire between the contending parties - institutionally known as the adversary system. Prior to the promulgation of this Act, the judiciary of Nepal conformed to the inquisitorial system of justice, engaging itself in the three roles of conducting investigations, prosecuting and adjudicating simultaneously. The enactment of the State Cases Act relieved the court from the responsibility of investigation, except in certain circumstances in which the court felt that the investigation was incomplete or was marred by irregularities or weaknesses. The State Cases Act, 2017 was repealed by a new Act in 2049, which completely relieved the court of the responsibility of investigation and marked the point at which Nepal's judiciary completed the course of advancement to the adversarial system of justice.

Nepal's Constitution aspires to establish an open society where people can have unrestricted assess to competent and credible justice. The emergence of a strong and professional bar is fundamental to the smooth administration of justice. The judiciary must assume an active role, in order to protect and enforce the fundamental rights of citizens. A strong and professional bar is also essential to achieve this.

Interim Constitution: The history of the independent judiciary in Nepal dates back only to the 1950s. Prior to the promulgation of the Interim Constitution in 2007, an independent judiciary was merely a dream, as the autocratic Rana

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[7] Judge Kalyan Shrestha, *Harnessing the Capabilities of the Judiciary to Meet Challenges for the Expeditious Delivery of Justice*. A working paper presented at the 4th SAARC Conference of Lawyers and Judges at Kathmandu, 1992.

regime wielded absolute power. The Rana Prime Minister held all the powers that a democratic constitution devolves to three organs of State. In this environment, a proper legal profession could not develop. The Rana Prime Ministers declined to recognize the need for a legal profession in Nepal and hence the history of the legal profession in Nepal begins with the advent of democracy in 2007.

In 1997 BS, Prime Minister Padma Samsher proclaimed a "*Sanad*" (an executive directive having the status of legislation) that pretended to separate the so-called judiciary from the executive organ, but this *Sanad* was never implemented. The Prime Minister did not want to lose his judicial authority. However, the following years saw the unprecedented rise of the people against the autocratic Rana regime, which eventually forced it to introduce certain reforms. Thus, in 2003, the Constitutional Act was promulgated. It provided for the establishment of an independent judiciary. However, the Act simply proved to be yet another deceptive move to prolong the autocratic regime by letting off some steam from the popular upsurge.

In 2007, the Interim Constitution became the cornerstone of the legal profession in Nepal. The establishment of the *Pradhan Nayalaya* in 2008 under the Apex Court Act, enabled the Supreme Court to issue prerogative writs, such as *Habeas Corpus.* It directly called for the establishment of a professional bar. The establishment of the *Pradhan Nayalaya* was received enthusiastically by the people, especially as it was adorned with prerogative jurisdiction. However, the prerogative jurisdiction of the court was not long tolerated, as it restrained the executive government from exercising absolute power. It was revoked around 2013. This was a great setback to the institutionalization of an independent judiciary and professional bar.

The Government's act to strip the court of the prerogative writ jurisdiction was strongly resented by the people, and mass demonstrations were held demonstrating the force of political opposition. The Government was eventually forced to reinstate the jurisdiction. This was followed by the enactment of a landmark piece of legislation - the Civil Liberties Act, 2012, which enshrined certain rights of the people as inherent and inviolable.

This Act specifically provided for remedy through resort to the prerogative writ jurisdiction of the Apex Court if the inherent rights as enshrined by the Act were infringed or violated[8]. Section 15(2) was particularly significant to the legal profession, as it provided for the right of persons under detention to have legal counsel for their defence.

The Supreme Court Act of 2018 was another important landmark, as it recognized the need for the meaningful protection of the rights of the people, and for this stipulated the emergence of a professional bar. The Supreme Court Rules, 2021 were the first instrument to grant institutional recognition to the legal profession. The Supreme Court Rules introduced the mechanism for licensing the legal profession. It also laid down the acceptable norms of the profession and categories of lawyer viz. agent, pleader, advocate and senior advocate. Licenses were to be issued by the Supreme Court.

The institutional recognition of the legal profession as an independent intellectual profession was completed with the passing of the Law Practitioners Act in 2025. This Act was a breakthrough for the development of the legal profession in Nepal, as it provided for three categories of lawyer - the pleader, advocate and the senior advocate. The pleader could represent persons in courts other than the Supreme Court. In 2049, the Bar Council Act repealed the former Act, in order to facilitate the better protection of the rights and interests of legal professionals and to help ensure that they discharged their professional responsibility in a more dignified manner.[9]

This Act provided for the establishment of a Bar Council as an autonomous legal body for the regulation of the legal profession[10]. Through this Act, the Bar Council is entrusted with the following responsibilities:[11]

- conducting examinations for newcomers.
- registering legal professionals.
- conducting follow-up actions to assess whether legal professionals have followed the prescribed codes of conduct (these codes are extensive and details cover restrictions on unethical behavior that can lead to disciplinary reprimand).
- accepting petitions concerning violations of codes of conduct and making recommendations to the Discipline Committee for action.
- determining the procedures to be applied by the committees under the Act.
- encouraging improvements in legal education and laying down the standards of education for lawyers in consultation with universities.
- launching refresher training for lawyers.

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[8] Section 17 (1), (2) and (3) of the Civil Liberties Act (Citizens' Rights Act), 2012.

[9] The Preamble of the Bar Council Act, 2049.

[10] Section 3, Bar Council Act, 2049.

[11] Section 8, Ibid.

After the inception of this Act, the bar exam was made mandatory for anyone who wanted to enter the legal profession. Moreover, the Act enabled the Council to adopt a set of rules for regulating the profession. The Council, through its Disciplinary Committee, can suspend and terminate the license of immoral professionals. The Attorney General of the Kingdom of Nepal is the ex-officio president of the Bar Council, and the president of the Nepal Bar Association is Vice-President. The other members of the council are the Registrar of the Supreme Court, the Dean of the Faculty of Law, Tribhuvan University, five senior advocates or advocates elected by lawyers from five development regions and two nominee senior advocates or advocates of the Nepal Bar Association.[12]

A Brief Overview of the Criminal Procedure

Under the present criminal justice system, criminal procedure is divided into three periods viz.

a. Before trial
b. During trial
c. After trial

Procedure Before Trial: The procedure before trial comprises processes relating to investigation and prosecution. The State Cases Act, 2049 and article 14 of the Constitution are fundamental laws governing procedures before trial. However, the Section on Court Management of the *New Muluki Ain* also governs many aspects of general procedure which are related to investigation and prosecution, for instance, the procedures concerning search and seizure, issue of warrants and summonses for witnesses.

Key Actions and Stages of Investigation

Filing of Complaint or FIR: Under the existing system, the procedures relating to investigation laid down by the State Cases Act, 2049 are applicable only to criminal cases incorporated by it under Annex 1. Any other cases, despite their criminal nature, are considered to be out of the jurisdiction of Police investigation, purely because they have not been incorporated under the said Annex. In the crimes included in the Annex, the investigation process begins usually with the first information report (FIR) when the given crime is lodged.

The existing laws provide for the following:

- the victim, his/her relatives or any person knowing about a crime must report it to the Police immediately.
- the FIR should be lodged at the nearest Police station to the place where the offence has been perpetrated or is likely to be perpetrated.
- the FIR filed should contain evidences substantiating the allegation.[13]
- the aggrieved party may file the FIR or it may be filed by a Police officer (generally in cases relating to drugs and narcotics) who has obtained information that an offence has been or is being committed.
- the FIR filed should contain the venues of the scene of crime and the date of the commission of the crime, the names of the actual culprits and the part played by them and evidence and other descriptions regarding the offence.[14]

The State Cases Act provides that if a verbal report of a cognizable offence is lodged, the officer in charge of the Police station should reduce it to writing as narrated by the person. After having recorded it, the complaint should be read out to the informant and his signature should be derived. Upon receiving the informant's signature, the complaint should be duly recorded in a case register book.[15]

If an officer in charge refuses to register the complaint, the complainant must notify it to a senior Police officer or the Chief District Officer with a full explanation regarding the non-registration of the complaint. Upon receiving such notification, the concerned authorities must make a record of such a report and must direct the concerned Police officer to initiate proceedings along with the given directives. The Police station must register the directives received in a manner thus prescribed.[16]

The filing of the FIR has become an indispensable formality in the Nepalese criminal justice system. The investigating officers believe it is a mandatory practice, and in fact hold it to be an essential formality of criminal investigation. Moreover, Police officers consider that the FIR should follow a set-format in order to be legally acceptable. On many occasions, the FIR is simply rejected on the ground that the document is not consistent with the set-format - the language

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12 Section 4, Ibid.

13 Section 3(1), State Cases Act, 2049: "Any person having knowledge that the crime mentioned in Annex 1 of the Act has taken place or is about to take place shall give information in writing or orally to the nearest police station as soon as possible. Such information must state all those evidences produced by him/her or those known or seen by him/her."

14 Section 3(2), Ibid.

15 Section 3(3), Ibid.

16 Section 3(5), Ibid.

and the size of the paper being used in practice. It has also been made mandatory that the FIR should state the facts of the complaint in detail. The Police Office does not accept mere information regarding the crime as acceptable for the FIR. However, it has been established by the Supreme Court that the details of the facts of the crime are not mandatory requirements for the FIR.[17]

Arrest of the Suspect: Arrest of the suspect usually takes place on the basis of the disclosure of the name in the FIR. In contravention with legal provisions, generally all arrests are made without any warrant. If no name has been disclosed in the FIR, then the arrest is made only after a certain stage of investigation has been completed that shows the probable suspicion of the person. Although the State Cases Act, 2049 BS, provides for the arrest of any person only upon ample evidence to establish their connection with the crime, the practice of arrest is quite the opposite. First, suspects are identified, then evidence is searched for. The suspect faces deplorable treatment on arrest, being immediately hand-cuffed and detained without interrogation.

Clause 121 of the Section on Court Management (*Adalati Bandobasta*) of the *New Muluki Ain* prescribes that the arresting officer must deliver a notice of the grounds of arrest to the arrested person. However, the Supreme Court[18] has made a regressive interpretation of the clause by establishing a ratio that clause 121 is not applicable to a person detained for the purposes of investigation.

The Supreme Court[19] has also laid down that if it is not possible to state the nature of the offence under investigation, it is sufficient to state the nature of investigation. These developments in the arrest procedure are not positive, and are inconsistent with article 14(5) of the Constitution. An act of arrest suspends many of the fundamental rights of the suspect. The subjective suspicions of a Police officer cannot be valid grounds for the arrest and detention of a person.

Interrogation and Deposition of Suspect: Interrogation of the arrested person starts after the arrest takes place. The State Cases Act requires the deposition of the suspect to be made in the presence of a Government Attorney. In practice, the interrogation takes place in Police custody, and the deposition is made in the presence of the Government Attorney. This clearly shows discrepancies in the process of interrogation. As a matter of fact, the legal provision that the deposition must be recorded in the presence of a Government Attorney has proven meaningless. Although the provison was made to prevent torture for the purpose of the extraction of a confession, this protection has not been guaranteed, as interrogation is carried out exclusively by the Police in the absence of a Government Attorney. Article 14(1) of the Constitution guarantees the right to remain silent. However, again, in practice this right is never recognized. In obvious contravention with article 14(5) of the Constitution, which unequivocally guarantees the right of detainees to consult and be defended by a legal practitioner of choice, the detainee is not allowed to consult his/her lawyer before or during the interrogation. This is a serious setback to the achievement of justice. A report presented several years ago by the Nepal Bar Association to the Royal Law Reform Commission recommended that the detainee's constitutional right to consult with and be defended by a lawyer should be protected in practice. However, no development has been seen so far in this concern.

In Nepal, the statement of the detainee amounts to a confession, and forms good evidence for conviction, provided that it has not been extracted by use of force, coercion, inducement or torture or inhuman treatment. Several decisions of the Supreme Court have established that, in the absence of any other corroborating evidence, the statement of the accused recorded before the Police cannot be the sole basis for conviction.[20] However, the Supreme Court's rulings are often contradictory. In many cases, the Supreme Court has shifted the burden of proving torture was inflicted during Police custody onto the accused. Such decisions are clearly against the spirit of section 9 of the Evidence Act, 2031, which obliges the prosecutor to show that the confession was obtained with the full consciousness and understanding of the detainee. In one case, the Supreme Court observed that since the accused had failed to show that the statement recorded at the Police had been obtained through torture, it could be used as evidence against him.[21] To assume that a detainee can prove that he/she had been tortured during custody is not only unrealistic, but is a departure from the recognized principles of criminal justice.

Submission Before the Judicial Authority for Remand: Article 14(6) of the Constitution of the Kingdom of Nepal, 2047, provides for the production of the arrested person before a judicial authority within twenty-four hours of such arrest, excluding the period of journey. However, this provision is worthless if the detainee is not given an opportunity to consult his or her lawyer. Neither the judicial authority nor the District Courts bother to scrutinize the evidence and related documents while granting remand for detention. In Nepal, the remand process has been carried out in Nepal as an *ex parte* procedure, as the defense lawyer has been absent during the production of the detainee at the court. Obviously, the grant of remand has often been made without legal representation of the detainee.

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17 Nepal Law Reporter (*Nepal Kanoon Patrika*) 2044, p. 1039, Decision No. 3287.

18 Nepal Law Reporter (*Nepal Kanoon Patrika*) 2044, p. 701.

19 Ibid. 2028, p.109.

20 See, State v Bijaya Gachchadar, Nepal Law Reporter (*Nepal Kanoon Patrika*), 2044, p. 1224, Decision No. 3286.

21 State v Jangu Giri, Nepal Law Reporter (*Nepal Kanoon Patrika*), 2044, p. 1224, Decision No. 3286.

When remand is requested by the investigating agency, after perusing the case file, the court shall pass an order of remand for a period not exceeding 25 days. Such remand may be given through one or through repeated orders. In Rameshwore P. Sonar v. Special Police Department[22], the Supreme Court observed that an extension of remand should be granted only after the physical production of the suspect and not on the basis of a letter. In Shambhu B. Syanthang v District Police Office, Lalitpur and others,[23] the Supreme Court observed that cases could be filed even after the expiry of the remand period. In Dinesh Chandra Gupta and others v. District Police Office, Sindhupalchok[24] the Supreme Court observed that since it is not possible to conduct an investigation owing to a long holiday, it is not relevant to keep a person in custody for such investigation. The judgments of the Supreme Court are distinctly disuniform and contradictory. They show that the Supreme Court has also contributed to the degradation of the standards of free and fair justice in Nepal.

In Nepal, no legislation allows bail to be issued during Police custody. An investigating officer may potentially seek repeated remands for his personal gain, or to make his work easy. In the absence of legal provisions and mechanisms to check such evils, seeking repeated remands has become a common practice of the investigating agency. Nepal's draft Criminal Procedure Code enshrined a provision for the grant of bail to the suspect by the court during custody a long time ago.[25] However, there has been no change in practice so far, causing many people to languish in Police custody for no good reason.

Forensic and Medical Investigation: In a great number of criminal cases, referral for investigation by an expert is unnecessary. However, in some cases, the scientific examination of evidence is not only essential but unavoidable. Such help varies very widely in character. It may constitute the keystone of the case, it may provide corroborative detail, or it may assist by resolving doubts upon points of minor importance or in sorting out the essential from the non-essential. In fact, the delivery of justice depends upon the scientific examination of evidence.

An investigating officer may forward materials viz., blood samples, semen or any part of the body to a government medical practitioner or to a laboratory for scientific examination, provided that he has sufficient belief that the findings could assist in the collection of evidence necessary to indict the suspect.

The State Cases Act, 2049, prescribes the presence of a female medical practitioner for the examination of women. If a female practitioner is not available, then any other woman under the direction of a male doctor should conduct the examination. Similarly, if an investigating officer deems it appropriate to acquire an opinion from an expert regarding any fact in relation to a crime, they may do so.

The investigating officer should have a clear grasp of the type of materials likely to yield evidence of value when submitted to expert examination. It is the responsibility of the investigating officer to evaluate the material collected during the course of investigation. The expert is neither a witness of the prosecution nor the defendant; rather he/she is the witness of the court.

Witness Deposition: During the course of investigation, the investigating officer can call upon witnesses, experts, or the aggrieved party or person who has witnessed a crime, and a deposition to that effect can be derived from them. The deposition must be recorded in the prescribed written form and signed by the witnesses. Such depositions, for admissibility in the court, must be testified to in the court. If such persons are not subjected to cross examination by the accused, admissibility of the deposition as evidence is discarded according to section 18 of the Evidence Act, 2031.

Search and Seizure: If an investigating officer, upon information and after such inquiry as he/she thinks necessary, has sufficient reason to believe that objects with some bearing upon a case might be found hidden, then he may enter upon such premises and conduct search and seizure. If such a place lies in the jurisdiction of another Police Office, then the investigating officer may request the jurisdictional authority to conduct such a search. Upon such request, an officer of the rank of sub-inspector may carry out a search, and a list will have to be drawn of objects searched and seized, and sent to the requesting officer. If the investigating officer deems that the evidence may be lost or tampered with when they are making their search request, they may proceed to the site and conduct such operations immediately. Objects searched and seized need to be notified to the concerned jurisdictional Police Office.[26] Search and seizure after the arrest of a suspect is not confined to the privacy of one's house or enclosed places. Rather, it can occur in any place, even if the place is a public area. A Police officer seeking a search and seizure warrant must state the facts of the case, establishing probable cause, on a written and signed affidavit.[27]

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22 Nepal Law Reporter (*Nepal Kanoon Patrika*), 2020, p. 1, Decision No. 184.

23 Nepal Law Reporter (*Nepal Kanoon Patrika*), 2049, p. 571, Decision No. 4562.

24 Nepal Law Reporter (*Nepal Kanoon Patrika*), 2050, p. 506, Decision No. 4783.

25 Nepal Law Review, Year 2, Part 3, 2035.

26 Clause 172 of the Section on Court Management of the *New Muluki Ain.*

27 Ibid.

The condition justifying search and seizure is that there should be probable cause. Such cause should be reasonably trustworthy within the officer's knowledge. Items for seizure must also be described with sufficient particularity so that the officer will have little discretion over the act. After having executed the search and seizure, the officer in charge must submit an explanation as to the reason of search. The searching officer also must present a list of items seized to the court within three days of such search and seizure[28]. The law requires the officer executing a search warrant to make an announcement as to his purpose before breaking into a dwelling[29]. This is done so as to avoid violence and allow voluntary compliance. Whenever a search or inspection is to be conducted, persons residing in or being in charge of a place liable to this must, on demand of the officer or other persons executing the search and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.[30]

Where any person in or about such place is reasonably suspected of concealing about his person any article for which search is being carried out, then such person may be searched and if such a person is a woman then the search must be carried out by another woman with strict regard to decency.[31]

The general rules regarding search and seizure are prescribed by clause 172 of the Section on Court Management of the *New Muluki Ain*. Before making a search and seizure, the officer or person about to make it must call upon two or more witnesses of good character. Such witnesses must be independent and responsible inhabitants of the locality in which the place to be searched is situated. No search must be made without the presence of such witnesses and a represent ative from the concerned Municipality or Village Development Committee. On completion of the search, a list of all things seized in the course of it, and of the places in which they are respectively found, must be prepared by the officer and signed by such witness. In the process of search and seizure, infringement of human rights may occur. Disputes often arise in the courts in this regard. The following judgement throws light on the practice.

In Kali Bahadur Adhikari v The State, Revenue Investigation Department[32] the Supreme Court observed that "when the law explicitly provides for the attendance of two local representatives during search and seizure, the mere fact that only one witness was present does not fall within the spirit of the law." In the same c ase, the Supreme Court went even further and stated that "where the deed of recognizance is not in conformity with the legal provision, it is not justifiable to indict such person on the basis of such deeds."

In contrast to many other countries, search and seizure is an independent function of the investigating authority in Nepal. The courts do not control it. No prior permission of the court is required to carry out search and seizure. This has been regarded as a weakness in the Nepalese criminal justice system. Since Police powers in matters of search and seizure are unlimited, they are often used with coercion. Potentially, the individual's right to privacy may be violated.

Confirmation of Suspect: Confirmation of the identity of suspects is an important aspect of the investigation. Sometimes the arrest of more than one person takes place, when the identity of the true criminal is unsure. In such circumstances, arrested persons are lined up for recognition by the victim or witnesses who were present at th e crime scene. This process is governed by clause 173 of the Section on Court Management of the *New Muluki Ain*. A pertinent question concerning this procedure has been raised, in the context of the constitutional provision guaranteeing the right to remain silent. Is it in accordance with the Constitution to present a person as a suspect for identification by another person? The right against self-incrimination is available in protection against forced communication of knowledge of the suspect. Does this right not include protection against the exposure of the physical person in public? If the right to self-incrimination is viewed in this respect, the right of the suspect to privacy and reputation is at stake. Clause 173 is fundamentally feudalistic, and is uninformed by the modern concept of criminal justice. The provision prescribes that if a person is suspected of a crime and is recognized by another, then at least four persons of similar age, face, color, and dressing should be found and lined up together with the suspect. The provision grants unlimited power to the investigating agency to interfere in the private lives of persons. The power of rounding up four people to be lined up with the suspect is founded on the concept that State power can prevail ove r a citizen's fundamental rights.

Key Actions and Stages of Prosecution

Decision to Prosecute or not to Prosecute: The State Cases Act, 2049 and Regulations, 2054, are the fundamental laws regarding procedures of prosecution. As per these laws, the criminal prosecution begins when the concerned investigating Police officer reports the findings of investigation, along with the suspect, to the concerned Government Attorney. The investigating officer can, on the other hand, ask for the termination of an investigation on the grounds of a lack of adequate evidence with which to prosecute the suspect.[33] However, the final decision as to whether or not to prosecute is

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28 Ibid.

29 Ibid.

30 Ibid.

31 Ibid.

32 Nepal Law Reporter (*Nepal Kanoon Patrika*), 2049, page 224, Decision No. 4484.

33 Section 17(1), State Cases Act, 2049.

made by the Government Attorney. If the Government Attorney believes that there is adequate evidence to initiate a prosecution, the opinion of the investigating Police does not prevail.[34]

Framing of the Charge Sheet: A charge sheet is an accusation of an alleged offence along with specific charges that is submitted to a competent court, or a notice given to an individual by the concerned office regarding any allegation. It is also termed as an accusation of a crime, which precedes formal trial.

A charge sheet is framed after the investigating officer has completed the compilation of all documents and evidences against the suspect. The charge sheet submitted by the prosecutor is accepted *in toto* by the court without any scrutiny. Despite any weakness in the case, it is the job of the prosecutor to throw the case before the discretion of the presiding judge. No matter how untenable, unjustifiable or preposterous the charge sheet, the court is obliged to readily accept it. There is a gap in the existing law to check such imbalances.

Section 18(1) of the State Cases Act, 2049, has laid down rules regarding the filing of the charge sheet. Pursuant to the section, if the public prosecutor, upon perusal of the case file, deems it appropriate to press charges, they should submit a charge sheet to the competent judicial authority in the manner as prescribed by the Act. The charge sheet must state the specific allegation against the accused, based on the evidence found. It should make reference to any laws that are applicable and state the punishment sought. While framing the charge sheet, the prosecutor must include the following information:

- Name and residential address of the accused.
- Details of notice (FIR) regarding the commission of the crime.
- Description of the crime, including the crime scene.
- Allegations made and evidence supporting such allegations.
- Relevant laws relating to the commission of crime, and its punishment.
- Quantum of punishment to be levied upon the accused.
- Amount of compensation (if any) to be given to the aggrieved party.

Additionally, the prosecutor is obliged to pay attention to the following provisions of the law:

- If there is any specific terminology for an offence in the prevailing laws, then that specific terminology must be stated. If there is no such terminology, then the elements of the offence must be clearly stated in the charge sheet so that the accused can clearly understand the allegation made against him.
- If the accused has a past history of committing offences, the charge sheet must state the crime committed and the sentence served by him/her, including the date of the punishment sanctioned and the name of the court sentencing, in order to establish a ground for a request for a higher term of sentence.

The State Cases Act, 2049, has embodied some new principles and set forth some guidelines regarding the submission of the charge sheet, and the method of investigation. Under the previous Act, investigation of all criminal offences was conducted jointly by the Police and the public prosecutor, whereas the new Act empowers the Police to undertake criminal investigations independently. Similarly, the prosecution may be independently done by the Government Attorney.

In cases where there is no reasonable ground to justify the submission of the charge sheet, then the case file along with the evidence is returned to the Police. This gives great power to the prosecutors in deciding whether to proceed with the case or not. The exercise of this power could be an important instrument to check random investigation and protect innocent detainees from forced prosecution. Thus, the relevant provision of the new Act is, in principle, a significant development in the enhancement of standards of criminal justice. However, in practice, the power is neglected.

Submission of Charge Sheet and Suspect: The Government Attorney is responsible for submitting the case in the court along with the suspect. Generally, the submission takes place within 25 days of the arrest of the suspect, with the exception of cases regarding narcotic drugs, where the Narcotic Drugs Act allows a period of 90 days before submission of the suspect. Section 18(1) of the State Cases Act, 2049 underlines this requirement for submission. It states that upon completion of the investigation, and with the formation of an opinion that a case can be made out, the concerned public prosecutor must submit the charge sheet along with the suspect, including all material evidences, to the competent body or court.

If a co-suspect absconds until the day of the submission of the charge sheet before the court, a warrant must be issued by the court for their arrest, in the form as prescribed by clause 98 of the Section on Court Management of the *New Muluki Ain*.

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[34] Section 17(2), Ibid.

The procedures regarding warrants are outline by clause 110 and section 107 of the Section on Court Management of the *New Muluki Ain* . As per these procedures, upon receiving the warrant, the Police must search for the suspect, who, upon being apprehended, must be produced before the Court within 24 hours, excluding the period of travel to the Court.

A Police officer can arrest a suspect without any warrant if he has been proclaimed to be absconding. Such suspect, if apprehended, must be produced before a court within 24 hours of arrest, excluding the period of journey.[35] The Supreme Court has observed that where a co-suspect has been apprehended with the assistance of some person other than the Police, or arrested and produced by them before the concerned authority, such assistance cannot be termed to be unauthorized.[36] Therefore, it can be concluded that anybody may arrest a co-suspect and submit him to the concerned authority.

Procedure during Trial: At the moment the charge sheet is filed by the prosecutor, the adjudication proceedings begin. The adjudication proceedings are divided into three stages viz. bail hearing, post bail hearing and final hearing.

Key Actions and Stages of Adjudication

With the submission of the charge sheet or arrest of the absconding suspect, the procedure before trial comes to an end. When the charge sheet is filed by the prosecutor, the judicial trial process begins at once. Generally, the trial of criminal cases is carried out by the District Courts of the concerned territorial jurisdiction. However, there are many statutes that give jurisdiction to quasi-judicial institutions for conducting trial and passing sentence. Furthermore, there are some purely administrative institutions that are equally competent to conduct trial and pass sentence. For instance, a Custom Office may take cognizance of the crimes underlined by the Import and Export (Control) Act. Many crimes under such legislation give jurisdiction to the concerned administrative offices to conduct investigation, prosecution and adjudication as single institutions.

The Section on Court Management of the *New Muluki Ain*, the Judicial Administration Act, 2048 and the District Court Regulations, 2052, are the main legal instruments governing procedures relating to the trial of criminal cases. The Evidence Act, 2031 is also equally applicable in matters of testimony and cross-examination of witnesses, which form an indispensable part of the trial proceedings. The trial proceedings based on the provisions of the above-mentioned legislation can be divided into three parts, i.e. the bail proceeding, the post bail proceedings, and the conviction and sentencing proceedings. These three proceedings take place neither consecutively nor continuously. Completion of each part opens the door for the succeeding part, which may take a considerably long time to occur.

Bail Proceedings: The pre-trial proceedings begin with the production of the suspect and the charge sheet. The registration of the charge sheet is the first step in the bail proceedings, which is immediately followed by the act of recording the suspect's deposition. The deposition is supposed to be recorded in the presence of a judge, but there are great discrepancies in the behavior of judges in this matter.

At present in Nepal, the facility of bail is available only after the charge sheet has been submitted before the court. No law exists regarding bail during Police detention. Clause 118 of the Section on Court Management of the *New Muluki Ain* is both the substantive and procedural law governing the matter of bail.

The next step in the bail proceedings regards the arguments of the Government Attorney and defense attorney. Arguments of lawyers during bail hearings are largely a matter of farce, as the defense lawyers have no access to case documents until this moment.

The defense lawyers's plea of grounds for granting the bail against the given charges is generally a recital of clause 118 of the *New Muluki Ain*, which gives great discretion to the judges over the matter. It is usually the presiding judge who has to ascertain, according to the dictation of his/her reason, whether there is a reasonable ground established to show the involvement of the accused in the crime. Thus, the order of presiding judges in the matter of bail is largely subjective. Grounds for the grant of bail are generally founded on prima facie evidence submitted by prosecutors in the case file. The general opinion of the public is that the application of clause 118(2) is to the disadvantage of the accused. Defense attorneys also generally point out that public prosecutors elevated to the position of judges in the trial courts are those who are most reluctant to use clause 118(2) in a more liberal way.

Section 118(2) lays emphasis on prima facie evidence. It is often seen that trial court judges rely heavily on the so-called confession that was given by the accused in the presence of the public prosecutor for the confirmation of guilt, and no reliance is made on the statement they made at court. This confession should not be taken as evidence against the accused, unless or until other evidences provide corroboration. However, this principle is rarely followed. The only evidence the judge ever relies upon is the confession made by the accused, regardless of other evidence supporting their innocence.

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[35] Sub-Section (1) (6) and (2) of Section 17 of the Police Act, 2012.

[36] Nepal Law Reporter (*Nepal Kanoon Patrika*), 2026, p. 105, Decision number 474.

As per clause 118(2), for an offence for which the punishment is less than 3 years, with an exception for detainees who do not have permanent residence in the Kingdom of Nepal, bail is granted as a privilege of the accused. However, such bail is generally accompanied by the order of the court to deposit a certain quantum of monetary bond or fixed assets as a guarantee. Obviously, there is a possibility that a accused person of limited financial means might be deprived of the privilege to be released on bail for being incapable of depositing the said bond. This means that the privilege granted by clause 118(2) is enjoyed only by wealthy accused. This is a failure of the system. In making wealth the determinant of liberty, individuals of limited means are subject to discrimination and injustice.

However, in the following cases, the courts or judicial institutions may deny the grant of bail as a privilege, even if the punishment on conviction is less than 3 years of imprisonment:

- Cases relating to the Prevention of Corruption Act, 2017, black marketing or cases relating to the creation of artificial scarcity of commodities by illegal storage.
- Cases relating to export/import.
- Cases relating to necessary service, materials.
- Cases relating to coins, foreign exchange and measurement.
- Cases relating to ancient monuments, statues or objects of archaeological importance, paintings, books or other artistic works.
- Cases relating to narcotics and drugs.
- Cases relating to government claim.
- Cases relating to the forgery of government documents, decisions or orders of courts, passports, insurance, cheques, drafts or cases relating to theft.

Although sub-sections (2) and (3) of clause 118 provide for judicial custody on the basis of prima facie evidence, clause 118(4) makes an exception to the above provision. This clause gives discretion to the court in the grant of bail to minors or physically or mentally diseased persons.

Except for crimes with a penalty of capital punishment or life imprisonment, the court should grant bail to the suspect with regard to the following conditions:

- Circumstances at the time of the commission of the crime,
- Age of the accused,
- Physical and mental condition, and
- Previous record and conduct.

If the court deems it appropriate to grant bail, then the amount of bail or surety is determined by the following conditions:[37]

- Nature of the crime,
- Economic and family background,
- Age of the accused and if he has been sentenced previously or not, and
- Quantum of compensation to be borne by the accused.

Post Bail Proceedings: The post bail proceedings can be defined as a set of procedures applicable in between the bail proceeding applicable and the final hearing. The Section on Court Management of the *New Muluki Ain*, the District Court Regulations, 2052, and the Evidence Act, 2031 are the main laws relating to post bail proceedings. This stage can be further divided into sub-stages:

Correctional Petition: If the accused has been remanded to judicial custody, he/she may file a correctional petition pursuant to clause 17 of the Section on Court Management. The petition is lodged at the Appellate Court of the concerned territorial jurisdiction. The correctional petition is not tantamount to an appeal. The court of appeal may sustain or cancel the previous order passed by the trial court. It may also direct the trial court to reconsider the bail proceedings. If the trial court's order is quashed by the Appellate Court, the accused is released on bail.

Testimony: Witnesses of the prosecution and accused are produced before the court for testimony. Unlike the western judicial system, witnesses are not examined at the time of the final hearing, but before this takes place.

Testimony of Expert Witness: The testimony of expert witnesses is another important proceeding at this stage.

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[37] Clause 118(10) of the Section on Court Management, *New Muluki Ain*.

Final Hearing: After the completion of post bail proceedings, the court sets a date for the final hearing. All criminal cases tried by the District Court are in accordance with a single court system. No separate criminal court or criminal bench is managed in Nepal. As such, the procedure is very long and tedious. This is a serious drawback to the system. The prosecutor very rarely succeeds in producing witnesses. After having failed to fulfill the legal duty to produce witnesses, the prosecutor takes recourse to clause 115 of the Section on Court Management, whereby a time is again fixed by the court for the testimony of the defaulter prosecution witnesses. In this way, clause 115 has been widely and grossly misused, and the accused has had to bear the burden.

The final hearing is a verdict session, which decides upon both facts and sentence. Nepal has no jury system. The trial court decides on both issues of fact and law, and thus carries out both the conviction and sentencing proceedings at the same time.

The trial proceedings are unique in the sense that, unlike many other countries, the final hearing is the apex of the trial. By the time the final hearing takes place, all other procedures have been completed; the witnesses have been examined, the exhibits have been confirmed and the experts' opinions have been recorded, all quite a long time before the day of the final hearing. In this sense, the final hearing is a time that the court has scheduled to hear the arguments of counsel, and to declare judgment.

Procedure after Trial: Execution of sentence and appeal against the trial judgment are two major aspects of the procedure after trial.

Sentencing: Sentencing is defined as the formal pronouncement of the judgment and the punishment of the defendant following his/her conviction of a crime. While delivering a verdict against an accused, judges enjoy wide discretion in determining the sentence to be imposed. Vast discretion is left to the sentencing authority, but this is not used positively. Sentencing in grave offences is generally severe and clinical. The penalty should fit the offender instead of the offence, but this is not a practice usually followed in Nepal. There is wide sentencing disparity among the courts. Different sentences are given for similar crimes committed under similar circumstances. For example, the Narcotics Control and Prevention (Third Amendment) Act, 2033 provides for imprisonment for a term of 15 years to life for persons possessing 100 grams or more of heroin. Therefore, for the commission of the same crime committed under similar circumstances, one person can receive a sentence of 15 years and another can be convicted for life.

Appeal: The right to appeal is guaranteed by the law. The exercise of this right is so common that the Courts of Appeal are virtually awash with cases, resulting in lengthy delays in appeal decisions. Appeal is made directly to the Appellate Courts, or through the prison where the accused has been lodged, within 70 days after having acknowledged the verdict in writing or after having received an appeal summons from the trial court. If an appeal cannot be lodged within the stipulated time frame, a grace period of 30 days is given to the appellant.

Criminal Justice System

Overview of Strengths and Weaknesses Uncovered by the Previous Research

There has been an acute shortage of research on the criminal justice system of Nepal, in particular concerning the effectiveness and efficiency of the system. "Analysis and Reform of the Criminal Justice System in Nepal", a study conducted by CeLRRd in 2056, is the first comprehensive research to make an attempt to uncover various problems facing the criminal justice system. The study investigated case files and conducted a questionnaire survey of prisoners and other key informants such as lawyers, judges, Police officers and human rights workers, to illumine the following aspects of the criminal justice system:

1. the structure of existing criminal investigation, prosecution and trial systems.
2. the procedures applied in conducting investigation, prosecution and trial.
3. the general time frame of the investigation of an offence, including time spent in pre-trial detention.
4. the general timeframe for the trial of an offence in the trial court.
5. the standards of mechanisms devised for the protection of detainees from torture.
6. the standards of justice upheld by the trial courts.

Among other things, the study also made an attempt to look into the factors and causes that malign the quality of justice. The following are important findings of the study:

1. The civic response to crime was not positive. The community generally did not volunteer to cooperate in the investigation of criminal offences. This is obvious from the finding that only 9 percent of incidents had been promptly reported by the public to the Police. A delay in the reporting of criminal incidents can destroy or malign the quality of evidence.[38]
2. FIRs were generally found to have been lodged by victims or close relatives of victims. This again shows the tendency of civil society to avoid becoming involved in the process of investigation. Virtually all FIRs were lodged in a written form, and the formalities involved in the preparation of a written FIR were frequently followed. In practice, FIRs are often deemed unacceptable if they do not follow standard formalities.[39]
3. The violation of the Constitution in relation to detention was phenomenal. Suspects were often held in Police custody beyond 24 hours without judicial mandate. The study showed that at least 37 percent of suspects were produced before the judicial authority only after the end of the constitutional deadline.[40]
4. The study found trial courts insensitive to the protection of the human rights of suspects, as they showed no interest in guarding against unnecessary remands. Remands were frequently granted without proper grounds. In 29% of cases studied, remand was granted more than three times. As shown by the research, in over 87% of cases, trial courts granted remand without scrutiny of the investigation process or grounds cited for the extension of detention.[41]
5. In general, junior Police officers were found to have been assigned the work of investigation. This showed a lack of interest among senior officers regarding matters of investigation. Prosecution was generally carried out randomly, without scrutiny of facts and evidence gathered by investigators.[42] Therefore, prosecutors were not found to be alert to the protection of the innocent.
6. The investigation lacked coordination with the prosecution, as there were no instructions given by Government Attorneys to investigators. The legality or fairness of the process of collecting or obtaining evidence was not scrutinized by prosecutors. [43]
7. The prosecutors failed to objectively analyze the evidence procured by investigators. Factors like character, age, economic situation, vulnerability and circumstances involved in criminal acts were given no consideration. The

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[38] CeLRRd, 1999, *Analysis and Reform of the Criminal Justice System in Nepal*, CeLRRd, Kathmandu, p. 86.

[39] Ibid. p.87.

[40] Ibid. p.90.

[41] Ibid. p. 95.

[42] Ibid. p. 97.

[43] Ibid. p. 98.

general practice of prosecutors while framing the charge sheet was to request the highest sentence available. In only 27% of cases, prosecutors refrained from resorting to a request for the stiffest penalty. Most interestingly, the correlativity of evidence and facts with the penalty was never considered.[44]

8. Confession was extracted from 85% of detainees. Of them, 42% complained in the court that the confession was extracted by use of force. However, the trial court convicted 60% of accused, and took their confessions as valid evidence. The fairness of procedure for extracting confession was not considered at all. This shows the foundation of the whole judicial system on a confession oriented approach.[45]
9. The right to legal counsel was not protected. Over 50% of accused had no legal representation when the sentence was declared. Thus the judges' discretion largely prevailed in the sentencing process.[46]
10. Wealth was a determining factor in securing personal liberty in a large number of criminal cases. For 94% of accused, bail was granted by the trial courts on the condition of a property bond. This means that a person with no property could have been deprived of personal liberty. As such the matter of bail was not founded on fairness of procedure.[47]
11. In a large number of cases studied, the trial was prolonged for a period of over one year. Only 17% of cases were disposed of within a period of three months.[48]

These findings have compelled us to conclude that the criminal justice system is far from meeting the standards set forth by the Constitution of the Kingdom of Nepal and various international human rights instruments. One reason for such a low standard of justice is the insensitivity of actors to the values of fairness of procedure and the human rights of suspects and accused.

Procedural formalities and technicalities outweigh the right to fair justice. The values of justice are ignored due to exigencies or compulsions created by actors' circumstances. Hence, the privileges, convenience and resources of these actors outweigh the right of detainees to personal liberty.

The investigation proceeds first with "arrest", then investigation. A large number of people are simply arrested for the convenience of the investigators in the investigation task. This practice is encouraged by a belief that confession is indispensable to securing conviction. Many persons are therefore simply remanded without any grounds. Random arrest, coupled with the grant of remand without scrutiny of grounds, are human rights violations of an overwhelmingly serious nature.

The Police have not hardly developed any devices to "scrutinize" the objectivity, authentic ity and reliability of evidence, and avoid the prosecution of persons against whom the charge is unfounded. In Nepal, investigation is understood to be a process of collecting information or evidence that will be generally helpful in incriminating the suspect. Hence, it is a common phenomenon that a suspect once arrested is generally remanded and prosecuted. Thus, the Police investigation does not resolve cases, rather it generates them. Since, the prosecution is largely "random prosecution", an extremely large number of cases are bound to be tried by the courts.

The situation of courts is not congenial for the protection of innocent persons. The courts are logistically and financially deprived. There are no specialized judges. Furthermore, under current circumstances, a large number of suspects or accused are not aware of their rights, and many of them are not capable of hiring lawyers to represent their cause. The "justice" they receive is therefore questionable.

The said research drew up several recommendations for reform:

Amendment of constitutionally inconsistent laws: The judiciary of Nepal sit in a hierarchical three-tier court system. The Supreme Court is at the highest level, followed by the Appellate Court, which acts as the court of first appeal, and at the bottom, the District Courts, playing the role of courts of first instance. Article 84 of the Constitution expressly maintains that courts and other judicial institutions, in accordance with the provisions of the Constitution, the laws and the recognized principles of justice, are to exercise powers relating to justice. Furthermore, article 86 puts the courts and other quasi-judicial institutions, except the Military Court, under the supervisory control of the Supreme Court. Pursuant to the article, the Supreme Court is commissioned to inspect, supervise and give directives to the subordinate courts. Quasi-judicial matters must be kept outside the scope of the judicial purview of the Supreme Court or its subordinate courts. Although article 85(2) permits the establishment of special courts for the purpose of trying special types of cases, it does not however, empower the law-making body to enact statutes that could have the effect of depriving the Supreme

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44 Ibid. p. 102.
45 Ibid. p. 105.
46 Ibid. p. 109.
47 Ibid. p. 111.
48 Ibid. p. 115.

Court or its subordinate courts of their jurisdiction of appeal. It is also clear from article 85 that courts or quasi-judicial institutions must act judicially, in accordance with recognized principles of justice.

However, there are a number of statutes in force (at least 53[49] can be identified) that contravene articles 14, 84, 85 and 86 of the Constitution, the spirit of the State Cases Act, 2049 and section 25 of the Evidence Act, 2031. Offences under these statutes are excluded by Annex 1 of the State Cases Act, 2049, meaning that the procedures established in the said Act are not applicable in the investigation, prosecution and adjudication process of these offences. In plain contravention with recognized principles of justice, some of these statutes vest all powers relating to investigation, prosecution and adjudication within a single institution. Others vest the power of prosecution in Government Attorneys, and the power of adjudication in administrative bodies, rather than in the courts. Some of these statutes even deprive the courts of their power to review appeals, for instance, regarding judgments of the Police Tribunal.

The Police Act places the power to investigate, prosecute and adjudicate offences solely in the hands of a Special Police Tribunal, which has a Police officer as one of the members. The final appeal under this Act is to be lodged with HMG instead of in a court of law. These provisions remain in force with the deliberate design of removing the Police Special Court from the supervisory control of the Supreme Court, as defined by article 86 of the Constitution. Moreover, the procedures relating to the establishment of this so-called special court are not governed by the Special Court Act, which is a specific law governing such matters. It is clear that these statutes remain in force with the effect of departmentalizing the criminal justice system. Such so-called tribunals, and quasi-judicial institutions like the Police Special Tribunal, are sometimes so powerful that they can impose a sentence of life imprisonment. Hence, rationalization of inconsistent laws like the Police Act is one of the most important aspects of reform of the criminal justice system in Nepal.

The system of justice established by the above listed statutes overrules the possibility of free and fair criminal proceedings. The achievement of free and fair justice is impossible in a system where the same institution has the ability to investigate, prosecute and adjudicate alleged offences. Such a system does not provide any safeguard against the institution's own interests. No institution can act as a judge in cases in which its interests are directly or indirectly involved. Against this backdrop, the following recommendations were put forward in order to improve the standard of the Nepalese criminal justice system.

Separation of investigation, prosecution and adjudication roles: Pursuant to article 85(2) of the Constitution, quasi-judicial institutions and special courts may be established by statute to hear special types of cases. However, according to the doctrine of bias, no legislation can empower a single institution to play the role of investigator, prosecutor and adjudicator. Hence, single institutions carrying out all these roles must be separated for the purpose of establishing free and fair criminal proceedings. As a general rule, the power of adjudication must be vested in independent courts of law. If the power of adjudication is vested in a quasi-judicial body, the Appellate Courts of law must necessarily be empowered to review the judgments of these bodies through the appeal system.

Sentencing only by courts of law: All offences punishable with a term of imprisonment must be included in Annex 1 of the State Cases Act, so as to ensure that prosecution of such offences is carried out solely by the office of the Attorney General. The above listed statutes must therefore be amended, to empower the courts of law alone to hold trial of offences that have imprisonment as a possible sentence. No quasi-judicial institutions should be permitted by law to adjudicate offences that have a sentence of imprisonment, whatever its term. The power of adjudication of quasi-judicial institutions must be limited to offences involving pecuniary penalties alone.

Delegated legislation should not be given the power to define institutions for investigation, prosecution and adjudication: Some of the statutes in the aforementioned list expressly empower regulations to define the institutions to carry out investigation, prosecution and adjudication of offences. Such a practice is in contravention with the general principles of law. It creates the potential for executive institutions to have a monopoly over criminal proceedings. Therefore, regulations giving power to institutions to take up the tasks of investigation, prosecution and adjudication should be amended in order to safeguard the freedom and fairness of criminal proceedings.

The law making process should not undermine the spirit of the Constitution: Law-making bodies must pay strict attention to articles 84, 85 and 86 of the Constitution while legislating concerning investigation, prosecution and adjudication of offences. Therefore, the above listed laws must be amended appropriately to eliminate provisions that affect the norms and standards of a free and fair criminal justice system. As envisaged by the Constitution, courts of law must be empowered to have jurisdiction over all kinds of crimes as a fundamental rule.

Promulgation of criminal procedure and penal codes: "The need for comprehensive and uniform codes of law relating to criminal procedures and the punishment system has been felt for a long time. Accordingly, His Majesty the King commissioned the drafting of such codes by the Law Commissions as early as 2029. The Commissions promptly and successfully accomplished the assignment. However, the promulgation of the said codes has not yet taken place. In the absence of such uniform codes, the systems of criminal procedure and sentencing have given rise to desperate proceedings and indiscriminate sentencing. Criminal procedures are lengthy, cumbersome and contradictory to the

[49] See, for details, *Analysis and Reform of the Criminal Justice System in Nepal*, pp. 158-165.

constitutional spirit of free and fair criminal trial. No kind of clear sentencing policy exists in Nepal. Practices such as the classification of offenders while awarding sentences are as yet unknown in Nepal. It is clear that Nepal lacks a comprehensive and uniform criminal justice system. Hence, it was strongly recommended that HMG promulgate the said codes, and consider action on the following points:

- Provision for separate sentences for professional and unprofessional offenders.
- Provision for the classification of offenders on the ground of past characteristics, age, prior records of crime, family history, and personal, social and economical factors.
- Provision for probation, parole and suspended sentence.
- Provision for a juvenile justice system along with a correctional system.
- Provision for a rational and accessible bail system.
- Provision for the realization of speedy trials, hence through the process of continuous hearing, with complete safeguard of the rights of suspects to be defended by lawyers from the moment of arrest.
- Provision for separate hearings for conviction and sentencing proceedings.

Enactment of law providing compensation to victims: No law for compensating or rehabilitating the victims of offences exists in Nepal. Victims are simply forgotten by the State after someone has been charged with the offence committed against them. Subsequently, victims or their families often undergo severe pain, torture and other losses because of the offences perpetrated against them. Under the present social set up, often the whole family faces economic destitution. A free and fair criminal justice system cannot be achieved that allows such a situation to prevail without intervention. Hence, an adequate new law must be enacted to address this problem. The new law must incorporate the following schemes:

- Remedies for the victims of offences. The state should be responsible for compensating or rehabilitating victims.
- Initial compensation and rehabilitation of the victims of crime at the cost of the state. Upon conviction of the offenders, the State could recover the cost of compensation from the offender through imposing a penal fine.
- The concept of victimology as part of the legal system.

Enactment of the Probation Act: The concepts of probation and parole are unknown in Nepal. In the absence of probation and parole systems, first and petty offenders and minors are treated in the same way as hardened criminals while carrying out their sentence. The Prison Act provides for exoneration of sentences on the grounds of offenders' good behavior, yet the said provision is applicable irrespective of past records. The correction of offenders is a forgotten point of the criminal justice system in Nepal. To fill this gap, the enactment of a probation law was strongly recommended. The Act must pay attention to the following points:

- Establishment of a Probation Department under the Ministry of Law and Justice.
- Specific grounds and criteria for the grant of probation.
- Power and responsibilities to be given to probation officers.
- Penal consequences for non-compliance with probation conditions.
- Special procedures for the grant of probation.

Section 29 of the State Cases Act, 2049: Section 29 of the State Cases Act, 2049, empowers HMG to withdraw criminal cases, without satisfying any meaningful reasons or grounds. Political parties have exploited this provision unscrupulously, in order to protect the cadres involved in criminal activities. In the last few years, the Nepali Congress and CPN (UML) have indiscriminately withdrawn more than 200 criminal cases without giving any objective reasons or grounds. This practice has affected the credibility of the entire criminal justice system and has the potential of impinging upon judicial independence. Moreover, the practice has contributed to the criminalization of politics. Hence, it was recommended that section 29 of the Act be amended with the following aims:

- The withdrawal of cases should be permitted only on the decision of the concerned District Court, on the grounds of gross mistakes in prosecution. The victim of the case at issue must be given the right to appeal a decision of withdrawal.
- A thorough hearing must precede the decision of the court.
- The permission to withdraw the case must be expressly supported by objective grounds.

Section 17(3) of the State Cases Act, 2049: The earlier State Cases Act, 2017, contained a provision enabling the court to make an order for reinvestigation of a crime, provided that there were reasonable grounds for believing that the investigation of that crime had not been adequate or proper. The Act provided for a monitoring mechanism for the investigation process. However, the State Cases Act, 2049, removed this power in light of its inconsistency with the principle of the adversarial system of justice. The Act also did away with the system of joint investigation by the Police and Government Attorneys. Thus, under the current Act, investigation has been made an exclusive responsibility of the Police. Section 17(3) of the Act empowers Government Attorneys to require investigators to procure additional evidences while considering the merits of the case for prosecution. However, this new power does not amount to a monitoring mechanism. Apparently, the investigation process is neither controlled nor monitored by prosecutors. A power without a monitoring mechanism is vulnerable to abuse and could lead to corruption. Hence, an appropriate amendment to section 17(3) was felt desirable to enable the prosecutor to maintain control over the investigation process. The amendment would also be essential to protecting innocent persons from being wrongly investigated.

Amendment in the Compensation Act: The Compensation Act, 2053, provides for compensation for torture committed by a government officer. According to this Act, such compensation is payable to the victim out of the state treasury. The Act also gives District Courts the power to pass an order for departmental actions against the perpetrator. However, the problem of torture during detention has been found to persist unabated. The main reason for the prevalence of torture is that the Act does not make the perpetrator accountable for his/her actions. Hence, to strengthen the scope of Act, the following amendments to the Act were suggested:

- The government must pay compensation to the victim of torture, but it must levy the same amount from the perpetrator by way of a fine.
- The nature of the departmental actions must be defined in the Compensation Act itself, and the District Court, instead of making a general order of action, must pass a definite departmental action to be taken against the perpetrator.
- The court itself must pay out the compensation awarded by it. For this purpose, the court must require the government to put a certain amount of money at its disposal, in the form of a deposit.

Clause 118 of Section on Court Management: Clause 118 of the Section on Court Management of the *New Muluki Ain* is the only substantive or procedural law relating to bail. The clause is so vague and imprecise that the grant or denial of bail often depends on the personal whim of the presiding judge. In practice, as a general rule, bail is granted to the accused person provided that he/she furnishes a monetary value bond. As bail is determined by economic conditions, an accused of limited financial means cannot benefit from this clause. This represents an obstruction to the fairness and impartiality of justice. Hence, to safeguard the impartiality of justice, prompt and immediate amendment of clause 118 was recommended. In this respect, the following schemes were suggested:

- Those who are not liable to be taken into judicial custody as per clause 118(3) should be released on the condition of appearing regularly at court on a given date. No kind of monetary security for bail should be required from an accused not liable to be taken into judicial custody.
- If the court needs to be assured of the accused person's attendance at court, a personal bond from a guardian can be asked for.
- The privilege of bail should not be made impossible to entertain because of economic factors.

Judicial Administration Act, 2048: No provision under the current criminal legislation exists concerning the withdrawal of a criminal conviction, save by clemency of punishment granted by His Majesty the King. This is so even in circumstances where it is proved that conviction was secured through a false or wrong prosecution. Clemency can restore the freedom of a falsely prosecuted and convicted person, but cannot remove the stigma attached to them by the crime. Conviction of a crime under the Nepalese law has several legal repercussions for the convicted person, for instance, he/she would thereafter be disqualified from holding public office. An appropriate amendment to the Judicial Administration Act, 2048, was therefore recommended. This should have the effect of empowering the Supreme Court to entertain petitions to reopen cases, provided that the prima facie grounds of false prosecution or charge exist.

Administrative and Structural Improvements in the Criminal Justice System

The Constitution of Kingdom of Nepal, 2047, provides a primary basis for the criminal justice system in Nepal. As such, all powers relating to criminal justice originate from constitutional provisions. Any act or conduct of the State inconsistent with the Constitution is therefore invalid. The Constitution envisages a criminal justice system that conforms to international human rights law and universally recognized principles of justice. Article 84 of the Constitution expressly obliges the State to deliver justice in accordance with recognized principles of justice, and thus the State is compelled to provide access to proceedings in conformity with those principles. The State's commitment to the criminal justice system is absolute, and thus no institution of the state can go against the said principles. Furthermore, article 14 has recognized

certain rights of the individual in relation to criminal justice as inherently inviolable. Such rights include the safeguard against self-incrimination, torture, cruel and inhuman treatment, and detention (save on the orders of a competent judicial authority) without being properly informed of the grounds. These rights are seen as basic individual rights. Thus, no institutions of the state machinery can undermine their inviolability.

However, as presented by the study, the protection and preservation of the fundamental rights of the detainees by state institutions is inadequate. The investigation system was found to be far from meeting the standards acceptable to the constitutional scheme and international human rights law. The approach to investigation was more concerned with forging or making evidence, rather than discovering it. Investigators were insensitive to the rights of detainees. The principle of presumption of innocence until judicial conviction is made was totally forgotten in investigation processes. Although the prosecution has the primary responsibility to protect innocent persons from false incrimination, the role of Government Attorneys was found to be limited to transferring the case from the Police to the court. Random prosecution was therefore phenomenal. Courts of Law have constitutional responsibility to protect individuals from the excess exercise of state power. However, the courts, like investigators and prosecutors, were found to be marred by insensitivity to the rights of detainees. The insensitivity and inaction of the institutions responsible in carrying out the administration of free and fair criminal justice has thus been a substantial problem for the Nepalese criminal justice system. Education of the actors of the criminal justice system on their respective obligations was therefore recommended as a primary agenda of a program to improve the condition of the criminal justice system. To achieve the goal, the following administrative and structural improvements were suggested.

No detention before interrogation: The study found that suspects are placed into detention immediately after arrest. No primary inquiry was made by a competent Police officer before the suspect was locked up. Pursuant to the State Cases Act, 2049, interrogation is to be made in the presence of the concerned Government Attorney, yet this provision was not complied with in practice. The handcuffing of the suspect took place from the moment of arrest, irrespective of the gravity of the crime, the level of the security risk, or the age, physical condition, status or past record of the suspect. The treatment received by the suspect at such moments is degrading and humiliating. The long-standing feudal practice of humiliation therefore persists without any improvement. Feudalistic policing outweighs the importance of the fundamental rights of the suspects. Hence, it was recommended that an administrative mechanism be designed to protect suspects from being incarcerated before interrogation takes place.

Maintenance of a registry book for record of arrest: Police officers are under no obligation to maintain a register of the records of arrest. The lack of such a register means that fabrication of the actual date of arrest and period of detention is a frequent occurrence. Provision for a separate register for details of arrest was recommended, to discourage the fabrication of documents concerning the date of arrest and period of detention. Such a register should list the name and address of the suspect, the date, the time and the place of the arrest and the reasons for the arrest. There must also be a system for the attestation of the register by the prosecutor. The registry book must be witnessed and signed by the suspect and his/her legal counsel. A written notice of the time and date of arrest should also be given to the family of the suspect at the moment of arrest.

Women's accessibility to justice has also been identified as a serious problem of the criminal justice system in Nepal. The following findings uncovered by CeLRRd's study "Condemned to Exploitation: Impact of Corruption in Criminal Justice System on Women" can give some insights into the situation:

- Reporting of crimes after three days was common in over 72 percent of incidents. This indicates that criminal proceedings may be vulnerable to inaccuracies, especially in relation to the crime of rape. After three days, a medical examination becomes meaningless. A survey of 71 victims of crimes revealed the following information:[50]
  - 54 percent of the 71 respondents reported that Police had mentally harassed them during their investigation.
  - 37 percent of respondents reported that the Police did not promptly register the first information report regarding their case after an allegation of crime had been made.
  - 21 percent of respondents reported that Police did not arrest the alleged offenders.
- Reporting of sexual crimes to the Police is culturally and socially embarrassing for victims. It has become natural for victims of harassment to abstain from seeking criminal proceedings. This obstructs prompt investigation by the Police and destroys the opportunity of justice in the courts. The findings of the study conducted by CeLRRd plainly indicate the lack of access to fair justice for women.[51]
- In offences like rape and trafficking, victims can identify the offenders with full precision. With rare exception, the victims can recognize offenders and provide accurate information of the facts associated with the incident. The victims, as the most direct and knowledgeable witnesses to the crime, also provide the most concrete evidence for

[50] CeLRRd, 2000, *Condemned to Exploitation: Impact of Corruption in Criminal Justice System on Women*, CeLRRd, Kathmandu, p. 23.

[51] Ibid. pp. 40-41.

the conviction of the offender. However, despite this advantage for the prosecution, it is interesting that over 41 percent of trafficking and rape cases studied ended in failure to prosecute offenders.

- The prosecution depended on partial evidence in 59 percent of cases and this led to a complete failure to prosecute in 41 percent of cases, despite the fact that victims can provide precise identification of the alleged offenders in one hundred percent of cases. Such failure to prosecute properly is largely caused by the involvement of concerned authorities in corrupt practices that often favor the offenders.
- 21 percent of the victim respondents reported the release of suspects before the completion of investigations. In most of these cases, victim participation in the investigation had been effectively ignored.
- 57 percent of victims stated that Police were reluctant to initiate an investigation as soon as the FIRs had been lodged.
- 21 percent of victim respondents alleged that Police did not arrest the suspects who were allegedly involved in committing the offence.
- The Government Attorneys declined to exercise their legally warranted power to require an additional investigation in 96 percent of the cases.
- 54 percent of victims reported harassment during the investigation process.
- In 59 percent of the cases, the respondents failed to appear in court to testify, due to a failure of the Government Attorneys to inform them of the adjudication process. Thus, a failure to prosecute in 41 percent of cases is of little surprise.
- 83 percent of the victims received threats on their life and suffered physical assault if they chose to appear in court. However, the prosecutors remained indifferent to such threats. The complaints made by victims regarding such threats were not pursued.
- 19 percent of victims reported rude behavior by the court clerks.
- 56 percent of the respondents reported a long and humiliating cross-examination by defense lawyers and a lack of efforts on the part of judges and Government Attorneys to object to such harassment.

There is no denying the fact that women in Nepal are treated as second-class citizens. The Defective Value System is responsible for burdening women with low self-esteem.

The negative impact of corruption that has pervaded other spheres of society has also influenced the criminal justice system in Nepal. This has a direct bearing on the eventual verdict in offences related to women. The plight of the victims is accentuated by the overwhelming presence in the proceedings of males who are insensitive to the sufferings of women.

The above research made an attempt to investigate the accessibility of women to the justice system. Based on its findings, the research has drawn up the following recommendations:

- The mechanism to carry out inspection of works of the Police and Government Attorneys should be strengthened.
- There must be an expressed political commitment to eliminate corruption in the justice system through the adoption of separate adequate legislation.
- The Parliament must enact the law regarding violence against women as soon as possible.
- Amendment of existing court procedures by the implementation of a uniform code of procedures and conduction of gender sensitization orientations for investigators and prosecutors is an urgent need.
- Training for lawyers and judges must be made necessary.
- A scheme for the protection of witnesses must be introduced immediately. The private detective system should be introduced along with it.
- Efforts must be made to expand women Police cells for investigation of trafficking and rape cases.
- Scientific and technological improvement of the investigation system is urgently needed.
- A system for appropriate criminal record maintenance must be launched immediately.

Quantitative Analysis of the Caseload

Introduction

This chapter examines the caseload of the judiciary in Nepal. The analysis is based on statistics covering a 10 year period beginning from F/Y 2047/2048. Subject to the statistics available in the annual report of the Supreme Court, this chapter attempts to give:

a. National figures for cases filed.

b. Figures for cases that have been disposed of and are pending.

c. A breakdown of civil and criminal cases.

d. The total number of judges involved in the delivery of justice.

This chapter has also made an attempt to examine the caseload of different levels of the judiciary, viz. the Supreme Court, the Appellate Courts and the District Courts. Hence, this chapter will provide a sense of the relative burden the criminal justice system places upon different levels of the judiciary. It will also show trends in caseloads, which suggest how well the courts are coping with the influx of cases and filing requirements.

Furthermore, the chapter analyzes the human resources available for dealing with cases. It will show the ratio of judges to caseload. This chapter will therefore provide a basis for measuring how well resources meet demand at national level.

Quantitative Situation of Caseload and the Trends over 10 Years

Current National Figures of Caseload: Fiscal Year 2056/57

Table 1: Nationwide Caseload by Types of Case and Levels of Courts

Item	Total National Figure	Supreme Court	Appellate Courts	District Courts
Total Figure	1,56,705	30,488[52]	41,240[53]	84,977[54]
Criminal Cases	44,202	3,166[55]	10,431[56]	30,605[57]
Civil Cases	1,12,503	27,322	30,809[58]	54,372[59]

The system for reporting the judiciary's caseload and its performance is not scientific and systematic. In general, the annual report of the Supreme Court is comprised of information about the total caseload, distribution of cases by type, the number of cases disposed of at different levels of judiciary, the expenditure of the courts and the human resources mobilized. However, the figures are largely inaccurate, mismatched and unsystematically organized. There are some blunders, for instance, in the summary of the annual report of F/Y 2054/55 the figures of the total cases, total civil and criminal cases and percentage of civil and criminal cases disposed of were copied from the report of the previous fiscal year. Obviously, the figures given in the summary report do not match with the figures in various annexes. These figures therefore simply mislead everyone. The variations of figures in the same report, and between the reports of various fiscal years, create difficulties in locating true information, and cause great confusion. For instance, the Supreme Court's annual report of F/Y 2056/57 states the total caseload of the year was 23,007 cases.[60] However, the aggregated figure of the cases given in annexes 2, 3, 4, 5, 6, 7, 8, 9,10,11, 12, 13 and 14, is 30,488. Based on the details found in those annexes, the former figure seems to be erroneous. The figures in some reports do not match simply because there are numerical mistakes in aggregations.

The problem of variations in figures is found at all levels of courts. For instance, at page 45 of the Supreme Court's Annual Report, F/Y 2056/57, 30,614 cases are cited as the total number of civil and criminal cases heard by all Appellate Courts. However, the aggregated figure of cases given in annexes 21, 22 and 23 is 41,240. The Report prepared by the Court Improvement Recommendation Committee, 2058, states a total of 30,407 cases were heard by the Supreme Court

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52 This is the aggregated figure of the Supreme Court Cases. See, Supreme Court Annual Report (SCAR), Fiscal Year (F/Y), 2056/57, Annexes No. 12, 13 and 14.

53 This is the aggregated figure of Appellate Court cases. See, Ibid.

54 See, Ibid., p. 69.

55 See, Ibid., Annex V.

56 This is the aggregated figure of criminal cases of 16 Appellate Courts, See, Ibid. at pp. 38-45.

57 See, Ibid., at summary.

58 This is the aggregated figure of civil cases from 16 Appellate Courts. See Ibid., Annexes 21, 22 and 23.

59 This is the aggregated figure of civil cases from the District Courts. See, Ibid.

60 Ibid., Introductory Note *(Pradtibaden yek Jhalak)* (Summary of SCAR, F/Y 2056/57).

in F/Y 2056/57, whereas the Supreme Court's Annual Report of the same fiscal year gives the figure as 30,488 cases. These mistakes have been corrected in our study following various cross checks. The total caseload was checked with the figures of various types of cases, the figures of disposed and backlog cases and the caseload of the courts of different levels. Any mismatches or discrepancies uncovered have been reported in the footnotes.

The trends of the nationwide caseload of the judiciary show that a large number of cases originating at the District level find access to the Supreme Court. The number of civil cases heard by the Supreme Court is far greater than the number of criminal cases. It is plain from the statistics that, compared to the civil justice system, the criminal justice system places only a very modest burden upon the Supreme Court. These figures confirm the plain reality of the absence of an effective filtering device for civil cases at District, Appellate and Supreme Court levels. The lack of a workable filtering device is the main reason for the huge caseload of the judiciary; a backlog that causes multiple shortcomings in the provision of justice. Delay in the justice system can lead to its failure. This can be compared to the metabolic system of the human body. In the body, food consumed beyond the capacity of digestion is converted into poison, leading to the death of the body itself. According to the statistics in the tables here, the judiciary is suffering from an excess intake of cases. With the current parlous provision of financial and human resources, the huge size of the caseload is bound to cause deficiencies in the digestion system of the judiciary. Thus there is huge potential for miscarriages of justice to occur.

Scenario of the Caseload at Different Levels of Courts

Table 2 presents the following trends of the caseload.

Total National	Total %	**Supreme Court**	Total %	**Appellate Courts**	Total %	**District Courts**	Total %
1,56,705	100%	30,488[61]	19%	41,240[62]	26%	84,977[63]	54%
44,202 (Criminal)	28%	3,166[64]	10%	10,431[65]	25%	30,605[66]	36%
1,12,503 (Civil)	72%	27,322[67]	90%	30,809[68]	75%	54,372[69]	64%

1. As presented by Table 1 and 2, the number of civil cases occurring in all levels of courts in F/Y 2056/57 was higher than that of criminal cases.
2. As obvious from Table 2, the right to appeal against the judgement of the District Court in criminal cases has been invoked in only 34.08% (10,431 out of 30,605) cases. To put it another way, only 34.08% of the cases at District Court level moved up to the Appellate level. This shows a positive trend of case filtering, which can lead to more effective funneling of the caseload. However, in the perspective of the huge ignorance of the right to fair criminal justice in society, it is very hard to say whether the right to appeal against District Court judgements is knowingly or deliberately not invoked. This may lead to violations of human rights.
3. Similarly, only a small percentage of criminal cases in which an appeal was made against the judgment of an Appellate Court reached the Supreme Court.
4. As obvious from Table 2, a large number of civil cases found access to Appellate Courts and eventually to the Supreme Court. Hence, the table shows almost a complete lack of devices to filter civil cases, which has prevented the effective funneling of cases through the superior courts.

Table 3 gives a comparative glimpse of the figures for civil and criminal national caseload since 2047. The table presents the following trends.

Table 3: Caseload by Type and Year

F/Y	**National Figure of Cases[70]**	**Civil**	**%**	**Criminal**	**%**
2047/48	86,934[71]	53,152	61.14%	33,782	38.86%

[61] See, Ibid., Annexes 12, 13 and 14.
[62] See, Ibid., Annexes 21, 22 and 23. The aggregated figure of Annexes 21, 22 and 23 is the total national figure of the caseload at Appellate level.
[63] See, Ibid., Annex 32.
[64] See, Ibid., Annex 5.
[65] See, Ibid., pp. 37-45.
[66] See, Ibid., Annex 32.
[67] See, Ibid., Annex 32.
[68] See, Ibid., Annexes 21, 22 and 23.
[69] See, Ibid., Annex 32.
[70] See, SCARs from F/Y 2047/48 to F/Y 2056/57.
[71] The figure does not include the cases heard or tried by Zonal Courts.

2048/49	1,55,052	1,08,177	69.77%	46,875	30.23%
2049/50	1,63,815	1,16,118	70.88%	47,697	29.12%
2050/51	1,63,168	1,20,860	74.07%	42,308	25.93%
2051/52	1,64,569[72]	1,17,674	71.50%	46,895[73]	28.50%
2052/53	1,79,737[74]	1,32,561	73.75%	47,176[75]	26.25%
2053/54	1,72,932[76]	1,24,502	71.99%	48,430[77]	28.01%
2054/55[78]	1,91,407	1,43,670	75.07%	47,737[79]	24.94%
2055/56	1,60,222	1,17,224	73.16%	42,998[80]	26.84%
2056/57	1,56,705	1,12,503	71.79%	44,202	28.21%

1. The proportion of civil cases has sharply increased in F/Y 2047/48, 2048/49, 2049/50 and 2050/51. Following F/Y 2051/52, the civil caseload fluctuates. The reason for this is not clear. However, a review of the Supreme Court Annual Reports of those years reveals a considerable increment in the number of writ petitions filed in the Supreme Court and Appellate Courts pursuant to the provisions of Article 88(1) and 88(2) of the new Constitution. Although not very obvious, this could be one of the explanations for the increment in the civil caseload. The augmentation of writ petitions is plain from the following figures.

Table 4: Number of Writ Petitions in the Supreme Court by Year after 2047

F/Y	**Full Bench/Special Bench**	**Divisional Bench**	**Total**	**Increment Percentage**
2047/48	172	1,748	1,920[81]	-
2048/49	62	2,652	2,714[82]	71%
2049/50	45	3,549	3,594[83]	76%
2050/51	678[84]	3,715[85]	4,393[86]	82%2.

One of the reasons for the sharp increase in the number of writ petitions filed might be due to the changed conditions in the political system after 2047. The new Constitution established the judiciary as the most powerful organ in the Kingdom. Since then, the Supreme Court has been awarded jurisdiction for judicial review of legislation. The sharp rise in petitions heard by the Special Bench in F/Y 2050/51 is indicative of the situation. In this year, over 95% of the writ petitions were filed as per article 88(1) of the Constitution, for the test of constitutionality of laws and regulations.[87] Under the changed political conditions, a large number of people resorted to the Supreme Court in many public interest litigations. The failure of political parties to respect the Constitution also encouraged people to resort to the court to force the government to act properly. For many people, the Supreme Court's extraordinary jurisdiction proved to be an important instrument to resolve problems covering such issues as women's property rights, citizenship, protection of civil employees and protection of the environment. This trend shows the increased awareness of the people towards their fundamental rights. It may also be taken as evidence of the general public's increased confidence in the judiciary, in

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72 See, SCAR, F/Y 2051/52 at pp. 15, 45, 65, Annexes 13, 14, 24.

73 See, SCAR, F/Y 2051/52 at p. 65, Annexes 5 and 22.

74 See, SCAR, F/Y 2052/53 at pp. 14, 39, 66, Annexes 13, 14, 24.

75 See, SCAR, F/Y 2052/53 at p. 66, Annexes 5 and 22.

76 See, SCAR, F/Y 2053/54 at pp. 13, 38, 64, Annexes 13, 14 and 24.

77 See, SCAR, F/Y 2053/54 at pp. 13, 38, 64 Annexes 5 and 22.

78 The report of F/Y 2054/55 has been copied from the report of F/Y 2053/54, ref. SCAR, F/Y 2053/54 at p. 64 and 66. This is a fatal mistake as it distorts the total figure of the caseload of F/Y 2054/55.

79 See, SCAR, F/Y 2054/55 at pp. 13, 38, 66, Annexes 5, 24, 13, 14, and 15.

80 See, SCAR, F/Y 2055/56 at pp. 35 to 62, Annexes 12, 13, 14 and 23 and also the summary of the report.

81 See, SCAR, F/Y 2047/48. pp. 23-26.

82 See, SCAR, F/Y 2048/49, pp. 8-13.

83 See, SCAR, F/Y 2049/50, pp. 8-13.

84 See, SCAR, F/Y 2050/51, Annexes 3, 5 and 9.

85 See, Ibid., Annex 7.

86 See, Ibid., Annexes 4, 5, 7 and 9.

87 Article 88(1) empowers the Supreme Court to exercise extraordinary jurisdiction for judicial review of legislation that is inconsistent with the Constitution.

contrast to other branches of the State. However, it is important to note that the trend of an increased number of writ petitions filed has come down after 2051.

2. Interestingly enough, the criminal caseload has remained generally stable since F/Y 2047/48. The reason for this is not obvious, however, the trend itself can be taken as positive development, because it shows filtering processes are somehow in operation, and thus there is potential to develop an effective funneling mechanism. However, the criteria applied in such filtering are not obvious or easily detectable. The Police records of cases pending and filtered out are not systematic enough to allow the identification of criteria employed in the process. The determination of these factors requires a separate study.

3. Current practices of the trial system do not adequately safeguard the human rights of persons subjected to criminal proceedings. The following factors might have played a crucial role in the decrease in appeals to the superior courts against the judgments of lower courts:

- In criminal cases, the appeal is subject to the application of the provisions of clause 41 of the Section on Punishment of the *New Muluki Ain*. Although the consistency of the provision with international standards of justice is questionable, it has helped to reduce the burden of the caseload on the superior courts. As such, it can lead to effective filtering of criminal cases.

- The trial process is not speedy.[88] A number of accused persons spend time in judicial custody that amounts to more than the law itself prescribes on conviction. In such situations, a number of those who are facing trial prefer to avoid appealing against the trial judgment.

- Prisoners are not necessarily imprisoned in a jail in the same district where the Appellate Court hearing the appeal is located. Moreover, they may not be put into jail in the same district where the trial of their cases is being conducted. In a number of cases, the judgment is not timely, and it is not easy for accused persons to prepare appeals and follow the judicial process. In such situations, a number of prisoners do not seek appeal at all. However, the situation regarding civil cases is different. The parties to a civil case are in regular contact with the courts, and as such are privileged with the prompt receipt of information regarding their case and its judgment. It they want to appeal, this information helps them to proceed to appeal immediately. This may be one reason for the higher number of civil cases that have been appealed.

- Pursuant to the provisions of Rule 29 of the Prison Regulations, 2020, prisoners have the privilege to obtain pardon, amnesty or remission of their sentences from HMG. The jailer makes recommendations for pardon, amnesty or remission on the grounds of good character. However, there is a practice of refusing to forward recommendations for pardon, amnesty or remission of sentence in the case of prisoners who have appealed against the judgment of the lower court. A number of prisoners therefore do not attempt an appeal, to increase their possibility of being recommended for the above privileges.

  The meetings organized at various places for dissemination of the research findings and collection of suggestions from their discussion pointed out that the following additional reasons might have played a role in the filtering of criminal cases:

  - The State Cases Act, 2049 repealed the State Cases Act, 2019, and entitled the Attorney General's Office to take final decisions on matters of prosecution. The previous Act had provided for compulsory prosecution of cases registered at the Police Office. With the end of this practice, the system of filtering was initiated. Thus, the present State Cases Act formally introduced the filtering device at the stage of investigation.
  - A large number of cases are filtered through the failure of prosecution to sustain the grounds of charge. In many cases, the prosecution fails to produce the co-accused or eyewitnesses, and other important evidence like that of expert witnesses fails because of an inability to discharge the burden of proof.
  - In crimes like rape and trafficking, victims are found often to become hostile, which eventually leads to the failure of prosecution. This circumstance is caused by a lack of protection for victims. Offenders often threaten the lives of victims and financial deals are done to tamper with the evidence. These circumstances lead to the failure of the prosecution. Hence, the judicial process of the court itself is also responsible for the failure of the prosecution.

4. Although the criminal caseload has remained stable, the total figure for the civil caseload has consistently increased each year. For instance, the total national figure of civil cases in F/Y 2047/48 (86,934) increased by 77.56% in F/Y 2056/57. This increment is just incredible when it is considered that the provision of financial and human resources have remained unchanged. This incremental trend shows the huge caseload upon judges, with the backlog increasing every year. An increment in case volume without necessary expenditure and provision of human resources may

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[88] Research carried out by CeLRRd found only 17% of cases studied had been disposed of within three months. See, *Analysis and Reform of the Criminal Justice System in Nepal*, CeLRRd, 1999, p. 115.

degrade the quality of justice and reduce confidence in the judiciary. The judiciary could thus find themselves in the firing line, facing criticism uninformed by knowledge of the difficulties, constraints and inconveniences they face.

National Caseload by Number of Judges by Year

The Constitution of the Kingdom of Nepal was promulgated in 2047[89]. The new Constitution effected change in the structure of the judiciary. Under the repealed Constitution, the judiciary was framed in a four tier system viz. District Courts as courts of first instance, 14 Zonal Courts and 5 Regional Courts as the first and second appeal courts, and the Supreme Court as the final appeal court. The new Constitution eliminated the Zonal and Regional Courts, and established the level of Appellate Court. Nine Appellate Courts were formed at that time, which has increased to a total of 16 Appellate Courts today. The civil and criminal cases under Zonal and Regional Courts were shifted to the Appellate Courts of the concerned territorial jurisdictions. Similarly, a large number of judges were amalgamated in these bodies. Some of the judges who were not accommodated in the judiciary as judges, were reinstated as civil employees under the executive branch.

It is interesting to note that after the restructuring of the judiciary, the placement/posting of judges did not correspond to the caseload and per judge distribution of cases. For no apparent reason, a considerable number of judges were removed from the courts to take up other responsibilities. Table 5 shows that the given caseload would have justified a number of additional judges in order to achieve efficient, fair and speedy justice.

The number of judges and human resource support of courts should be necessarily related to the caseload of courts. The efficient and timely disposal of cases is dependent on adequate human resources. Table 5 demonstrates the year wise proportion of human resources compared to the caseload.

Table 5: Caseload per Judge by Year

F/Y	Total Caseload	Total Judges	Per Judge Caseload
2047/48	86,934[90]	182	1:477.65
2048/49	1,55,052	179	1:866.21
2049/50	1,63,815	197	1:831.54
2050/51	1,63,168	198[91]	1:824.08
2051/52	1,64,569	190[92]	1:866.15
2052/53	1,79,737	216[93]	1:832.11
2053/54	1,72,932	216[94]	1:800.61
2054/55	1,91,407	236[95]	1:811.04
2055/56	1,60,222	239[96]	1:670.38
2056/57	1,56,705	237[97]	1:661.20

As seen from the table, the caseload became extremely heavy following F/Y 2047/48. One of the major reasons for such a huge augmentation of the caseload in F/Y 2048/49 was the carry over of cases from 14 Zonal Courts to the Appellate Courts that had been established under the new Constitution. Although there have been fluctuations in the increment of cases in the last two fiscal years, in general, the total figure of the caseload has increased tremendously since 2047. The total national figure of the caseload demonstrates this rising trend. The trend shows that the judiciary at different levels lacks a device to filter civil cases in the intake process, i.e. at the registration stage. The number of judges has not been

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89 Kartik 23, 2047 BS

90 After promulgation of the Constitution of the Kingdom of Nepal, 2047, the judiciary was restructured. The Zonal Courts, the first appeal court, and the Regional Courts, the second appeal court, that had been established under the repealed constitution were eliminated, and a new appeal court was established. The caseloads of the Zonal and Regional Courts were shifted to the newly constituted Appellate Courts. These cases were enlisted in the record of various Appellate Courts in F/Y 2048/49. That is why the figure of the national caseload in F/Y 2047/48 is smaller than that of F/Y 2048/49. The per-judge caseload of F/Y 2047/48 excludes the cases being heard by the Zonal Court. Thus, naturally, the figure of the caseload for this year is smaller than that of following years.

91 See, SCAR, F/Y 2050/51, pp. 6-7.

92 See, SCAR, F/Y 2051/52, p. 14.

93 See, SCAR, F/Y 2052/53, p. 13.

94 See, SCAR, F/Y 2053/54, p. 12.

95 See, SCAR, F/Y 2054/55, p. 12.

96 See, SCAR, F/Y 2055/56, pp. 13, 34 and 61.

97 See, SCAR, F/Y 2056/57, p. 13.

increased in the same proportion as the rise in cases to enable the judiciary to address the increased caseload. Table 6 clearly presents the scenario.

Table 6 demonstrates an interesting scenario regarding the caseload, the human resources and the responsibility of work to be discharged. If the figure of 86,934 (F/Y 2047/48) is taken as the baseline caseload, the proportion of the increment in the subsequent years is simply incredible. The Appellate Courts thus endorsed thousands of cases that were earlier under the purview of 14 Zonal Courts. However, the human resource increment situation is grim. For instance, in F/Y 2051/52, the number of judges was reduced by 4%. Their caseload defies belief. The baseline burden of each judge in F/Y 2051/52 was 866.15 cases which was increased by 5.09% in the previous year. Under the present system of judicial proceedings, where a case is scheduled for trial or hearing in several inconsecutive sessions, no judge can be expected to take up the given burden of the caseload. No one should expect fair and impartial justice from a judge on whom such an incredible volume of work has been imposed. Under current practices, time for the argument of a case is not set aside, and judges are only given access to case details on the day of the hearing. Judges' burden of work, coupled with the conditions they face, must make it almost impossible to achieve adequate, fair and impartial justice. This leads us to conclude that the court can dispense judgement but not justice. No nation that believes in the values of justice and democracy can support a system that places such a volume of cases upon judges.

The table plainly shows that the increment in the number of judges over the last ten years is negligible, whereas the size of the caseload has increased enormously. For instance, the caseload of F/Y 2048/49 (1,55,052 cases) increased by 29.02% in F/Y 2054/55 (1,91,407 cases). The increase in the number of judges over the last ten years is therefore far below that necessary to address the existing caseload and the annual increment of the intake of cases. This situation can be clearly seen from the annual backlog of cases before different levels of courts.

Table 6: Increment in Caseload and Judges by Year

F/Y	Total Caseload	Increment Percentage	Total Judges	Increment Percentage	Per Judge Caseload	Increment Percentage
2047/48	86,934	-	182	-	1:477.65[98]	-
2048/49	1,55,052	78	179	1.6	1:866.21	81.34
2049/50	1,63,815	6	197	10	1:831.54	-4
2050/51	1,63,168	0	198	0.5	1:824.13	0.8
2051/52	1,64,569	1	190	-4	1:866.15	5.09
2052/53	1,79,737	9	216	14	1:832.11	-3.93
2053/54	1,72,932	-4	216	0	1:800.61	3.78
2054/55	1,91,407	10	236	9.2	1:811.04	1.30
2055/56	1,60,222	-16	239	1.2	1:670.38	-17.35
2056/57	1,56,705	-2	237	0.8	1:661.20	- 1.37

The scenario presented by Table 6 helps to identify certain trends. The following observations can be made:

- The increment in the caseload is huge compared to the number of judges available to address it.
- Although there have been fluctuations from year to year, the intake of cases at the District Courts is on the increase. The intake of civil cases is larger than criminal cases.
- The State lacks the sensitivity and reactivity to address the increasingly large volume of the caseload. It means that the state is not conscious of its obligation to guarantee fair, impartial and speedy justice.
- It is almost impossible for a judge to dispose of 866 cases a year with efficiency and fairness. To compare the proportion of the recruitment of judges with the given proportion of the growth in the caseload each year, it is quite plain that the judiciary is under high stress, which obviously thwarts their efficiency in delivering quality justice.
- Due to the consistent growth in the size of the caseload from the early 1990s, one can conclude that no mechanism or device exists for filtering cases at their point of origin. The large volume of the backlog each year leads to a huge caseload. This causes stress on the judiciary, which must affect the efficiency of courts. The fairness and impartiality

[98] The caseload under Zonal Courts is not included in this figure. In F/Y 2048/49, the Appellate Courts endorsed cases from various Zonal Courts. Hence, the caseload per judge in F/Y 2047/48 excludes the caseload taken up from Zonal Courts. Otherwise the figure would increase to almost that of F/Y 2048/49. Hence, the increment of caseload per judge has only been shown for the years following F/Y 2048/49.

of justice, its two most vital qualities, are therefore in serious jeopardy. The growth in caseload owing to the huge backlog of cases each year can not only delay the delivery of justice, but can also seriously malign the possibility of fair trial.

- On the whole, the scenario presented by the statistics above compels us to conclude that the State lacks interest in investment for the improvement of the justice system. It is obvious from these statistics that the State still holds the attitude that the judicial system is a non-productive sector for investment.

Table 7 shows a comparison of the civil and criminal caseload per judge that further justifies the observations above. A criminal trial in Nepal takes place neither continuously nor consecutively. Thus, the trial of a single criminal case takes several sessions before the final hearing where a judgement is made of guilty or not guilty and sentence is passed. Repetitions in the trial process are encountered owing to inefficiencies of procedure. The work burden of a judge in each case is thus multiplied by several sessions of trial. Civil procedure in Nepal is also cumbersome. However, since there is a chance for conciliation in civil cases, this sector may develop a workable filtering device to help avoid lengthy court proceedings, and create more time in the courts to deal with criminal cases. Unfortunately, the pattern of the present caseload in the court of first instance compels us to conclude that the District Courts are either not interested or not used to using various filtering devices to reduce the volume of petty and unfounded cases, and alleviate stress created by the caseload. As is obvious from the statistics, courts of first instance are happier to engage in formal proceedings in each case and pass judgment. This trend essentially results in either of the following:

1. Judges leave a large volume of cases as backlog for the next year, or
2. They deliver a judgement, but not justice.

The stress to clear the backlog of cases has the potential to cause violations of the basis norms of justice. Table 7 further elucidates the statement.

Quantitative Performance of Judiciary and Trends over 10 Years

The statistical information and trends discussed above clearly demonstrate the distressed situation of the justice system in Nepal. The situation is far below the standards of justice set forth by the Constitution of the Kingdom of Nepal and international human rights instruments. By and large, the trends discussed above show that the State is not sensitive to addressing the problem of the huge caseload of the judicial system. The number of judges is too small to cope with the increased volume of the caseload. Most interestingly, the government has made no attempt to recognize the complex situation created by the incredible increment in the caseload after the restoration of democracy. These factors compel us to conclude that the judicial system is not a priority of the government for investment.

Table 7: Caseload per Judge by Types of Caseload and Year

F/Y	National Figure of Judges	National Figure of Cases	Civil Cases	Per Judge Civil Caseload	Criminal Cases	Per Judge Criminal Caseload
2047/48	182	86,934[99]	53,152	1:292.04	33,782	1:185.61
2048/49	179	1,55,052	1,08,177	1:604.34	46,875	1:261.87
2049/50	197	1,63,815	1,16,118	1:589.43	47,697	1:242.11
2050/51	198	1,63,168	1,20,860	1:610.40	42,308	1:213.68
2051/52	190	1,64,569	1,17,674	1:619.33	46,895	1:246.81
2052/53	216	1,79,737	1,32,561	1:613.70	47,176	1:218.40
2053/54	216	1,72,932	1,24,502	1:576.39	48,430	1:224.21
2054/55	236	1,91,407	1,43,670	1:608.77	47,737	1:202.27
2055/56	239	1,60,222	1,17,224	1:490.47	42,998	1:179.90
2056/57	237	1,56,705	1,12,503	1:474.70	44,202	1:186.51

In the following section, an attempt is made to examine the performance standards of the judiciary in quantitative terms.

Backlog Situation of the District Court

[99] The figure does not include cases from the Zonal Court.

Under the present constitution, District Courts are the courts of first instance in Nepal. As such, criminal and civil cases are supposed to originate in the District Courts of the concerned territorial jurisdictions. However, various statutes have conferred jurisdiction for cognizance of litigation on various administrative tribunals, for criminal offences in particular. For instance, the CDO possesses the power to adjudicate and deliver judgements in offences like public offence and the illegal possession of firearms. Similarly, the DFO tries offences relating to the invasion of forest and the killing of wildlife.

Appeals against the judgement of such tribunals generally go to Appellate Courts. This means that the figures of cases disposed of by the District Courts and the caseload of the Appellate Courts do not generally correspond. In this part of the study, the figures for appeals are exclusively taken from the District Courts, and as such, cases which were tried by administrative tribunals are excluded. The statistics in this part reflect the situation arising from trial in District Courts alone.

As per Table 8, the number of cases that are backlog outweighs that of cases that have been disposed of. Except in F/Y 2048/49 and 2056/57, the disposal rate of the District Courts on average is less than 50% of total cases.

This situation is extremely unusual. The total figure for 10 years' backlog outnumbers the total figure for ten years' new intake. This is definitely an unhealthy trend. It plainly indicates that over 50% of cases spend more than a year in District Courts. Hence, the delivery of fair, impartial and efficient justice is still a matter of question in the trial or first instance court.

Although there has been a fluctuation in the intake of new cases each year, the general trend is that there has no reduction in litigation. This indicates that there is presently no filtering device at the point of origin of cases.

Table 8: New Intake and Backlog Situation at District Court Level by Year

F/Y	Backlog (Cases Received from Previous Year)	Intake of New Cases	Total Cases	Total Disposal	%	Not Disposed (Backlog for Following Year)	%
2047/48	33,926	42,098	76,024[100]	28,938	38.06	47,086	61.94
2048/49	47,086	43,215	90,301[101]	45,263	50.12	45,038	49.88
2049/50	45,038	50,033	95,071[102]	45,158	47.50	49,913	52.50
2050/51	49,913	38,538	88,451[103]	41,661	47.10	46,790	52.90
2051/52	46,790	44,706	91,496	39,602	43.28	51,894	56.72
2052/53	51,894	43,995[104]	95,889[105]	43,973	45.86	51,916	54.14
2053/54	51,916[106]	43,619	95,535	45,014[107]	47.12	50,521	52.88
2054/55	50,521[108]	44,286	95,535	45,014[109]	47.12	50,521[110]	52.88
2055/56	50,521	33,014	83,535	38,937[111]	46.61	44,598	53.39
2056/57	44,598[112]	40,379	84,977	50,011[113]	58.85	34,966	41.15

The following data on criminal and civil caseloads will further help to analyze the trends.

Table 9: Caseload per Judge at District Court Level by Types of Caseload and Year

F/Y	Total Caseload	Division of Cases		Total Judges	Per Judge Caseload		
		Civil	Criminal		Total	Civil	Criminal

[100] See, SCAR, F/Y 2048/49, Annex 24.
[101] Ibid.
[102] Ibid.
[103] See, SCAR, F/Y 2050/51, p. 38.
[104] See, SCAR, F/Y 2052/53, p. 65.
[105] See, SCAR, F/Y 2052/53, p. 66.
[106] Ibid.
[107] See, SCAR, F/Y 2053/54, p. 64. The annual report of F/Y 2054/55, page 66, cites the total caseload of the District Court in F/Y 2053/54 as 95,889.
[108] See, Ibid., SCAR, F/Y 2053/54, p. 69.
[109] The figure is repeated from the report of F/Y 2053/54. See, SCAR, F/Y 2053/54, page 64 and F/Y 2054/55 at page 66.
[110] The total disposals from the total caseload of District Courts in F/Y 2054/55. See, SCAR, F/Y 2054/55 at p. 66.
[111] See, SCAR, F/Y 2056/57, p. 69.
[112] See, SCAR, F/Y 2055/56, p. 76.
[113] See, SCAR, F/Y 2055/56, p. 62.

2047/48	76,024	44,224	31,800[114]	98[115]	1:775.75	1:451.26	1:324.49
2048/49	90,301	55,239	35,062[116]	100[117]	1:903.01	1:552.24	1:350.97
2049/50	95,071	59,901	35,170[118]	96[119]	1:990.32	1:623.97	1:366.35
2050/51	88,451	57,792[120]	30,659	107[121]	1:826.64	1:540.11	1:286.53
2051/52	91,496	56,603	34,893	112[122]	1:816.93	1:505.38	1:311.54
2052/53	95,889[123]	62,175	33,714	90[124]	1:1,065.43	1:690.83	1:374.60
2053/54	95,535	59,340	36,195	120[125]	1:796.13	1:494.50	1:301.63
2054/55	95,535	59,340	36,195	120[126]	1:796.13	1:494.50	1:301.63
2055/56	83,535[127]	52,338	31,197	120[128]	1:696.13	1:436.15	1:259.98
2056/57	84,977[129]	54,372	30,605	120[130]	1:708.84	1:453.10	1:255.04

The caseload per judge is extremely high. As the District Courts are the courts of first instance, they have to follow a tedious sequence of trial procedures. Thus, there are several sessions in the trial of a case before its final hearing. Numerous procedural stages, coupled with a huge burden of cases, seem to create a great stress on judges at District Court level. This situation must necessarily impair the quality of justice delivered.

If we view the number of judges at trial courts, it has increased only by 22 persons (98 in 2047 and 120 in 2057) since F/Y 2047/48. The trial courts have therefore been extremely under-resourced for several years. Despite the knowledge that the workload of the trial judges is huge, there seems to have been no attempt to increase the number of judges to that adequate for the demand of work. In a situation where there is no filtering device to check the new intake of cases, the failure to look into the demand for additional judges essentially indicates the disinclination of the State to improve the condition of justice.

Thus, one of the major reasons for a large number of cases as annual backlog is the lack of an adequate number of judges in the District Courts. The huge volume of the civil caseload naturally obstructs the process of criminal trials. There is a high risk of the violation of human rights in criminal cases, as the accused might be deprived of personal liberty during the trial. The huge size of the caseload prevents the courts delivering speedy trials, and as such, the personal liberty of the accused that is waiting the trial might be seriously jeopardized. This situation compels us to infer that the State is not serious in protecting the personal liberty of persons subjected to criminal trial. The following statistics further justify the statement.

Table 10: Backlog of Civil and Criminal Cases at District Court Level

F/Y	**Total Caseload at District Level**	**Pending Cases (Backlog)**	**% of Backlog**	**Criminal Cases**		**Criminal Cases**	
				Backlog	**%**	**Backlog**	**%**

114 See, SCAR, F/Y 2048/49, Annex 27.
115 This is the aggregated figure of District Court judges, SCAR, F/Y 2047-48, Part 2, pp. 14-19
116 See, SCAR 2048/49, Annex 27.
117 This is the aggregated figure of District Court judges, Ibid., Part 1, pp. 50-59.
118 See, Ibid., Annex 27.
119 This is the aggregated figure of District Court judges. See, SCAR, F/Y 2049/50, Part 2, pp. 53-63
120 See, SCAR, F/Y 2050/51, Annex 26, p. 65.
121 This is the aggregated figure of District Court judges. See, Ibid., p. 6.
122 This is the aggregated figure of District Court judges. See, SCAR, F/Y 2051-52, p. 64
123 See, SCAR, F/Y 2052/53, p. 66.
124 This is the aggregated figure of District Court judges. See, Ibid., p. 65.
125 This is the aggregated figure of District Court judges. See, SCAR, F/Y 2053/54, p. 63.
126 This is the aggregated figure of District Court judges. See, SCAR, F/Y 2054/55, p. 65.
127 See, SCAR, F/Y 2055/56 at p. 62.
128 This is the aggregated figure of District Court judges. See, Ibid., p. 61.
129 See, SCAR, F/Y 2056/57, p. 70.
130 This is the aggregated figure of District Court judges. See, Ibid., p. 69.

2047/48	76,024[131]	47,086	61.94	19,961	42.39	27,125	57.61
2048/49	90,301[132]	45,038	49.88	15,499	34.41	29,542	65.59
2049/50	95,071	49,913	52.50	17,166[133]	34.39	32,747	65.61
2050/51	88,451	47,589	53.80	16,757	35.21	30,832	64.79
2051/52	91,496[134]	51,894	56.72	18,931	36.48	32,963	63.52
2052/53	95,889	51,916	54.14	15,484	29.83	36,432	70.17
2053/54	95,535[135]	50,521	52.88	17,908	35.45	32,613	64.55
2054/55	95,535[136]	50,521	52.88	17,968	35.57	32,613	64.55
2055/56	83,535[137]	44,598	53.39	16,144	36.20	28,454	63.80
2056/57	84,977[138]	34,966	41.15	11,081	31.69	23,885	68.31

Backlog and New Case Intake Situation of Appellate Courts

Under the present situation, the Appellate Court is the court of first appeal. According to the Judicial Administration Act, appeals of all cases decided by District Courts and tribunals go to the Appellate Court of the concerned territorial jurisdiction. Thus, each year thousands of appeals against the judgments of the lower courts and tribunals gain access to the Appellate Courts. Table 11 gives an insight into the last 10 years' intake and backlog situation, and the rates of disposal.

Table 11: Disposal and Backlog Situation at Appellate Court Level

F/Y	Backlog	Intake of New Cases	Total Cases	Total Disposal	Disposal %	Not Disposed
2047/48	441	3,314	3,755[139]	1,279	34.06	2,476
2048/49	2,476	46,617	49,093[140]	27,991[141]	57.02	21,102
2049/50	21,102	29,739	50,841	33,793[142]	66.47	17,048
2050/51	17,048	43,690	60,738	41,820	68.85	18,918
2051/52	18,918	33,807	52,725[143]	34,263	64.98	18,462
2052/53	18,462	40,347	61,768[144]	45,590	73.81	16,178
2053/54	16,178	36,874	53,052[145]	39,512	74.48	13,540
2054/55	13,540	55,626	69,166[146]	55,649	80.46	13,517
2055/56	13,517	35,114	48,631[147]	31,725	65.24	16,876

131 See, SCAR, F/Y 2047/48, pp. 38-46.
132 See, SCAR, F/Y 2048/49, pp. 60-64.
133 See, SCAR, F/Y 2049/50, pp. 84-92.
134 See, SCAR, F/Y 2051/52, p. 65.
135 The figure has been drawn from deducting the disposed cases from the total number of civil and criminal cases.
136 The figure has been drawn from deducting the disposed cases from the total number of civil and criminal cases. See, SCAR, F/Y 2054/55, p. 66.
137 The figure has been drawn from deducting the disposed cases from the total number of civil and criminal cases. See, SCAR, F/Y 2055/56, p. 66.
138 The figure has been drawn from deducting the disposed cases from the total number of civil and criminal cases. See, SCAR, F/Y 2056/57, p. 70.
139 See, SCAR, F/Y 2048/49, p. 31.
140 The Appellate Courts endorsed a large number of cases from 14 Zonal Courts in this year. Hence, there was a great increase in the volume of the caseload at this level.
141 See, SCAR, F/Y 2048/49, pp. 34-37, Annexes 17, 18 and 19.
142 See, SCAR, F/Y 2048/49, pp. 34, 35, 39, 40, Annexes 17 and 19.
143 See, SCAR, F/Y 2051/52, p. 42, Annex 24.
144 See, SCAR, F/Y 2052/53, pp. 39, Annex 24.
145 See, SCAR, F/Y 2053/54, pp. 38, Annex 24.
146 See, SCAR, F/Y 2054/55, pp. 38, Annex 24.

2056/57	16,876	24,364	41,240[148]	26,569	64.43	14,671

As per the statistics, although the disposal rate of the Appellate Courts has generally improved, quite significantly, the problem of case backlog is still large. The number of cases taken up by the Appellate Court has also remained high. Appellate Courts generally take up cases in two ways:

1. Appellate Courts receive appeals against judgments of District Courts in all kinds of cases, as well as judgments of various quasi-judicial bodies like Chief District Offices and Forestry Offices.

2. Appellate Courts have jurisdiction to hear certain writs such as *Habeas Corpus*, *Mandamus*, and injunctions.

The survey of annual reports of the Supreme Court shows that the exercise of the writ jurisdiction of the Appellate Courts has rapidly increased over the past years. Similarly, the increased number of appeals from the court of first instance and tribunals has been reduced. It means that the volume of cases of Appellate Courts will be further increased in future.

If we view the current trends, the backlog of cases has increased significantly over the last three years. The disposal rate in F/Y 2056/57 was reduced to 64% from 80% in F/Y 2054/55. Table 12 shows that the caseload itself was reduced in these years, and as such, the caseload per judge has also tremendously reduced. However, interestingly, the ratio of the disposal of cases has also been significantly reduced. The number of judges has been almost stable over these years. Hence, the reason for the increased backlog is not obvious. These figures indicate a deterioration in the quantitative performance of Appellate Courts.

Table 12: Caseload per Judge at Appellate Court Level by Types of Caseload and Year

F/Y	Total Caseload	Division of Cases		Total Judges	Per Judge Caseload		
		Civil	Criminal		Total	Civil	Criminal
2047/48	3,755	2,267	1,488[149]	73[150]	-	-	-
2048/49	49,093	37,973	11,120[151]	67[152]	1:732.73	1:566.76	1:165.97
2049/50	50,841	39,242	11,599[153]	79[154]	1:643.56	1:496.73	1:146.82
2050/51	60,738	50,252	10,486[155]	72[156]	1:843.58	1:697.94	1:145.64
2051/52	52,725	42,314	10,411[157]	61[158]	1:864.34	1:693.67	1:170.67
2052/53	61,768	50,204	11,564[159]	110[160]	1:561.53	1:456.40	1:105.13
2053/54	53,052	42,876	10,176[161]	104[162]	1:510.11	1:412.27	1:97.85
2054/55	69,166	60,072	9,094[163]	100	1:691.66	1:600.72	1:90.94
2055/56	48,631	39,596	9,035[164]	112[165]	1:434.20	1:353.54	1:80.67

147 See, SCAR, F/Y 2055/56, p. 35, Annex 23.

148 See, SCAR, F/Y 2056/57, p. 37, Annex 23.

149 See, SCAR, F/Y 2047/48, p. 31.

150 This figure includes judges of Zonal Courts and Regional Courts, which preceded the Appellate Courts. Hence, the caseload per judge has not been calculated for this year.

151 See, SCAR, F/Y 2048/49, pp. 34-37, Annexes 17, 18 and 19.

152 This is the aggregated figure of Appellate judges. See, Ibid., Annex 16.

153 See, SCAR, F/Y 2048/49, pp. 34, 35, 39, 40, Annexes 17, 19.

154 This is the aggregated figure of Appellate judges. See, SCAR, F/Y 2049/50, Annex 16.

155 See, SCAR, F/Y 2050/51.

156 This is the aggregated figure of Appellate judges. See, Ibid., p. 26.

157 See, SCAR, F/Y 2051/52, Annex 22.

158 This is the aggregated figure of Appellate judges. See, Ibid., p. 41.

159 See, SCAR, F/Y 2052/53, Annex 22.

160 This is the aggregated figure of Appellate judges. See, Ibid., Annex 21.

161 See, SCAR, F/Y 2053/54, Annex 22.

162 This is the aggregated figure of Appellate judges. See, Ibid., p. 37.

163 See, SCAR, F/Y 2054/55, Annex 22.

164 See, SCAR, F/Y 2055/56, Annex 21.

165 This is the aggregated figure of Appellate judges. See, Ibid., Annex 20. However, on page 33, the number is stated as 104.

2056/57	41,240	30,809	10,431[166]	110[167]	1:374.90	1:280.10	1:94.82

The figures for the caseload per judge at the nationwide Appellate level can help to identify further trends regarding the backlog of cases.

The civil caseload per judge is extremely high, which thus must significantly affect the delivery of quality justice in criminal cases. The criminal caseload per judge seems to be moderate. Hence, to improve the quality of the criminal justice system, the judiciary must take initiatives to reduce the civil caseload. To do this, it requires initiatives to set up workable filtering devices to check the uncontrolled intake of new civil cases.

Table 13: New Intake and Backlog Situation at Appellate Court Level by Year

F/Y	Total Caseload at Appellate Level	Pending Cases (Backlog)	% of Backlog	Criminal Cases		Civil Cases	
				Backlog	%	Backlog	%
2047/48	3,755	2,476	65.94%	962	38.85	1,514	61.15
2048/49	49,093	21,102	42.98%	7,460	35.35	13,642	64.65
2049/50	50,841	17,048	33.53%	6,205	36.40	10,843	63.60
2050/51	60,738	14,918	24.56%	5,635	37.77	13,283	89.04
2051/52	52,725	14,018	26.59%	5,967	42.57	12,887	91.93
2052/53	61,768	15,710	25.43%	5,375	34.21	10,335	65.79
2053/54	53,052	13,540	25.52%	4,541	33.54	8,999	66.46
2054/55	69,166	13,517	19.54%	4,137	30.61	9,380	69.39
2055/56	48,631	16,876	34.70%	5,328	31.57	11,548	68.43
2056/57	41,240	14,671	35.57%	4,357	29.70	10,314	70.30

The main explanation for the high intake of new cases at Appellate level is the huge number of appeals against the judgements of District Courts and tribunals. This means that the larger the size of case intake in the District Courts, the larger the number of appeals will be to Appellate level. Hence, the caseload at Appellate level cannot be reduced without introducing an effective filtering device at District level.

Backlog and New Case Intake Situation of the Supreme Court

The Supreme Court functions as the apex appellate court as well as the court of record. Pursuant to article 88 of the Constitution of the Kingdom of Nepal, 2047, the Supreme Court has the extraordinary jurisdiction to protect the Constitution and fundamental rights of citizens. In addition to cases relating to its special constitutional responsibility, the Supreme Court receives cases from many other sources.

1. Under the Judicial Administration Act, the Supreme Court is the court of final appeal for review of judgments of the Appeal Court that have reversed the judgments of a lower court. In such a situation, the party affected by the judgment of the Appeal Court can have access to the appellate jurisdiction of the Supreme Court. Therefore, a number of cases reaching the Supreme Court are appeals against the judgments delivered by the Appellate Courts.
2. Where the judgment of the Appellate Court has confirmed the judgement of the lower court, the affected party can have access to the revision jurisdiction of the Supreme Court. The revision jurisdiction is available on the grounds of violation of a Supreme Court precedent. Therefore, the petitions for revisions of the Appellate judgements constitute another major type of case coming before the Supreme Court.
3. Under article 88(1) of the Constitution, the Supreme Court can test the constitutionality of legal instruments. Writ petitions concerning constitutional issues constitute a significant volume of work for the Supreme Court.
4. Under article 88(2), any person can have access to the extraordinary (writ) jurisdiction of the Supreme Court for the enforcement or restitution of the fundamental rights guaranteed under part three of the Constitution. The number of such cases following the promulgation of the Constitution has tremendously increased.

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166 See, SCAR, F/Y 2056/57, Annex 21.

167 This is the aggregated figure of Appellate judges. See, Ibid., Annex 20.

5. In matters of contempt of court, the Supreme Court entertains jurisdiction as a court of first instance, in order to address the issue of the contempt of the Supreme Court and its subordinate courts.

6. The Supreme Court, under the House of Representatives' Election Act, 2047, has jurisdiction to hear first appeals against judgements of the Appellate Courts.

Thus, the Supreme Court has the potential to be flooded with a huge number of cases. Moreover, it may receive a high number of writ petitions as a result of the inefficiency of the executive government and the turbulent situation in the country. In the current political climate, there is great potential for violations of human rights. The inefficiency of the government and the turbulence created by the Maoist terrorism following 2050 has subjected the nation to chaos, and abuses of human rights are increasing. These factors may have contributed to the sharp rise in the number of writ petitions filed in the Supreme Court. If so, this trend is one for concern. However, it can be read positively. It suggests that the public have confidence in the judiciary to provide them with a remedy for violations of their rights, and indicates that the judiciary is held in comparatively higher regard than the other two constitutional branches of the Kingdom.

Subsequent to the promulgation of the new Constitution, the roles and responsibilities of the Supreme Court have been hugely increased. The volume of its caseload has also increased. The following table plainly explains the trend of augmentation of the caseload in the years following 2047.

Table 14: Situation of Disposal of Cases at the Supreme Court by Year

F/Y	Backlog Received	Intake of New Cases	Total Cases	Total Disposal	Disposal %	Not Disposed	%
2047/48	2,274	4,881	7,155[168]	3,101	43.34	4,054	56.66
2048/49	4,054	11,604	15,658[169]	5,571	35.58	10,087	64.42
2049/50	10,087	7,816	17,903[170]	11,048	61.71	6,855	38.29
2050/51	6,855	7,124	13,979[171]	7,667	54.85	6,312	45.15
2051/52	6,312	14,036	20,348[172]	9,698	47.66	10,650	52.34
2052/53	10,650	11,430	22,080[173]	11,439	51.81	10,641	48.19
2053/54	10,641	17,704	24,345[174]	11,807	48.50	12,538	51.50
2054/55	12,538	14,168	26,706[175]	11,955	44.77	14,751	55.23
2055/56	14,751	13,305	28,056[176]	12,249	43.66	15,807	56.34
2056/57	15,807	14,681	30,488[177]	13,247	43.45	17,241	56.55

- The table shows that the caseload of F/Y 2056/57 has increased by five times than that of F/Y 2047/48. Interestingly, despite the incredible increment in cases, the disposal rate has kept pace. However, the increment of judges is too low to cope with the increased figure of the caseload.
- The quality of judgements might have been affected by the incredible stress resulting from the increased caseload.
- The trend of multiplication of the caseload by five times in a period of ten years shows that the device for filtering cases has hardly been exercised. A large number of appeals to the Supreme Court indicates either of the following circumstances:
    1. The reversal rate of the judgments between the District Courts and the Appellate Courts is high, or
    2. The Supreme Court has not developed a system of filtering to create a workable funneling of the caseload.

It is hard to identify the main factors contributing to the rise of the caseload of the Supreme Court. This requires an independent study. Nonetheless, conclusions can be drawn from the data. It is clear from the level of the existing

168 See, SCAR, F/Y 2047/48, pp. 23-30.
169 See, SCAR, F/Y 2048/49, pp. 8-19.
170 See, SCAR, F/Y 2049/50, pp. 8-19.
171 See, SCAR, F/Y 2050/51, Annexes 4-15.
172 See, SCAR, F/Y 2051/52, p. 14 and Annexes 13 and 4.
173 See, SCAR, F/Y 2052/53, pp. 8-19.
174 See, SCAR, F/Y 2053/54, p. 13 and Annexes 13 and 14.
175 See, SCAR, F/Y 2054/55, p. 13 and Annexes 5 and 15.
176 See, SCAR, F/Y 2055/56, p. 12 and Annexes 12, 13 and 14.
177 See, SCAR, F/Y 2056/57, Annexes 12, 13, and 14.

caseload that the existing number of the judges in the Supreme Court is not adequate to address the volume of cases. This must have implications for the quality of justice delivered and the confidence of people in the apex court. The current situation may give rise to the following:

1. A tendency among judges to clear the backlog of cases without proper attention to due process of law. Judges might feel that the judiciary is flooded with unnecessary litigation. In such a state of affairs, resultant biases in dealing with the volume of cases may deprive people of their rights to fair justice. One example of this trend is the judgment preventing relatives from seeking the motion to quash the anti-law interlocutory order of the lower court, provided for by clause 17 of the Court Management Section of the *New Muluki Ain*[178]. Similarly, the following practices also indicate the trend:
   - The appearance of lawyers is not allowed in the motion for hearing the *Sadhak*. *Sadhak* is a special process in the Nepalese judicial system to check the legality of a judgment of a lower court that has not been contested through the process of appeal. The motion of *Sadhak* results in a judgement like that of an appeal. However, in hearing these motions, the Supreme Court has ignored the fact that the appearance of a defense lawyer at a judicial motion is not simply a right of the defendant, but is also a rule of the due process of law. The Supreme Court has overlooked the basic principle of justice that no justice can be done when the due process of law is ignored.
   - In *Habeas Corpus* cases, petitions by third party are effectively discouraged.
2 A deterioration in the intellectual quality of judgments may arise. Judges will not have adequate time for academic exercises. Judges will have hardly any time to research cases in order to pass judgments founded on logic, rationale and principles of justice.
3 The schedule for declaring judgment (popularly known in Nepal as *NISU)* may be postponed more frequently. This practice of postponement has already been seen in the Supreme Court. The number of schedules for declaring judgment that are pending is incredibly high. In one case, the Supreme Court rescheduled the date for hearing over 20 times.[179]

Table 15: Caseload per Judge at Supreme Court Level by Types of Caseload and Year

F/Y	Total Caseload	Civil	Criminal	Total Judges	Per Judge Total Caseload	Criminal Caseload	Civil Caseload
2047/48	7,155	6,661	494[180]	11[181]	1:650.45	1:44.91	1:605.55
2048/49	15,658	14,965	693	13[182]	1:1,204.46	1:53.31	1:1,151.15
2049/50	17,903	16,975	928	19[183]	1:942.26	1:48.84	1:893.42
2050/51	13,979	12,816	1,163	19[184]	1:735.74	1:61.21	1:674.53
2051/52	20,348	18,757	1,591	19[185]	1:1,070.95	1:83.74	1:987.21
2052/53	22,080	20,182	1,898	19[186]	1:1,162.11	1:99.89	1:535.89
2053/54	24,345	22,286	2,059	19[187]	1:1,281.32	1:108.37	1:1,172.95
2054/55	26,706	24,258	2,448	18[188]	1:1,483.67	1:136.00	1:1,347.67
2055/56	28,056	25,290	2,766	19[189]	1:1,476.63	1:145.58	1:1,331.05
2056/57	30,488	27,322	3,166	19[190]	1:1,604.63	1:166.63	1:1,438.00

178 See, Mofimudin Khan for Dinawa, Ahamudin Khan v. HMG, (Murder case) Supreme Court's Bulletin, Year 10, Vol. 6, No. 215.

179 Tara Poudel v. HMG and others. Writ No. 3313, Supreme Court, Special Bench Judgement.
Date, 2058, Shrawan 18.

180 In F/Y 2047/48, SCAR cites 29 cases that are under consideration by the full bench and 465 by the division benches. The said 29 cases have not been included in the aggregated figure. See, Page 1 of the Report.

181 This is the aggregated figure of Supreme Court judges. Ibid., Part 2, p. 1

182 This is the aggregated figure of Supreme Court judges. See, SCAR, F/Y 2048/49, Part 12, p. 1-2. Out of 15 judges, two judges retired due to a provision of the new Constitution.

183 This is the aggregated figure of Supreme Court judges. See, SCAR, F/Y 2049/50, Part 2, p. 1.

184 This is the aggregated figure of Supreme Court judges. See, SCAR, F/Y 2050/51, p. 7.

185 This is the aggregated figure of Supreme Court judges. See, SCAR, F/Y 2051/52, p. 14.

186 This is the aggregated figure of Supreme Court judges. See, SCA R, F/Y 2052/53, p. 13.

187 This is the aggregated figure of Supreme Court judges, See, SCAR, F/Y 2053/54, p. 13.

188 This is the aggregated figure of Supreme Court judges. See, SCAR, F/Y 2054/55, p. 13.

189 This is the aggregated figure of Supreme Court judges. See, SCAR, F/Y 2055/56, p. 12.

190 This is the aggregated figure of Supreme Court judges. See, SCAR, F/Y 2056/57, p. 12. However, there has been mention elsewhere in the report of one more judge so the number becomes 19.

Table 15 shows that the caseload of the Supreme Court per judge is extremely high compared to that of other courts. The existing number of judges is hardly enough to address 50% of the existing total caseload. In the Supreme Court, two judges sit together to hear the cases. It means that the per-judge caseload would be double. For one judge to have a caseload of about 3,000 cases is simply incredible. However, judicial practices are not helping to ease the burden. As seen from the data above, the criminal caseload of the Supreme Court is minimal compared to its civil caseload. The large size of the caseload is the result of a huge intake of civil cases. The Supreme Court has failed to recognize and respond to this trend. As discussed above, it has focused its efforts on blocking criminal cases, hence, by preventing lawyers from appearing in *Sadhak* motions and restricting third persons from seeking the motion for hearing provided for by clause 17 of the Court Management Section of the *New Muluki Ain*[191]. The Supreme Court should instead concentrate on the implementation of an effective filtering device for civil cases, which would help reduce the caseload per judge.

F/Y	District Court			Appellate			Supreme Court		
	Total Caseload	Total Judges	Per Judge Cases	Total Caseload	Total judges	Per Judge Cases	Total Caseload	Total Judges	Per Judge Cases
2047/48	76,024	98[192]	1:775.76	3,755	73[193]	1:51.43	7,155	11[194]	1:650.45
2048/49	90,301	100[195]	1:903.01	49,093	67[196]	1:732.73	15,658	13[197]	1:1,204.46
2049/50	95,071	96[198]	1:990.32	50,841	79[199]	1:643.55	17,903	19	1:942.26
2050/51	88,451	107[200]	1:826.64	60,738	72[201]	1:843.58	13,979	19[202]	1:735.74
2051/52	91,496	112[203]	1:816.93	52,725	61[204]	1:864.34	20,348	19[205]	1:1,070.95
2052/53	95,889	90[206]	1:1,065.43	61,768	110	1:561.53	22,080	19[207]	1:1,162.11
2053/54	95,535	120[208]	1:796.13	53,052	104[209]	1:510.11	24,345	19[210]	1:1,281.32
2054/55	94,807	120[211]	1:796.13	69,166	100[212]	1:691.66	26,706	18[213]	1:1,483.67
2055/56	83,535	120[214]	1:696.13	48,631	112[215]	1:434.20	28,056	19[216]	1:1,476.63
2056/57	84,977	120[217]	1:708.14	41,240	110[218]	1:374.90	30,488	19[219]	1:1,604.63

[191] Clause 17 of the Court Management Section of the *New Muluki Ain* allows access to the court for the correction of a wrong order. In the interests of justice, this provision permits any person to challenge any procedure or order made by the court. The superior court is obliged to take note of a wrong order and initiate a *suo-moto* motion to quash it. Clause 17 has been effectively exercised by lawyers and friends of accused or prisoners to correct several wrong or legally unfounded orders made by trial courts. However, its use has now been restricted. The restriction has in fact blocked access to fair justice. Such judicial discretion could rather be used to reduce the number of petty and unnecessary civil disputes coming before the court. See, Mofimudin Khan for Dinawa, Ahamudin Khan v. HMG, (M urder case) Supreme Court's Bulletin, Year 10, Vol. 6, No. 215.

[192] See, SCAR, F/Y 2047/48, pp. 14-19.

[193] See, Ibid., pp. 5-13. The figure includes judges of Regional and Zonal Courts.

[194] See, Ibid., at p. 1.

[195] See, SCAR, F/Y 2048/49, Annex 23(A). (The figure of judges should be reduced according to the names repeated in the list.)

[196] See, SCAR, F/Y 2048/49, Annex 16.

[197] See, SCAR, F/Y 2048/49, p. 3.

[198] See, SCAR, F/Y 2049/50, Annex 23(A).

[199] See, Ibid., Annex 16.

[200] See, SCAR, F/Y 2050/51, p. 6.

[201] See, Ibid.

[202] See, Ibid., p. 7.

[203] See, SCAR, F/Y 2051/52, p. 64.

[204] See, Ibid., p. 41.

[205] See, Ibid., p. 14.

[206] See, SCAR, F/Y 2052/53, p. 65.

[207] See, Ibid., p. 13.

[208] See, SCAR, F/Y 2053/54, p.64.

[209] See, Ibid., p. 37.

[210] See, Ibid., p. 13. (Note : The total number of judges mentioned at p.12 does not match with the figures mentioned at pp.13, 38 and 64.)

[211] See, SCAR, F/Y 2054/55, p. 65.

[212] See, Ibid., p. 37

[213] See, Ibid., p. 13.

[214] See, SCAR, F/Y 2055/56, p. 61.

[215] See, Ibid., p. 34.

[216] See, Ibid., p. 12.

Caseload Situation of Himalayan and Hill Districts[220]

The caseload of courts in the Himalayan and hill districts is smaller in comparison to that of districts in the Terai (plain) and urban areas. The judges in the Terai and urban areas have severe caseloads. Obviously, the stress of work in these areas is tremendous. Furthermore, judges in the Terai and urban areas are deprived of special benefits. Judges in the hill and Himalayan districts have a higher rate of allowances but lower caseloads, and in addition, obtain incentives for career promotion. The higher management of the judiciary has not recognized the disparity in the workloads of these regions. The courts of Himalayan and hill districts have hardly enough work to occupy them for half a year. As can be seen from Table 17, the courts in Himalayan regions have on average hardly two dozen cases to dispose of in a year.

Table 17: Caseload in District Courts of four Himalayan Districts

S.N	F/Y 10 Years	Districts	Caseload	Number of Judges	Caseload Per Judge Per Year
1.	2047/57	Rasuwa	296	1x10 Years	1:29
2.	2047/57	Manang	54	1x10 Years	1:5.4
3.	2047/57	Mustang	90	1x10 Years	1:9
4	2047/57	Dolpa	513	1x10 Years	1:51.3
Total	**10 Years**	**4 Districts**	**953**	**4x10 Years**	**Average 1:23.6**

These four districts have had a total of 953 cases to dispose of over a period of 10 years. This figure indicates a work burden of less than 100 cases for four courts in one year, i.e. on average 2 cases a month. What these courts, with at least one judge and half a dozen support staff, do for the remainder of their working year is an interesting question. However, it has been completely ignored by the Judicial Council, which is responsible for the management of the judiciary. The negligible caseload of these courts consumes a huge proportion of judicial resources. The need for these courts, in their current form, is questionable. The following disaggregation of data by types of case and performance of work will help to further illustrate the situation.

Table 18: Rasuwa District

F/Y	Civil Cases	Criminal Cases	Total	Disposal	Backlog for Next Year	No. of Judges	Per Month Disposal Rate
2047/48	3	27	30	21	9	1	1:1.75
2048/49	6	16	22	19	3	1	1:1.58
2049/50	7	13	20	7	13	1	1:0.58
2050/51	12	14	26	13	13	1	1:1.08
2051/52	11	21	32	14	18	1	1:1.16
2052/53	15	28	43	21	22	1	1:1.75
2053/54	14	29	43	26	17	1	1:2.16
2054/55	19	24	43	31	12	1	1:2.58
2055/56	6	8	14	7	7	1	1:0.58
2056/57	10	13	23	12	11	1	1:1.92
Total	**103**	**193**	**296**	**171**	**125**	**1x10yrs**	**Avg. 1.28**

Table 18 highlights the inefficient use of scarce human resources and state revenue. It raises a question as to the rationale of their existence in their permanent form, as there is hardly any business for them to carry out as a permanent court. The following facts discernible from the table should be mentioned at this point:

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217 See, SCAR, F/Y 2056/57, p. 69.

218 See, SCAR, F/Y 2056/57, Annex 20.

219 See, SCAR, F/Y 2056/57, p. 12.

220 All figures in this part are based on the annual reports of the Supreme Court.

1. The average caseload per month of the Rasuwa District Court over the last ten years has been 1.28 cases. Despite such a negligible workload, it is interesting to see the backlog of cases that has been left for the coming years. The backlog is not found in one particular fiscal year, but remains consistent throughout the ten year period. This definitely indicates that the court is not serious in meeting standards of justice.
2. The low number of civil cases indicates a minimum of financial and commercial transactions.
3. The number of criminal cases is almost double that of civil cases. As criminal cases generally impact upon the liberty of defendants, their fundamental rights are vulnerable to violation. To leave a backlog of criminal cases for the next year means an extension of the period for their disposal. A delayed trial is a violation of the right to fair trial.

Table 19: Manang District

F/Y	Civil Cases	Criminal Cases	Total	Disposal	Backlog for Next Year	No. of Judges	Per Month Disposal Rate
2047/48	1	4	5	4	1	1	1:0.33
2048/49	1	0	1	0	1	1	1:0
2049/50	1	3	4	0	4	1	1:0
2050/51	3	8	11	4	7	1	1:0.33
2051/52	6	11	17	12	5	1	1:1
2052/53	3	4	7	0	7	1	1:0
2053/54	2	2	4	0	4	1	1:0
2054/55	0	2	2	0	2	1	1:0
2055/56	0	1	1	1	0	1	1:0.08
2056/57	1	1	2	2	0	1	1:0.17
Total	**18**	**36**	**54**	**23**	**31**	**1x10 yrs**	**Avg. 1:0.16**

The situation in Manang is even more interesting. The monthly disposal rate of cases is less than one case a month. Out of 54 cases recorded over a period of ten years, 31 cases were left as backlog during this period. In F/Y 2056/57, there were only two cases heard and neither of them were disposed of in this year. This raises the question as to how a nation can continue to maintain a permanent court that has only one or two cases to dispose of during a year.

Table 20: Mustang District

F/Y	Civil Cases	Criminal Cases	Total	Disposal	Backlog for Next Year	No. of Judges	Per Month Disposal Rate
2047/48	2	7	9	5	4	1	1:0.42
2048/49	4	5	9	7	2	1	1:0.58
2049/50	5	3	8	1	7	1	1:0.08
2050/51	5	15	20	11	9	1	1:0.92
2051/52	3	12	15	12	3	1	1:1.00
2052/53	1	4	5	2	3	1	1:0.17
2053/54	4	2	6	2	4	1	1:0.17
2054/55	5	1	6	2	4	1	1:0.17
2055/56	4	2	6	5	1	1	1:0.42
2056/57	3	3	6	1	5	1	1:0.08
Total	**36**	**54**	**90**	**48**	**42**	**1x10 yrs**	**1:0.40**

The situation in Mustang is no different to that in Manang. The court received a total of 90 cases over a period of ten years. Of them, 42 cases were left as a backlog during this ten year period. The monthly workload of the court was less than one case a month. This means that the court remained almost idle throughout the year.

Table 21: Dolpa District

F/Y	Civil Cases	Criminal Cases	Total	Disposal	Backlog for Next Year	No. of Judges	Per Month Disposal Rate
2047/48	6	58	64	50	14	1	1:4.17
2048/49	3	34	37	33	4	1	1:2.75
2049/50	16	20	36	27	9	1	1:2.25
2050/51	12	54	66	48	18	1	1:4.00
2051/52	14	40	54	21	33	1	1:1.75
2052/53	20	46	66	51	15	1	1:4.25
2053/54	9	32	41	28	13	1	1:2.33
2054/55	7	29	36	21	15	1	1:1.75
2055/56	56	4	60	30	30	1	1:2.5
2056/57	29	24	53	37	16	1	1:3.08
Total	**172**	**341**	**513**	**346**	**167**	**1x10 yrs**	**Avg. 2.53**

The court in Dolpa is a little more credible. It had an average of 2 cases to dispose of in a month. In a period of ten years, the court heard a total of 513 cases, of which 346 cases were disposed.

There are certain commonalities in the performance of the four courts and the type of cases before them.

1. The courts all had less than two cases to dispose of each month, but, despite that negligible number, backlogs were left for the following years.
2. The volume of criminal cases was larger than that of civil cases.

Table 22 : Situation of District Courts in 18 hill districts

District	2056/57		Total	Disposal	Backlog for Next Year	Judges	
	Civil	Criminal				No. of Judges	Monthly Caseload
Terathum	159	105	264	152	112	1	1:12.66
Dhankuta	102	113	215	124	91	1	1:10.33
Sindhuli	153	128	281	182	99	1	1:15.17
Gorkha	168	130	298	203	95	1	1:16.92
Lamjung	150	103	253	177	76	1	1:14.75
Myagdi	143	92	235	137	98	1	1:11.41
Rukum	152	94	246	183	63	1	1:15.25
Rolpa	67	127	194	125	69	1	1:10.42
Pyuthan	162	133	295	178	117	1	1:14.83
Jajarkot	63	30	93	54	39	1	1:4.5
Mugu	121	73	194	98	96	1	1:8.17
Humla	43	42	85	67	18	1	1:5.58

Bajura	42	48	90	62	28	1	1:5.17
Accham	20	60	80	66	14	1	1:5.5
Doti	86	44	130	76	54	1	1:6.33
Darchula	52	131	183	141	42	1	1:11.75
Baitadi	33	67	100	82	18	1	1:6.83
Dadeldhura	30	44	74	52	22	1	1:4.33

Table 22 shows that there are also peculiar trends of the caseload of District Courts in 18 districts. Generally, all these courts tried less than 300 cases a year. An average monthly caseload for the courts was about 10 cases. However, all these courts consumed a comp aratively huge amount of human resources and revenue for a considerably small outcome.

Comparative Situation of the Expenditure and Caseload

Four Remote Districts[221]

The comparison of the caseload with expenditure is based on facts and figures of the fiscal years 2055/56 and 2056/57. The figures for the District Court's expenditure prior to F/Y 2055/56 are not available, as they have been nowhere published, and are impossible to glean from the rubble of unsystematically maintained court records. The Annual Supreme Court Report of F/Y 2055/56 does not include the expenditure details for Rasuwa, Manang, Mustang and Dolpa District Courts. Hence, a two year comparison of the caseload and expenditure by these courts is not possible here. Such comparison can only be prepared based on the details available for the F/Y 2056/57. However, analysis based on one year's expenditure will give a true picture, as there has been no change in the expenditure pattern.

Table 23: Expenditure of Cases in 4 Himalayan Districts

F/Y	Districts	Total Budget (Rs.)	Total Caseload	Disposed Cases	Average Cost of Disposed Cases
2056/57	Rasuwa	8,40,795.13	23	12	1:70,066.26
2056/57	Manang	12,12,133.12	2	2	1:6,06,066.56
2056/57	Mustang	11,46,233.90	6	1	1:11,46,233.90
2056/57	Dolpa	11,75,589.14	53	37	1:32,15,106
Total:	**4**	**43,74,751.29**	**84**	**52**	**1:84,129.83**

The costs of the cases tried by the aforementioned four District Courts and that of cases tried by other District Courts of the country are simply incomparable. The rationale behind the difference is not founded on any grounds or fact. The average cost of one case in Rasuwa, Manang, Mustang and Dolpa was Rs. 84, 129.83, whereas it was simply Rs. 3,610.75 in the other districts. For disposing of a total of 84 cases, these four courts consumed a sum of Rs. 43, 74, 751.29, a cost met from the limited funds of public taxes. This means that disposition of a mere 0.10 percent of the cases absorbed 2.37 percent of the total cost of disposition throughout the country. This implies that on an average, the cost of disposition of cases in these 4 districts was nearly 24 times higer than the national average.

The above mentioned costs of those courts are not exhaustive. The investment in court buildings and other logistics further increases the total cost of cases. In such a situation, the State must seriously think of bringing down the unnecessary costs of the judiciary. It should consider devising a mechanism of circuit courts that can visit districts with a minimal caseload. The huge amount spent on a negligible number of cases, the large part of which goes to providing salaries and allowances for judges and support staff, can be diverted to strengthen the quality of judicial works, and increase human resources in courts with high workloads.

Table 24: Comparison of Expenditure of 4 Himalayan District Courts with other District Courts

F/Y	Districts	Total Budget (Rs.)	Total Caseload	Disposed Cases	Average Cost of Disposed Cases
2056/57	Rasuwa, Manang,				
	Mustang, Dolpa	43,74,751.29	84 (0.10%)	52(2.37%)	1:84,129.83
2056/57	Other 71 Districts	18,03,89,366.78	84,893	49,959	1:3,610.75
Total	**75**	**84,977**	**18,47,64,118.07**	**50,011**	**1:87,740.58**

The situation of the 18 hill District Courts is not much better than that of the four courts mentioned above. 17 of these courts in hill districts consumed 9% (Rs. 27,791,954.15) of the total budget (Rs. 302,209,672.76) of the District Courts for a total of 3,310 cases. This is an unfair distribution of resources. The situation plainly indicates how the highest level of the judiciary lacks an approach of systematic planning for judicial administration. A large number of courts with high workloads are under-resourced, while a huge volume of taxpayer's money is being unwisely spent. The judicial administration could improve this situation by designing an alternative mechanism for the dispensation of justice.

Table 25 better illustrates the situation:

Table 25: Cost of Cases Disposed of in 18 Remote (hill) District Courts

[221] See, SCAR, F/Y 2056/57, Annex 38. For the caseload, see previous tables.

Districts	Total Caseload (Number)	Total Expenditure (Rs)	Disposal (Number)	Cost per Disposed Case (Rs)
Terathum	264	17,53,807.59	152	1:11,538.21
Dhankuta	215	18,57,271.12	124	1:14,997.99
Sindhuli	281	16,62,140.28	182	1:9,132.64
Gorkha	298	20,77,485.13	203	1:10,233.92
Lamjung	253	13,17,994.46	177	1:7,446.30
Myagdi	235	13,31,264.50	137	1:9,717.26
Rukum	246	14,78,847.77	183	1:8,081.14
Rolpa	194	17,84,978.93	125	1:14,279.83
Pyuthan	295	12,54,220.83	178	1:7,046.18
Jajarkot	93	21,19,911.86	54	1:39,257.63
Mugu	194	12,84,897.47	98	1:13,111.20
Humla	85	Not Available	67	-
Bajura	90	12,65,276.19	62	1:20,407.68
Accham	80	12,04,094.81	66	1:18,243.86
Doti	130	16,49,721.56	76	1:21,706.86
Darchula	183	13,91,355.64	141	1:9,867.77
Baitadi	100	31,95,557.24	82	1:38,970.21
Dadeldhura	74	11,63,128.77	52	1:22,367.86
Total	**3,310**	**2,77,91,954.15**	**2,092**	**1:13,284.87**

18 Remote (Hill) Districts[222]

The average cost of disposed cases ranged from Rs. 7,046.18 in Pyuthan to Rs. 22,367.86 in Dadeldhura. The average for the 17 districts taken together works out at Rs. 13,284.88. Seven districts fell below the average, while the remaining 10 districts were in the above average category.

Table 26: Comparison of Expenditure on Cases in 18 Hill District Courts with Other Districts

F/Y	Districts	Total Caseload	Total Budget (Rs)	Disposed Cases	Cost Per Disposed Case (Rs)
2056/57	18 Hill Districts	3,310	2,77,91,954.15	2,092	1:13,284.87
2056/57	Other 53 Districts	81,583	15,25,97,412.63	47,867	1:3,187.95

Comparative Analysis of Financial Resources and Caseload

This part of the analysis will give a picture of the financial situation of the justice system. An attempt will be made to show the average cost of the cases heard, and divisions of the costs between District, Appellate and Supreme Court levels. An attempt will also be made to show the proportion of the cost consumed in dealing with civil and criminal caseloads. This part of the study will therefore reflect on the comparative situation of the growth of the caseload and the availability of financial resources.

The analysis covers fiscal years 2048/49 to 2056/57. F/Y 2047/48 has been deliberately left out, as the restructuring of the judiciary had not taken place at that time. Table 27 reflects the trend of annual growth in cost per case.

[222] See, Ibid. The figures for expenditure in Humla district are not available. Hence, in this table, the caseload has not been aggregated to obtain the cost per case.

Table 27 shows that over the 8 year period following F/Y 2048/49, the caseload increased by 1.07%. During this period the budget increased by 228.25% and the average cost per case increased by 224.78%.

Table 27: Nationwide per Case Cost by Year

F/Y	Total Budget[223] (Rs)	Total Caseload	Cost Per Case (Rs)
2048/49	9,20,68,104.84	1,55,052	1:593.79
2049/50	13,27,17,186.14	1,63,815	1:810.17
2050/51	13,70,34,324.02	1,63,168	1:839.84
2051/52	15,13,48,236.13	1,64,569	1:919.66
2052/53	19,02,61,682.75[224]	1,79,737	1:1,058.56
2053/54	21,87,99,388.50	1,72,932	1:1,265.23
2054/55	24,50,17,137.03[225]	1,91,407	1:1,280.08
2055/56	25,91,23,613.00	1,60,222	1:1,617.28
2056/57	30,22,09,672.76	1,56,705	1:1,928.53
Increment Ratio	**228.25%**	**1.07%**	**224.78%**

Cost of Civil and Criminal Cases

Table 28: Nationwide Expenditure on Civil Cases by Year

F/Y	Total Expenditure (Rs)	Civil Caseload Cost (Rs)	Total Civil Cases	Cost Per Case (Rs)	% of Civil Case Cost
2048/49	9,20,68,104.84	6,42,34,265.78	1,08,177	1:593.79	69.77
2049/50	13,27,17,186.14	9,40,74,744.19	1,16,118	1:810.17	70.88
2050/51	13,70,34,324.02	10,15,02,552.00	1,20,860	1:839.84	74.07
2051/52	15,13,48,236.13	10,82,20,578.20	1,17,674	1:919.66	71.50
2052/53	19,02,61,682.75	14,03,23,244.10	1,32,561	1:1,058.56	73.75
2053/54	21,87,99,388.50	15,75,24,122.00	1,24,502	1:1,265.23	71.99
2054/55	24,50,17,137.03	18, 39,09,742.50	1,43,670	1:1,280.08	75.06
2055/56	25,91,23, 613.00	18,95,83,867.40	1,17,224	1:1,617.28	73.16
2056/57	30,22,09,672.76	21,69,64,964.80	1,12,503	1:1,928.53	71.79
Increment Ratio	**228.25%**	**237.78%**	**4.00%**	**224.78%**	

Table 29: Nationwide Expenditure on Criminal Cases by Year

F/Y	Total Expenditure (Rs)	Criminal Caseload Cost (Rs)	Total Criminal Cases	Cost Per Case (Rs)	% of Criminal Case Cost
2048/49	9,20,68,104.84	2,78,33,906.25	46,875	1:593.79	30.23%
2049/50	13,27,17,186.14	3,86,42,678.49	47,697	1:810.17	29.12%
2050/51	13,70,34,324.02	3,55,31,950.72	42,308	1:839.84	25.93%
2051/52	15,13,48,236.13	4,31,27,455.7	46,895	1:919.66	28.50%

[223] See, SCAR, F/Y 2048/49 (Annexes, 15, 22 and 29), F/Y 2049/50 (Annexes 15, 22 and 29), F/Y 2050/51 (Annexes 20, 29 and 38), F/Y 2051/52 (Annexes 20, 29 and 38), F/Y 2052/53 (Annexes 20 and 29), F/Y 2053/54 (Annexes 20, 29 and 38), F/Y 2054/55 (Annexes 20, 29 and 38), F/Y 2055/56 (Annexes 18, 39 and p. 59), F/Y 2065/57 (Annexes 19, 29 and 38).

[224] This figure does not match with the figure given by the Estimated Expenditure book (Red Book) of HMG of this year, where the figure given is Rs. 19,66,81,000. Our analysis has been based on the figure given in the table, obtained from SCAR.

[225] This figure does not match the figure given by the Estimated Expenditure book (Red Book) of HMG of this year, where the figure given is Rs. 24,98,93,000. Our analysis has been based on the figure given in the table, obtained from SCAR.

2052/53	19,02,61,682.75	4,99,38,626.56	47,176	1:1,058.56	26.25%
2053/54	21,87,99,388.50	6,12,75,088.9	48,430	1:1,265.23	28.01%
2054/55	24,50,17,137.03	6,11,07,178.96	47,737	1:1,280.08	24.94%
2055/56	25,91,23,613.00	6,95,39,805.44	42,998	1:1,617.28	26.84%
2056/57	30,22,09,672.76	8,52,44,883.06	44,202	1:1,928.53	28.21%
Increment Ratio	**228.25%**	**206.26%**	**- 5.70%**	**224.78%**	

Tables 28 and 29 show the following patterns:

- The costs for the criminal caseload are smaller than the costs for the civil caseload. Therefore, the large part of judicial expenses is spent on the administration of civil justice. It means that the burden of costs for the State lies in the management of the civil rather than the criminal justice system.
- The spectacular trend obvious from the tables is that the financial burden of criminal justice is decreasing, whereas that for civil justice follows an increasing pattern. The trend has an obvious relation to the effectiveness of the filtering device available within the system. If we observe the trend of case filtration, the criminal justice system shows a greater pro-funneling paradigm than that suggested in the civil justice system. If the civil caseload at all levels of the court structure is analyzed, it can be seen that an incredibly high number of civil cases have made their way to the highest court.
- It is clear from the above statement that the civil justice system lacks a system for funneling case flow. However, in the criminal justice system, a significant percentage of cases are lost before the prosecution process begins. Similarly, a certain percentage of cases are lost during the prosecution stage, and a significant number of cases terminate in the trial courts.
- These facts and figures can lead us to conclude that the stress of workload upon the judiciary is a result of the mismanagement of the civil justice system.

If we observe the expenditure patterns of various levels of court, an unusual trend becomes apparent. The consistent rise in expenditure at the highest level of the judiciary is not a positive trend in the development of the justice system. The apex court's expenditure is largely caused by the influx of an incredible number of cases from the lower courts. The proportion of writ petitions filed in the Supreme Court has definitely increased over the years. However, the major stress upon the court has not been caused by writ petitions, but by civil cases from the lower courts. This trend definitely indicates a lack of planned administration of justice, and lack of vision for reform in the judiciary.

The growth of expenditure at the appellate level demonstrates the same trend. In contrast, the total expenditure at the trial court level seems to have decreased. There are deficiencies in the use of trial court revenue in two respects.

1. Firstly, a considerable amount of revenue is being spent at District level on a very small number of cases in districts like Rasuwa and Manang, while in courts with a high caseload deficiencies in revenue are seriously felt.
2. Secondly, the higher courts take a significant part of the increased budget of the judiciary.

These two dimensions seriously jeopardize the efficiency of the trial courts, which are responsible for protecting the liberty of people. Moreover, the consumption of a large part of revenue in order to deal with civil cases creates unfavorable conditions for the improvement of poor standards of criminal justice. The standards of criminal justice in Nepal today fall far below those envisaged by the Constitution and international human rights instruments.

Tables 30 and 31 will help to explore the further important trends. It is obvious that the judicial budget has increased by over two times since F/Y 2048/49, and there was a 16% rise in the budget of 2056/57 from the previous year, 2055/56. However, a large part of the increment has been taken away by the growth of the caseload every year.

Table 30: Expenditure on Different Levels of Court by Year (Rs.)

F/Y	Supreme Court	%	Appellate Court	%	District Court	%
2048/49	88,93,181.96	9.66	1,84,93,165.03	20.09	6,46,81,757.85	70.25
2049/50	1,26,31,568.27	9.52	3,27,41,126.16	24.67	8,73,44,491.71	65.81
2050/51	1,42,06,482.62	10.37	3,40,75,316.67	24.87	8,87,52,424.73	64.77
2051/52	1,61,78,089.31	10.69	3,94,13,463.31	26.04	9,57,56,683.51	63.27
2052/53	3,01,74,095.26	15.86	4,47,20,108.54	23.50	11,53,67,478.95	60.64

2053/54	3,44,08,669.92	15.73	5,84,91,352.90	26.73	12,58,99,365.7[226]	57.54
2054/55	3,70,08,477.55	15.10	821,09,293.76	33.51	12,58,99,365.72	51.38
2055/56	4,95,39,081.28	19.12	80,392,000.00	31.02	12,91,92,531.80	49.86
2056/57	3,31,09,651.67	10.96	8,43,35,903.08	27.91	18,47,64,118.07	61.14

Table 31: Comparison of the Increment in Human Resources and Caseload by Year

F/Y	Increment of Caseload (%)	Increment of per Judge Caseload (%)	Increment of Human Resources	Increment of Financial Resources (%)	Cost Per Case (Rs)
2048/49	78	-	-2.27	-	1:593.78
2049/50	6	-2.90	10.06	44.15	1: 810.16
2050/51	0	3.76	-2.54	3.25	1: 854.68
2051/52	1	-2.34	-1.04	10.45	1: 839.83
2052/53	9	-1.14	15.26	25.71	1:1058.55
2053/54	-4	-13.19	10.09	15.00	1:1265.23
2054/55	10	12.80	-2.06	11.98	1:1280.08
2055/56	-16	20.86	5.46	5.76	1:1617.27
2056/57	-2	3.05	-0.80	16.63	1:1928.52

The figures in Table 31 help us to identify some important points:

1. The caseload has obviously increased beyond the provision of judges. A greater number of judicial personnel are required to address the increase in cases. The enlargement of human resources has been negligible, except in F/Y 2049/50, 2052/53 and 2053/54. However, the growth in cases has remained at a high level, except in certain years. This growth has put more stress on judges, and the case backlog has reached an extremely high level. The consistent growth in the backlog of cases impairs the quality or the standard of justice, which in turn decreases the faith of people in the judiciary. In such circumstances, the notion of perceived corruption becomes phenomenal and attacks against the judiciary are sharpened.
2. The lack of growth in the budget for human resources corresponding to the growth in caseload has created a state of confusion in the judiciary of Nepal. The problem has been intensified by the lack of systematic planning made within the judiciary itself.

Tables 32 to 34 will show the caseload in the context of expenditure at different levels of the courts.

Table 32: Expenditure of Civil and Criminal Caseload at the Supreme Court Level by Year

F/Y	Expenditure (Rs.)	Caseload (No.)	Cost Per Case (Rs.)	Civil Caseload (No.)	Civil Caseload's Expenditure (Rs)	% of Civil Caseload of Total Cases	Criminal Caseload (No.)	Criminal Caseload's Expenditure (Rs.)	% of Criminal Case load
2048/49	88,93,181.96	15,698	1:566.52	14,965	84,77,925.08	95.33	693	3,92,596.20	4.41
2049/50	1,26,31,568.27	17,903	1:705.56	16,975	1,19,76,812.34	94.82	928	6,54,755.93	5.18
2050/51	1,42,06,482.62	13,979	1:1,016.27	12,816	1,30,24,556.93	91.68	1,163	11,81,925.69	8.32
2051/52	1,61,78,089.31	20,348	1:795.07	18,757	1,49,13,132.55	92.18	1,591	12,64,956.76	7.82
2052/53	3,01,74,095.26	22,080	1:1,366.58	20,182	2,75,80,325.66	91.40	1,898	25,93,769.60	8.60
2053/54	3,44,08,669.92	24,345	1:1,413.38	22,286	3,14,98,526.10	91.54	2,059	29,10,143.82	8.46
2054/55	3,70,08,477.55	26,706	1:1,385.77	24,258	3,36,16,103.06	90.83	2,448	33,92,374.49	9.17

[226] The annual actual expenditure of F/Y 2053/54 (Annex 38) and F/Y 2054/55 (Annex 38), is given as 12,58,99,365.72 in the Annual Report of the Supreme Court. However, in its report for F/Y 2055/56 (Annex 39), the figure is given as Rs. 11,53,67,478.95. We have taken the previous year's figure as the true figure.

2055/56	4,95,39,081.28	28,056	1:1,765.72	25,290	4,46,55,095.72	90.14	2,766	48,83,985.56	9.86
2056/57	3,31,09,651.67	30,488	1:1,085.99	27,322	2,96,71,408.52	89.62	3,166	34,38,243.15	10.38

Table 33: Expenditure of Civil and Criminal Caseload at Appellate Court Level by Year

F/Y	Expenditure[227] (Rs.)	Caseload (No.)	Cost Per Case (Rs.)	Civil Caseload (No.)	Civil Caseload's Expenditure (Rs)	% of Expenditure of Civil Cases	Criminal Caseload (No.)	Criminal Caseload's Expenditure (Rs.)	% of Criminal Case load
2048/49	1,84,93,165.03	49,093	1:376.70	37,973	1,43,04,299.10	77.35	11,120	41,88,865.93	22.65
2049/50	3,27,41,126.16	50,841	1:643.99	39,242	2,52,71,479.18	77.19	11,599	74,69,646.98	22.81
2050/51	3,40,75,316.67	60,738	1:561.02	50,252	2,81,92,446.46	82.74	10,486	58,82,870.21	17.26
2051/52	3,94,13,463.31	52,725	1:747.53	42,314	3,16,30,939.53	80.25	10,411	77,82,523.78	19.75
2052/53	4,47,20,108.54	61,768	1:724.00	50,204	3,63,47,758.21	81.28	11,564	83,72,350.33	18.72
2053/54	5,84,91,352.90	53,052	1:1102.53	42,876	4,72,72,020.79	80.82	10,176	1,12,19,332.11	19.18
2054/55	8,21,09,293.76	69,166	1:1187.13	60,072	7,13,13,499.33	86.85	9,094	1,07,95,794.43	13.15
2055/56	8,03,92,000.00	48,631	1:1653.10	39,596	6,54,56,224.05	81.42	9,035	1,49,35,775.95	18.58
2056/57	8,43,35,903.08	41,240	1:2045.00	30,809	6,30,04,482.01	74.71	10,431	2,13,31,421.07	25.29

Table 34: Expenditure of Civil and Criminal Caseload at District Court Level by Year

F/Y	Expenditure[228] (Rs.)	Caseload (No.)	Cost Per Case (Rs.)	Civil Caseload (No.)	Civil Caseload's Expenditure (Rs)	% of Expenditure of Civil Cases	Criminal Caseload (No.)	Criminal Caseload's Expenditure (Rs.)	% of Criminal Case load
2048/49	6,46,81,757.85	90,301	1:716.29	55,239	3,95,67,176.69	61.17	35,062	2,51,14,581.16	38.83
2049/50	8,73,44,491.71	95,071	1:918.73	59,901	5,50,32,790.21	63.01	35,170	3,23,11,701.50	36.99
2050/51	8,87,52,424.73	88,451	1:1,003.41	57,792	5,79,88,944.50	65.34	30,659	3,07,63,480.23	34.66
2051/52	9,57,56,683.51	91,496	1:1,046.57	56,603	5,92,38,825.27	61.86	34,893	3,65,17,858.24	38.14
2052/53	11,53,67,478.95	95,889	1:1,203.14	62,175	7,48,04,962.03	64.84	33,714	4,05,62,516.92	35.16
2053/54	12,58,99,365.72	95,535	1:1,317.83	59,340	7,82,00,328.28	62.11	36,195	4,76,99,037.44	37.89
2054/55	12,58,99,365.72	95,535	1:1,317.83	59,340	7,82,00,328.28	62.11	36,195	4,76,99,037.44	37.89
2055/56	12,91,92,531.80	83,535	1:1,546.57	52,338	8,09,44,259.64	62.65	31,197	4,82,48,272.16	37.35
2056/57	18,47,64,118.07	84,977	1:2,174.28	54,372	11,82,20,161.10	63.98	30,605	6,65,43,956.99	36.024

It is interesting to note that the criminal caseload of the Supreme Court is low; little over 10% of the total caseload. This suggests that management of the criminal caseload is not a problem for the Supreme Court. The problems faced by the Supreme Court are therefore related to the management of its civil caseload. How the Supreme Court arrived at such an unusual state of affairs is unknown. It could be argued that one of the main reasons is the lack of a filtering device for screening civil cases at their point of origin. Such an overwhelming volume of civil cases is detrimental to the

[227] The figures have been taken from the Court Management Improvement Commission's Report 2058.
[228] Ibid.

development of a fair and impartial criminal justice system. This is an especially serious matter for the apex court, which is supposed to protect the fundamental rights of citizens enshrined in the Constitution.

The Appellate Courts are not in a good position regarding expenditure, as over 75% of their budget is consumed in dealing with the civil caseload.

The volume of expenditure for criminal cases in the District Courts is above 30%. This means that the stress of the criminal workload is significant at District level.

Filtering and Funneling Process

Introduction

The criminal justice system consists of several key stages. Each stage consists of a set of proceedings that are unique, typical and defined but intrinsically connected to those of other stages. Each stage has its own significance and is somehow independent, however, the operation and function of each influences another. This is why the criminal justice system has been defined as an integrated system. This characteristic means that weakness in one of the stages will definitely affect the others.

The current Nepalese criminal justice system is founded on the principles of the adversarial system. Thus the judiciary functions as an independent institution or as an umpire. In the criminal justice system the State is a party against the person subjected to criminal proceedings. As such, the State investigates offences, prosecutes and defends the case in court. While carrying out these proceedings, the State's concerned institutions possess the right to arrest, detain and interrogate suspects. In the course of these processes, there has always been a danger of the deprivation of persons' liberty.

The Constitution guarantees the right of individuals against such deprivation of liberty. The rights guaranteed by the Constitution provide a basis for fairness of procedures conducted by the State during arrest, detention, interrogation, formulation of charges and trial at the court. Violation of these rights impinges upon the personal liberty of the suspect, and as such the State's action becomes null and void.

During investigation and prosecution, the person effectively remains under the control and disposal of the State, which is a party against them. The State, having great powers and resources at its disposal, conducts investigation against the suspect. The suspect himself/herself cannot act freely for his/her defense or security. Obviously, he/she might be subjected to an excess of power by the State, leading to miscarriage of justice. To prevent miscarriages of justice, the criminal justice system has evolved a set of principles to be universally applied. A few worthy of mention are:

1. A person is presumed to be innocent until his/her guilt is proved beyond reasonable doubt.
2. The onus of proof to prove the guilt beyond reasonable doubt lies on the State, the prosecutor.
3. The suspect has the right to remain silent and not bear witness against himself/herself.
4. The suspect or accused has the right to have the legal assistance of their legal counsel of choice.

These principles are founded on those enshrined in international human rights instruments and the domestic laws of many states as the minimum standards of fair and impartial criminal justice. The Constitution of the Kingdom of Nepal, 2047, has enshrined these principles as fundamental rights under article 14. This article states that, *inter alia*:

1. No one can be punished for any act that is not defined by the law as a crime.
2. No one can suffer greater punishment than that prescribed by law.
3. No one can be tried twice for the same crime.
4. No one can be coerced to confess against him/herself.
5. No one can be subjected to torture, cruel, inhuman or degrading treatment.
6. Everyone has the right to have notice of the offence for which he/she has been arrested.
7. Everyone has the right to have legal counseling with the legal counsel of his/her choice.

8. Everyone has to be produced before the judicial authority within 24 hours of arrest, and no one can be detained more than 24 hours without the mandate of the judicial authority.

These standards operate as the basis for the fairness of criminal proceedings. Violation of any of these standards at any stage in the criminal proceedings is an excess or abuse of power, and as such is void. The Kingdom of Nepal has acceded to the international human rights instruments that set minimum international standards for fair trial. Clause 9 of the Treaty Act, 2049, has made a provision for application of these instruments in the domestic context of Nepal.

It has thus been recognized that fair trial is a fundamental right of each individual. Hence, the State and its organs are obliged to respect these standards as the inalienable and inviolable rights of individual persons.

Objectives of this part of the Study

In Nepal, acts pertaining to investigation and prosecution are separate. The Police is solely responsible for conducting investigation of offences specified in Annex 1 of the State Cases Act, 2049, and such other offences that are designated by specific laws to be investigated by the Police. Under the prevalent law, the responsibility of prosecution lies with the Government Attorney's office. These two institutions perform their functions independently. However their actions are complimentary. The role of both institutions is necessary in the processing of criminal cases.

Generally, the District Court is the court that conducts trials. However, in Nepal there is a widespread departmentalization of criminal justice. As specified by various laws, a dozen government institutions are entitled to conduct trials regarding criminal offences. Some of these statutes confer power upon a single government institution for investigation, prosecution and adjudication. For example, the Import and Export (Control) Act, 2013 empowers the custom office to arrest, investigate, prosecute and pass sentence. The fairness of procedure in these types of proceedings is doubtful.

The present study has limited scope. It does not intend to look into the various stages of proceedings of quasi-judicial tribunals that have power of cognizance over criminal offences. The study is limited to the scope of Annex 1 of the State Cases Act, which specifies offences that are to be investigated by the Police, prosecuted by the Government Attorney and adjudicated by a court of law.

The fundamental objective of this part is to compile information regarding each stage of criminal proceedings as they occur nationwide. This is in order to show:

1. the trends in crimes and their processing, including a view of how effectively/ineffectively certain filtering devices within the system work,

2. patterns of performance regarding various types of crime, as indicated by disaggregation of data,

3. a possible pattern of funneling of cases through the courts, from which the type of cases that make it through the system to conviction, and the case flow, can be observed, and

4. whether a pattern exists in the types of cases that have been filtered out.

The analysis of the data in this part is expected to give a picture of:

- The national scenario regarding FIR registration,

- Year wise crime trends,

- The distribution of crimes according to their nature, including crimes relating to women, and

- The caseload of the Police and Attorney General's Office.

The analysis will also give a picture of the actions of the Police and Government Attorney's offices at District level regarding the implementation of filtering devices and development of a workable funneling system for the justice process. The rates of conviction of offenders will also be established, which in turn will help to ascertain the quality of the investigation and prosecution system in Nepal. This analysis will thus provide indicators to judge the sensitivity of actors in the justice system to its guiding principles, in particular regarding offences related to women.

Methodology

The following methodology was adopted:

- Compilation of statistical information from Annual Reports of the Police Headquarters, the Office of the Attorney General of the Kingdom of Nepal and the Supreme Court.

- Originally, it was intended to compile information since 2047, the year in which the judiciary was granted independence, and the Attorney General's Office was declared by the Constitution as the final authority for the prosecution of criminal cases. However, this was not possible regarding data from the Police Headquarters, due to the unavailability of consolidated data before F/Y 2050/51.

- A team of experts scrutinized the statistics compiled, which where then cross-checked by a different team. In this process, a great number of discrepancies and mismatches of statistics within and between institutions were identified. The nature of the majority of these discrepancies and mismatches was clarified following further investigation of the data sources.

- Complimentary statistics of one institution were cross-checked with those of others. Mismatches that were identified have been reported in the footnotes.

- To confirm and authenticate the reliability of the data, the concerned authorities were consulted.

Constraints

During the study, the team encountered several problems. Some of them caused a great deal of trouble. These problems have been outlined as constraints.

- As in other parts of the study, the discrepancy of statistical figures was found to be a great limitation to addressing the objectives. None of the institutions involved in various stages were found to maintain systematic records. Hence, the team had to struggle hard to obtain accurate data, and compile it properly. Most painfully, even data from the same institution was often found to be mismatched. In such a situation, the analysis of certain information became impossible.

- Another serious problem encountered was a lack of persons in all sectors who were able to give accurate and proper information about institutional records. Most of the answers provided to us were simply conjecture. Furthermore, it was found that one of the reasons for mismatches of data is that reports are often prepared and submitted to higher authorities on an ad-hoc basis. When final reports are submitted, the data that was previously given in the ad-hoc reports is generally forgotten. Thus an institution can have contradictory data, with different figures for a single category.

- It was found that overall, none of the institutions studied have a system for carrying out review and analysis of statistics. Neither do they have a systematic approach for the compilation and analysis of figures. For instance, the figures given in the Supreme Court's Annual Report of F/Y 2053/54 are repeated in F/Y 2054/55, and the figures given in the annexes are different. These kinds of practice not only frustrate analysis, but derogate the credibility of the institution concerned.

- The Police Headquarters could not provide data for fiscal years before F/Y 2050/51. Hence, a comparative analysis of data using Police figures from before F/Y 2050/51 has not been possible. The following analysis of the trends is therefore based on the statistics since F/Y 2050/51.

- There are various types of offences where the Government Attorney's offices have not been involved in the prosecution. However, in such cases, they are actively involved in representation of the government in the courts. A practice has emerged whereby Government Attorney's offices are only involved in the prosecution of those cases that are specifically designated in Annex 1 of the State Cases Act. Furthermore, only in those cases where laws make specific provision for offences to be investigated by the Police and prosecuted by the Government Attorney's office, will Government Attorneys intervene in prosecution. The Police do not investigate offences that fall beyond the purview of Annex 1 of the State Cases Act, and those that are not as such specified by statute. This means that the Police only maintain records of those cases specified by specific statutes and those falling under the purview of Annex 1. This leads to a great problem of mismatched data between the Police and the Attorney General's Office. The figure of criminal cases recorded by the Attorney General's office is generally larger than that of the Police, which may puzzle some people. This occurs because Government Attorneys defend cases investigated by departments such as those of forestry and customs in the court. The records of various quasi-judicial bodies that are involved in the investigation and prosecution of offences are not available centrally. The scrutiny of FIRs registered at institutions other than the Police has therefore not been possible in this study.

Despite several constraints, the team has been able to collect information that can throw light on the current situation and pattern of crime trends, the standard of criminal proceedings and the performance levels of various institutions. Moreover, the study has been fairly successful in showing the standard of performance of filtering devices, and the patterns of funneling of cases through the courts.

Scenario of Crime Occurrence and Reporting

In criminal proceedings, the process generally begins with the registration of the FIR. Registration of the FIR is a process by which a crime, and if possible the identity of an offender, are brought to the attention of the Police. The investigation of suspects generally starts after the registration of the FIR by an individual or with the report of Police personnel themselves. The process of investigation then advances to the arrest, interrogation and detention of suspects, followed by the collection and scrutiny of evidence. Hence, the investigation of the suspect and the collection and scrutiny of evidence is the primary or the initial stage of criminal proceedings. Following the collection and scrutiny of evidence, the prosecution stage begins. During prosecution, the legality, authenticity and adequacy of evidence to support a charge against suspects is analyzed, the nature of the crime committed and laws applicable are determined, and the suspect is submitted with the charge sheet, with specific demands for types of sentence. The prosecution is therefore the second key stage of the criminal proceedings. The prosecution ends with the submission of the charge sheet to the trial court. The prosecution is either sustained or rejected by the court. Consequently, the accused will either be convicted or acquitted. Hence, the conviction or acquittal is the third key stage of the criminal proceedings.

All these stages are intrinsically interrelated. A fair and proper investigation leads to a prompt, reliable and efficient prosecution, which in turn results in a flawless conviction. Prosecutors should protect innocent people. The prosecutors are supposed to use a judicial mind while taking the decision to prosecute or abstain from doing so. Thus, the Police and prosecutors should consciously and judicially scrutinize evidence to avoid unjustified prosecution. The procedure they apply to separate cases where prosecution is justified from those where it is unjustified, is known as a "filtering device". The filtering device is therefore implemented to avoid "random prosecution". In fact, the filtering device requires that prosecutors act independently of investigators. It should prevent prosecution being simply a bridge between the Police and the judiciary.

The total caseload of the judiciary is directly concerned with the first and second key stages of the criminal proceedings. If the prosecutors function judiciously, the probability of the effective implementation of the filtering device becomes possible. However, this is only possible if workloads are reasonable. This itself is dependent on the Police operating an effective filtering procedure during the investigation of the suspect. If all cases reported to the Police are investigated and forwarded to Government Attorney's offices without consideration of the cases' merits, the implementation of filtering devices becomes impossible. Hence, the more effective the filtering process of the Police, the greater the chance for the use of a judicial mind by the prosecutors. If there is a greater opportunity for the use of a judicial mind, there will be a higher chance of blocking unnecessary cases arising at court.

Table 35: Number of FIRs Nationwide by Year

F/Y 2051/52	**F/Y 2052/53**	**F/Y 2053/54**	**F/Y 2054/55**	**F/Y 2055/56**	**F/Y 2056/57**	**F/Y 2057/58**	**Total**
9,111	9,421	9,456	10,562	10,504	10,640	9,897	69,591
Increment %	3.40	0.37	11.70	-0.55	1.29	-6.98	Avg. 1.17

In this section, an attempt will be made in the light of the discussion above to examine the current practices or trends in the use of filtering devices at different key stages of criminal proceedings. To make this analysis, the following data has been studied:

- The total number of FIRs filed in all 75 District Police Offices.
- The total number of FIRs not acted upon by Police Offices.
- The total number of offences investigated.
- The total number of offences submitted to the District Government Attorney's Offices for prosecution.
- The total number of offences prosecuted by the District Government Attorney's Offices.
- The total number of offences that have resulted in the conviction of suspects (excluding partially convicted cases).
- The total number of acquitted cases.
- The types of crime that have generally resulted in the conviction of suspects.

The statistics present the following scenario regarding the occurrence and reporting of crime:

- There has been an average growth in the rate of crime reporting by 1.17% over the past seven years. It can be inferred from this figure that the crime rate is rising, albeit slowly. However, in F/Y 2057/58, there was a sharp reduction in the registration of FIRs, compared to the levels of previous years. The reason for this has not been established. The intensification of the Maoist insurgency and resultant evacuation of Police Offices are probable causes. This can be supported by evidence of a severe reduction in reported crimes in certain districts in western Nepal. The situation of Rukum district, which was one of the districts sampled for study, can best illustrate this statement.

Table 36: Total Number of FIRs and Filtered Out FIRs by Year

F/Y	Total FIRs	Acted on	Number of FIRs Filtered Out by Police	Filtered by Police %
2051/52	9,111[229]	6,098 (4,269+1,829)[230]	3,013	33.07
2052/53	9,421[231]	6,155(4,104+2,051)[232]	3,266	34.67
2053/54	9,456[233]	5,641(3,595+2,046)[234]	3,815	40.34
2054/55	10,562[235]	6,137(3,844+2,293)[236]	4,425	41.90
2055/56	10,504[237]	6,028(3,640+2,388)[238]	4,476	42.61
2056/57	10,640[239]	6,228(3,838+2,390)[240]	4,412	40.47
2057/58	9,897[241]	Report not published	-	-

- The increment rate is not always consistent; there are fluctuations.
- The occurrence and reporting of crime in F/Y 2054/55 was high in comparison to that found in other years. In this fiscal year, the crimes of rape, robbery, gambling, trafficking, polygamy and crimes related to employment in foreign countries were crimes found to have particularly increased. The increment of such crimes indicates a growing instability and breakdown of law and order in society. Although, the actual reasons for this are not known, the disruption of general law and order resulting from the general election held in this year may be a reason for the increment in these types of crime.

These statistics include only FIRs pertaining to the offences investigated by the Police Office, i.e., offences falling within Annex 1 of the State Cases Act, 2049. Therefore, the figures do not include those FIRs regarding crimes like the poaching of wildlife, violation of immigration rules and evasion of tax and custom duty that were investigated by the concerned government departments.

Scenario of the Effectiveness of Filtering Devices

Table 36 presents quantitative support for the satisfactory performance of filtering devices at the stage of investigation. On average, 38.84% of FIRs are filtered out by the investigating agency, i.e., the Police. However, it has not been

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229 The figure slightly differs with that given by the Police Headquarters Report, 2056. The former figure given is 9,111, whereas the information obtained from the CID is 9,100. The other figures mentioned here match those published in the said report. See, pp. 74-80.

230 The figures inside the bracket are the FIRs that went to the District Court and the CDO's Office respectively. See, Attorney General's Report, F/Y 2051/52, p. 20.

231 See, Attorney General's Report, F/Y 2052/53, p. 86. The figure supplied to CeLRRd by the CID, Police Headquarters, is 9,438.

232 The figures inside the bracket are the FIRs that went to the District Court and the CDO's Office respectively. See, Attorney General's Report, F/Y 2052/53, p. 40

233 See, Attorney General's Report, F/Y 2055/56, p. 119. However, the report of the same office in F/Y 2053/54 states the number as 9,268, p. 82. The figure supplied to CeLRRd by CID was 9,326.

234 The figures inside the bracket are the FIRs that went to the District Court and the CDO's Office respectively. See, Attorney General's Report, F/Y 2053/54, p. 33.

235 See, Attorney General's Report, F/Y 2055/56, p. 120. However, the report of the Police Headquarters states the number as 10,324. The same figure was supplied to CeLRRd by the CID.

236 See, Attorney General's Reports, F/Y 2053/54 and 2045/55, p. 33 and p. 24 respectively. This figure was obtained by deducting the backlog received from F/Y 2053/54 from the total figure of F/Y 2054/55.

237 See, Attorney General's Report, F/Y 2055/56, p. 120.

238 See, Attorney General's Reports, F/Y 2054/55 and 2055/56, p. 24 and p. 35 respectively. The figure was obtained by deducting the backlog received from F/Y 2054/55 from the total figure of F/Y 2055/56.

239 See, Attorney General's Report, F/Y 2056/57, p. 121. However, the Police Headquarters' Report, 2057 (Special Issue (p. 74) published on the annual Police Day) states the figure as 10,584.

240 See, Attorney General's Reports, F/Y 2055/56 and 2056/57, p. 35, and p. 77 respectively. The figure was obtained by deducting the backlog received from F/Y 2055/56 from the total figure of F/Y 2056/57.

241 The figure was supplied to CeLRRd by the CID.

possible to identify the detailed criteria that have been applied in the filtration of FIRs. The proportion of FIRs that have been filtered during the last two years is simply incredible. A large number of cases have not been acted on. The reason for this is not obvious. However, one reason could be the rise of the Maoist insurgency in many parts of the country. Due to the withdrawal of Police presence from many parts of the country, the arrest of suspects has become a very difficult task.

Table 37: Comparison of Filtering by Police and Government Attorney's Offices by Year

F/Y	Number of Cases Submitted by Police to Govt. Attorney	Number of FIRs Filtered Out by Police	Filtered by Police %	Cases Filtered By GOvt. Attorney	Filtered %	Cases Received By Govt. Attorney From Other Agencies for Defense
2051/52	6,098	3,013	33.07	364[242]	5.97	2,498[243]
2052/53	6,155	3,266	34.67	282	4.58	1,995
2053/54	5,641	3,815	40.34	291	5.16	1,439
2054/55	6,137	4,425	41.90	283[244]	4.61	1,786
2055/56	6,028	4,476	42.61	268	4.45	2,033
2056/57	6,228	4,412	40.47	234[245]	3.76	2,222
2057/58	3,907	5,990	-	Not Available	-	Not Available

The number of cases filtered by the Police may have included a number of pending cases. However, without checking the records of every District Police Office, it is not possible to identify the actual number of pending cases. The report published by the Police Headquarters does not give a detailed enumeration of pending cases. It can therefore be assumed that the figure represents the filtered out cases alone. However, these cases should be examined, to determine whether they were filtered out or were pending.

Table 37 presents an interesting scenario regarding the filtering of cases during investigation and prosecution. As shown by the table, the proportion of filtered cases at the stage of prosecution is on average merely 5%. This could suggest either of two conclusions:

Table 38: Filtration of Cases by Government Attorney's Offices by Year

F/Y	Total FIRs	Number of Cases Submitted by Police to Govt. Attorney	Cases Filtered By GOvt. Attorney
2051/52	9,111	6,098	364
2052/53	9,421	6,155	282
2053/54	9,456	5,641	291
2054/55	10,562	6,137	283
2055/56	10,504	6,028	268
2056/57	10,640	6,228	234

1. The investigation of the Police is flawless, and thus the Government Attorneys do not feel the need to scrutinize case files. The prosecution is based only on the evidence collected by the Police, or
2. There is no practice of filtering cases. In other words, Government Attorneys conduct almost random prosecution, or they transfer the case-files to the trial courts without using judicial minds.

The prosecution rarely requires investigators to collect additional evidence[246]. It seems that the prosecution accept case files from the Police *in toto.* This suggests that government attorneys are not concerned with the filtering process, and

[242] See, Attorney General's Report, F/Y 2053/54. p. 20. This applies to F/Y 2052/53 and F/Y 2053/54.

[243] This figure is not included in the aggregated figure of total cases in the report of the Attorney General. This means that in this fiscal year, all cases forwarded by the Police were prosecuted. See, Attorney General's Report, F/Y 2053/54, p. 32-33 and 66. This is applicable to F/Y 2052/53 and 2053/54 also.

[244] See, Attorney General's Report, F/Y 2055/56, p. 21. This applies also to F/Y 2055/56.

[245] See, Attorney General's Report, F/Y 2056/57, p. 20.

prevent a large number of cases from reaching conviction. Such practices have the potential to lead to violations of human rights.

Thus, it is hard to justify the first conclusion, as a large number of cases do fail in the trial court. On the basis of present conviction rates, one would be compelled to conclude that Government Attorney's offices are not suitably active and efficient in filtering out unfounded cases. This necessarily leads to a higher rate of failed convictions in the trial courts, and is a cause of their excessive caseload.

Scenario of Conviction in Trial Courts

Table 39 : Conviction and Acquittal Rates in the Trial Courts by Year

F/Y[247]	Disposed Cases	Pending	Conviction	Success (Conviction) %	Failure (Acquittal + Partial Conviction)	Failure %
2051/52	5,763	7,420	3,386	58.75	2,377	41.25
2052/53	6,076	7,452	3,594	59.15	2,482	40.85
2053/54	5,692	7,401	3,212	56.43	2,480	43.57
2054/55	6,831	8,518	3,819	55.91	3,012	44.09
2055/56	5,946	9,226	3,593	60.43	2,353	39.57
2056/57	8,236	7,946	4,751	56.69	3,415	42.31

Table 39 shows the serious failure rate of the prosecution. The average rate of failure is 41.94%. This failure obviously suggests the inefficiency of any filtering device at the prosecution stage. On the basis of the table, the following conclusions can be drawn:

1. One of the reasons for the huge caseload of the judiciary is the inefficiency of the filtering device at the prosecution stage. This is not caused by a lack of appropriate law, but by a lack of initiatives to implement such a device effectively.
2. The failure rate or the acquittal of a large number of cases suggests possible violations of human rights in great number of cases.
3. Investigations and prosecutions are not generally based on the legality, authenticity and reliability of evidence.
4. The role of prosecutors is largely confined to that of bridge between the Police and the courts. The prosecutors generally do not take decisions judiciously.

Scenario of FIRS by the Type of Crime

Analysis in this part is based on the data supplied by the CID to CeLRRd. The figures of the FIRs included in this part of the analysis do not perfectly match those used to show the scenario of the occurrence and reporting of crimes, effectiveness of the filtering device and the convictions in Tables 36 to 39. The figures used in those tables are based on the report published by the Police Headquarters in F/Y 2056/57 on the annual "Police Day". Since the report does not furnish disaggregated figures of individual crimes, the same cannot be used for analysis of the trends in this part. However, the mismatch of the figures supplied by CID and that of report is by no more than two digits, so it will make no difference in the overall result of the analysis. The detailed figures of each individual crime are given in Table 41. For the convenience of analysis, the figures of similar crimes have been grouped below in Table 40, to show how the disaggregation of figures by crime appears nationwide.

Table 40: Number of FIRs by Types of Cases by Year

Crime	**2051/52**	**2052/53**	**2053/54**	**2054/55**	**2055/56**	**2056/57**	**2057/58**

[246] Section 17(3) of the State Cases Act, 2049, empowers Government Attorneys to require investigators to compile additional evidence needed for prosecution. However, this power is rarely used. One of the explanations often cited is that Police investigators submit documents to the prosecutors at the end of the remand deadline, the 25th day. This practice makes it impossible to scrutinize the documents and filter cases effectively. The large number of failed convictions is exacerbated by the delays in submission of documents to prosecutors by the Police.

[247] See, respective reports of the Attorney General's Office. (F/Y 2051/52 to 2056/57).

Murder	2,206	2,257	2,331	2,489	2,616	2,557	2,450
Public Offence	1,620	1,798	1,861	2,086	2,100	2,169	1,864
Theft	705	689	624	584	490	498	312
Drugs	537	480	378	394	409	385	235
Arms and Ammunition	162	205	185	225	299	198	199
Trafficking	150	133	117	130	110	120	92
Rape	132	125	112	107	141	186	122
Robbery	105	106	83	138	132	191	283
Corruption	2		1	2	0	0	0

The table presents the following crime trends:

- The crime of murder has the highest frequency of occurrence, followed by public offence, theft and drugs. The crimes of trafficking and rape seem to be the two major crimes against women, and together constitute one of the most frequently occurring categories of criminal act nationwide.
- The crime of murder has consistently increased, except in F/Y 2057/58. However, even the total figure in this fiscal year is greater than some of those recorded in earlier years.
- Interestingly enough, crimes related to drugs show a decreasing trend, despite a few fluctuations. The crime of theft shows a consistently decreasing trend. In principle, decreasing trends of crime, such as those of crimes related to drugs and theft, would indicate the improvement of general law and order. However, it would be merely a conjecture to conclude so without determination of the true causes. At this point, the following alternative hypothesis can be drawn up for these decreasing trends:
  1. The state of Police alertness for prevention of these crimes has increased. Increased Police alertness means the improvement of the crime management system.
  2. Or, there may a completely different reason for the reduction of crimes. The deterioration of the general law and order situation may have affected the confidence of people in the criminal justice system. The public may thus have refrained from using the Police system, and consequently a large number of cases may not have been reported to the Police.

The prevalent law[248] on theft is archaic. It allows forfeit of 10% of the total value of property stolen upon the recovery of the property. Generally, people who have sustained a loss of property because of theft do not like to move to legal proceedings, as they do not want to lose 10% of the value of their property if it is recovered through the court. In such conditions, cases of theft are not even recorded in the Police Office, and offenders are released by the Police without completing formal criminal proceedings, i.e. being submitted to the prosecutor. An increase in such tendencies might be a possible cause for the decreasing trend of crimes of theft. Cases relating to public offence are heard by the CDO, and as such the rate of convictions is very high. There is a great potential for violations of human rights by these administrative institutions as legal representation is frequently denied. CDOs who pass judgements in these cases are not from a legal background, and as such judgments are often not formulated by a judicial mind. If we exclude these cases from the list of successful prosecutions, the number of failed convictions increases dramatically.

The following table[249] shows the nationwide data of detailed crime trends.

Table 41 : Detailed Breakdown of FIRs by Types of Crime by Year

S.N	Crime	2051/052	2052/053	2053/054	2054/055	2055/056	2056/057	2057/058
1	Murder with Robbery*	12	6	8	10	20	28	29
2	Murder*	516	498	506	565	630	602	616
3	Murder with Poison	-	1	4	1	-	-	1
4	Attempt to Murder	234	287	323	301	410	293	283
5	Abortion*	89	76	74	101	81	89	55
6	Suicide by Poisoning	346	414	442	544	617	703	812

[248] Clause 47 of the Section on Punishment, *New Muluki Ain*, 2020.

[249] The figures in the table were supplied by the CID to CeLRRd with an official letter of authentication.

7	Suicide by Arson	64	64	63	75	77	78	86
8	Suicide by Hanging	953	1,044	1,120	1,336	1,343	1,392	1,356
9	Suicide using Arms/Weapon	12	16	14	16	15	16	12
10	Suicide by Jumping	37	42	32	45	60	69	45
11	Suicide by Electrocution	2	1	1	1	1	1	2
12	Suicide by Drowning	54	33	38	41	28	22	33
13	Cow Slaughter	26	26	22	26	20	17	21
14	Fraud	57	44	76	64	87	62	39
15	Rape	132	125	112	147	141	186	122
16	Attempt to Rape	30	27	34	34	18	33	35
17	Robbery	105	106	83	138	132	191	283
18	Thievery by Force	42	35	35	27	24	27	22
19	Theft	705	689	624	584	490	498	312
20	Theft of Antique Particulars	12	11	8	10	7	3	10
21	Cattle Theft	66	72	62	54	39	33	19
22	Narcotic Drugs	537	480	378	394	409	385	235
23	Counterfeit of coin or currency	6	8	11	11	17	21	16
24	Arson	56	89	50	51	54	77	87
25	Illegal possession of Arms							
	and ammunition	162	205	185	225	299	198	199
26	Abscondance from jail	1	-	-	-	-	-	-
27	Crime against (Treason)							
	State Offence	3	8	1	8	14	24	70
28	Gambling	36	20	13	21	13	9	7
29	Abscondance from police custody	2	6	2	2	-	1	-
30	Public Offence	1,620	1,798	1,861	2,086	2,100	2,169	1,864
31	Citizenship	55	64	35	58	65	54	64
32	Trafficking of Human Beings	150	133	117	130	110	120	92
33	Polygamy	173	155	101	135	96	96	75
34	Child Marriage	11	7	5	3	1	5	1
35	Misappropriation of State Property	2	-	1	2	-	-	-
36	Vehicle Accident (only those							
	cases brought before the Court)	960	1,036	976	1,043	1,050	1,029	1,034
37	Accidental homicide*	1,352	1,385	1,417	1,454	1,581	1,502	1,301
38	Black Marketing	14	13	6	9	22	18	6
39	Cheating	187	78	77	95	90	90	75
40	Pick Pocketing	3	1	4	1	1	-	-
41	Foreign Employment	34	24	44	90	2	3	-
42	Conversion of Religion	1	-	1	3	1	-	2
43	Miscellaneous Murder Case*	237	291	322	358	313	336	448
44	Foreign Exchange	-	6	17	9	7	6	1
45	Miscellaneous	4	14	21	9	2	17	40
46	Possession of Explosive Material	-	-	-	-	-	23	28
47	Battery / Grievous Hurt	-	-	-	-	-	53	53
48	Illegal Collection of Donations	-	-	-	6	12	2	6
49	Sodomy (Sex with an Animal)	-	-	-	-	-	1	-
50	Election-related crime	-	-	-	1	5	1	-
51	Hijacking of Plane	-	-	-	-	-	1	-

	Total	**9,100**	**9,438**	**9,326**	**10,324**	**10,504**	**10,584**	**9,897**

* Aggregated in Table No. 40

Table 42 : Number of FIRs and Charge Sheets (C/S) by Types of Crime by Year

Crimes	**2051/52**		**2052/53**		**2053/54**		**2054/55**		**2055/56**		**2056/57**		**2057/58**	
	FIR	C/S	FIR	C/S	FIR	C/S	FIR	C/S [250]	FIR	C/S [251]	FIR	C/S [252]	FIR	C/S [253]
Murders	528[254]	516[255]	505	498	518	418[256]	576	-	650	460	630	482[257]	646	-
Rape[258]	162	132	152	152[259]	146	121	181	-	159	148	219	162	157	-
Drugs[260]	537	539	480	481	378	368	394	-	409	385	385	418[261]	235	-
Robbery	105	105	106	106[262]	83	70	138	-	132	111	191	100	283	-
Arms and Ammunition	162	161	205	205[263]	185	169	225	-	299	285	198	228[264]	199	-
Trafficking	150	150	133	130[265]	117	107	130	-	110	118	120	129[266]	92	-
Corruption	2	-	-	-	1	19	2	-	0	14	0	3	0	-
Public Offence	1,620	1,674	1,798	1,798	1,861	2,041[267]	2,086	-	2,100	2,073	2,169	-	1,864	-
Theft	705	452	689	-	624	410	584	-	553	621[268]	498	770[269]	312	-

250 The figure is not available.

251 The figures in this column were obtained by deducting the backlog of F/Y 2054/55 from the total figure of each type of case in F/Y 2055/2056.

252 See Attorney General's Report, F/Y 2056/57, p. 37, and F/Y 2055/56, p. 37.

253 The report has not yet been published.

254 Data supplied by the CID.

255 Attorney General's Report, F/Y 2051/52, p. 52. Interestingly, the figure given by the Attorney General's office is larger than that given by the Police. Moreover, at page 52 of the Attorney General's report, the figure of crimes regarding Narcotic drugs is 539, whereas at page 38 the figure is stated as 558. It is clear that the figures of the Police and AG are different.

256 Attorney General's Report, F/Y 2053/54, p. 58 (Applicable to all figures of this column). However, if we compare the figures at page 80 of the same report, the figures can be observed to be different. On this page, the figures are 506, 113, 377,83, 184 and 117 respectively.

257 The total figure of the cases disposed of in F/Y 2055/56 was 394, and the backlog was 375. However, the total figure of the caseload of that fiscal year is given as 1,069. This year's backlog figure is reported as 375, which is not true. The backlog figure should be 675. The true figure of the murder cases in F/Y 2056/57 is 482 (1157-675 = 482).

258 The category for the crime of rape also includes crimes of attempt to rape.

259 The report supplied by the CID to CeLRRd states 152 FIRs filed, including thos e regarding attempt to rape. However, the Attorney General's Report of F/Y 2052/53 at page 64 states the figure as 158.

260 The total figure of drug-related cases cited in the Attorney General's Report at page 85 is stated as 481, which is larger by one case than the Police report. However, the same report at page 64 states the figure as 491. The correct figure is not known. It is also unknown how the figure given by the Attorney General's office can be larger than that given by the Police.

261 The total figure of drug cases was given by the Police as 385. However, page 75 of the Attorney General's Report F/Y 2056/57 states the figure as 384. The same report at page 37 states the total figure of FIRS filed in the year as 824. The backlog received for the previous year is given as 406. Deducting the backlog from the previous year, the total figure of this year is 418. However, this figure exceeds the figure given by the Police. The explanation for this is unknown.

262 Attorney General's Report, F/Y 2052/53, p. 85.

263 Ibid.

264 The total figure of arms and ammunition cases given by the Police is 198. Page 121 of the Attorney General's Report, F/Y 2056/57 also states the same figure. The same report at page 37 states the total figure of the year to be 671. The backlog re ceived from the previous year is 443. Deducting the backlog from the previous year, the total figure of this year is 228. However, this figure exceeds the figure given by the Police. The explanation for this is not known.

265 Attorney General's Report, F/Y 2052/53, p. 64.

266 The Police have informed CeLRRd of 120 trafficking cases in total. Page 121 of the Attorney General's Report F/Y 2056/57 states the figure to be 125. The same report at page 37 states the total figure of the year to be 321. The backlog rec eived from the previous year is 192. Deducting the backlog of the previous year, the total figure of this year is 129. However, this figure exceeds the figure given by the Police. The explanation for this is unknown.

267 Attorney General's Report, F/Y 2053/5 4, p. 58.

268 The Police have informed CeLRRd of 553 cases of theft in total. Page 119 of the Attorney General's Report F/Y 2055/56 also states the same figure. The same report at page 37 states the total figure of the year as 1,340. The backlog received fro m the previous year is 719. Deducting the backlog of the previous year, the total figure of this year is 621. However, this figure exceeds the figure given by the Police. The explanation for this is unknown.

269 The total figure of theft cases given by the Police to CeLRRd is 498. Page 121 of the Attorney General's Report F/Y 2056/57 states the figure as 530. The same report at page 37 states the total figure of the year as 1,438. The backlog received from the previous year is 668. Deducting the backlog of th e previous year, the total figure of this year is 770. However, this figure exceeds the figure given by the Police to CeLRRd and contradicts the figures of the AG's office. The explanation for this is unknown.

The table shows a lot of interesting figures. For instance, in F/Y 2051/52 and 2053/54, the Police reported 537 and 480 FIRs for drug crimes respectively. However, the Attorney General's reports cite the figures of prosecutions for these crimes as 539 and 481 respectively. Similarly, in F/Y 2056/57, the Police stated that there were 385 FIRs, whereas the Attorney General's office cites 418 cases prosecuted. The same condition is obvious regarding the crime of arms and ammunition in F/Y 2056/57, the crime of public offence in F/Y 2051/52 and 2053/54, and the crime of theft in 2055/56. How many more cases are prosecuted than the number of FIRs reported by the Police is an unanswered question. There is a possibility that some cases are pending. However, this is not enough to justify such a large gap in the data. It can therefore be concluded that neither the Police Headquarters nor the Attorney General's office are serious about maintaining systematic records of cases.

However, the available data, despite some mismatches in the figures, highlights some important trends of prosecution:

1. Prosecutors are serious enough to use a filtering device in cases of murder. In these cases, prosecutors do scrutinize the evidence, merits of the facts and other documents. It leads us to conclude that they judiciously decide, before prosecution is made, whether the case is sustainable or not. For instance, in F/Y 2055/56 and 2056/57, only 460 and 482 cases were prosecuted out of 650 and 630 FIRs. This pattern of prosecution indicates a workable funnel in the system that can help to reduce the caseload of the judiciary.
2. There is also a positive trend of filtering that can be seen in cases of rape. In all but one fiscal year the prosecutors did filter a certain number of cases. Obviously, a certain percentage of cases, as in cases of murder, are lost before prosecution.
3. However, the scenario regarding drug cases is different. Here, the level of prosecutions is huge compared to that of other crimes. The table shows there are a few instances where the prosecution figures exceed the figure of FIRs filed. Although there is no obvious justification for this, it might be due to the following:
   - cases pending at investigation level might have been submitted to the prosecutors in the following years, so that the number of prosecutions is higher than the number of FIRs, or
   - more than one case emerged from the same FIR, or
   - more than one charge sheet was produced against a person from the same FIR.

   The authenticity of these reasons is not possible without an empirical study. At this point, what can be simply concluded is that the cases regarding drugs are generally not filtered out. Almost all cases investigated by the Police are transferred to the courts for trial. Hence, the funneling of cases with regard to narcotic drugs is quite different to that regarding other types of crime.
4. A remarkable trend has been discovered in relation to crimes of arms and ammunition and public offence. No cases of these types are lost prior to prosecution. The prosecutors in these types of case simply send all cases investigated by Police to trial. These cases are tried by the CDO, an administrative office having quasi-judicial power to try such cases. These cases generally result in conviction. As mentioned before, this boosts the overall figure of successful prosecutions.

To conclude, it is obvious that the filtering device at the stage of prosecution functions to a certain extent. However, it is not consistent in all types of cases. In some cases, the filtering process is effective and thus creates a feasible funnel of cases through the system, whereas in other cases the filtering device is absolutely ineffective.

Under the present legal system in Nepal, the courts are bound to accept the charge sheet submitted to them *in toto*. They cannot instruct the prosecutors on the charge sheet, i.e. in matters regarding its contents, the law applied and the punishment invoked. Moreover, the courts can neither reject nor recommend amendment or change. Therefore, the trial is based absolutely on the charge sheet submitted by the prosecutors.

The result of the trial appears in the form of a conviction or acquittal of the accused. Recently, a judicial practice has developed that shifts the degree of punishment from a higher to lower standard. In principle, such a shift is construed as failure of the prosecution, although in Nepal, the Attorney General's office defines it as a partial success.

Table 43 explains the current trends of convictions and acquittals in the trial court.

Table 43: Conviction and Acquittal Status of Prosecuted Cases by Year

Crimes	2055/56[270]				2056/57[271]			
	Total Cases[272]	Conviction	Partial Conviction	Acquittal	Total Cases	Conviction	Partial Conviction	Acquittal

[270] See, Attorney General's Report, F/Y 2055/56, p. 37.

[271] See, Attorney General's Report, F/Y 2056/57, p. 37.

[272] The total figure here includes both cases disposed of and that are backlog. The backlog remaining is not given here, as it has no relation to the conviction and acquittal trends.

Murder	1,069	144	124	126	1,157	219	204	204
Rape	311	45	24	50	354	93	34	64
Drugs	770	172	114	78	824	217	170	76
Robbery	313	16	23	61	413	25	43	111
Arms and Ammunition	669	190	27	9	671	236	20	9
Trafficking	291	38	30	31	321	66	49	51
Corruption	45	5	0	8	35	10	3	3
Public Offence	2,830	1,513	260	92	5,102	2,114	358	195
Theft	1,340	250	220	202	1,438	288	310	309

The figures in the table reflect several interesting trends.

1. The number of acquittals and partial convictions together indicate the extreme failure of the prosecution in gaining convictions. This obviously suggests a poor state of investigation and prosecution. Such a pattern of failure leads us to conclude that:
   - Under present practices of investigation and prosecution, either a large number of innocent persons are unnecessarily subjected to criminal trial, or a large number of criminals escape justice. In both circumstances, Nepalese society becomes a paradise for offenders.
   - The sensitivity of the investigators and prosecutors to the human rights of persons is minimal.
2. The acquittal rate is comparatively high for crimes of murder, rape, robbery and trafficking, whereas the rate of convictions is higher for drug-related crimes.
3. It is also obvious from the table that a large number of cases every year are left as backlog. This means that the accused has to wait for a long time before their case is disposed of. The delay in the trial process may mean evidence is vulnerable to being tampered with. This might be one of the causes for a higher rate of acquittals in crimes like murder and rape. Thus, it is not necessarily that the failure of the prosecution results from wrong prosecution alone, but it may equally be the fault of an unsystematic trial system in the courts.

Scenario of FIRs and Prosecution in the Sampled Districts

It has been impossible to obtain systematic records of cases dealt with by District Courts from which disaggregated figures of convictions or acquittals can be drawn. The Supreme Court annual reports give only the aggregated figures of the districts. They do not distribute the figures by type of crime or by result. The District Courts also do not maintain disaggregated figures of the types of crimes that come before them and the results reached. Neither published reports nor the survey of the sampled districts have yielded information regarding disaggregated data on types of crimes and their results occurring at district level. Thus, it has not been possible to track the state of longitudinal caseflow in order to show which cases generally result in conviction and which ones do not. However, two years' disaggregated figures from the trial courts for a few important types of crime (Table 43) give a suggestion of the caseflow and indicate the state of funneling.

There have been great constraints on obtaining crime-wise disaggregated figures to show the district situation. Hence, it is difficult to see the design of a funnel in the criminal justice system. However, data from the following three fiscal years is available regarding crime and district wise disaggregated figures of FIRs, charge sheets and conviction and acquittal rates. An attempt has been made to throw some light on the funneling design by using this data. Unfortunately, even the data of these three years, obtained from the annual reports of the Attorney General, is inconsistent in many respects. There are some figures of prosecution (i.e.: the number of charge sheets) that exceed the number of FIRs. How this has occurred is not clear. It can be conjectured that:

1. either one FIR gave rise to prosecution of several separate crimes, or
2. pending cases revived later on increased the number of prosecutions.

However, the following figures can help to identify some trends of funneling.

Table 44: Total Criminal Cases in the Sampled Districts by Type: F/Y 2051/52[273] FIR (F) and Prosecuted (P)

Crimes	Jhapa		Terathum		Rasuwa		Rukum		Gulmi		Rupendehi		Rautahat		Surkhet		Kanchanpur		Kath.	
	F	P	F	P	F	P	F	P	F	P	F	P	F	P	F	P	F	P	F	P
Murder	16	16	1	3	2	2	3	3	6	6	18	8	9	8	7	11	4	5	53	26
Rape	10	9	1	0	0	0	0	0	0	1	11	13	2	2	1	2	3	3	9	14
Drugs	26	23	0	0	2	2	1	2	0	0	69	68	6	24	1	0	7	6	90	112

[273] For the figure of FIRs see, Attorney General's Report, F/Y 2051/52, pp. 43-49, and the figure of prosecuted cases in the same report, pp. 26-32.

Robbery	6	8	0	0	0	1	1	1	2	0	4	6	6	8	0	0	4	6	8	2
Arms	8	8	0	0	0	0	0	0	0	0	5	6	18	0	0	0	6	5	1	3
Trafficking	2	2	0	0	3	2	0	0	0	0	10	7	1	1	1	1	1	1	39	35
Public Offence	93	101	7	8	1	1	1	3	15	15	84	84	18	16	15	13	11	12	209	220
Theft	33	31	1	0	1	0	0	0	5	0	26	13	8	0	5	1	18	14	119	145

Table 45 (A) : F/Y 2052/53[274] FIR (F) and Prosecuted (P)

Crimes	**Jhapa**		**Terathum**		**Rasuwa**		**Rukum**		**Gulmi**	
	F	**P**	**F**	**p**	**F**	**P**	**F**	**p**	**F**	**p**
Murder	21	11	4	4	1	1	12	12	3	3
Rape	8	10	0	0	0	0	0	0	0	0
Drugs	28	31	1	1	0	0	0	0	0	1
Robbery	4	0	0	0	0	0	4	3	0	3
Arms	7	9	2	2	0	0	2	1	0	0
Trafficking	5	5	0	0	1	1	1	1	0	0
Public Offence	109	121	8	8	1	1	3	4	10	8
Theft	44	43	1	0	2	1	3	1	4	3

Table 45 (B) : F/Y 2052/53[275] FIR (F) and Prosecuted (P)

Crimes	**Rupendehi**		**Rauthat**		**Surkhet**		**Kanchanpur**		**Kathmandu**	
	F	**P**	**F**	**p**	**F**	**P**	**F**	**p**	**F**	**p**
Murder	25	20	3	5	6	5	4	5	43	18
Rape	4	6	2	2	1	1	5	5	9	9
Drugs	27	28	4	0	1	2	11	11	78	94
Robbery	1	2	1	6	0	0	7	1	0	2
Arms	3	4	5	9	1	1	3	3	9	6
Trafficking	1	4	0	0	0	1	2	1	31	31
Public Offence	110	110	18	21	10	14	12	15	332	332
Theft	19	8	2	4	7	3	25	11	104	126

Table 46 (A) : F/Y 2053/54[276] FIR (F) and Prosecuted (P)

Crimes	**Jhapa**		**Terathum**		**Rasuwa**		**Rukum**		**Gulmi**	
	F	**P**	**F**	**p**	**F**	**P**	**F**	**p**	**F**	**p**
Murder	12	11	2	2	0	0	13	7	4	3
Rape	9	9	0	0	0	0	0	0	0	0
Drugs	15	21	0	0	1	0	0	0	0	0
Robbery	5	4	0	0	0	0	1	0	0	0
Arms	5	5	1	1	1	1	2	2	1	1
Trafficking	9	8	0	0	0	0	0	0	6	0
Public Offence	105	109	9	10	2	3	1	3	10	11
Theft	28	24	3	2	1	1	1	0	0	0

Table 46 (B) : F/Y 2053/54[277] FIR (F) and Prosecuted (P)

Crimes	**Rupendehi**	**Rautahat**	**Surkhet**	**Kanchanpur**	**Kathmandu**

274 For the figure of FIRs see, Attorney General's Report, F/Y 2052/53, pp. 78-84, and the figure of prosecuted cases in the same report, pp. 56-62.

275 For the figure of FIRs see, Attorney General's Report, F/Y 2052/53, pp. 78-84, and the figure of prosecuted cases in the same report, pp. 56-62.

276 For the figure of FIRs see, Attorney General's Report, F/Y 2053/54, pp. 73-79, and the figure of prosecuted cases in the same report, pp. 50-56.

277 For the figure of FIRs see, Attorney General's Report, F/Y 2053/54, pp. 73-79, and the figure of prosecuted cases in the same report, pp. 50-56.

	F	P	F	p	F	P	F	p	F	p
Murder	21	12	13	12	3	3	6	6	28	28
Rape	10	9	1	2	0	0	5	2	9	3
Drugs	13	10	4	4	0	0	4	6	71	76
Robbery	1	0	2	2	0	0	0	1	3	3
Arms	3	3	4	2	0	0	4	9	5	0
Trafficking	5	3	2	2	0	0	1	0	21	20
Public Offence	81	86	20	22	14	12	16	27	388	379
Theft	15	12	6	0	3	1	20	14	79	108

Disaggregated figures of other fiscal years are not available. Hence, the trend analysis hereafter is based on the statistics of F/Y 2051/52, 2052/53 and 2053/54.

The disaggregated figures of FIRs and prosecutions of the ten sampled districts present certain important trends of the crime situation. Despite a few fluctuations, the data of all three years demonstrates the same trends:

1. The distribution of crimes of murder is generally scattered throughout the country, although there is a higher frequency of its occurrence in the densely populated, multi-ethnic, settled and pro-urbanized districts of the Terai, and in urban districts like Kathmandu.
2. The crime of rape demonstrates the same trends.
3. Crimes related to drugs are generally confined to urbanizing and urban set-ups.
4. The crime of robbery is prevalent in Terai districts like Jhapa, Rupendehi and Kanchanpur. The open border between Nepal and India in these districts might be one reason for this type of trend.
5. Places of urban set-up face a large problem of the crime of public offence.
6. The distribution of the crime of trafficking is scattered almost nationwide, and has affected Kathmandu and other hilly districts in particular.

In hill districts, crimes committed are of a lesser degree of seriousness, and of lower frequency.

Scenario of Women's Accessibility to Criminal Justice

The offences of rape, attempt to rape, trafficking and abortion, which are directly related to the body and dignity of women, and the offences like polygamy and child marriage, which are related to the dignity of women, are have been found to make up the largest part of the criminal caseload of the trial courts. In the offence of rape and trafficking, women are the victims of the crime. In cases of polygamy, women are both the victims and offenders. Females are generally the victims of child marriage, as under the present values of the social system, a girl does not have a choice in her marriage. However, in the offence of abortion, women are the offenders.

"Condemned to Exploitation", a research work carried out by CeLRRd in 2000, indicates that the access for women to justice is severely restricted by various factors. It was concluded that gender bias was one of the major restrictions. This part of the present study has made an attempt to show the trends in the occurrence of crimes relating to women, which will reflect on the situation of women´s accessibility to the justice system as well as trends concerning the dispensation of justice.

A review of the annual reports of the Police, Attorney General and the judiciary shows the following patterns of certain major crimes against women in the criminal justice system.

Table 47: Number of FIRs by Types of Cases Related to Women by Year

Crime	2051/52	2052/53	2053/54	2054/55	2055/56	2056/57	2057/58	Total
Rape	132	125	112	147	141	186	122	965
Attempt to Rape	30	27	34	34	18	33	35	211
Trafficking	150	133	117	130	110	120	92	852
Abortion	89	76	74	101	81	89	55	565
Polygamy	173	155	101	135	96	96	75	831
Child Marriage	11	7	5	3	1	5	1	33

Total	585	523	443	550	447	529	380	3,457

Over the last seven years, for the majority of crimes against women, there have been no particular trends in FIRs lodged. However, a decreasing trend can be seen in the number of FIRs lodged for the crimes of polygamy and child marriage. This should be an evidence of an improvement in the situation of women in Nepal; unfortunately, the reverse is probably true. The trends in the data above are contradicted by the findings of a recent survey carried out in 14 districts of Nepal, that show polygamy and child marriage to be a continuing and serious reality.[278] The fall in FIRs filed for these crimes should therefore be a cause for concern. This trend suggests that polygamy and child marriage are not priorities for investigators. It may also indicate a reluctance of communities to report such crimes. This may be due to a lack of faith in the justice system, or an indifference to the criminality of these practices.

The reluctance of civil society to report crime might also explain the low number of FIRs lodged for the crime of trafficking. Although there are no concrete figures for the number of girls and women that are trafficked from Nepal, it has been estimated to be between 5,000 and 7,000 annually. In F/Y 2057/58, only 92 FIRs relating to trafficking were lodged. What is the cause for this vast gap between the practice of trafficking and the performance of investigators? The stigma which attaches to victims of rape and trafficking undoubtedly contributes to the low number of FIRs filed. However, the investigating agency must also bear responsibility. For all crimes against women, there have been some fluctuations in numbers of FIRs lodged. However, on the whole, the levels remain constant. Crimes against women continue to occur in a high number. The investigating agency's commitment to their eradication has therefore been found wanting, and the effectiveness of a filtering system at this stage disproved.

Out of the FIRs registered as mentioned above, the following cases were investigated and forwarded to the prosecution (Table 48).

Table 48: Backlog Situation of Cases Related to Women[279]

Crime	2055/56				2056/57			
	Total FIRs	Investigated	Pending	% of Acted	Total FIRs	Investigated	pending	% of Acted
Rape	141	141	0	100	186	144	42	77.42
Attempt to Rape	18	14	4	77.78	33	28	5	84.85
Trafficking	110	102	8	92.73	120	100	20	83.33
Abortion	81	76	5	93.83	89	61	28	68.54
Polygamy	96	87	9	90.63	96	78	18	81.25
Child Marriage	1	1	0	100	5	4	1	80.00
Total	447	421	26	94.18	529	415	114	78.45

The data above shows the number of cases in which investigation was completed after FIRs were lodged. A filtering mechanism apparently exists at this stage. In cases that are pending, there was no specific reason to continue investigation. Hence, the offender may have absconded, the victim may not have appeared, or the grounds have not been strong enough to support further action. For the crimes above in the two fiscal years highlighted, a small number of cases have been filtered. The percentage of cases acted on is lowest for the crime of attempt to rape. However, this may not be due to an efficient filtering system. Incidents of attempt to rape are difficult to prove, and investigators may lack motivation to pursue the process. Furthermore, victims of the alleged crime may face pressure to drop the case by Police and perpetrators, who are often in positions of power. In the crime of abortion, the number of FIRs acted on is also comparatively low. This may be due to pressure from pro-abortion activists on investigators. For the cases of rape and child marriage, no external influences or internal filtering seems to have taken place. 100% of FIRs lodged have been acted on. This is a negative trend. In general, despite some filtering, the majority of FIRs proceed through the investigation stage. The Police do not appear to have a serious commitment to the scrutiny of cases.

Table 49: Intake and Backlog of Cases Related to Women by Type

Crime	2055/56		2056/57	
	Backlog	New Intake	Backlog[280]	New Intake
Rape	163[281]	148	192	162

[278] Baseline survey of Trafficking and Women's Situation, conducted by CeLRRd, 2001. For detailed information, please contact CeLRRd.

[279] Information on the situation of cases acted on and pending was available for only two fiscal years.

[280] See, page 37 and 75 of the Report of the Attorney General's office, F/Y 2055/56.

Attempt to Rape	45	68[282]	23[283]	79[284]
Trafficking	173	118[285]	192	129[286]
Abortion	38	28[287]	34	46[288]
Polygamy and Child Marriage	130	27	14	215[289]
Total	**549**	**389**	**455**	**631**

Table 50: Comparison of Filtering by Police and Attorney General's Offices by Types of Cases

Crimes	2055/56				2056/57			
	Police		AG		Police		AG	
	FIRs	Investigated	Cases Received	Prosecuted	FIRs	Investigated	Cases Received	Prosecuted
Rape	141	141	148	148	186	144	162	162
Attempt to Rape	18	14	23	23	33	28	45[290]	45
Trafficking	110	102	118	118	120	100	129	129
Abortion	81	76	28	28	89	61	26[291]	26
Polygamy[292] and Child Marriage	97	88	98	98	101	82	99[293]	215

Table 49 shows the number of new cases that are passed to the prosecution by the Police, and thus the standard of their investigation. The level of new intake is particularly great for the crimes of trafficking and rape. Thus the filtering system of the Police is also lacking. The prosecution´s filtering system for these two crimes is also weak, as seen by the high backlog of cases of this type. It suggests that the prosecution rely on the standards of investigation of the Police, and prosecute the majority of cases that are passed to them.

Table 50 shows that the process of filtering used by the Police is more effective than that of prosecutors. The number of FIRs acted on by investigators is slightly less than those lodged for most types of case. However, the number of cases prosecuted by Government Attorneys is the same as those received in all but one instance. The exception is in F/Y 2056/57, when 99 cases of polygamy and child marriage were received by the Attorney General´s office, and 215 were prosecuted. This discrepancy cannot be explained by the reports of the Attorney General´s office.

This data shows that in the majority of cases, the prosecution fails at the trial stage. Such a high failure rate suggests that prosecutions are not founded on adequate proof. The number of unfounded cases proceeding to the trial stage must

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281 The Attorney General's annual report of F/Y 2055/56, at page 37, cites the total figure of crimes of rape as 311. Its annual report of F/Y 2054/55, at page 58 (Annex 8), cites the backlog of that year as 163. Deducting the backlog from the total cases should leave 148 cases. However, according to the Police report, the total FIRs registered in F/Y 2055/56 were 141. It is thus interesting to learn that the AG´s office prosecutes more cases than are investigated by the Police. Moreover, the AG's annual report of F/Y 2055/56, at page 75 (Annex 8), cites the total cases prosecuted in that year as 68, and the backlog left for the next year as 34. The fate of the other cases or the explanation of the total figure of 311 is not given. Such kinds of discrepancies are common in the AG's report, and make it almost impossible to analyze the true situation of cases passing through the system.

282 The Attorney General's annual report of F/Y 2055/56, at page 75, cites the total figure of crimes of attempt to rape as 770. Its annual report of F/Y 2054/55, at page 58 (Annex 8), cites the backlog of that year as 45. Deducting the backlog from the figure of the total cases should leave 725 cases. The figure used in the table was collected from the district wise distribution of cases. According to the Police report, the total number of FIRs registered in F/Y 2055/56 was 18, out of which 14 were forwarded for prosecution. It is therefore interesting to learn that the AG's office prosecuted 711 more cases than were investigated by the Police.

283 The backlog deducted from the total figure.

284 See, page 77 of the AG's Report, F/Y 2056/57.

285 The AG's report of F/Y 2054/55, at page 58, cites the backlog of that year as 173. The report of F/Y 2055/56, cites the total number of cases as 291. Deducting the backlog from the total cases should leave 118 as new cases. In the report of the same year at page 75 (Annex 8), the total number of cases prosecuted was stated as 38. The reason for this discrepancy is unknown.

286 Obtained by deducting the backlog of 192 cases from the total figure of 321. See, page 77 of the AG's Report, F/Y 2056/57.

287 The total backlog from the previous year is 38. The total figure of cases for F/Y 2055/56 is 66. Deducting the backlog from the total cases leaves 28 new cases.

288 Obtained by deducting the backlog of 34 from the total figure of 60 cases. See, page 77 of the AG's Report, F/Y 2056/57.

289 Obtained by deducting the backlog of 14 from the total figure of 229. See, page 77 of the AG's Report, F/Y 2056/57.

290 See, AG's Report F/Y 2056/57, p. 77. The figure of 45 cases was gained by deducting the backlog of 34 from the total figure of 79. This figure does still not match with the figure given by the Police.

291 See, AG's Report, F/Y 2056/57, p. 77. The total figure of cases in this year was 60. The backlog received from the previous year was 34. Deducting the backlog from the total figure leaves 45 cases.

292 According to the AG's Report of F/Y 2055/56 (Annex 9), the total figure of cases is 228. The previous year's backlog was 130. To deduct the backlog from the total leaves 98 cases. See, AG's Report, F/Y 2054/55, p. 58.

293 See, AG's Report, F/Y 2056/57, p. 77. The total figure was 229. The backlog from the previous year was 130 (Annex 9, F/Y 2055/56). Deducting the backlog from the total figure, the outcome is 99.

necessarily place a great strain on the courts. The use of an effective filtering device at both the investigation and prosecution stages could reduce the number of failed cases, and hopefully improve the quality of work done by the courts.

Table 51: Funneling Situation of Cases Related to Women in F/Y 2055/56

Items	Rape	Attempt to rape	Trafficking	Abortion	Polygamy and Child Marriage
Total FIRs	141	18	110	81	97
Acted on	141	14	102	76	88
%	100	77.77	92.72	93.83	90.72
Total Received from Police	148	23	118	28	98
Prosecuted	148	23	118	28	98
%	100	100	100	100	100
Total Backlog and New Cases Disposed of by the Court[294]	311(Backlog: 192 Disposed: 119)	68 (Backlog: 34 Disposed: 34)	291(Backlog: 192 Disposed: 99)	66 (Backlog: 34 Disposed: 32)	228 (Backlog: 130 Disposed: 98)
%	38.26 (119 = 100%)	50 (34 = 100%)	34.02 (99 = 100%)	48.48 (32 = 100%)	42.98 (98 = 100%)
Conviction	44	12	38	9	58
%	36.19	35.29	38.38	28.13	59.18
Partly Convicted	24	4	30	6	25
%	20.17	11.76	30.30	18.75	25.51
Acquittal	50	18	31	17	15
%	42.02	52.94	31.31	53.13	15.31
Backlog	192	34	192	34	130
%	61.74	50	65.98	51.52	57.02

[294] The conviction rate was obtained only from the total figure. It was not possible to identify which cases were new and which were backlog. Hence, the rate of conviction given here has been based on the total figure of cases received by the court from the prosecutors.

Scenario of Types of Crimes at District Court Level

The Annual Reports of the Supreme Court do not give a clear picture of the criminal caseload according to types of crime. The report concerns only a very few types of criminal case. The bulk of criminal cases have been put under the heading of miscellany. The most obvious problem found in the reports is that types of case are aggregated randomly. Even cases that are prosecuted by the State are aggregated with those that have the nature of torts, where the parties are individuals and the State has nothing to do. It would thus be very difficult to disaggregate the figures, and give a clear picture of the situation regarding individual crimes. However, in this part, an attempt has been made to reflect on the situation of important criminal cases, which include:

1. Juvenile Delinquency
2. Forgery and Cheating
3. Theft and Robbery.
4. Rape
5. Abortion
6. Murder
7. Corruption

The description and analysis is given year-wise. This part of the study will show trends of crimes that generally make it to trial.

Fiscal Year 2047/48[295]

The total nationwide criminal caseload during F/Y 2047/48 is 31,800**.** The largest proportion of the caseload was of crimes of forgery and cheating. Crimes of this nature were 5,599 in number. The crime of murder was the second most frequently occurring crime, of which 2,755 cases were recorded. The crime of theft and robbery was the next most frequently occurring, at a recorded level of 2,113 cases. As per the report, election offences were the least occurring crimes. In this year, only one case of election-related crime was filed at court. In this fiscal year, 3 cases of juvenile delinquency were filed at District Courts. Crimes pertaining to women such as rape and abortion also fall in the category of little-occurring offences when compared to crimes such as murder and theft. As per the report, 271 cases of rape and 89 cases of abortion came to the District Courts for trial.

Fiscal Year 2048/49[296]

The total national figure of criminal cases at District Court level in F/Y 2048/49 was 35,062. The figure increased by 8,133 cases from the previous year. The trend of crimes coming to the court is similar to that of the past year. Election-related offences increased significantly in this year. This was probably as the ever first general election took place in 2048, after the restoration of democracy. 249 election cases appeared in the trial courts in F/Y 2048/49. As per the record, the occurrence of crimes of forgery/cheating remained high in this year.

The offence of rape increased to 95 recorded cases, and abortion to 13 cases in this fiscal year. This shows an increasing trend of crimes against and by women.

Fiscal Year 2049/50

In F/Y 2049/50, the figure of the total criminal caseload in the trial courts increased to 35,170 cases. The crime of forgery and cheating maintained the highest frequency of occurrence. The number of offences of juvenile delinquency, corruption and election-related crime increased marginally. However, "conventional" offences like murder and theft decreased in this fiscal year. Crimes relating to women, like rape and abortion, decreased marginally.

Fiscal Year 2050/51

Interestingly, the national criminal caseload in this fiscal year decreased to 30,659. Even then, the crime of forgery and cheating recorded the highest number of occurrences out of all types of crime.

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[295] All figures are taken from the Annual Report of the Supreme Court, F/Y 2047/48.

[296] SCAR, F/Y 2048/49.

Cases of murder and theft/robbery made up 6.91% and 7.55% of the total national criminal caseload respectively. The number of offences against women increased. The crime of rape reached its highest recorded level since F/Y 2047/48. Offences relating to corruption and juvenile delinquency were the least occurring crimes in this year.

Fiscal Year 2051/52

In F/Y 2051/52, the criminal caseload again increased. The total number of cases recorded in this year was 34,893. Of this figure, the largest proportion were again crimes of forgery/cheating, which made up 23.43 percent of the total. Offences against women, in particular rape, maintained the high frequency of previous years. The number of offences of abortion increased by 9 cases from the recorded level of the previous year. Election-related crimes decreased substantially. Offences relating to corruption and juvenile delinquency were again the least occurring crimes.

Fiscal Year 2052/53

In F/Y 2052/53, the total criminal caseload recorded a slight decrease from the previous year. The total national figure of criminal cases was 33,714. Crimes of forgery and cheating were again the most frequently occurring, making up 28.23% of the total criminal caseload.

Cases of murder and theft/robbery represented 7.94% and 7.06% of the total criminal caseload respectively. The highest recorded increment of offences against women was recorded this year. The number of offences of rape reaching trial increased to 445 cases. The number of recorded cases of abortion increased to 165 cases. Offences of corruption also showed an increase on previous levels. 231 cases of corruption reached the trial courts in this year.

Fiscal Year 2053/54

The total number of criminal cases tried during this fiscal year was 36,195, a slight increment on the totals of previous years. Crimes of forgery and cheating made up the largest proportion of the total compared to other individual crimes. Cases of murder and theft made up 7.39% and 5.93% of the yearly total respectively. There was a decrease in the number of crimes against women reaching the trial courts. The recorded number of cases of abortion dropped to 95 cases from 165 cases tried in F/Y 2052/53.

Fiscal Year 2054/55

In F/Y 2054/55, the total figure of criminal cases tried was 36,195, a decrease of 1.3% from the total of the previous year. In F/Y 2054/55, cases of forgery/cheating represented 24.45 % of total criminal cases. Cases of murder and theft represented 6.81% and 6.33% of the total respectively. The number of cases of rape was 492, increasing by 17% from the number recorded in the previous year. Cases of election-related crime increased to 259 from 176 cases in the previous year, F/Y 2053/54. This could be due to the local election that was held in F/Y 2053/54. The number of cases of corruption decreased by 27%.

Fiscal Year 2055/56

In F/Y 2055/56, the total number of criminal cases that appeared at the District Court was 31,197. The caseload decreased from that of the previous year. However, the trend of crimes was similar. Crimes of forgery and cheating were the most frequently occurring. Crimes of murder and theft were respectively only 11.36% and 7.45% of the total number of cases recorded. No election took place in this fiscal year, so cases of election-related crime decreased. The crime of corruption decreased by 35% in this year from the recorded level of the previous year.

Based on the description of the year-wise trends of crimes reaching the trial courts, certain important conclusions can be drawn:

1. Crimes of forgery and cheating constituted a major part of the criminal caseload of the trial courts, and the level of their occurrence was almost consistent every year. Cases of forgery and cheating generally relate to disputes over property between individual persons. All forgery cases are not criminal cases in the strict sense, where the State is a party. Forgery of documents other than official documents is a criminal case in which the parties are individual persons, and the prosecution has nothing to do. Generally, in a large number of forgery cases, two individuals are the parties. We can therefore conclude that a significant part of the criminal caseload of the District Courts was made up of cases in which individual persons are the parties. Hence, the investigation and prosecution had nothing to do with screening or filtering out unfounded cases.

2. Cases of forgery that have individual persons as the parties originate in the trial courts, and follow almost civil procedures. Hence, the trial court itself is the point to check the intake of unfounded cases affecting its working schedule. However, the trend of a high number of cases of forgery coming to the trial courts indicates the ineffectiveness of their filtering devices, and lack of interest in the trial courts to strengthen mechanisms to funnel the caseflow. This work burden must place great stress on the courts, and necessarily affect the effective and efficient trial of criminal cases in which the deprivation of an individual's liberty is threatened.

3. As obvious from the figures for the crime of rape, although the level of occurrence fluctuates, it has followed an increasing trend. There has been a huge growth in recorded cases of rape coming to the trial court in recent years.

4. The criminal caseload of the last ten years is still dominated by "traditional" crimes. This indicates that crime trends, and the structure of criminal laws and procedures are relatively simple and unsophisticated. This is positive, as the condition does not defy reform initiatives. Once technical crimes enter the mainstream of the caseload, carrying out reform will be a challenge, as each law dealing with each type of crime will have to be informed by specialized knowledge and technical considerations. Reforms would therefore have to be brought about on a crime by crime basis. This would be very difficult and expensive to achieve.

5. It seems from the types of crime that constitute the bulk of the caseload that a significant volume of cases could be effectively dealt with by improving the effectiveness of filtering devices. Alternative forums or instruments could be promoted to reduce the intake of cases like forgery, where the dispute is between individual parties and civil procedures can be applied. After developing such mechanisms or instruments, the trial courts could concentrate on types of criminal case where there is a greater potential for the violation of the human rights of victims or accused. There are two ways open to achieve this:

   - Either the criminal and civil courts should be separated so that criminal cases can be tried by courts having specialized knowledge of criminal law and skills of conducting trial; or
   - Several alternative mechanisms or instruments need to be developed so that the huge intake of criminal cases of civil nature can be blocked from entering the trial courts.

Human Resources and Caseload

Introduction

The quality of the standard of justice is dependent on the strength and efficiency of the human resources involved. The analysis of the caseload above shows the increasing backlog of cases and the new intake of civil and criminal cases. From the pattern of growth since F/Y 2047/48, it can be calculated that the caseload has increased almost consistently. However, expenditure on the judiciary has not increased in the same proportion. The recruitment of judges has also increased, but even so, the existing number of judges is hardly enough to carry out the workload of the courts.

In this part of the study, an attempt has been made to explore the situation of human resources involved in the administration of justice, excluding judges. Adequate and efficient human resources are a prerequisite for the fair and competent administration of justice. The fair administration of justice without efficient and adequate human resources is simply a myth.

In Nepal, human resources involved in the dispensation of justice are regulated by the Civil Employees Act and Regulations. Judicial staff, like the staff of other departments of the executive government, are recruited by the Public Service Commission. The Civil Employees Act and Regulations determine the terms and references of the service, benefits and disciplinary actions concerning judicial staff. There is no separate law for the human resources of the judiciary and other government departments.

The judiciary is dependent on the executive government for its budget, and is thus unable to make provision for human resources as per its choice or need. The judiciary must work with the human resource strength allowed by the budget that has been sanctioned by the executive. This does not help to achieve speedy, efficient and competent justice. The trends and conditions shown by the chapter on analysis of the caseload adequately demonstrate that the executive government seems to lack interest in investing in the judiciary. As revealed by the facts and figures, the government is not yet prepared to invest in the administration of justice, despite its importance for the country's development.

Independence of tenure is another significant issue that should be considered in relation to the fairness and competency of justice. Prior to 2047, judges were recruited directly by the Ministry of Law and Justice from those in the executive service. They could thereafter be moved from the judicial service to other departments under the executive. Since there was no line of demarcation between the executive and judicial service, judicial staff and judges were indirectly controlled by, and loyal to, the executive government.

This condition has changed significantly after the restoration of democracy. The judiciary holds complete independence from other branches of the government. Hence, the executive government, in principle, has no room to influence the performance of judges. In contrast to the situation before 1990, the judiciary has full control over its employees. However, its financial constraints are severe, and prevent the judicial service working to its own plan for the recruitment and capacity development of its staff.

In this part, therefore, an attempt has been made to quantitatively analyze the situation regarding the human resources of the judicial service and its impact on the process of justice. The analysis attempts to identify:

1. the national quantitative strength of human resources, and their distribution at various levels of the courts,
2. the strength of human resources involved in judicial functions and general administration, such as financial management,
3. the strength of human resources and their distribution by level of position,
4. the national caseload per staff member, and the distribution of human resources according to criminal and civil caseload,
5. the distribution of human resources according to rank and file, and
6. the trend in the increment of human resources, and its comparison with the caseload of the courts.

Constraints

Statistical information regarding human resources is not available before F/Y 2051/52. It would have been difficult to gather information from the ruining documents in the storeroom of the Supreme Court, and was made impossible by the constraints on time. Hence, the following analysis is based on the available records of the seven years from F/Y 2051/52.

National Scenario of Human Resources and Caseload

As per the national figure of the human resources in the judicial service, including all types of employees except judges, each employee has an annual ratio of 45.16 cases to deal with. (This figure is the average taken from the caseload of 7 years.) However, a considerable number of staff in the judicial service, viz. accountants, drivers, typists, electricians, telephone operators, are not directly involved in judicial administration. In the Supreme Court, the proportion of such staff make up about 49.42% of total staff employed. The proportion of such employees might be slightly less at other

levels of the courts, but in general, they make up not less than 25% of total staff. It is therefore clear that, as a rule, the total caseload of the courts has to be addressed by 75% of the total staff of the judicial service.

Table 52 : National Caseload and Human Resource Situation

F/Y	Total Cases	Total Human[297] Resources	Number of Cases Per Human Resource
2050/51	1,63,168	3327	1:49.04
2051/52	1,64,569	3342	1:49.24
2052/53	1,79,737	3721	1:48.30
2053/54	1,72,932	3761	1:45.98
2054/55	1,91,407	3685	1:51.94
2055/56	1,60,222	3684	1:43.49
2056/57	1,56,705	4530	1:34.59

Annual caseload also differs significantly between levels of court and geographical areas. As shown in a previous chapter, the caseload of Himalayan and hill District Courts is smaller in comparison than that of courts in the Terai and urban areas. Thus, the caseload per employee in the Terai and urban areas will be significantly higher than that of employees in Himalayan and hill districts.

Although, it is not clear in what skill areas human resources have increased, the following table shows that in F/Y 2052/53 and 2056/57, the total number of staff increased significantly. In these years, the growth of human resources was far greater than the growth of the caseload. This can be taken as a positive trend.

Table 53 : Growth of Caseload and Human Resources Nationwide by Year

F/Y	Total Cases	Annual Growth of Caseload	Total Human Resources	Annual Growth of Human Resources
2050/51	1,63,168	-	3,327	-
2051/52	1,64,569	0.85	3,342	0.45
2052/53	1,79,737	8.44	3,721	10.19
2053/54	1,72,932	-3.94	3,761	1.06
2054/55	1,91,407	9.65	3,685	-2.06
2055/56	1,60,222	-19.46	3,684	-0.03
2056/57	1,56,705	-2.24	4,530	18.68

Table 54 : Caseload and Human Resource Situation in the Supreme Court by Year

F/Y	Caseload	Annual Growth Rate	Human Resources	Per Person Caseload	Annual Growth Rate
2050/51	13,979	-	244	1:57.29	-
2051/52	20,348	31.30	259	1:78.56	27.08
2052/53	22,080	7.84	259	1:85.25	7.84
2053/54	24,345	9.30	259	1:94.00	9.30
2054/55	26,706	8.84	237	1:112.68	16.58
2055/56	28,056	4.81	236	1:118.88	5.21
2056/57	30,488	7.98	255	1:119.56	0.57

[297] All figures have been collected from the Annual Reports of the Supreme Court. See, Reports of each individual year. This figure does not include judges.

The figures of the caseload in different years show an incredible increment in the caseload each year. However, human resources overall have decreased. This trend is grim. Over a period of seven years, the caseload has increased by over 100%, whereas the growth of human resources has stagnated. It is obvious that one of the great causes of the backlog of cases each year is the deficiency or inadequacy of human resource provision.

As stated before, about 49.42% of human resources are not directly involved in the judicial administration process. Hence, the total caseload of the court must be directly handled by 60% of its total human resources. This indicates that the stress of work burden on the Supreme Court is overwhelming.

Table 55: Distribution of Human Resources in the Supreme Court by Level (F/Y 2051/52)

Total Human Resources[298]	Officer Level				Clerical Level Subba, Kharidar, etc	Technicians [299]Drivers, Peon, Typists
	Special Class	First Class	Second Class	Third Class		
259	1	2	30	24	74	128 (49.42%)

The disaggregation of Table 55 is taken from F/Y 2051/52. It clearly shows the lack of staff directly involved in judicial administration.

Scenario of Human Resources and Caseload in the Appellate Courts

The per-employee caseload in the Appellate Courts is slightly smaller than that of the Supreme Court. The caseload in the Appellate Courts has decreased since F/Y 2054/55, due to a reduction of the volume of the cases. However, human resources were only increased in F/Y 2052/53, and then a long time afterwards in F/Y 2056/57, by 8.69%.

Table 56 : Caseload and Human Resource Situation at Appellate Court Level by Year

F/Y[300]	Total Cases	Total Human Resources	Human Resources Growth Rate	No. of Cases Per Human Resource
2051/52	52,725	636	-	1:82.90
2052/53	61,768	785	23.43	1:78.69
2053/54	53,052	785	0	1:67.58
2054/55	69,166	771	-1.78	1:89.71
2055/56	48,631	771	0	1:63.08
2056/57	41,240	838	8.69	1:49.21

Scenario of Human Resources and Caseload in the District Courts

The District Courts, as the courts of first instance, are the main points for the origination of cases. As such, District Courts are also where cases must be screened. District Courts can prevent a significant number of cases from reaching the higher courts by promoting conciliation in civil cases, and delivering convincing judgements in criminal cases. For such work, the District Courts need staff of special competency and in adequate provision. However, there has been a negative psychology prevalent in Nepal that often underestimates the importance of the District Courts. Citizens, seni or courts, government and even legal professionals often denigrate trial courts. This is one reason why there has been a tendency to approach Appellate Courts for review of judgements in almost all cases.

This psychology is obvious in many aspects concerning the courts, including that of human resources. Newly recruited personnel are generally placed in trial courts, whereas, as per the demand of work, District Courts need experienced staff. The same bias is true regarding budget allocation.

Table 57 shows a comparatively low volume of cases per staff member, which has consistently decreased over the years. This kind of trend should be taken positively. However, it should be observed that this distribution of cases per staff member has decreased due to the reduction of the caseload, rather than the recruitment of adequate manpower.

Table 57 : Caseload and Human Resource Situation at District Court Level by Year

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[298] See, Annual Report of the Supreme Court, F/Y 2051/52. p. 13.

[299] This figure includes Press Supervisors, Typists, Telephone Supervisors, Cartographers, Computer Operators, Pressmen, Mechanics, Proof readers, Book Binders, Drivers, etc.

[300] See, Annual Report of the Supreme Court, F/Y 2051/52, p. 41, 2052/53, p. 38, 2053/54, p. 38, 2054/56, p. 37, 2055/56, p. 34, and 2056/57, p. 36.

F/Y[301]	Total Cases	Total Human Resources	Number of Cases Per Human Resource
2050/51	88,451	2447	1:36.14
2051/52	91,496	2447	1:37.39
2052/53	95,889	2677	1:35.81
2053/54	95,535	2677	1:35.68
2054/55	94,807	2677	1:35.41
2055/56	83,535	2677	1:31.20
2056/57	84,977	3437	1:24.72

From this data, the increment in human resources is only obvious during F/Y 2056/57.

The proportion of workload in various District Courts is different. In the Himalayan and hill districts, the proportion is much smaller than that in the plains and urban sectors. The workload of the latter courts is tremendous, and the existing manpower is definitely under severe stress.

The existing human resources of the judiciary are rudimentary. There is hardly any evidence of a modern approach to case management, and working style is largely manual and traditional. The system of record keeping is absolutely unsystematic. Case files are maintained traditionally.

[301] See Annual Report of the Supreme Court, F/Y 2051/52, 2052/53, 2054/55, 2055/56, and 2056/57.

Motion Study

Introduction

This part of the study contains the findings of an observation carried out in the ten sampled districts and the analysis thereof. The study was into two aspects, the motion of the courts and the timeframe of cases tried. It focuses on the behavior of judges in relation to the motions required by the law of procedure and the timeframe of the cases before them.

The findings analyzed in this study were obtained through an observation survey. The information was entered onto a schedule sheet, then processed using specially designed software.

Timeframe and Modus Operandi of Observation

For the purpose of observation, 10 out of 75 District Courts, representing various geographical areas, case workloads, population compositions and development standards were selected. The observation was conducted for three days, and observers were present from the moment of the opening of the courts to their closure, viz. 9 AM to 4 PM in Kathmandu, and 10 AM to 4 PM in other districts. The variation occurred owing to a special provision in Kathmandu, where the court opens at 9 AM, and the court is closed on Sunday. In the countryside, Sunday is still a working day.

In total, from 10 District Courts, the motion and times of 19 benches were observed for a period of three days. The observers followed detailed checklists of information to be obtained. To obtain the information sequentially and systematically, a questionnaire was developed that covered all aspects of court motion and different parts of the court's working timeframe.

The surveyors or observers were all practicing lawyers with at least five years' experience of court practice. Each surveyor had an assistant to help him/her in the compilation of information during the observation. During the observation, the surveyor and his/her assistant observed, among other things, the motion in relation to the following procedures of the court:

1. Remand of suspects: According to the existing law, a suspect has to be produced before the court within 24 hours of his/her arrest. However, there is a danger that Police may violate this procedural law if the courts are not vigilant. It is therefore the duty of the judge to inquire into details of arrest and procedure followed for the production of the suspect before the court, before they grant or reject the request for remand. The surveyors thus attempted to observe the attitude of the judge regarding these matters, and his/her sensitivity to the protection of the constitutional rights of the suspects.
2. State of Suspect's detention: During detention, a suspect may be subjected to torture and ill treatment for the purpose of extracting a confession. He/she might have been denied the right to legal assistance. Similarly, his/her family might have been harassed or prevented from visiting the suspect. The judge should protect the rights of suspects in such regards. Hence, the surveyors observed the attitude of judges and their sensitivity towards the protection of suspect's rights during custody in the Police.
3. Bailment: According to the existing law, the process of bailment in Nepal starts only at the point when the Government Attorneys submit the suspect at court with the charge sheet. The first hearing at the court therefore relates to the grant or denial of bail to the suspect. The bail is supposed to be decided based on the availability of evidence or proof. At this point, the concerned judge has space to use his/her discretion, and therefore there is a danger that a judge's whim will prevail over the spirit of the law. Hence, surveyors observers observed the attitude of the judges and the general practice he/she applied in relation to this point.
4. Witness Testimony: In the course of trial, the State and the defendant are supposed to submit their witnesses at the court for testimony. However, the practice of hearing the testimony of witnesses in the courts has been distorted over the years. Witnesses are tampered with and spoiled, and courts are generally not serious in identifying possible falsification of the witness's statement. Hence, the surveyors observed the practice and procedures applied in hearing the testimony of witnesses, the alertness and sensitivity of judges to prevent witnesses giving the wrong statement, and the procedure applied by the courts to prevent tampering with witnesses, etc.
5. Representation of Government Attorneys and Defense Lawyers: To ensure the fairness of court procedure and impartiality of judgments, the appearance of Government Attorneys and defense lawyers is important to criminal proceedings. Therefore, the surveyors considered the quality of representation in the court, the preparation of cases, cooperation between judges and lawyers, etc.
6. Quality of Judgements: The passing of judgment does not necessarily mean the delivery of justice. The surveyors analyzed the judgements of cases they observed for mention of arguments raised by the lawyers of the parties,

discussion of applicable laws, the consistency of sentencing and regard to the characteristics of persons under trial, etc.

These are only a few of the substantial areas that were covered. There were several other aspects to the observation, which are discussed at length in the following parts of this study. However, it should be mentioned here that the observation also made an attempt to explore the financial and human resource situation of the sampled District Courts, their logistic and support facilities, and their environment and peripheries. These aspects are all necessary to achieve fair and impartial justice.

Objectives of the Observation

The fundamental objectives of the observation were to identify the motion and timeframe of trials, and the constraints facing the courts in operating according to standards necessary for fair and impartial trial. This is the first study of its kind in Nepal.

The total number of cases observed during the three-day observation periods is 187. In this figure, events included are the motions of remand, bail, witnesses testimony and the final hearing. There are some cases where the surveyors observed different motions of the same case, however the duplication is not aggregated in the total figure. Hence, the total figure represents independent individual motions.

The following types of criminal case were observed.

1. Scenario of the Remand Motion

The request for remand is made to extend the period of the suspect's detention for the purpose of further investigation. Article 14(1) of the Constitution of the Kingdom of Nepal unequivocally stipulates that no one shall be detained for more than 24 hours, excluding travel time, without the mandate of the judicial authority. Thus, the investigating agency must produce the suspect at court within 24 hours of arrest, excluding travel time. Section 15(1)(2) of the State Cases Act, 2049, reiterates the provision. However, according to section 15(4) of the Act, the court may grant remand for a period of 25 days at once on several occasions. Exceptionally, under the Narcotic Drugs (prevention) Act, detention may be granted for as long as 90 days.

According to the said laws, a suspect has to be brought before the judicial authority within 24 hours of arrest, excluding travel time. This plainly means that detention of the suspect beyond this period, without the mandate of the judicial authority, is *ab initio* illegal, and as such void. As per the said laws, remand can be obtained ordinarily for a period of 25 days, and exceptionally for 90 days for the crimes under the Narcotic drugs law. However, the law has given power to the court to determine the period of detention. Hence, the determination of the period of remand is a privilege of the court, but not of the investigating or prosecuting agency.

A judge has to play a very vital role in this regard. This motion is universally considered as the phase of the investigation in which the suspect is most susceptible to suffer ill treatment, torture, or denial of the right to fair trial. A set of criminal procedural guidelines jointly developed and implemented by Police, prosecutors, judges and defense lawyers highlight the following responsibilities of judges to ensure fair trial:

1. inquiry as to whether the suspect has been illegally detained, tortured or ill treated during the arrest or detention should be made promptly,
2. inquiry as to whether the suspect has been given the notice of the causes and grounds for arrest and detention should be made promptly,
3. order for medical examination should be immediately given if there is a circumstance existing indicating that torture has occurred,
4. scrutiny of documents to ensure that the investigation progresses smoothly without fouls should be made sincerely,
5. provision for representation by lawyers of the suspects during remand should be secured without excuse of any kind, and
6. instruction for prompt investigation and prosecution should be given to Police and prosecutors.

These requirements are founded on the provisions of the Constitution of the Kingdom of Nepal, 2047, the State Cases Act, 2049, the Police Act, 2012, the Torture Compensation Act, 2053, and international human rights instruments such as ICCPR and CAT, which have been incorporated into Nepalese law by section 9 of the Treaty Act, 2049.

A presiding judge is therefore obliged to ensure that these requirements are strictly enforced and complied with by all persons or institutions involved. No excuses or exceptions can be allowed to permit the occurrence of events that violate these requirements.

The findings of the observation survey present the following scenario of court practice.

Out of a total of 187 cases heard by 19 benches of 10 District Courts during periods of three-day observation, 82 cases heard related to criminal matters. Of them, 27 cases appeared in the court during the three -day observations.

Table 58: Number and Types of Cases Observed

Total Cases Heard	Civil Cases	Criminal Cases	Observed Criminal Cases Prosecuted By the State	Criminal Cases at Remand Stage
187	70	117	81	27
100	27.43%	62.57%	69.23%	33.33%

In these 27 cases, the motion observed related to remand. This means that the cases had yet to reach the stage of prosecution. Hence, the trends concerning remand can be identified based on the motion observed in 27 cases. These cases were of several different types, which are shown below.

1.1 Detailed Findings of the Observation in relation to the Remand Motion : As per procedural rules, a suspect must be produced before a presiding judge for the request of remand. However, the existing practice is that the motion for remand is not a scheduled job of the court. Hence, the Police may produce the suspect at court at **any** time or any moment, as per its choice or convenience. Indeed, presiding judges, prosecutors and defense lawyers are totally ignorant of the time or moment that the production of suspects takes place in court. It was generally observed that the courts do not have a prescribed timetable for the production of suspects, nor do they specifically instruct Police attendants present at the production of suspects to appear with the suspect at a specified alternative time. This leads us to conclude that motions for remand do not follow a specific procedure. This is a very sorry state of affairs in the criminal justice system of Nepal.

A case observed in one of the sampled courts during the study reveals an interesting level of sensitivity of a trial court to the human rights of a suspect. A suspect was produced at the court by the Police just 10 minutes before the closure of the court. The remand was immediately forwarded. The person was still kept in the Police van, and the judge did not require the appearance of the person before them. The registrar of the court took the statement of the order and wrote it in the case file, which should, by law, be done by the judge himself/herself. A group of court staff came out of the office and took a lift in the Police van with the suspect. The Police van then dropped the court staff at their various destinations. In fact, "this remand was easily granted in return for the Police transportation of court staff to their destinations". This is a strategy applied by the Police in certain cases where remand may be difficult to obtain. The event indicates how easily judges can sign the document for the extension of remand.

Remand is therefore not a special part of the criminal proceedings of many trial courts. Some of the following characteristics regarding remand are obvious everywhere in Nepal:

- the remand process is generally conducted in the rest chamber of the judge instead of in the court chamber (bench),
- no defense lawyer or prosecutor is present while the remand process is being carried out,
- the registrar or the court clerk assisting the judge at the bench looks at the case file and prepares the order for remand to be signed by the judge,
- the suspect is generally not taken to the chamber; judges do not even feel the need to observe the appearance of the suspect,
- in some courts like the Kathmandu District Court, the suspect is produced at the bench when the trial or hearing of other cases is going on,
- only in rare cases do judges take remand in the form of a specific motion, even in the larger courts like Kathmandu,
- the bulk of judges are not prepared to accept a remand motion as an essential part of judicial proceedings.

These statements are well corroborated by the following findings of the motion study.

1.2 Timeframe for completion of the remand process: The following chart shows the scenario of the time that suspects must generally spend at court for completion of the remand process:

The chart presents an interesting finding. Remand motions do not take place as soon as the suspect is produced at the court. At such times, the bench may be busy with some other business, i.e. hearing of other cases, or it may be the break time of the court. As presented by the chart, in 18 cases the suspects had to wait for a long time in the court for completion of the remand process. Interestingly enough, in almost all courts observed, there were no separate places for suspects to wait for the remand process to take place. They were generally held in the courtroom, and were, as a rule, handcuffed. The handcuffs were removed at the point if and when the suspect was called to the dock. A member of Police personnel attended the suspect throughout, with a gun in their hand. As mentioned previously, the causes of the delay in the remand process is not due to arguments of the suspects' lawyers, scrutiny of investigation documents, or queries of judges to the suspects. The major reasons for the delay are as follows:

- Firstly, as mentioned earlier, as per the practice prevailing in Nepal, the remand process is not felt to be a practice requiring a decision to be made with the judicial mind of the judge,
- Secondly, since the place of detention and the court are not located in the same premises in Nepal, Police escort all suspects together. Often two people are handcuffed together, and therefore one must wait in court until the remand process of their handcuffed partner is completed,
- As stated above, the case file of the suspect is not submitted to the judge until the proceedings regarding their handcuffed partner are completed, and in such cases the judges do not bother to ask why the person has been held in the court for a long time, and
- Last but not least, judges are not prepared to inquire about the situation of custody and the means employed to interrogate the suspects at this stage. Hence, the sight of handcuffed suspects waiting for long periods in court does not surprise them.

These issues are of fair trial. The situation as described above is not consistent with the spirit in which the Constitution and international human rights instruments are saturated, or the standards of justice that they envisage. These problems have been acknowledged by the judiciary. A set of criminal procedural guidelines developed in collaboration with the judiciary instructs judges to pay attention to such weaknesses. The occurrence of such problems thus evidently results from a lack of pro-active mentality among judges.

1.3 Scrutiny of documents for the protection of suspects from torture and ill treatment: Section 3(2) of the Torture Compensation Act, 2053 requires a medical check of the suspect before and after they are placed into Police custody. This is to guard against the possibility of torture of the suspect during Police custody. Section 15(4) of the State Cases Act empowers the suspect to call for the court to make an order for a medical check. These two laws together should oblige judges to voluntarily inquire as to the occurrence of torture. Incidents of torture could then be quickly addressed, and thus, in time, the practice could be prevented. However, the following chart gives a negative impression of judges' attitude in this concern. It reveals that judges did not consider the mandatory obligation of the Police to attach the medical check up certificate to the case file in the bulk of cases. This means that in a large number of cases, the remand process took place in disregard of section 3(2) of the Torture Compensation Act.

There was not the time or possibility to examine 6 of the case files of the 27 cases in which the remand process was observed. However, out of 21 cases, the attachment of the medical check up report to the case file was found in only one case. Even so, the lack of report did not prompt judges to refuse the request of the Police for extension of remand. This practice is prevalent even in the court in Kathmandu district where the medical check up of suspects is by no means difficult. Moreover, in this district, judges have access to seminars and are in an academic environment where such issues are frequently discussed.

Interestingly enough, the survey reveals that during the remand process, none of the suspects called for a medical test to be carried out. Neither did they disclose if a medical check up had been conducted before and after they were put into custody. Thus, in practice, section 3(2) of the Torture Compensation act is virtually ignored.

1.4 Representation by prosecutors and defense lawyers during the remand process: The judicial process essentially involves the defense of the suspect or accused. No fair or adequate hearing is possible that ignores the right of the suspect to legal defense. The ideal of competent and independent justice is one of the basic principles of the Constitution of the Kingdom of Nepal, stated in its preamble. The Constitution has guaranteed the right to an adequate and fair hearing as inviolable, according to the ideals of justice. Article 84 has enshrined universal standards to be followed in the dispensation of justice, and has thus brought about greater respect for international human rights law. By these principles and provisions, a remand process that neglects the right of the suspect to be defended denies the right to a fair and independent trial.

The findings of the observation survey reveal a negative situation in this regard. The following charts show the full picture:

In the cases observed, neither Government Attorneys nor defense lawyers were present during the remand process. Thus, this part of criminal proceedings must be carried out by judges in response to the request of the Police, without the contribution of other actors. There is no specific legal requirement that the remand process be initiated by prosecutors, so the Police can approach the court themselves. However, there is no restriction on the Police moving to the court with the cooperation of the prosecutors, or on the court requiring the appearance of the prosecutors during the remand process.

There is no mechanism by which the request for remand in court is specifically brought to the attention of defense lawyers. However, this can be done by the court requiring suspects to call their lawyers to so inform them, or providing the service of a court-appointed lawyer to suspects. Unfortunately, judges' concerns in this regard do not show a positive trend.

In the cases observed, Government Attorneys and defense lawyers were absent from the remand hearing. There was no argument heard as to whether the extension of detention was necessary or not. In such circumstances, the remand

process simply becomes an administrative function of the court. The appearance of the lawyers will in fact set the process into judicial motion. As the grant of remand has been taken as an administrative process by courts, the need for the investigating officer to appear at the court during the motion to appraise the investigation process has now been absolutely forgotten. As a matter of fact, usually a junior Police officer, head constable or even constable will appear in court with a request for extension of detention. The study found the investigating officer to be largely unconcerned with appearing in the court or apprising the judge of the progress of the investigation. He/she knew that there is hardly any need for his/her appearance in the court as their absence is simply taken for granted. The following chart explains the situation.

The survey also revealed that none of the requests of the Police for a first extension of detention were rejected by the judges. Furthermore, during the three-day observation periods, six of 27 cases were produced in the court for the third time, 5 for the second time and 15 of them to obtain extension for the first time. The general trend is that the investigation continues until the end of the remand period, hence 25 days. The majority of cases were submitted before the court only at the deadline for requesting the extension.

The disregard of the presence of prosecutors and defense lawyers and the appearance of junior Police officers or personnel below the rank of officer during the remand process is a violation of section 15(4) of the State Cases Act. This section explicitly requires judges to decide an issue of remand only after detailed scrutiny of documents. This section requires judges to look into the progress of the investigation carefully, and extend the remand period only on the condition that the investigation is progressing satisfactorily.

However, the privilege granted to the judge is not absolute, and thus he/she cannot subjectively decide the matter. This is an issue to be decided objectively. Thus, the State and the defendant should both have a fair chance to present their case for the grant or denial of remand before the court. However, this is not possible without having the lawyers from both sides present to argue the case. The appearance of the investigating officer is also indispensable, as they should be the person best informed about the state of the investigation. Their comments are thus invaluable in helping the judge decide the matter objectively.

Unfortunately, the prevailing practice found was other than that stipulated by the norms of justice and the provision of law.

2. Scenario of the Pre-Trial Motion at the Court

The findings of the study in this part are based on the observation of the pre-trial motion of the 10 cases. During the three-day observations of 19 benches, the team had the opportunity to follow the process of pre-trial motion in 10 cases. The information recorded in these cases during three days has been processed to track the trends.

The end of investigation within 25 days, or 90 days in the case of drug cases, is the point at which prosecution can begin. As revealed by the section of this study on the situation of the national caseload, a small number of cases disappear before the prosecutorial process begins. Government Attorneys can refrain from prosecuting those cases that are not founded on evidence or grounds. However, the trend demonstrated in that part of the study reveal that such cases make up less than five percent of the total number of prosecuted cases.

As stipulated by section 18 of the State Cases Act, the prosecution should take place with a specific charge sheet that states the law violated by the suspect and the sentence to be imposed on him/her. The prosecution therefore ends with the filing of the charge sheet at the court, which also brings to an end the process of investigation into the given crime and the suspect. Therefore, no further investigation of the same type of crime by the same suspect is possible once the charge sheet has been filed at court.

At the moment the charge sheet is filed, the suspect should be produced in the court. The process then continues until a decision is made on the issue as to whether the suspect should be placed under judicial custody or released with or without bond. This process is called the pre-trial motion. It is comprised of three important stages, (1) the recording of the deposition of the suspect, (2) the arguments of lawyers for bail or against, and (3) the order of the judge for bail or judicial custody.

This motion is crucial to the liberty of the suspect. The motion ends either by securing the liberty of the suspect or by subjecting them to confinement. Obviously, this part of criminal proceedings requires a high degree of sensitivity of judges to the rights of suspects and events taking place during Police custody. At this point, a judge should be looking simultaneously into various issues, viz., the liberty of suspects, the efforts carried out by the State to address the crime, the prudence of the prosecutors while using the laws and the suffering of the suspect and their family during the investigation. If the judge at this point fails to secure fair proceedings, miscarriage of justice will immediately set in. The correction of this is impossible, regardless of how the case proceeds. The consequences are devastating for the State, society, the victim, the system and not least the suspect themselves.

To avoid this, the judge should follow certain norms. They must first ensure that the suspect gets a fair chance to make their statement and is defended by a lawyer. The suspect should have the privilege to remain silent, if they so wish. They

should be presumed innocent, and the burden of proving their guilt lie absolutely on the prosecutors. To ensure that these principles are protected, the judge should conduct court motions carefully with all required sensitivity.

2.1 Scenario of the motion for recording the deposition of suspects: The vulnerability of suspects to torture and ill treatment is not ruled out in Nepal. Research conducted by various institutions in the past indicates the frequency of torture and inhuman treatment. Defense lawyers and civil society at large have voiced their concern at the denial of the right of suspects to remain silent and obtain legal representation from the moment of arrest. In Nepal, the confession of the accused is regarded as strong evidence to justify their conviction. Efforts are therefore made to extract such confessions. Once they are obtained, the investigators and prosecutors are relieved of the task of searching for objective evidence. Thus, fair trial cannot be secured without assessing the situation of suspects during Police custody. The result of the survey in this regard is not positive.

Out of ten cases observed, in only one case the presiding judge made inquiry of the suspect as to the behavior of Police during detention.[302] In no other cases was inquiry regarding Police behavior during detention made. The motion began with traditional practices, i.e. asking the suspect's name, address, etc. In only one out of 10 cases did the judge inform the suspect that he could abstain if he did not want to make a statement. However, in that case, the suspect preferred to give his deposition.

Interestingly enough, two cases were observed where the suspects were put in handcuffs during the recording of the deposition. However, in 8 cases the handcuffs of the suspect were removed during the deposition process. It seems that in some courts the practice of removing handcuffs during the deposition process is well established.

However, no judges made inquiry as to whether the suspects could understand the Nepali language. The deposition process began at once, without any inquisition into the suspects' ability to comprehend the Nepali language, or into the languages they were able to understand.

The interesting fact revealed during the observation of the deposition recording stage was that Government Attorneys did not appear in court at this time. Even defense lawyers were not present. One explanation is that lawyers generally perceive their role to begin with the commencement of the stage of argumentation. Interestingly enough, none of the lawyers of the suspects observed had informed their clients that they had the right to remain silent.

Formalities were found regarding rules and procedures. For example, the surveyors observed that suspects were asked to stand up to give their deposition in all cases. To make deposition in standing position was taken to be a rule of procedure. The physical condition of the suspects was not considered.

It is thus obvious that the pre-trial motion largely follows traditional practices. There are set of formalities to fulfill, which although they are not part of the procedural law, are considered sacred. One of these is that the suspect stands while making their deposition. Sometimes the process of making a deposition takes a couple of hours, and standing for such a long time is a form of torture.

2.2 Scenario of the motion for bail hearing : The motion for bail hearing is the second stage of the pre-trial hearing. This is a crucial moment in terms of the personal liberty of suspects. At this point, the court must decide whether the suspect is set free or placed in judicial custody.

Generally, the motion for bail takes place immediately after the recording of the deposition has been completed. However, the surveyors in this study found a practice of postponing the motion until the following day if there was inadequate time to hear the arguments before the court.

However, the practice of postponing the motion may subject suspects to torture. Generally, the statement of the confession is reversed at court. The suspect may disclose facts of torture meted out during the Police detention. If they do so, and the remainder of the motion is postponed, the suspects may face retaliation by the Police when they are returned to wait in detention.

During the hearing for bail, out of ten judges observed, six were found actively involved in making notes of the arguments of lawyers, whereas the other six were silent spectators. The latter attitude is not a positive trend. A judge should act as an umpire, and as such should be expected to agree or disagree on the arguments heard from both sides of the case. The order of the judge should be founded on agreement or disagreement with the arguments raised by the parties' lawyers. However, neglecting to note down the arguments put forward by lawyers means indifference to them. This practice implicitly denies the suspect an adequate hearing, and indicates a trend of imposing decisions rather than attempting to make a judgement.

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302 The judge making such inquiry was Dr. Ananda Mohan Bhattarai. His inquiry was interesting. While the suspect was giving his deposition, Judge Bhattarai asked a lot of questions, regarding whether torture had been inflicted or not, whether the suspect had been allowed to see a lawyer or not, etc. He also informed the suspect of his right to remain silent if he wished so. The name of this judge has been mentioned in appreciation of the emerging pro-active attitude of judges in this regard.

The study of the orders following the bail motions in the cases observed is revealing. Only a very few judges were interested in basing their decisions on evidence, the others generally relied on the superficial representation of the facts of the cases. The question of the liberty of suspects was therefore not properly addressed during the bail motion.

Out of ten cases, an order for judicial custody was the result in 50% of cases, whereas bail was granted with a wealth bond in 4 cases. In only one case was bail granted without any form of security. Based on these findings, it can be concluded that judges are not prepared to set persons free until the case has been disposed. Their preference is for judicial custody.

Demand for wealth security in 40% of cases observed indicates that Nepal has two different standards of criminal justice for the rich and the poor. The provision of a wealth bond cannot be the basis for the deprivation of individual liberty. In the same factual circumstances, a wealthy person has the possibility of bail, whereas a poor person who is unable to pay the security may be deprived of their liberty. The deprivation of liberty should be based on only one ground, that of evidence to prove the suspect's guilt. The trend of incarcerating persons on the ground of their inability to pay a bond is against the values of justice.

The motion for bail hearing can be an important stage in the future direction of a case. In Nepal, the trial of a suspect does not follow a continuous or consecutive hearing process. The trial is divided into several parts, and each part takes place after a significant gap. The delay in the trial process not only deprives the suspect of their personal liberty, but subjects them to severe mental torture. Even if continuous hearing is not possible under the present legal framework, speedy trials could still be achieved. The bail hearing could be used as a forum to look into a case in depth, and the judge at that moment could make all orders necessary for a speedy trial. The trial could thus come to an end in a shorter period of time. However, judges generally follow the tradition of "look and act". They order the testimony of the witnesses, and if at that time something else is found left to be done, another motion will be arranged. In general, there will be several motions in the course of a trial. This could be avoided if the motion for bail hearing was used as a forum to explore all necessary motions to be taken up in the future, and the schedules for hearing fixed accordingly. However, the survey discovered a prevalence of traditional practices. Out of ten benches observed during the bail hearing, only four benches had a pro-active attitude.

3. Scenario of the Motion for Witness Testimony

During the three-day observations, the surveyors had occasion to watch 30 motions for the witness testimony. Hence, the information included in this section is based on the findings obtained from those 30 motions.

Witness testimony is crucial to ensuring fair trial. The testimony and cross-examination of witnesses, including expert witness, can ascertain the truth or reliability of evidences on which the conviction or acquittal of the accused can be based. As a rule, the witness is first examined by the lawyer who called the witness for testimony. The cross-examination is then carried out by the lawyer from the opposing side. This motion is especially important to establish the authenticity of statements made by witnesses. However, the motion for witness testimony in Nepal is a travesty. There is no significance attached to it by the court. The following findings of the observation survey confirm the statement:

- in none of the cases of witness testimony observed were witnesses called to take an oath to tell the truth,
- none of the witnesses were warned that he/she would be subjected to perjury for giving false information or statements,
- the witnesses testified in the presence of other witnesses and unconcerned persons,
- there were no precautions taken to protect the witnesses from cooking information,
- none of the witnesses were questioned by the judges, and
- none of the witnesses were asked to establish their identity.

The testimony and cross-examination of witnesses is one of the most neglected motions in the trial courts.

3.1 Scenario of the witness dock : In three out of 30 motions observed, the witnesses were examined at the desk of court personnel (*phatawala*). In such a situation, there is no question of the judge's presence. In the other motions, the testimony and the cross-examination took place in the court chambers (benches), simultaneous to the hearing. The concern of judges for witness examination was therefore totally absent. In principle, the presiding judge himself/herself should conduct the testimony, in isolation from other witnesses. The following two charts show the negative scenario regarding witness testimony:

As per the observations of the surveyors, the existing modus operandi of the witness motion was found to be as follows:

- the prosecutors' witnesses were called through a summons, whereas the defendant was asked to call their witnesses themselves.
- the witnesses themselves had to approach the concerned court personnel, and wait until the court personnel were prepared for them.

- the court personnel generally informed the judge that the formality of hearing witness testimony had to be fulfilled.
- the lawyers were then called to examine their witnesses.
- the questions were put to witnesses by the lawyers, and the answers given by the witnesses recorded.
- the witnesses were advised to speak slowly so that the court personnel could write their testimony down.
- the lawyer from the opposing side was called to cross-examine the witness.

This scenario suggests that the motion of witness testimony is viewed as an unnecessary process in the present Nepalese context.

The process of testimony and cross-examination is not only tedious but overwhelmingly trying for the witnesses. One of the hidden objectives of parties in the process of hearing testimony and during the cross-examination is to harass their counterpart. Hence, lawyers may resort to all kinds of tactics or strategies to destroy the witnesses of the opposing side. This is an outcome of the lack of concern of judges towards the progress of the motion. The following chart will better illustrate the situation.

3.2 Scenario of the quality of the witness documents : The statement recorded by the court personnel is signed by the judges to establish its authenticity. Interestingly enough, at the head of the document, it is mentioned as a matter of ritual that the testimony took place in the presence of the judge. This way the process of justice is rendered is subject to formality but not objectivity. The following chart will further illustrate the situation.

In five events, the judges signed the documents inside the chamber. It is therefore impossible to state whether they carefully read the documents before signing them.

One treacherous tactic at this stage is to keep the witnesses in the dock for a long time. Under existing practice, witnesses are kept standing until the testimony and cross-examination is completed. The observation team noted that none of the witnesses observed were allowed to sit down during the whole period of the motion.

This tedious process requires a lot of stationery. Frequently, the parties themselves are requisitioned to provide the stationery, which in Nepal is in the form of special Nepali paper, considered particularly important for recording the witness's statement.

Generally the parties to the cases were found present during the motion. As a rule, they tried to tamper with the witnesses.

A few other interesting findings of the observation are:

- The process of giving testimony and cross-examination is not always comfortable for women witnesses.
- The whole text of their statement is not read out to all witnesses.
- The treatment of expert witnesses could not be explored, as the surveyors had no occasion to observe the recording of testimony and cross-examination of expert witnesses.

Thus the situation of the motion regarding witnesses is deplorable. It raises a serious question as to the effectiveness of the evidence of witnesses. The situation needs to be immediately reviewed to address the problems effectively.

4. Scenario of the Motion for Final Hearing

In Nepal, unlike other countries, the motion for final hearing is comprised of both the motion for verdict on the merit of the case (guilty or not guilty) and the judgment on sentencing. The motion starts with the opening statement of the Government Attorney, which is followed by a defense made on the part of the defendants. At the end, the rebuttal from the government side takes place. The motion for final hearing is the end of the trial process.

The analysis in this section is based on the observation of 93 cases scheduled for the motion of final hearing. The majority of the cases at trial level take more than a year to complete. The main causes of delay in the trial process have been observed to be the following:

- the formalities to be fulfilled for summoning witnesses are lengthy and ignore the value of speedy trial,
- the prosecutors take a long time to produce witnesses, and often fail in the process,
- in general, judges do not immediately scrutinize case files or complete all processes necessary to make cases ready for their final hearing,
- judges are still prepared to use clause 115 of the Court Management Section of the *New Muluki Ain* to summon the prosecutors' witnesses. In general, this process leads to delays,
- prosecutors and defense lawyers frequently postpone the motion for the final hearing of cases, and

- the process of hearing testimony is lengthy and time consuming.

These problems seriously jeopardize the realization of fair trial. Some consequences of such practices are described below:

- the accused has to wait an unnecessarily long time for the verdict, and in some cases the time spent in custody is longer than the sentence imposed,
- witnesses are severely tampered with, and in many cases they become hostile. In cases of sexual violence or exploitation such as rape, trafficking, etc., victims are particularly vulnerable to suffer miscarriages of justice, and
- the defendant has to bear great expenditure because of the high frequency of motions and the time these take, for example, expenses of travel incurred by their family members and lawyer's fees.

The findings of the survey regarding this motion are as follows.

4.1 Concerns of judges in relation to the timeframe of the trial process: According to existing practice, the cases ready for the motion of final hearing are scheduled and the list of the scheduled cases is published weekly and daily. The date for the motion of the final hearing is given to the parties quite early, in general, a month before it will take place.

On many occasions, the motion for final hearing is seriously delayed due to reasons mentioned above. The surveyors in this study found judges made no special efforts to identify procedural weaknesses or causes for delay in the motion for final hearing. In only four cases observed did judges query the reason for the delay in the motion for final hearing, or express their concern over the same.

The cases observed were of different types, and some were quite serious in terms of the intensity of sentence that could result. However, judges showed no concern in giving priority to such cases. Although, it was noted that in five cases the judges called concerned court personnel to explain the reasons for delay in scheduling of the motion for final hearing.

4.2 Scenario of representation of lawyers during the final hearing: The findings of the observation show that there is no practice among lawyers to appear in the court to inquire about their cases at an early hour. The chart below reveals how prompt Government Attorneys and defense lawyers are in enquiring about the status of the cases in which they are counsel.

At the moment the motion for the final hearing begins, a judge might have to question lawyers on the cases to be heard that day. This process briefs the court and the parties on the status of the cases. It should be an established practice for all lawyers that they appear in the court chamber at the earliest time, and help judges to carry out a general overview of all cases that are listed to be heard that day.

However, this practice was not found in any of the courts observed. The following two charts present the picture regarding lawyers' promptness in enquiring about the status of the cases listed in the schedule for motion.

Lack of consultation between judges and lawyers before the motion for final hearing begins is an indication of the under-developed state of legal professionalism and the trial system.

The efficiency of both Government and defense attorneys was found wanting. In only two out of 93 cases observed, the arguments of government met the following standards:

- complete preparation of the cases before the hearing,
- citation of adequate references, in particular from precedents of the Supreme Court, during the hearing,
- preparation of a memorandum for presentation, and
- in-depth understanding of the facts.

In the remainder of the cases, Government Attorneys were content to recite the important parts of the FIR, the accused person's statement made to the Police and in court, the charge sheet and some other documents prepared during investigation. The performance of defense lawyers was slightly better than that of Government Attorneys, as they were observed to meet the above-mentioned standards in 21 out of 93 cases.

The lawyers observed had a largely traditional approach to representation. Their arguments were long and repetitive. Lawyers did not show much interest in answering the queries of judges. The following weaknesses were commonly noticed in their arguments:

- case files were poorly organized,
- indices were not prepared or attached to the case files,
- lawyers often cited dates, addresses and names of parties and witnesses incorrectly,
- no efforts were made to match references cited with the facts or evidence of the given case,

- none of the lawyers observed presented their cases based on a core theory, and
- arguments presented were often contradictory.

The response of judges towards the representations of lawyers was on the whole reasonable. In 56 out of 93 cases, the judges actively listened to lawyers' arguments and made queries for clarification. Judges made notes actively in 32 cases. The following table will better illustrate the situation:

Table 59: Distribution of Cases According to Judicial Attitude

Total Cases Observed	93
Judge Responsive to Lawyers' Arguments in Case	56
Judge Making notes of Arguments in Case	32
Equal Opportunities for Presentation Given	82
Interest shown in citation of Supreme Court Judgments	5
Interest shown in facts, law and references, etc.	51

The above chart shows an encouraging level of activity on the part of judges. It suggests that if there was improvement in the standard of quality of legal representation, this would meet a receptive audience. Further change could be effected by the bench, and a better standard of justice be delivered.

4.3 Scenario of the preparation of cases by judges: The study revealed that the overwhelming majority of judges observed were present in the court chamber (bench) full time, excluding morning preparation and tea time break. However, in one court observed the judge did not appear in the court chambers at all. Court business, even the passing of judgments, was carried out from the rest chamber. The surveyor of this court raised the question of fairness of proceedings with the judge concerned, however the judge did not find the practice one of remark. He stated: "it is acceptable here".

The number of requests for adjournment of the motion by Government and defense attorneys is large. During the observation period, the surveyors noticed such requests in 43 out of 93 cases. However, in the majority of such cases the response of the judges was found to be positive, i.e. they refused to act on the requests. The judges observed showed concern for the defendants, rejecting requests for adjournment of the motion in five cases, citing grounds such as the defendant being in judicial custody, that the defendant was ill or that the defendant was a woman. In a few cases, where this request had not been made in the past, the request for adjournment was accepted. The volume of requests for adjournment indicates the contribution of attorneys to producing a backlog of cases.

However, the responsiveness of judges concerning the physical or mental conditions, hardship, trouble or problems of the prisoners or parties in the cases was dismal. In all but two cases, none of the judges observed felt it necessary to make inquiry into these matters.

4.4 Scenario regarding the participation of parties in the motion for final hearing: The active participation of parties to proceedings is a fundamental element of an adequate hearing. The situation observed in this regard does not show a positive trend. During the study, defendants were observed to appear in only 66 cases. Their appearance was meaningless, i.e. the judges showed no kind of interest to know about their situation. The defendants were simply witnesses to the proceedings of their own cases.

4.5 Scenario during the stage of the judgment making process: The judgment is the final result in the motion for final hearing. Unfortunately, in many cases in Nepal, further trials or proceedings follow the motion for final hearing. This can be observed from the findings of the study. Judgment was obtained in only 23 of 93 cases in which the motion for final hearing had been completed. The following findings are based on the 23 cases in which the judgment stage was reached.

4.5.1 Writing of Judgment: The judgment should be based on the objective findings or outcomes gathered, deducted, or concluded from scrutiny of the facts and evidence of a case, with regard to the relevancy of the evidence with established facts and applicable laws. Judges should draw their conclusions carefully. They should be guided by the norms of justice, the law, and the arguments and references produced by attorneys. The writing of judgments is therefore a matter of special skill, and should be the exclusive responsibility of the presiding judge.

In Nepal, it is not uncommon for court personnel to write judgments based on the general dictation of the presiding judge. Although the occurrence of this practice has decreased over the years, the observation revealed that it is still prevalent to some extent.

Although the time to study the quality of judgements was insufficient, an attempt was made to identify the issues or elements that were given importance in the spoken judgments. From this study it was noticed that associated facts

influenced the judgement in 11 cases, the confession made to the Police influenced the judgment in 1 case and the standard of evidence together with the facts influenced judgment in 11 cases.

These findings show that trial courts no longer rely solely on extra-judicial confession for making a conviction. However, there are still judges who happily use extra-judicial confession as valid evidence for conviction.

4.5.2 Parties' Attitude to the Judgment: In 19 out of 23 cases, the accused was present when the judgments were pronounced. The majority of defendants did not question the judgment, at least immediately. 19 out of 23 cases resulted in conviction and partial conviction. Two out of 19 convicted or partially convicted defendants felt dissatisfaction with the grounds of the judgments. In this project, it has not been possible to study the reasons for the acceptance of judgments by the majority of defendants. Further research could examine this trend in depth, and look into such factors as the advice given to the accused, their educational and social backgrounds, and their level of comprehension of the judgments.

Any external factors influencing the judgments were not noticed during the observation. However, in one case, the judgment was decided in the rest chamber of the judge, so the surveyor was unable to observe the influence of external factors upon its preparation.

Time Study

The object of this section is to produce a study of how the working day of judges is spent. This will show the time spent by judges both inside and outside the courtroom. The time taken inside the courtroom includes engagement in taking evidence, hearing motions, waiting for attorneys, or hearing of civil cases. Time spent outside the court involves meetings, writing opinions, conducting research and handling administrative matters. This part of the study is intend to find out, *inter alia*:

- if there is a need to allocate additional financial resources to the judiciary.
- if additional judges are necessary to address the caseload of courts.
- if the courts are able to manage their time.

The findings of this part of the study are based on observation conducted by a group of surveyors over three -day periods. To carry out this work, the following *modus operandi* was adopted:

1. A survey form was prepared for recording information,
2. The group involved in the survey approached the court 10 minutes before the opening time of the court, viz. 10 minutes before 9.00 AM at Kathmandu, and 10 minutes before 10.00 AM in other districts.
3. The group then spent its time in the court until the court's closure, viz. 4.00 PM, and
4. The information thus obtained was entered into specially designed software and processed.

The results of the survey are encapsulated in the tables and charts below.

Special Conditions of Rukum and Rasuwa Districts

Rukum is one of the districts that has been severely affected by the Maoist insurgency. At the time of the survey, the judge of Rukum District Court was on a long leave, and thus it was not possible to conduct a motion and time study of the court. The general overview of data available on the district reveals that the intake of new cases in this district has decreased. In F/Y 2057/58, 30 cases were registered at the court, and 8 cases were disposed of. The backlog of 31 cases was shifted to F/Y 2058/59. By the time the surveyor approached the court (21/6/2058), five new cases had been registered at the court. From the report of this period (first quarter of the fiscal year), the caseload of the court can be observed to have greatly decreased.

A motion observation was also not possible in Rasuwa district, as there was no schedule of motions fixed for that week. As reported by the court staff, there were a total of 6 criminal and 11 civil cases sub-judice. The judge was present at the court, however he did not turn up at the bench. Hence, it was not possible to observe the time management and the motion of the court as conducted by the judge. Moreover there were no staff who could give information about various other matters. It was also found that there are no lawyers in Rasuwa district. Thus, in the majority of cases, there is no representation made by lawyers. In some cases, lawyers are called by the parties from Nuwakot or Kathmandu.

1. Opening Time of the Court

The surveyors conducted a time and motion study of ten courts. Of them, Kathmandu District Court opened at 9.00 AM every working day, i.e. Monday to Friday. The other sampled courts opened at 10.00 AM every working day, i.e. Sunday to Friday.

2. Time of Arrival of Judges at Court

The chart presents the following trends:

- A great deal of judges observed arrived at court 45 minutes after court opening. As shown by the chart, 7, 6 and 5 judges arrived at court after 45 minutes on the first, second and the third days respectively.
- The judge at Rukum was absent on all three days of the observation, so his time of arrival has not been recorded.
- None of the judges turned up exactly at the court opening time on the first day of observation.
- Some judges turned up two hours after the court had opened.

The chart demonstrates that trial court judges, with few exceptions, spend 30 minutes during the early working hours of the court doing nothing.

3. Release of the Causelist

As per current practices, the causelist is released weekly and daily. The weekly causelist is comprised of the cases to undergo motion for hearing in that week, and the daily causelist concerns cases to be heard on the concerned day. The causelist is supposed to be posted immediately after the court has opened.

The charts reveal the following trends:

- Districts like Rukum and Rasuwa do not publish regular weekly causelists.
- None of the courts observed released causelists in the first 30 minutes after the opening of the courts. In some courts, the causelist was released after 1.30 hours.
- The business of the courts does not start until the causelist has been released. Some courts take more than 45 minutes to release the causelist. Hence, in this time the court is idle.

4. Daily Caseload and Timeframe

As seen from the chart below, more than 6 to 10 cases a day were scheduled to be heard by the majority of benches observed. This is in fact a tremendous volume of work per day for these courts. The following chart illustrates the situation:

5. Arrival of Judges at Court Chambers (Benches)

As seen from the chart, in only a very few courts, judges arrived at chambers during the first hour after the court's opening. This indicates that for one hour during the court's early working hours, a large percentage of judges of courts observed were not occupied with court business. Most judges observed arrived at chambers between one and one and half hours after the opening of the court.

Arrival of the Registrar *(shrestedars)* at Court

The Registrar is the chief administrative officer of the court. The court personnel work under his/her administrative control. Hence, his/her role is crucial to the proper functioning of the court. His/her punctuality at court is therefore important.

As it was found, Registrars in the majority of courts observed arrived within 15 minutes of the court opening. A few Registrars were found to arrive before the actual opening time. However, there were some who turned up after 45 minutes of the working day had passed. Their absence from the court could prevent administrative works taking place, such as the release of the causelist. This would definitely affect court business and how a judge used their working time.

6. Court break for tea

Generally, the court breaks for tea at noon. Although, the practice varies between courts, in Kathmandu the court break is generally at 1.00 PM. In some courts in the countryside, the practice of complete adjournment of the court following the tea break is not unusual.

From the observation, it was found that a majority of courts adjourned for tea three hours after the courts opened. Interestingly, some courts did not re-convene again. A few courts adjourned court business after one and two hours. This leads us to conclude that there is no set practice for adjournment and the reconvening of courts after their tea break. The following chart illustrates the situation.

There is no uniformity in the time taken for a court's tea break. It was noticed that some judges do not leave the bench until all the hearings have been completed. The surveyor in Jhapa District Court observed such an instance. The chart above shows that only 4, 7 and 6 benches on the first, second and third days respectively reconvened within one hour of the break. 4, 2 and 4 benches on the first day, second day and the third day respectively reconvened after one hour of the break. Such benches therefore worked for more than five hours a day. The other courts observed either did not reconvene, or continued working in the chamber.

7. Total Time Spent by Judges for Works in a Day

The total time spent by judges for works excludes time not used in the office. The time involved for delay in arrival, early departure and teatime should be deducted from the total working hours of the court. In other words, the actual time spent in the bench and for other administrative works can be taken as the actual amount of time spent by judges in court work. The actual time taken in court work by the courts observed was found to be as follows:

The chart presents the following results:

- Excluding the benches of Rukum and Rasuwa, the figure represents 17 benches from the sampled districts. No business of courts was found in Rasuwa and Rukum.

- During the three day observation periods, the 17 benches observed were occupied by court work for a total of (approximately) 52 hours daily. In principle, each bench was supposed to work 6 hours every day, excluding one hour for tea time. Therefore, the 17 benches observed should have, in total, worked for 102 (6 hours x 17 benches) hours daily. Thus, in three days, they should have worked 306 (17 x 3 days x 6 hours) hou rs in total.
- As seen from the table above, on the third day, only one bench worked for over 5 hours.
- Only 3, 5, and 5 benches on the first, second, and third days respectively worked for five hours. Thus the majority of benches observed worked less than five hours daily. The chart indicates that approximately three to four hours spent in court work is a normal practice of judges in the courts observed.

Infrastructure, Physical Facilities and Human Resources

The surveyors also observed the infrastruc ture and physical facilities of the sampled courts. The objective behind this was to explore:

- how far the infrastructure and physical facilities available are compatible with the works to be carried out daily,
- whether there is a working environment available in courts today or not, and
- whether there is a need for immediate investment to strengthen the quality of works carried out by courts.

The study found that, in general, the infrastructure and physical facilities of District Courts are poor. Expect in a very few courts, the working environment is bad. Courts are crowded and noisy. The Kathmandu District Court, in particular, has a tremendous rush of works, and as such it is fully crowded and noisy. The judges in Kathmandu have no private chambers. They have to share a common room. The condition of the library is extremely poor. Even the Bare Acts are not adequate. Benches are narrow and cramped.

The following data gives a full picture of the ten sampled districts:

Table 60: Expenditure Situation in Sampled District Courts

Districts	**Total Budget F/Y 2057/58**[303]	**Regular Budget**	**Development Budget**	**Building**
Jhapa	27,41,000	27,41,000	X	Own Building but not adequate
Therathum	13,05,000	13,05,000	X	Not adequate
Rasuwa	10,00,000	10,00,000	X	Old, Poor
Kathmandu	87,48,000	87,48,000	X	Old building, not own
Rautahat	25,82,000	25,82,000	X	Modern, Own building
Rupendhei	24,16,000	24,16,000	X	Old, Poor
Rukum	15,10,000	15,10,000	X	Old, Poor
Gulmi	15,95,000	15,95,000	X	Old, Poor
Surkhet	16,68,000	16,68,000	X	Modern, Own
Kanchanpur	13,06,000	13,06,000	X	Modern, Own

The regular budget covers the following budget heads:

1.	Salary	2.	Allowances
3.	Daily Transportation Allowances	4.	Water and Electricity costs
5.	Telephone charges	6.	Miscellaneous Services
7.	Rent	8.	Maintenance costs
9.	Office stationary	10.	Printing
11.	Fuel	12.	Overheads

As presented by the table above, the majority of courts work in rented buildings, and buildings are old and poor. Some of these courts have no adequate space to work or to store case files. However, it is interesting to note that the need to purchase vehicles tends to prevail over the need to maintain court buildings.

Physical Facilities of the Bench

[303] The budget is cited from "Report of the *Adalat Sudhridhikaran Sujhab Samiti*". 2058. Published by the Superme Court, 2058. See, pages on the concerned districts.

On the whole, the condition of the benches is very poor. In a few newly constructed buildings, like those of Rautahat and Kanchanpur, the benches have adequate space.

None of the courts have the facilities of computer or fax.

Table 61: Physical and Logistic Situation of the Benches in Sampled Districts

	Total	**Ktm**	**Ras**	**Jha**	**Ter**	**Rau**	**Rup**	**Gul**	**Ruk**	**Sur**	**Kan**
Adequate Furniture	5	-	Yes	-	Yes	Yes	-	-	-	Yes	Yes
Enough Space	3	-	-	-	-	Yes	-	-	-	Yes	Yes
Dock	4	Yes	-	-	Yes	Yes	-	-	-	-	Yes
Books	6	Yes	-	Yes	-	Yes	Yes	Yes	Yes	-	-
Phone	10	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Fax	0	-	-	-	-	-	-	-	-	-	-
Photocopy	4	Yes	-	Yes	-	Yes	Yes	-	-	-	-
Computer	1	Yes	-	-	-	-	-	-	-	-	-
Fan	7	Yes	-	Yes	Yes	Yes	Yes	-	-	Yes	Yes
Heater	3	Yes	Yes	-	-	-	-	-	Yes	-	-
Motor	8	Yes	-	Yes	Yes	Yes	Yes	Yes	-	Yes	Yes
Carpet	2	-	-	-	-	-	-	-	-	Yes	Yes
Water	10	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Light	10	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Toilet	6	Yes	Yes	Yes	Yes	Yes	-	-	-	Yes	-
Canteen	3	-	-	-	-	Yes	-	-	Yes	-	Yes

Total Human Resources

Table 62: Total Human Resources in Sampled Districts by Position of Employment

Dist	Post of Judge	Existing No	Under Secretary	Section Officer	Non Gazetted 1st Class	Non Gazetted 2 nd Class	Non Gazetted 3 rd Class	Court Paid Lawyer	Surveyor	Finger Print Expert	Forensic Expert	Summon Surveyor	Peon Ardali Messenger
GUL	1	1	-	2	4	7	1	1	0	0	0	5	6
JHA	3	2	-	2	9	12	1	1	1	0	0	5	10
KAN	1	1	-	-	4	4	2	1	0	0	0	3	7
RAS	1	1	-	-	1	2	1	0	1	0	0	1	2
RAU	4	4	1	1	12	16	12	1	1	0	0	5	12
RUK	1	-	-	-	2	-	3	1	0	0	0	3	4
RUP	5	5	1	1	10	12	12	1	1	0	0	5	12
SUR	1	1	-	-	4	4	8	1	1	0	0	5	8
TER	1	1	-	-	2	3	4	1	0	0	0	5	-
KTM	11	10	1	3	44	47	33	1	1	0	0	33	27
Total	**18**	**16**	**2**	**6**	**48**	**60**	**44**	**8**	**5**	**0**	**0**	**70**	**61**

Legally trained human resources are very scarce.

Financial Resource Analysis

Introduction

In developing countries, the investment in the judiciary is often considered unproductive and unnecessary. A nation's judiciary is supposed to defend the constitution and the rights of the people. However, in Nepal, the executive often views the judiciary as an opponent, whose sympathies lie with the public alone. Policy makers and planners often forget or deliberately ignore the need to invest in the judiciary, and thus overlook the linkage of rights to development. The judiciary and the justice system are the most marginalized sectors in terms of budget allocation in Nepal today.

The following factors can threaten the judiciary:

- In comparison to the executive and the legislature, the justice system is more easily accessible to the people for remedy of violations of their rights. As such, individuals or groups can use it to serve their interests more directly than the other institutions of the State. The judiciary is a platform from which the government is often criticized, and moreover, it has the power to declare government policies, programs and actions illegal. Such functions can bias the executive against the justice system.
- In developing countries, there is often rule by discretion, rather than by law. In such conditions, the judiciary may be the only institution that people can directly approach in order to put the State on the right track, and prevent autocracy. This can create a negative attitude of the executive towards the courts.
- Over the past years, several methods have been developed by which the actions of the State can be put under judicial scrutiny. Judicial review and public interest litigation are two such major developments. They can be used by the judiciary to compel the State to behave only in accordance with the Constitution and the law. These processes have placed the State in almost direct opposition to the executive, especially in developing countries. The powers of the judiciary are therefore vulnerable to be checked by the executive, and one of the most effective methods of control is financial.
- The executive and legislative power work closely. The very existence of the executive power is often dependent on the support of the legislature. The legislature's control over the executive is obvious and direct, as they sanction the executive's budget. Moreover, the executive is dependent on the legislature to pass laws enabling it to act. The judiciary is not so closely linked to the legislative and executive powers. The court should maintain independence from these organs. It is not directly represented in the policy making and purse controlling organs of the State, and is thus dependent on them for financial resources.
- In some countries, the judiciary has the power to plan its development and formulate its budget, so it is not financially handicapped by the State. However, in Nepal, the judiciary is completely dependent on the executive in this regard.

Impacts of Financial Deprivation

In a democratic state, the judiciary's role of safeguarding the constitution is crucial. The Constitution of the Kingdom of Nepal has given sovereign power to the people, and thus, the judiciary is the protector of their sovereignty. The fundamental rights of citizens should be vigorously defended. The Constitution declares the directive principles and the State polices that should be used in governance. The protection of fundamental rights is necessarily related to these directive principles, as empowered citizens are the backbone of democracy and rule of law. No state can achieve development or progress by depriving its citizens of their rights. Thus, to overlook the judiciary in the development of the nation is fatal. An independent and competent judiciary is the backbone of a democratic society.

Deprivation of the judiciary in terms of financial resources not only results in a lack of fair, impartial and competent justice, but it necessarily impairs the process of the consolidation of democracy. The neglect of the judiciary is therefore the neglect of the rule of law and democracy. This has been the practice in the Kingdom of Nepal over recent years.

Objectives of this Part of the Study

This part of the study aims to present the financial situation of the judiciary, and how financial considerations affect the process of the dispensation of justice. The preamble of the Constitution has assured independent and competent justice for the nation. To achieve this, investment is required to build the strength of the judiciary, both in terms of its infrastructure and human resources. This part of the study will therefore analyze:

- The treatment of the judiciary by the organ holding the purse of the nation,
- The levels or types of investment made in the judiciary,
- The State's attitude towards the promotion of the strength of the judiciary, necessary to the protection of democracy and the rule of law, and

- The possible effects on the present pattern of budget allocation on the quality of justice provided by the courts.

Scope of the Study

This part of the study examines the following:
1. The total expenditure on the judiciary as compared to expenditure on other branches of government.
2. The intra-judicial budget and its pattern.
3. The ratio of judges to members of the population.
4. The ratio of judges' salaries to total expenditure on salaries.
5. Trends in expenditure on the judiciary.

Methodology

To accomplish this study, a team including finance experts and economists analyzed data from HMG's book on Estimated Expenditures. Four fiscal years were chosen for study; F/Y 2052/53, 2054/55, 2057/58 and 2058/59. These years were chosen to enhance a comparative analysis of data, and thus reflect Nepal's changing political context. F/Y 2052/53 was the first year after the restructuring of the judiciary. F/Y 2058/59 shows the current situation of the judiciary's financial resources. Such comparative analysis will illumine the aspects stated as the scope of the study above.

Scenario of the Total Expenditure on the Judiciary

The following table gives a picture of the comparative situation of expenditure on three branches of the State:

Table 63: Pattern of Expenditure by State Branch (Rs.) (in Thousands)

F/Y	Total in Rs.	Judiciary	Legislative	Executive and other branches
2052/53	5,16,47,805	1,96,681[304]	73,118	5,13,78,006
2054/55	6,20,22,294	2,49,893	1,23,778	6,16,48,623
		(27.05%)[305]	(69.29%)	(20.00%)
2057/58	9,16,21,335	3,56,733	1,50,548	9,11,14,054
		(42.75%)	(21.63%)	(47.86%)
2058/59	9,97,92,219	4,72,715	1,96,579	9,91,22,925
	(93.22%)	(140.35%)	(168.85%)	(92.93%)

When one compares the judiciary with the legislature one should note that legislature is confined to Singha Durbar, whereas the judicial body is operational in all 75 districts.

The justice sector's share of national expenditure is less than 0.50 % of the total. Tables 64 and 65 shows that the increment of the judicial budget over the past decade has been less than 0.10 %. An overwhelmingly large part of this budget is spent on items such as salary and allowances, as "regular expenditure". Expenditure for the development of the judiciary has been completely forgotten in the national budget. How can a judiciary in a state of poverty deliver the competent and independent justice envisaged by the preamble of the Constitution? The preamble of the Constitution has incorporated the principle of competent and independent justice as one of its basic structures. This obliges the State to work actively and strategically for the development of the institutions, mechanisms and instruments necessary for achieving this aim. However, the State has left the judiciary in poverty. Its commitment to the realization of competent and independent justice is doubtful. The conditions the judiciary is subjected to are indicative of an overall lack of political commitment to deliver fair, impartial and objective justice to the people. In such a state of affairs, the following questions should be of paramount importance for consideration:

1. Can an emerging democracy survive in the context of the pauperization of the judiciary?
2. Is it possible to safeguard the Constitution and the fundamental rights of people by severely reducing the financial resources of the courts and subjecting them to constraints on logistics and infrastructure?
3. Can an emerging democracy flourish if it neglects the sphere of the State that is necessary to maintain a balance of interests through the dispensation of justice?

The previous part of the study showed that none of the District Courts surveyed have facilities such as fax machines. For these courts, computers are the tools of a dream world. Who is responsible for this parlous state of the judiciary? Is it the

[304] In this figure the expenditure for Administrative Court and the Revenue Tribunal is not Included with enclosed with that expenditure the total figure becomes 197546000, See Estimated Expenditure Book (Red Book) HMG 2052-53, Page No. 10

[305] The figure in % in the box indicates the ratio of increment from the previous years.

consequence of a lack of dynamic leadership in the judiciary itself, or the apathy of the executive and parliament to the third pillar of the State? From conversation with judges and other higher administrative officers of the judiciary, it has been learned that the judiciary has consulted the concerned authority regarding the mitigation of its financial problems. However, the executive branch continues to demonstrate disinterest in the justice sector. The State has therefore knowingly ignored the need to strengthen the judiciary. Table 64 shows the annual increment of the financial resources of the justice sector. When considered in the context of the findings of the increased workload of the courts after the restoration of democracy, these trends seem grim. Under current rates of inflation, the increment of financial resources is simply unable to address the increased caseload of the courts and the other demands upon it under the current circumstances.

Table 64: Expenditure on various Organs of the State (in % of Total Expenditure)

F/Y	Judiciary (%)	Legislature (%)	Executive and other branches (%)
2052/53	0.38	0.14	99.48
2054/55	0.40	0.20	99.40
2057/58	0.39	0.16	99.45
2058/59	0.47	0.20	99.33

Table 65: Expenditure Growth Pattern for each Branch

	2052/53	**2054/55**	**2057/58**	**2058/59**
	(%)	**(%)**	**(%)**	**(%)**
Judiciary	0.38	0.40	0.39	0.47
Legislature	0.14	0.20	0.16	0.20
Executive	99.48	99.40	99.45	99.33

The distribution and growth pattern of expenditure indicates certain important characteristics of the justice system in Nepal.

1. The executive has absolute control over the purse of the judiciary. As a matter of fact, the judiciary can hardly move ahead without the concurrence of the executive. In this context, the independence of the judiciary is severely hampered. As highlighted by issues of tenure and judicial review, the courts cannot flourish or progress towards the goal of competent justice without true independence.
2. The State has shown a consistent disinterest in the promotion of a good working environment of courts through the development of infrastructure and logistic amenities. This can lead us to conclude that the issue of justice is the matter of least priority for the executive government. This raises a question of the State's commitment to the rule of law and democratization.
3. By putting the courts in financial crisis, the State has blocked progressive change in the mentality of judges and support staff. The spirit of justice envisaged by the Constitution should be achievable without effort. However, as the judiciary does not even have a budget for training and orientation for its staff, it cannot effectively promote progressive attitudes. It is simply implausible that it can provide competent justice in such a situation.
4. Thus, by depriving the judiciary of financial resources, the question of fair and impartial criminal justice has therefore been neglected by the State.
5. Many other institutions of the State are privileged to negotiate with national and international funding agencies to acquire financial assistance. This is almost impossible for the judiciary. The Ministry of Finance must give clearance for this kind of acquisition of funding. Hence, the judiciary has very little potential to actively generate financial resources by itself. The judiciary does generate a significant amount of revenue. However, this goes to the State exchequer. The budget the judiciary receives from the State does not match the contribution the judiciary makes to the State exchequer. We are forced to conclude that the State is making no investment at all in the judiciary from other sources of revenue.

Detailed Breakdown of the Expenditure on the Judiciary (Each heading in %)

Table 66: Regular and Development Expenditure (Rs.) (in Thousands)

F/Y	Regular	Judiciary		%	Regular	Legislature		%	Regular	Executive		%
		%	Development			%	Development			%	Development	
2052/53	2,29,816	100.00	0	0	73,118	100.00	0	0	2,25,18,585	43.86	2,88,26,286	56.14
2054/55	2,26,149	90.50	23,744[306]	9.50	1,15,678	93.46	8,100	6.54	2,76,41,619	44.84	3,40,07,007	55.16
2057/58	3,25,163	99.97	95	0.03	1,45,095	96.38	5,450	3.62	4,30,42,488	47.22	4,81,03,044	52.78
2058/59	3,99,215	84.45	73,500	15.55	1,96,579	100.00	0	0	4,87,26,147	49.16	5,03,96,778	50.84

Table 66 plainly demonstrates the situation of the judiciary regarding development expenditure. The judiciary is comprised of three tiers of courts. In total, there are 75 District Courts, 16 Appellate Courts and one Supreme Court. As shown by the findings on logistics and infrastructure from the observation study in ten districts, many court buildings are old, unspacious and poor. These courts do not have fax machines or computers. Without adequate technical facilities, the delivery of judgements can be delayed. Persons have to wait for long periods for judgments and court documents. At present, courts have no facilities for archiving documents, and thus they can be damaged by rain, mice and insects. None of the courts in Nepal, except the Supreme Court, has a library. Despite such problems, the State has shown hardly any interest in developing the infrastructure of the judiciary.

Intra-Judicial Expenditure

Table 67: Distribution of Expenditure by Types of Courts

F/Y	Supreme Court	Appellate Court	District Court	Adm. Court	Revenue Tribunal	Labor COurt	Special Court	Total
2052/53	2,36,17,000	5,08,93,000	12,21,71,000	8,65,000	19,62,000	-	-	19,95,08,000
2054/55	2,61,56,000	7,51,44,000	14,30,90,000	8,51,000	32,07,000	14,45,000	-	24,98,93,000
2057/58	3,14,75,000	9,21,00,000	17,44,65,000	20,32,000	50,45,000	16,16,000	-	30,67,33,000
2058/59	7,93,05,000 [307]	11,83,77,000	22,28,19,000	31,13,000	59,86,000	19,89,000	23,88,000	43,39,77,000

The regular budgets of the Supreme Court and the Appellate Courts show an increasing trend. This has been in response to an increasing caseload at these levels. The majority of this increment is spent on salary, fuel and allowances. The increased size of the budget of higher courts may be necessitated by an increased caseload, but it indicates that the case burden cannot be dealt with by existing filtering and funneling devices.

Furthermore, increased budget at higher levels of court should be of a lower priority than investment in the District Courts. Although, the increment of the regular budget of the District Courts has increased, it is insufficient to meet their caseload. District Courts bear a tremendous stress of work, and as the first point of entry for all cases, have a particular responsibility to ensure fair trial. Thus they should receive a greater proportion of the judicial budget.

The following considerations are important at this juncture:

1. The Supreme Court's caseload of civil appeals and review petitions has increased tremendously in comparison to its criminal caseload. Over 90% of the existing total caseload is made up of civil cases. This indicates there is a lack of an effective filtering device to block civil cases from reaching the Supreme Court. It also suggests that a large part of the Supreme Court's regular budget is consumed by an unnecessary caseload. There is a need for additional support staff, judges, stationery and other various associated necessities to deal with such increases.
2. The large number of civil cases reaching the Supreme Court indicates the low quality of judgments made by the Appellate Courts. This high figure implies that there is a lack of public confidence in the judgments of the lower appeal courts. The lack of quality of judgments and confidence in them is thus consuming a huge amount of the Supreme Court's regular expenditure.
3. High caseloads push back the schedule of the courts, and this might lead to the emergence of corrupt practices. Parties may attempt to influence the process of justice to achieve quick results in their favor. This rules out hopes for the provision of justice. Corrupt practices destroy the efficiency of the courts, and as a consequence, more of

306 Expenditure for capital formation under regular expenditure is also regarded as development expenditure. Therefore, the development expenditure, here , also includes the capital formation expenditure.

307 The total figure given in the Estimated Expenditure Book (Red Book) HMG 2058-59 is not correct. So this figure is the corrected aggregated version of expenditures under various heading. See Page 2.

the regular budget is consumed in order to manage the caseload. Therefore, there is a nexus of corrupt practices, inefficiency and an increasing regular budget.

In F/Y 2058/59, the annual expenditure of the Supreme Court increased by 152 percent, but by merely 27 percent in the District Court. The development of District Courts is crucial to the achievement of fair and impartial justice, as they provide grassroots access to justice.

As the foundations of the structure of the justice system, and largely concerned with the merits of cases, these courts must be operate carefully in order to achieve objective justice. The are responsible for ensuring that cases are supported by adequate evidence, and that evidence is objectively scrutinized.

This is essential for the dispensation of fair and impartial justice. The role of District Courts necessitates their provision with adequate resources. However, the trends of expenditure for the State show that the District Courts are not a priority for investment.

Breakdown into Basic Salary and Allowance (Non Salary)

Table 68: Expenditure on Salary in Different Courts (Rs.) (in Thousands)

F/Y	Supreme Court	Appellate Court	District Court	Adm. Court	Revenue Tribunal	Labor COurt	Special Court	Total
2052/53	10,300	28,275	69,200	425	875	-	-	1,09,075
2054/55[308]	13,922	51,975	1,10,500	551	1,937	695	-	1,79,580
2057/58	17,500	67,685	1,20,000	1,335	3,000	650	-	2,10,170
2058/59	34,762[309]	85,870	1,70,000	2,230	3,890	1,034	214	2,98,000

Table 69: Expenditure on Allowances in Different Courts (Non Salary) (Rs.) (in Thousands)

F/Y	Supreme Court	Appellate Court	District Court	Adm. Court	Revenue Tribunal	Labor COurt	Special Court	Total
2052/53	1,675	6,120	25,716	101	205	-	-	33,817
2054/55*	-	-	-	-	-	-	-	0
2057/58	2,600	9,860	32,500	197	440	110	-	45,707
2058/59	34,762	4,556	25,500	156	190	45	751	65,960

The annual salary growth rate of the justice system is not in bad shape, compared to that of other institutions. The rate of salary growth presents a positive trend for judicial incentives. This growth is particularly obvious for the Supreme Court, where the salary provision increased by almost 100% in F/Y 2058/59. However, this positive trend does not explain the stagnated position of expenditure for development.

In the recent fiscal year, the office expenses of the Supreme Court have substantially decreased. The decrease of expenditure on items such as stationery and basic amenities like water, electricity and communication might hamper the quality of judgments. Falling standards of judgment are obvious from case data and judgment texts published in the Nepal Law Reporter (*Nepal Kanoon Patrika*), which covers important judgements of the Supreme Court.

Table 70: Office Expenditure by Levels of Court (Rs.) (in Thousands)

F/Y	S. Court	%	A. Court	%	D. Court	%	Adm. Court	%	Revenue Tribunal	%	Labour Court	%	Especial Court	%	Total
2052/53	5,842	24.74	10,933	21.48	12,355	10.11	201	23.24	807	41.13	-	-	-	-	30,138

[308] There is no detailed classification of salary and allowance in this fiscal year. It has therefore not been possible to identify what part of the expenditure relates to basic salary.

[309] This figure does not match with the total figure obtained by adding all the headings under consumption. There has been found a mis-match in the figures, and it was not possible to identify the source. The total budget of the Supreme Court in F/Y 2058-59 should be Rs. 79305000, which is given as Rs. 4454543000 in the Estimated Expenditure Book of HMG's Finance Ministry, F/Y 2058-59, page number 2. The figure for consumption expenditure it is given only as Rs. 44543000, which should be Rs. 695424000 by the accumulation of all headings under consumption. The figure for the total budget for the Supreme Court and that for the budget under the heading of consumption are the same, which is the cause of the mis-match. (See, page 2.)

2054/55	7,624	29.15	19,569	26.04	17,090	11.94	266	31.26	1,030	32.12	750	51.90	-	-	46,329
2057/58	9,375	29.79	24,290	26.37	21,965	12.59	475	23.38	1,535	30.43	856	52.97	-	-	58,496
2058/59	9,781	12.33	27,951	23.61	27,319	12.26	727	23.35	1,906	31.84	910	45.75	1423	59.59	70,017

Table 71: Development and Capital Expenses of Different Courts (Rs.) (in Thousands)

F/Y	S. Court	%	A. Court	%	D. Court	%	Adm. Court	%	Revenue Tribunal	%	Labour Court	%	Especial Court	%	Total
2052/53	-	-	5,665	11.13	14,900	12.20	130	15.03	75	3.82	-	-	-	-	20,770
2054/55	-	-	3,600	4.79	155	0.11	34	4.00	240	7.48	-	-	-	-	4,029
2057/58	-	-	-	0.00	-	0.00	25	1.23	70	1.39	-	-	-	-	95

Table 72: Comparison of Expenditure on Judiciary with Other State Departments

F/Y	Judiciary %	Defense %	Education %	Health %	Attorney General %	Police %
2057/58	0.39	4.26	12.82	5.02	0.08	5.75
2058/59	0.47	4.54	14.10	5.20	0.10	5.81

Population and Judges

The table above shows the lack of planning of the placement of judges according to considerations of population and development. In F/Y 2052/53, in Jhapa, one of the most populous districts surveyed, there were only two District Court judges to serve the entire district population. This ratio of judges to population improved in the following year, when the number of judges increased to 3. However, overall the ratio of judges to population is insufficient. Even in districts with comparatively small populations, such as Gulmi and Kanchanpur, only one judge was provided for the entire district in the fiscal years under focus.

However, the situation is most serious in Kathmandu. In F/Y 2052/53, there were 9 judges to serve a population of 6,75,341. This allocation is entirely inadequate for a populous and urban setting, which will naturally have a higher number of occurrences of crime. The situation presented above suggests that neither the government nor the judiciary have appropriate plans or policies for the provision of human resources at District Court level. The requirements of populations according to their size and level of development have been apparently ignored. The failure to supply courts with appropriate levels of personnel must necessarily impact on the delivery of justice.

Table 73: Population per Judge in Sampled Districts

Name of District	Population	2052/53		2054/55		2055/56	
		No. of Judges	Ratio	No. of Judges	Ratio	No. of Judges	Ratio
Jhapa	5,93,737	2	1:2,96,868.5	3	1:1,97,912.3	3	1:1,97,912.3
Terhathum	1,02,870	1	1:1,02,870.0	1	1:1,02,870.0	1	1:1,02,870.0
Kathmandu	6,75,341	9	1:75,037.80	10	1:67,534.10	10	1:67,534.1.0
Rasuwa	36,744	1	1:36,744.00	1	1:36,744.00	1	1:36,744.00
Rautahat	4,14,005	3	1:1,38,001.6	3	1:1,38,001.6	3	1:1,38,001.6
Rupandehi	5,22,150	3	1:1,74,050.0	3	1:1,74,050.0	3	1:1,74,050.0
Gulmi	2,66,331	1	1:2,66,331.0	1	1:2,66,331.0	1	1:2,66,331.0
Rukum	1,55,554	1	1:1,55,554.0	1	1:1,55,554.0	1	1:1,55,554.0
Surkhet	2,25,768	1	1:2,25,768.0	1	1:2,25,768.0	1	1:2,25,768.0
Kanchanpur	2,57,906	1	1:2,57,906.0	1	1:2,57,906.0	1	1:2,57,906.0

Source: *CBS 2001 and Field Survey*

Table 74: Proportion of Judges to Population Nationwide

Year	Total Population	Total Judges	Popultion per Judge	Ratio of Population per Judge
Before 2058	1,84,91,097	236	78,352	1:78,352
After 2058	2,32,14,681	236	98,367	1:98,367

Table 75: Proportion of District Court Judges to Population

Year	Total Population	Total Judges in District Court	Population Per District Court Judge	Ratio of Population per District Court Judge
Before 2058	1,84,91,097	120	154,092	1:1,54,092
After 2058	2,32,14,681	120	193,456	1:1,93,456

Table 76: Proportion of Appellate Court Judges to Population

Year	Total Population	Total Judges in Appellate Court	Population Per Appellate Court Judge	Ratio of Population per Judge
Before 2058	1,84,91,097	100	1,84,911	1:1,84,911
After 2058	2,32,14,681	98	2,36,885	1:2,36,885

Table 77: Proportion of Supreme Court Judges to Population

Year	Total Population	Total Judges in Supreme Court	Population Per Supreme Court Judge	Ratio of Population per Judge
Before 2058	1,84,91,097	19	9,73,216	1:9,73,216
After 2058	2,32,14,681	18	12,89,705	1:12,89,705

Recent Trends in the Criminal Justice System of Nepal

As revealed by research in the past, at every stage of criminal procedure, there is a lack of adequate sensitivity to the protection of human rights. For instance, unnecessary remand is frequently granted, and the right to adequate defence during the remand motion is often ignored. The lack of objective analysis of the evidence and the facts during and for prosecution is another common problem. This can lead to almost random prosecution, and consequently a large number of prosecuted cases fail to achieve conviction. The high number of failed prosecutions may suggest the violation of individual liberty. The high incidence of random prosecution is also a cause of the huge caseload of the judiciary. This contributes to inefficiency in the criminal justice system.

The present study has confirmed many of the findings of previous research. The following trends highlight the situation, and can be a basis for plans for required interventions in the future:

1. Over the last ten years, the Supreme Court has faced constant growt h in its caseload. The growth of the civil caseload has increased incredibly, making up over 90% of the current case volume of the Supreme Court. The trend of increments of the caseload in the Appellate and District Courts fluctuate, however, in totality the caseload in these courts has also increased. The lack of efficiency in clearing case backlog is obviously one of the main reasons for accumulation of undisposed cases in these courts. At every tier of the court structure, there has been a trend of a rising civil case load. The growth in the number of new cases together with the accumulated backlog has seriously hampered the emergence of a workable funneling system.

2. After restoration of democracy, the number of people approaching the Supreme Court on various issues has tremendously increased. This could be taken positively, showing citizens' increased consciousness of their rights. However, a lack of an effective and efficient filtering device has led to cases piling up in the Supreme Court. This reduces the Court's ability to promptly and efficiently protect the fundamental rights of the people. Overall, the criminal caseload of the Supreme Court has come down to a manageable size, which shows the existence of an effective filtering device regarding these cases. However, the time, resources and energy saved by the filtering device for criminal cases is consumed by the need to deal with the civil caseload. This potentially marginalizes criminal cases in which the preservation of personal liberty is at stake.

3. The existing nationwide per-judge caseload is huge. The present research has shown the caseload has consistently increased over the years, except for a few fluctuations in some years. However, the number of judges has not been increased to meet the proportion of the increment of the caseload. Obviously, the volume of work for each judge at every level of the court structure must be creating great stress. After the restoration of democracy, the per-judge caseload remains not less than 600. This caseload is simply impossible for one judge to deal with efficiently. This is especially true in the trial courts, where a judge has to complete several procedural stages before the final hearing. Thus the existing per-judge caseload can be multiplied several times.

4. The study reveals that the ratio of the growth of human resources, i.e. judges, does not match the ratio of the growth of the caseload each year. This is one of the major reasons giving rise to the huge backlog of cases every year. The failure to recruit additional judges to meet the present demands of the caseload is frustrating. This situation compels us to conclude that the State is not committed to the principles in the preamble of the Constitution, which has promised the provision of competent and independent justice to the people.

5. The current rate of the disposal of cases is less than 50% of the total caseload. It means that each year over 50% of cases remain as backlog for the next year. Thus, au tomatically, a large number of new cases can be designated as the following year´s backlog. This leads to an accumulation of cases that threatens the achievement of speedy justice. In the last ten years, the government of Nepal has shown hardly any interest in this painful problem. It can be concluded that the government is not interested in placing the development of the judicial system on its priority agenda. The judiciary is left helpless to face the situation.

6. In considering the situation of appeals from the lowest court to the apex court, a positive trend can be seen in the criminal caseload. A number of criminal cases tried by the trial courts do not approach the Appellate Courts, and the proportion of criminal cases at the Supreme Court constitutes less than 10% of the total caseload. However, the trend is reversed in the civil sector. Almost all cases heard by the District Courts have made their way to the Appellate Courts, and a very large portion of them have come before the Supreme Court. This indicates that the administration of civil justice is in a bizarre condition.

7. A few courts in the Himalayan region have virtually no work to do, however, they consume a huge financial resources. In a period of ten years, four District Courts, namely, Rasuwa, Manang, Mustang and Dolpa, have disposed of 23 cases on average. This means a rate of hardly two cases each year. However, annually, these courts

consume over four million rupees. This situation has neither been examined by the government nor the judiciary in the last ten years, and no body has taken responsibility for its management. It suggests the need for a circuit court to deal with the caseload of these districts. If such a move was taken, the expenditure consumed by these courts could be diverted to other courts in desperate need of financial resources.

8. 17 other hill district courts also possess a small caseload. Monthly, not one of these courts deals with more than ten cases. Interestingly enough, these courts also have a backlog of cases every year, and the case disposal rate is not better than that of the overloaded District Courts in the urban and Terai zones. The performance records of courts in different regions and geographical zones clearly indicate that the judicial administration lacks a policy of work assessment of judges, and a corresponding system of rewards and punishments. It is interesting to note that even in courts like Rasuwa and Manang, there are cases remaining as backlog. The question of accountability has therefore been neglected in the field of justice in Nepal.

9. The per-case cost of justice in Himalayan and hill districts is huge. In Rasuwa, the cost for one case is about Rs. 70,000.00, whereas in Mustang, in F/Y 2056/57, it was about Rs. 11,00,000, as this court had only one case to dispose of in that financial year. In hill districts, the cost per case is also high. How these costs can be properly managed and the quality of justice strengthened has not been a question seriously considered, even after the restoration of democracy.

10. Although, the growth in the crime rate is not serious, in general, it is increasing. However, from the Police record, the operation of a filtering device is clear. Although it is hard to say how many of cases are pending and how many have been filtered out, it can be seen from the study that about 30 to 40% of FIRs are not prosecuted. This shows a positive trend towards the development of an effective funnel in the criminal justice system.

11. At the prosecution stage, 4 to 5% of cases are filtered out. This trend does not suggest a satisfactory rate of failure of the prosecution at the trial courts. However, it does indicate that a filtering device exists and is somehow functioning. The rate of failures of prosecution in the trial court indicates the potential for effective filtering at the prosecution stage. As such it suggests that a considerable volume of cases in the trial courts could be reduced by improving the effectiveness of the filtering device at the prosecution stage.

12. Excluding partial convictions, the prosecution faces failure in over 40% cases. However, its successes are very often in cases of public offence, a crime for which the conviction rate is very high. This happens because these kind of cases are tried by the CDO, an administrative tribunal having jurisdiction to try some criminal cases. If such cases are excluded from the list of successes, the ratio of convictions decreases far below 40%. This leads us to conclude that random prosecution is phenomenal in Nepal. This is one of the major causes for the level of the criminal caseload in the courts.

13. The failure of prosecution in such a huge proportion could suggest the following situations:

- Either the violation of human rights is phenomenal in the investigation and prosecution stages, and the credibility of investigation and prosecution is suspect, or
- The courts are easily manipulated by offenders, and thus the courts are in their service.
- Whatever the reality might be, circumstances surely exist where the rights of innocent people may be crushed, and criminals escape the justice. This seriously undermines the confidence of people in the system, and its credibility overall.

14. Conventional crimes like theft, murder and robbery still constitute the majority of crimes before the justice system in Nepal. However, crimes related to narcotic drugs, trafficking of women for prostitution and rape are increasing. As yet, cyber crimes, and offences relating to issues such as technology and the environment have not exhibited a strong presence in the criminal justice system. This does not mean that such crimes have not occurred, but rather may suggest a lack of awareness about them in the investigating and prosecuting agencies.

15. Access for women to justice is not properly safeguarded. Trials of offences against women are conducted in open court, which is vulnerable to breach of the right to privacy. The study reveals that the prosecution success rate in crimes such as rape and trafficking is not good.

16. The study reveals that in the ten sampled districts, the crime of trafficking has raised its head in districts like Jhapa, Rupendehi and Kathmandu in particular. Such districts are densely populated, and are undergoing rapid urbanization. They also have access to the Indian border. Crimes such as rape are also taking on an urban character.

17. Trained human resources are a scarcity in the justice system. Excluding judges, clerical and lower level personnel constitute the overwhelming majority of the system´s total human resources. There is no workable mechanism for the induction of highly trained and competent human resources. The induction received by the officer level of judicial staff is a basic training of three months given by the executive department. None of the staff have a chance to obtain specialized training.

18. The results of the motion study show that a number of persons have to wait a long time in the courts for the remand motion. Furthermore, in the majority of cases, the medical check up reports were not attached to the casefiles, and thus decisions on remand were taken irrespective of such reports.

19. There was no representation by lawyers during the remand motion in the courts observed. Neither Government Attorneys nor defence lawyers were present during the remand process. Moreover, in general, suspects were found to have been produced in the courts by the lower ranking Police personnel. In such circumstances, the potential for violations of human rights is huge.

20. Judges were observed to be inactive during suspects' deposition at the courts. Judges did not pay much attention to what the suspect was saying or examine whether they were speaking the truth.

21. Witnesses were not properly examined, and the judges were generally unconcerned with their testimonies.

22. It was found that judges generally spend four hours a day in the court. The remainder of their time was taken by coming late to the office, in teatime, etc. However, a significant part of their time was wasted by lawyers, both the defense and Government Attorneys, due to the high frequency of case adjournment.

23. The infrastructure and the logistic situation of the majority of courts was found to be very poor. This may have serious consequences for the achievement of fair trial.

24. The financial situation of the court is very poor. The budget allocated to the judiciary is hardly enough to meet its daily needs. A negligible part of the budget has been spent on the development of the judiciary. The judiciary in fact is pauperized. The government's attitude towards the judiciary is indifferent.

These trends do not indicate positive working conditions for the courts. The nation should consider that if the judiciary is deprived of financial and human resources, democracy cannot flourish.

Conclusion and Recommendations

The caseload of all courts is huge. However, the levels of civil and criminal cases are not proportionate. This study has shown that there seems to be a system of filtering in operation for criminal cases that is not applied to civil cases. Almost all civil cases originating at District Court level reach the Supreme Court. The burden of stress on the Court is basically created by its civil caseload. This burden thus diverts time and resources away from criminal cases - which are those in which the human rights of parties are most vulnerable to abuse. As yet, the judiciary does not seem to have reviewed the situation. It still does not have a concrete plan of action for the management of the caseload. The Supreme Court and the Judicial Co uncil must therefore develop a concrete plan of action and a strategy to manage the caseload at each level of court. This Plan must include a strategy for the filtration of civil cases at their entry point into the justice system.

The study has shown that there are a large number of failures of the prosecution. This indicates that there are a large number of unfounded cases reaching the judiciary as a result of prosecutorial inefficiency. If the filtering device at the prosecution stage was improved, then this could decrease the burden of unnecessary cases on the courts, and reduce infringements of suspects' rights. The Attorney General's office must therefore review its working practices. It must develop concrete strategies of action for the improvement of the filtering mechanism, and orient its staff on how this can be achieved. If that happens, the protection of the human rights of people subjected to unfounded cases would be possible.

The workload of the courts in Himalayan and hill districts is minimal, but they enjoy the same investment as courts with higher work burdens. This expenditure is not sustainable, especially in light of the nation's current financial pressures. The expenditure that is not being used efficiently could instead be used to develop an alternative judicial mechanism, for example, a system of circuit courts. One approach might be to create a different system of "judicial districts", merging the jurisdictions of several courts. Such reforms would help reduce unnecessary expenditure of the judiciary, and direct resources to areas where they were needed most. The Judicial Council must conduct a study on a feasible management system for the future.

The condition of the judiciary's human resources is poor. There is a trend for a high intake of clerical manpower, which causes great strain on the judiciary. This must be stopped and the appointment of highly qualified personnel be encouraged. Furthermore, such personnel should be provided with the technology and facilities to enable them to carry out their job effectively and efficiently.

Time is not managed efficiently at trial court level. A significant proportion of the working day is wasted. The present lottery system for the distribution of cases among judges at trial court level should be immediately discontinued, as it does not encourage confidence in the performance of judges. Justice cannot be dispensed if there is no confidence in its quality. Cases should be distributed early so judges have time to prepare for them. This would save time in the latter procedural stages, and enhance the quality of judgments delivered. The Judicial Council should therefore conduct a study into the management of court time and how this can be improved.

The budget available to the judiciary is negligible. The judiciary cannot protect the Constitution and the fundamental rights of the citizens in a state of pauperization. The Supreme Court and the Judicial Council must prepare a Plan of Action for the framing of its own budget and independent expenditure. The itemized budget allocation system of the Finance Ministry should be immediately removed, in order to protect the independence of the court. To develop strong leadership in the Supreme Court, judges with a high caliber of work and capacity should be promoted or taken up from outside the judiciary. The present trend of promotion of senior judges from the Appeal Court should be wiped out. Thus, the Judicial Council should develop guidelines on the necessary quality of judges to be adopted or promoted by the Supreme Court.

In comparison to the executive and legislative branches of State, the judiciary does not explore the enhancement of its financial resources. The judiciary should be permitted to use its own authority to explore the possibility of funding from donors, and use revenue it has generated by itself. The State must give at least 1% of its total budget to the judiciary immediately, and release the control of the Finance Ministry over judicial funds.

There were several recommendations made by the participants of meetings in which the draft of the study was disseminated. These have been attached to the report as Annex 1.

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Annex 1

Recommendations from Dissemination of the Draft Report

Dissemination meetings on the draft of the report were held in Chitwan, Kathmandu, Biratnagar, Nepalgunj and Janakpur. A comprehensive presentation of the findings was made at each meeting and comments from participants encouraged. In total, 90 people participated in the five meetings. These included judges from District and Appellate Courts, prosecutors from Government Attorney's Offices, Defense Lawyers, Police Officers, Human Rights Activists, journalists, court staff and researchers. This research is the first of its kind in Nepal, and so has provoked a good response.

The scope of the present research has been confined to highlighting the current trends in the criminal justice system, based on available facts and figures, viz. the statistics available from the annual reports of the actors involved in the criminal justice system. The dissemination meetings were an opportunity to hear the views of actors in the criminal justice system. The following recommendations are the outcome of these meetings. They have been based on the trends drawn from the facts and figures studied, and reflect the concerns of the actors of the criminal justice system themselves.

Investigation and Prosecution

1. The low level of criminal cases in the courts may be due to poor techniques of investigation and prosecution. Prosecutors and investigators do not properly discharge the responsibility entrusted in them by law. Delays in investigation and a lack of investigation at all in some cases are a major cause of a drop in convictions. This can be seen for the crimes of rape and trafficking in particular. In many criminal cases, the Police are politically influenced and FIRs are not entertained. A major cause of delay in criminal proceedings is due to the prosecution's negligence. The prosecution frequently fails to cite the full details of defendants and witnesses correctly, making it impossible to serve a summons. The court is not able to locate them and call them to a hearing. Judges now have a practice of issuing successive summonses in order to locate witnesses that have been incorrectly identified. Such practices, from all sides, lead to great delay in court proceedings. Delays also result from the lack of logistic support for court staff. Court messengers have no allowance or vehicle with which to carry out their work. Current practices should be reviewed and reformed. The practice of serving summons through mass media or newspapers should be introduced as an alternative to the present system. There should be training for court messengers to increase their efficiency and reduce the possibility of mistakes.
2. The existing State Cases Act has given Government Attorneys great powers to determine matters of appeal. However, there is a danger that victims' interests will be jeopardized by the decisions of Government Attorneys. Thus, victims must be allowed to initiate an appeal if the State will not. Furthermore, compensation for unfounded prosecutions should be introduced immediately. This has been a major source of violations of human rights. The lack of compensation for detention in unfounded cases has been effectively used by the Police to suppress ignorant people. This factor has also exempted investigators and prosecutors from accountability for their unprofessional activities.

The role of lawyers

3. Disciplinary action against lawyers engaged in malpractice is not effective due to the political divisions in the Bar Council, which is the only body to monitor lawyers' compliance with their professional code of conduct. The quality of professional knowledge and the skills of a segment of the legal community are poor. Some lawyers are engaged in unethical practices. They take high fees from their clients and file unnecessary cases. Many lawyers often engage in lengthy and irrelevant arguments in court. They are unconcerned if court time is wasted. They deliberately cooperate with their clients to delay proceedings and cook the evidence. Adjournment by lawyers is phenomenal. In Banke court, one case has been adjourned 45 times and another has been running for 22 years. The Bar's interest to improve these conditions is poor. Lawyers have accepted that the Bar Association is a platform for politics. Since the Bar is politically divided, actions against lawyers engaged in malpractice are not possible.

   The judiciary too has not been pro-active in dealing with these problems. It has set no standards for legal representation. There is hardly any difference in judges' treatment of professionally qualified and unqualified

lawyers. The treatment they offer to both groups is the same, as there is never any critical acceptance or denial of arguments in their judgements. "The argument is accepted or denied" is a statement used indiscriminately in judgements. For the improvement of the confidence of people in the judiciary, the courts must change their rudimentary style of judgement writing. The judgement must be grounded on objectivity and recognized principles of justice. Judgments, especially at Appellate Court level, should be transparent. This will also help to increase the accountability of legal practitioners to their clients.

Lawyers should also be involved in the filtration of cases. One of the reasons for a lower number of criminal cases in the Appellate and Supreme Courts is that the Attorney General's Office refrains from resorting to appeal in cases where there is less chance of the reversal of District Court judgements. However, in civil cases this does not occur. Legal practitioners should play a role in the filtration of civil cases similar to that of prosecutors in criminal cases. Legal practitioners could help to build a filtering device for these cases by engaging in negotiation to resolve cases out of court. At present the professional credibility and responsibility of lawyers in Nepal is not sufficiently developed to bring about this process. The provision of proper legal advice or counseling by lawyers is greatly suspect. A majority of participants in the dissemination meeting, including the Bar's leaders, accepted that the political division of the Bar is causing numerous problems. Hence, the possibility that the Bar can play an effective role in the development of an "outer-court" solution to the case burden is slight. It is essential to build the confidence and capacity of the Bar. Lawyers should receive training to develop their intellectual capacity. It was suggested in one dissemination meeting that lawyers should develop areas of specialization, for a better quality of service to the public. To achieve these standards and to improve the filtration system, lawyers should receive training in the application of new techniques, such as "outer-court" methodologies. The Bar Association should develop an institutional basis for lawyer-led mediation. Any initiatives in this regard should be based on appropriate law, and furthermore, have the support of the court. So far, the approach of the court to techniques such as outer court mediation has not been positive.

The Supreme Court

4. The excessive caseload of the Supreme Court is a negative indicator of the quality of justice in the lower courts. The reduction in the volume of work in the lower courts has resulted in a heavier workload in the Supreme Court. The trend in the increment of the Supreme Court's caseload that is exhibited by the statistics shows that the court will have an unmanageable caseload in the future. The quality of judgements is already decreasing. The Supreme Court is no longer a court of record but a court to increase the disposal rate. The concern of judges is the disposal of cases rather than the protection of rights. The judicial management should take heed of this situation. The quality of justice the Supreme Court can deliver will be necessarily compromised if current conditions continue. There is an urgent need to act to reduce the Supreme Court's caseload.

5. Some stated that the number of judges in the apex court should be increased to alleviate the excessive per-judge caseload. However, there should be vigilance against miscarriages of justice, in order to ensure that the due process of law is not broken down in the haste to clear the case backlog. The practice adopted by the Supreme Court to prevent the representation of lawyers in the *Shadak* hearing is a violation of the due process of law. No punishment can be made in accordance with law, if there has been no representation by lawyers in the case. Legal representation is not simply a privilege given to persons, but is also a rule of the due process of law.

6. Some participants stated that Appellate Courts be given the same jurisdiction to hear writs as the Supreme Court, thus covering *certiorari* writs among others. This would reduce some of the pressure at the highest level. Some participants argued that the Supreme Court's revision jurisdiction is one of the causes of its heavy caseload, and a separate bench should be created for the scrutiny of revision applications. Furthermore, cases should be categorized on the basis of degrees of punishment and value. Cases within certain categories should not be heard beyond Appellate Court level. For example, under such a system, criminal cases in which the terms of imprisonment were less than 10 years, or that involved sums less than Rs. 100, 000 could be designated as incapable of appeal to the Supreme Court. Such a system of categorization was in operation prior to 2047, within the four-tier court system. If applied again, it could significantly reduce the burden on the Supreme Court.

Court Reform

7. Some participants pointed out the need for reform of the court structure. For some participants, the concept of a permanent court system in all administrative districts was not only expensive but also unnecessary. The expenditure on the judiciary was not felt to be proportionate or planned. It was held that presently, a small number of cases are consuming a huge amount of resources, and resources are terribly scarce in courts with larger caseloads. Some participants felt there was no justification for the continuity of courts in districts like Rasuwa, Mustang, Manang and Dolpa, and similarly, the eighteen District Courts in the hill areas of the country. It was argued that the distribution of courts to fit the existing administrative divisions of the country does not

favor the achievement of fair and competent justice. Many also advocated the creation of a circuit court to address the heavy expenditure and loss of time in courts with a negligible number of cases, or at lower levels. Internal division of the courts was also suggested. Some felt there was a need to have separate specialized courts to deal with matters like family, labor and juveniles. Such courts might help to decrease the present caseload of the existing courts. For some, the excessive civil caseload was a particular concern. Criminal cases were stated to be the priority focus for the justice system, and the division of the court into civil and criminal benches was advocated.

8. However, there was no consensus among participants on the issue of court reform. An almost equal number of participants in the meetings urged the development of the existing system to cope with the problems it faced. It was stated that the frequent changes in the structure of the court, for example, the number of Appellate Courts, were creating instability. Some participants held that even courts with no work to do should not be altered, and stated that the State should not hesitate to make even huge expenditure in the delivery of justice. Although many participants proposed the establishment of separate tribunals to deal with certain types of case, this was rejected by others. Trial court judges in particular felt there was no need for separate courts. Instead, there should be a "consolidated judiciary". Hence, the trial court should deal with all types of case. As an alternative, the trial court could be internally arranged into sections to deal with different types of case.

9. In the opinion of some participants, the continuous hearing process should be introduced immediately to improve the quality of justice. They argued that the judge who first receives a case should have total authority to dispose of it. Furthermore, judges should not prolong proceedings by issuing orders in different court sessions. Several orders should be issued at one time.

10. The development of initiatives outside the courts of law was also discussed. To address the existing heavy civil caseload, participants pointed out the need to enforce the Local Autonomous Governance Act, which envisages devolving judicial power to local authorities in petty civil matters. The development of the mediation system as an alternative dispute resolution system was also suggested to address the present heavy stress of work in the courts of law.

11. The management of the judiciary was felt to be totally unconcerned with the need for a planned judicial system. Participants said that the administrative mechanism of the judiciary must develop concepts of program and budget planning. A lack of such plans was stated to be one reason for the current "irrational budget distribution system". It was argued that the increase in the caseload is not in itself a negative trend. More cases in the courts are an indicator of increased accessibility to the judicial process. However, proper management of the caseload is necessary to secure adequate and fair justice. The pressure to clear the backlog in the trial courts causes a huge backlog in the apex court. The management of the court must be conscious of such trends. It was stated that there should be an effective time management system in the court. Some participants felt that the skills and time management of judges were more important than their number.

12. Overall, the management of the judiciary was felt to be weak, particularly in their receptiveness to modern technology. It was argued that trial courts are reluctant to think of introducing new technology and how this may be used in connection with such practices as the service of notices and summons. Participants stated that the present trend of deputing a service man (*tameldar*) for the service of a summons is not only rudimentary, but carries the potential for corruption and miscarriage of justice. Thus, the practice must be changed immediately to break the present trend of an imposed delay in justice. The judiciary should be receptive to technology and change its feudal practices. Participants also stated that the question of pro-active leadership in the judiciary is another important issue to be addressed. At present, the post of Chief Justice is too powerful. If the Chief Justice is not active, then nothing will happen. The judiciary must always look to the Chief Justice for action. The role of the Judicial Council must be increased. If this takes place, the Judicial Council should also undergo change. It has become a forum of "judicial politics". Its role in the promotion of judges and the creation of an apex court of senior citizens should be stopped.

13. There should be changes in the manpower of the justice system. It was argued that the overwhelming majority of the human resources of the judiciary are of a clerical position. The adversarial justice system requires trained and highly qualified human resources. Court staff should, ideally, come from a legal background. The trend of maintaining high numbers of clerical staff must be replaced with the recruitment of adequate human resources, trained to handle matters of justice.

14. Participants stated that there is a need for further research into the criminal justice system. The heavy caseload of the Supreme Court and the increased caseload for courts in the Terai were particular areas of concern.

Furthermore, the judiciary and court personnel should be aware of research findings. It was felt that in Nepal there is a trend of building perceptions with no basis on facts and figures. Participants stated that the central Bar and judges of the Supreme Court must be aware of relevant research to help the strengthening of institutional independence. Scarcity of intellectual resources is acute. Training for judiciary and court staff was felt necessary. Participants stated that the understanding among judicial staff of the modern principles and approach to justice was very low. It was stated that staff are not aware of the very basic concepts of fair trial, and have been educated only in formal procedures, not the principles and concepts of justice. The skills of judges must be developed. Judicial awareness should then lead to activism. Participants said that the judiciary should come out of the hangover of the imposed system of the past by which rule was enforced. At present, the people are supposed to rule themselves. There is a need to bring about drastic changes in the judicial system, of which judges should be part.

The Finances of the Judiciary

15. The judiciary is one of the most important branches of the State. As an independent branch, it has its own norms and principles of administration. It possesses exclusive control over the recruitment of human resources, their capacity building and their performance. The terms and conditions of their service are supposed to be governed by the set of rules enacted by it alone.

    As an independent branch, the judiciary should also receive an allocation of budget from the State to spend in accordance with its program needs. However, the planning of the budget is subject to control by the executive branch of the State. The judiciary has to spend its budget as itemized or earmarked by the executive. This negates the independence of the judiciary, and subjects it to executive control. It is against the spirit of the Constitution, and violates the rule of constitutionalism. Furthermore, the State has failed to invest significantly in the judiciary. Its infrastructure and logistic situation are extremely poor, and are not congenial for the fair administration of justice. The State's investment in these areas has been negligible. Despite a significant contribution of revenue to the exchequer, the State's allocation of its budget to the judiciary is extremely poor. The public demand for quality of justice is high, but this is impossible to achieve in a state of judicial pauperization.

    The current situation shows the State's lack of concern to invest in justice, and reflects the State's indifference to promotion of the rule of law and human rights. Therefore, to raise the standard of justice in Nepal, the State must refrain from maintaining its financial control over the judiciary and offer adequate funds to carry out its work. The executive's control over the expenditure system of the judiciary must end immediately. The judiciary should be given control over its budget. Internal allocation should be given to the Supreme Court.

The Record System

16. The Record System of all institutions is very poor and needs immediate improvement. Institutions in the criminal justice system are not actively analyzing their performance on the basis of statistics. The concept of a work audit is completely lacking. Judges often work just to dispose of their caseload. The quality of justice is not properly considered. One of the reasons for the great backlog in cases is the lack of accountability of judges. Failures in judicial performance should be punished. There should be no impunity for bad performance. At present, their treatment is based solely on the bias and discretion of the head of the institution. The head of the institution's discretion is absolute. The Judicial Council has been involved in the protection of corrupt judges. This should cease. Judges who are incriminated on charges of corruption should be judicially prosecuted. However, they should be rewarded for good work. There should be a system of record for judges' performance. A reward and punishment system based on performance should be considered.

17. This recommendation applies to other institutions. The Attorney General is failing to achieve successful prosecutions. In over 50% of cases, there is a failure of the prosecution. This must subject the office of the Attorney General to scrutiny. In 50% of cases, there have been violations of human rights. However, at present, there is no mechanism by which to hold the Attorney General accountable for this performance. Neither is there a facility to record the department's good works. Government Attorneys frequently work under great stress. They are subject to revenge in certain circumstances and often have to initiate cases under pressure. Such pressures should be recognized and good work of the Government Attorney's taken into account. However, some participants stated that the assessment of prosecutorial performance should not lead to the introduction of an incentive system. A Government Attorney should be able to make the case for the prosecution with no fear of personal loss or promise of gain.

18. It was also stated that the Bar Council's role in the punishment of corrupt and unethical lawyers is insignificant. It was argued that the Bar Association, which has been raising its voice against the judiciary for its inaction

regarding corrupt judges, is silent towards its members, who are not only maligning the profession but also extorting poor people. It was felt that the role of the Bar Council should be fair.

Civil society

19. Civil society is not educated about the role of the judiciary. It seems that civil society is not concerned to cooperate with the judiciary for the effective and efficient delivery of justice. Civil society does not provide adequate help in many areas, such as the service of notices, protection of witnesses and execution of judgments. The following practices are instances of civil society's lack of concern for a fair and impartial judicial system:

- Many cases regarding the same issue are filed in courts.
- The stigma attached to crimes may dissuade victims from reporting or pursuing a case. This stigma is the product of limited vision
- People often engage in blocking the speedy trial of cases. They use excuses in court for their own ends. Hence, one party to a case often deliberately declines to appear at court on the scheduled date, for the sake of delaying the court procedure if the cause of action is not in their favor. A section of the legal community encourages their clients in this behavior. Those that delay the court in such ways do not consider the constraints the judiciary will face as a consequence.
- A large section of litigants have the tendency to approach the Supreme Court to exploit loopholes in the Judicial Administration Act, in particular, regarding the question of meaningful difference in the judgments of the lower courts (*tatwik bhinnata*). There are several such laws that provide excuses for litigants to exploit the system and delay their cases. The legislature must therefore look into these matters seriously and devise appropriate laws to restrict people from exploiting these loopholes in the law.

Legal Reform

20. There is a need for new law, and reform of existing provisions. The court was given independence by the Constitution. However, the State has failed to bring about new laws to enforce its provisions. It has also neglected to update existing laws to meet the needs of a modern court and society. Current laws are not systematic, and pervert court procedure. The size of the civil caseload is partly due to the application of bad laws and bad practices. This can be seen in cases for the partition of "*aungsabanda*" (inherited property). Ambiguities in the law lead to lengthy procedures in determining the issue. Furthermore, in a case where only one co-parcener has requested partition, if successful, this right will not be granted to other co-parceners. Thus, the other parties must bring separate cases to court at a later date regarding a right that has already been decided. The court should consider the aungsa rights of all those who are not the named parties to the case at one time, and divide the property accordingly. Cumbersome procedural rules have also led to the trend of "*lagau*" (attached) cases. In many issues, several separate cases are filed. Rather, there should be a single hearing in which a complete judgment is made, covering all aspects of a case. There are many customary and procedural laws that are inappropriate for today's society. The law should be reviewed, and changes made to avoid unnecessary cases and ensure timely completion of the cases that are being heard.

Illegal influences

21. The illegal nexus of actors is a reason for a backlog in cases, and the manipulation of verdicts. Many cases are influenced by political considerations. Corruption and illegal practices should be addressed.

Annex 2

List of Participants in Dissemination Meetings on the Draft Report

Chitwan - 10th Chaitra, 2058

S.No.	Name	Organization
1	Shambhu Bahadur Khadka	Judge, District Court, Chitwan
2.	Rajendra Shrestha	Govt. Attorney, District Govt. Attorney Office, Chitwan
3.	Representative	District Police, Chitwan
4.	President	Journalist Association of Chitwan
5.	Ram Krishna Tiwari	President, Chitwan Bar Association
6.	Jagannath Bhandari	Chitwan Bar Association
7.	Bhupendra Poudel	Chitwan Bar Association
8.	Madhav Khania	Chitwan Bar Association
9.	Bishnu Ghimire	President, District Development Committee
10.	Devi Gyanwali	Deputy Mayor, Bharatpur Municipality
11.	Krishna Bhakta Pokharel	Advocate, CLRC, Chitwan
12.	Ramkrishna Adhikari	Advocate, CeLRRd, Chitwan
13.	Manarupa Gurung	Chitwan Bar Association
14.	Mahendra Baskota	Chitwan Bar Association
15.	Gajendra Wasti	Advocate, CeLRRd, Chitwan
16.	Registrar	District Court, Chitwan
17.	Representative	CDO Office
18.	Mayor	Ratnanagar
19.	Phulmaya Ranabhat	Chitwan Bar Association
20.	Bhupendra Khanal	Nawalparasi Bar Association
21.	Yubaraj Sangroula	Co-ordinator, CeLRRd, Kathmandu
22.	Rammani Gautam	Advocate, CeLRRd, Kathmandu
22.	Balkrishna Dhakal	Advocate, CeLRRd, Kathmandu

Kathmandu - 11th Chaitra, 2058

S.No.	Name	Organization
1	Rabindra Regmi	Inspector, District Police Office, Kathmandu
2.	Sadikshya Karki	Editor, Combat
3.	Jamuna Poudel	CVICT
4.	Chuda Shrestha	SSP, CID, Police Headquarters, Kathmandu
5.	Binod Dhungel	Journalist, Nepal Samacharpatra
6.	Ananda M. Bhattarai	Judge, Kathmandu District Court
7.	Lilamani Poudel	President, Kathmandu District Court Bar Association
8.	Krishna Kamal Adhikari	Advocate
9.	Dilliraman Acharya	Govt. Attorney, District Govt. Attorney's Office, Kathmandu
10.	Chet Nath Ghimire	Govt. Attorney, Appellate Govt. Attorney Office, Patan
11.	Lav Kumar Mainali	Advocate

12.	Bimal Prasad Dhakal	Patan Appellate Bar Association
13.	Balkrishna Dhakal	Advocate, CeLRRd, Kathmandu
14.	Sunil K. Pokharel	Executive Member, Nepal Bar Association
15.	Rachana Shrestha	Advocate, CeLRRd, Kathmandu
16.	Prakash KC	Advocate, CeLRRd, Janakpur
17.	Yubaraj Sangroula	Co-ordinator, CeLRRd, Kathmandu

Biratnagar - 12th Chaitra, 2058

S.No.	Name	Organization
1	Shantiram Bhandari	Chairperson, Biratnagar Appellate Bar Association
2	Keshari Raj Pandit	Judge, Appellate Court, Biratnagar
3	Sushila Karki	Biratnagar Appellate Bar Association
4	Devendra Raj Sharma	Judge, District Court, Morang
5.	Krishna Thapa	Govt. Attorney, District Govt. Attorney's Office, Morang
6.	Ram Kumar Shrestha	Inspector, District Police Office, Morang
7.	Ishwor Prasad Upadhyay	Registrar, District Court, Morang
8	Meena Giri	Biratnagar Appellate Bar Association
9.	Diwas Bajagain	SOCO Officer, District Police Office, Morang
10.	Binod Bhandari	Journalist, Kantipur Publication
11.	Sharad Raj Subedi	Journalist, Gorkhapatra Corporation
12.	Suresh Lal Shrestha	Secretary, Biratnagar Appellate Bar Association
13.	Khagendra Bd. Shrestha	Secretary, District Court Bar, Morang
14.	Prakash Nath Uprety	Advocate
15.	Ramesh Kumar Pokharel	Govt. Attorney, Appellate Govt. Attorney's Office, Biratnagar
16.	Ram Prasad Sitaula	Councillor, Nepal Bar Council
17.	Devi Bahadur Ghimire	Biratnagar Appellate Bar Association
18.	Ganesh Raj Luitel	District Court Bar, Morang
19.	Hem Raj Pant	Advocate, CeLRRd, Biratnagar
20.	Bal Krishna Dhakal	Advocate, CeLRRd, Kathmandu
21.	Bidhya Pokhrel	CeLRRd, Kathmandu

Nepalgunj – 13th Chaitra, 2058

S.No.	Name	Organization
1	Lekhnath Poudel	Banke District Court
2	Chiranjivi Parajuli	District Advocate Office, Banke
3	Bharat Lamsal	Section Officer, District Court, Banke
4	Tika Jung Singh	Advocate
5	Govinda Bandi	Vice President of Nepal Bar Association
6	Ishwori Prasad Gyawali	Nepalgunj Appellate Bar Association
7	Shiva Kumar Shrestha	District Court Bar Association, Banke
8	Basudev Gyawali	Nepalgunj Appellate Bar Association
9	Narayan Shrestha	Nepalgunj Appellate Bar Association
10	Jhabindra Poudel	Advocate, CLRC, Banke
11	Satish Sharma	Advocate, CLRC, Banke
12	Radha Sharma	Women's section, Nepalgunj Appellate Bar Association

13	Sunita Sharma	CeLRRd
14	Bishnu Pokhrel	Women's section, Nepalgunj Appellate Bar Association
15	Bishow Prakash Adhikari	Advocate, CLRC, Banke
16	Arjun Kumar Kharel,	CLRC, Banke
17	Sarita Gyawali	Advocate
18	Hari Prasad Gyawali	Nepalgunj Appellate Bar Association
19	Indra Jit Tiwari	Advocate
20	Bhanu Bhakta Rijal	Advocate, CLRC, Banke
21	Bhajan Chaudhari	Human Right Activist, INSEC
22	Govinda Pd. Chuwai	Advocate, CLRC, Banke
23	Kumar Sharma Acharya	Advocate, CeLRRd
24	Rudra Khadka	Journalist, Kantipur
25	Rachana Shrestha	Advocate, CeLRRd, Kathmandu
26	Yubaraj Sangroula	Co-ordinator, CeLRRd, Kathmandu

Janakpur - 14th Chaitra, 2058

S.No.	Name	Organization
1	Badri Kumar Basnet	Chief Judge, Janakpur Appellate Court
2.	Govinda Prasad Parajuli	Judge, Janakpur Appellate Court
3.	Ramji Prasad Mainali	Sr. Advocate
4.	Shyam Kishor Mallick	Janakpur Appellate Bar Association
5.	Hari Krishna Uprety	Janakpur Appellate Bar Association
6.	Bishwonath Prasad Upadhyay	President, Janakpur Appellate Bar Association
7.	Dharmendra Sharma	Janakpur Appellate Bar Association
8.	Yubaraj Thapa	Inspector, District Police Office, Dhanusha
9.	Brij Kumar Yadav	Journalist, Janakpur Today
10.	Sudeep Koirala	Advocate
11.	Deepak K.C.	Advocate
12.	Raju Khatiwada	Registrar, Dhanusha District Court
13.	Mukesh Karki	Janakpur Appellate Bar Association
14.	Medini Prasad Poudel	Govt. Attorney, Appellate Govt. Attorney's Office, Janakpur
15.	Devendra Thakur Nirala	Janakpur Appellate Bar Association
16.	Radhakrishna Uprety	District Court, Bar Association, Dhanusha
17.	Balram Subedi	Advocate
18.	Rajendra Kharel	Registrar, Janakpur Appellate Court
19.	Rajendra Pokharel	Govt. Attorney, Appellate Govt. Attorney Office, Janakpur
20.	Laxmi Bahadur Nirala	Sr. Advocate
21.	Balkrishna Dhakal	Advocate, CeLRRd, Kathmandu
22.	Prakash KC	Advocate, CeLRRd, Janakpur
23.	Posh Nath Sharma	Judge, Janakpur Appellate Court