Baseline Survey
on
Criminal Justice system of Nepal

Research Supported By:

Danida/HUGOU

Research Conducted By:

Center for Legal Research and Resource Development (CeLRRd)

Dadhikot-9, Bhaktapur

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Published By:

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Acronyms

CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CC	Code of Conduct
CeLRRd	Center for Legal Research and Resource Development
CIAA	Commission for Investigation of Abuse of Authority
CID	Crime Investigation Department
CJS	Criminal Justice System
CKN	Constitution of the Kingdom of Nepal
CO	Custom Office
CPL	Criminal Procedural Law
CPSL	Central Police Science Laboratory
DAO	District Administration Officer
DAO	District Administration Office
DEVA	Development Associates for Rural and Regional Development
DDC	District Development Committee
DFID	UK Department for International Development
DFO	District Forest Office
FGD	Focus Group Discussion
FIR	First Information Report
HUGOU	Human Rights and Good Governance Advisory Unit / DANIDA
ICCPR	International Covenant on Civil and Political Rights
IHRI	International Human Rights Instrument
IO	Immigration Office
LDTA	Local Development Training Academy
MOHA	Ministry of Home Affair
MOLJPA	Ministry of Law, Justice and Parliamentary Affair
NGO	Non-governmental Organization
NHRC	National Human Rights Commission
NPC	National Planning Commission
NPI	Nepal Press Institute
NTSS	National Trading Center for Scientific Support to Crime Investigation (UK)
PI	Performance Indicator
RP	Resource Person
SOCO	Scene of Crime Officer
TOR	Terms of Reference
UDHR	Universal Declaration of Human Rights
UN	United Nations
VDC	Village Development Committee

Acknowledgement

Center for Legal Research and Resource Development, CeLRRd, wishes to express its sincere thanks and gratitude to Danida/HUGOU for giving us the opportunity for carrying this important research mission. The research is hoped to fill in a gap of information in the field of criminal justice system of Nepal. Although, the present research constitute continuation of series of research CeLRRd has done in the past, it contains certain important features in many respects of the criminal justice system of Nepal. We hope that the findings of the study will be useful for police, prosecutors, judges, defense lawyers, civil society, academic institutions and all those involved in research and project implementation concerning the system of justice.

This research mission has been completed with generous and resourceful support of many personalities. At the juncture, we would especially like to acknowledge, and to appreciate the professional guidance of Dr. Asta Olsen, Program Coordinator, and HUGOU. We would also like to appreciate support and professional guidance of Mr. Murauri Siwakoti, Senior Consultant, Dr. Jit Gurung, Advisor and Advocate Sundeep Bista, Senior Program Office of HUGOU.

We would also like to appreciate cooperation of Mr. Binod Pokhrel, lecturer TU, Mr. Tirtha Pradhan, AIGP, and Mr. Ananata Bhattarai, AIGP, Police Headquarters, Mr. Umesh Mainali, Director General of Prison Management Depatment, Mr. Nanda Bahadur Subedi, Deputy Attorney General and Mr. Shree Prasad Pandit, Registrar, Supreme Court.

Finally, I would like to appreciate tireless works of my team, resource persons and support staff. Special thanks also goes to staff and teachers of Kathmandu School of Law for library research facilities. We would also like to acknowledge the contribution of Ms. Carita Thomas, intern from UK, Ms. Hanna Dunchun, visiting lecturer of KSL from UK and Ms. Misty Allen, intern from USA in editing the report. Special thanks also go to Ms. Bidhya Pokehrel for her technical support to the team.

Yubaraj Sangroula
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Executive Summary

Upon restoration of democracy in 1990, Nepal, the Preamble of the Constitution of the Kingdom of Nepal, assured for independent and competent justice as one of the basic structure of the governance system. For the implementation of the assurance guaranteed under the Preamble, Article 14 of the Constitution, enshrined some basic elements of fair trial, as the minimum standards of criminal justice system. Subsequently, Nepal ratified all important human rights instruments concerning minimum standards of the criminal justice system.

Fair trial, under the Constitution of the Kingdom of Nepal as well as the international human rights instruments, has been recognized as one of the basic rights of human rights. Under ICCPR and UDHR, the State parties have undertaken to respect the rights of their citizens concerning fair trial as non-derogable human rights. In the context of political change in Nepal after 1990, the people's concern has sharply increased to the accessibility of fair and impartial justice, especially in relation to criminal justice. To address the concern of people, the government has made attempt to amend laws and design schemes to replace the traditional and feudally tainted criminal justice system, which is lengthy in procedure, formalized then pro-active towards human rights, and, to a larger extent, biased to women and socially and economically deprived people. Often, the actors of criminal justice blame each other for the persistent problems, although they are almost equally insensitive to the basic rights of the suspects, accused or convicts, as well as victims of crimes. Hence, the criminal justice system of Nepal is subjected to several problems which effectively jeopardize the rights of people to fair and impartial justice.

The investigation system is still marred by torture and ill treatment of suspects, as the extraction of confession still constitute the objective of the investigators. Investigation often starts with the arrest of person with necessary detention of suspects. The importance of objective and material evidence is still in a bleak condition. The methods used for the interrogation of suspects are archaic and torturous. The use of force during interrogation is still a common phenomenon. The prosecution is random leading to over 50% of failure. The prosecution is largely dependent of outcomes of wrong investigation. The government attorneys who have to play crucial role in protection of innocent person, are hardly concerned of the facts and the standards or admissibility of evidences. Obviously, the lack of vigilance over the investigation, and the prosecution with establishment of the admissibility of evidence and determination of facts lead to extremely high number of criminal cases result in acquittal of accused. The circumstance induces every one to conclude that:

Either the trial system is totally ineffective and inefficient, so that a large number of offenders are privileged to escape the justice, or

A number of innocent persons are simply incarcerated and punished for nothing.

This circumstance is largely responsible to denigrate the confidence of people over the justice system. Obviously, the large proportion of failure of the government in prosecution

is not only raising a question to the fairness and impartiality of the investigation and prosecution systems, but it also seriously raises the impartiality of judgements made by the judiciary.

The present research has showed that there has been a serious lacuna in the process of filtering of unnecessary cases, which in the one hand creates a big backlog of cases in the trial courts every year, and in the other hand it unnecessarily subjects individuals to detention, thus violating their liberty. The review of the statistics published by the Police Headquarters and the Attorney General's Office show less than 5 % of filtering of cases. The survey of FIRs in the ten sampled districts presents a further grim situation as the percentage hardly reach 3% of total cases investigated by the police. Although there have been plenty of filtering devices available, the prosecutors seem to be simply not inclined to use them. The research presents a circumstance that the investigation of the criminal offences starts with the information supplied by the FIR registered by someone. The FIR has often been taken as a serious evidence against the alleged suspect. The investigation progresses generally without taking into note of the possibility of other peoples' involvement in the commission of crime. The need to extract confession thus becomes an indispensable element of the investigation. Under the State Cases Act, the government attorneys have the power to keep vigilance over the investigation and instruct the investigators for obtaining additional evidences if required to carry out prosecution. However, the research shows that this power is hardly exercised by government attorneys. They simply ignore such vital affairs, and tend to prosecute all cases they receive from the police.

The overview of available literature and information obtained from various institutions shows that, it is not only the torture but also the incidents of custodial death and sexual harassment or exploitation frequently happening during the detention period. The study team had the chance to witness an incident of torture in Kapilvastu district, where an inspector tortures detainees in a group with a plastic pipe. The review study of literature revealed that the human rights organizations had collected 1337 incidents of torture in 1990, and 1294 in 2001. These figures shows that even now the problem is in a dangerous level.

The condition of prison system is extremely bad. Prisons are not only over-crowded, the buildings are old and, many of them, are in a state of collapse threatening hundreds of lives . Officially, the total capacity of prisons all over the country may house about 7000 people. However, the capacity does not meet the standards set forth internationally. Currently, the number of prisoners exœeds over 10,000 inmates. The situation is obviously pitiful. The government, in terms of financial as well as human resource, has given no serious attention to the poor condition of the prison system. The total budget allocated by the Government to manage 73 prisons housing over 10,000 inmates, including salary and allowance of staff and medical treatment of prisoners, is Rs. 1,39,565. Over the years' the government has constituted several Commissions for recommending improvements in the jail, however nothing yet has taken place in concrete .

The study reveals that the condition of juvenile justice system is extremely in a poor condition, as juveniles have been indiscriminately incarcerated along with adult convicts. Although, in the last two years, there seems to have been a significant activism for ameliorating the condition of juvenile justice, it is, however, mainly a NGO initiative.

The Supreme Court of Nepal, however, has made positive intervention in this regard, as it has passed several judgements instructing the government to establish the rehabilitation or correction homes, and get those juveniles out of jails.

The present study has made an attempt to explore the socio-economic and residential characteristics of the suspects and prison inmates as causative factors for the social dynamic between them and the different actors of the criminal justice system. While doing so the research has given attention to establish trend between gender and crime, age and crime, caste/ethnicity and crime, educational status and crime, martial status and crime, family status and crime, occupation and crime, income and crime and monthly income and crime. The analysis of these dynamics is carried out based on both the quantitative and qualitative data obtained from the survey in the sampled districts. To extract the information, 75 respondents had been interviewed. The findings of the survey shows that the gender ratio of crime is 80 and 20 percent men and women respectively. As revealed by the survey, the population group aged 25-32 years constitute largest segment involved in the crime representing 28% of the total crime. The population group aged between 17 and 24 constitute the second largest group of the prison population. This trend is a possible indicator of an increase in delinquent potential of young people as they progress towards adulthood. The findings of the survey also showed that the majority of respondents were Chettris (32%) followed by Brahmin (21%) and Dalit (21%), and Limbu, Newar and others (8%). The majority of respondents interviewed had completed primary education (32%). However, the second largest group were illiterate (26%). It showed that the lack of education was a significant factor in the emergence of crime. Majority of respondents had been married (72%). Similarly, majority of respondents said that they had less than five members in the family (49%). The majority of respondents(45%) came from the agricultural background. 13% of respondents constituted the population of laborers. All these figures help to generalize certain obvious trends. Firstly, illiterate population constitute the largest prison population. Secondly, the dominant class of the Nepalese society, Chettris and Brahmin, ethnically constitute the vulnerable group in terms of crime. Thirdly, economically backward population constitute the largest prison population. The question of fair trial in such situation is always serious, as the population facing trial comes from educationally and economically vulnerable groups. The information obtained from questionnaire survey had been crossed check with tools of FGD, which, too, explores similar trends. Hence, the quantitative data are supported by the qualitative data.

Another significant aspect of the study related to the mode of criminal proceeding, which is a matter of great concern in terms of human rights situation. As the study shows, the male police had arrested 69% of respondents. Although, the State Cases Act provides for a female police personnel to arrest and body search or touch physically a female arrestee , yet 30% of female respondents had been physically touched by the male police personnel. 70% of respondents stated that their family had not been informed of their arrest, and 34% stated that they had been insulted and acted rudely at the time of arrest. Moreover, despite the provision of medical check before interrogation takes place and sending to the lock up cell, 80% of respondents had been taken to the detention cell straight away without any medical check up. The survey also revealed irregularities concerning search and seizure as 69% respondents revealed that the search of body of investigating officers had not been conducted before they initiated the process. However, majority of respondents informed of arrest and detention during day-time, which shows a positive trend. The study

also presents a general trend of violation of the rights of suspects to obtain an arrest slip, at the moment of arrest. However, 68% of respondents said that they had been given such slip only in the police office. However, 51 % of police key informants suggested that they had issued arrest slip to detainees. The custodies are uncomfortable and dirty. 82 of respondents report the same. Although, the health of detainees is one of the key concerns guiding international rules for their institutionalization. However, this is another aspect of the custody which shows very bad condition. 48% respondents report that they had fallen ill during detention.

The Constitution of the Kingdom of Nepal guarantees the right of every individual to a free and fair legal representation by a legal professional of their choice. Although this rights is guaranteed in all circumstances, in practice it is rarely afforded. However, it is found from the survey that 69% of respondents had not been aware of their right to consult with a defense lawyer while in custody. Among 26 persons held in custody for charge of murder, more than 70% were not aware of their rights. In the police custody, for so many reasons, 90% of detainees had no lawyers, which indicates to bizarre situation of fair trial.

The police officer within the rank of DSP and above hardly get into the investigation. Normally, the junior and new officers are involved in the process of investigation, particularly in interrogation. The deposition of suspects is generally recorded in the absence of the government attorneys (50%). The right to remain silent is something, which is absolutely denied during interrogation. Out of 75 respondents, 73 had made deposition (2 of them had not been arrested by the police, and had gone straight to court). Most interestingly, 83% of suspects had not been provided with the opportunity to submit their evidences.

Article 14 (6) of the Constitution provides for the production of the arrested person before judicial authority within 24 hours of arrest, excluding the period of journey. However, out of 75, three prisoners had not been produced.

The study presents number of problems which are directly related to basic rights of suspects to a fair and impartial trial. However, it shows a great concern of all actors to address the problem, and raise the standard of the system. One of the most significant aspect of the study was that every key informant realized the mistakes committed, and the need to improve in their attitude. In the FGD, all resource persons of criminal procedural guidelines and key informants critically accepted the lack of standard of the criminal justice system.

The development of the Criminal Procedural Guidelines and series of orientation thereof have positively contributed to change in the existing condition of the criminal justice system. 42% of police respondents stated that they had been observing the guidelines (all of respondents had not yet received orientation). 35% of them however did not know of the guidelines. Majority of the respondents who had chance obtain orientation stated that the guidelines had been tremendously helpful in making them to follow the best practice. 52.6% key informants felt that the guidelines helped them to understand the procedural matters in a true sense. The Government attorneys had similar feelings, as the number of preliminary report concerning crime has significantly gone up. The judges too have similar feeling, as 86% of respondents stated that there has been a change in the attitude of police after orientation programs.

The judges also stated that 62% of the judges reported that the police and government attorneys adhered to the presumption of innocence. However, their views on the over all capacity and efficiency of government attorneys in the conduction of prosecution were of more concern. Only, 15% of judges had full confidence in the performance of the government attorneys.

The motion and time observation concerning interrogation reveal some interesting findings. Only very few police offices have separate rooms for interrogation. Interrogation are often carried out by lower level of police personnel. While interrogation continues, suspects are kept standing, sometimes over four hours as observed by the team. Hand cuffing has been used as a rule, and no one is spared. In some police offices, equipments of torture are displayed too.

To sum up, the criminal justice system needs to be revamped. The existing conditions are far from satisfaction to meet the standards set forth by the Constitution and international human rights instruments. The attitudinal changes among all actors is a pre-condition for any significant changes.

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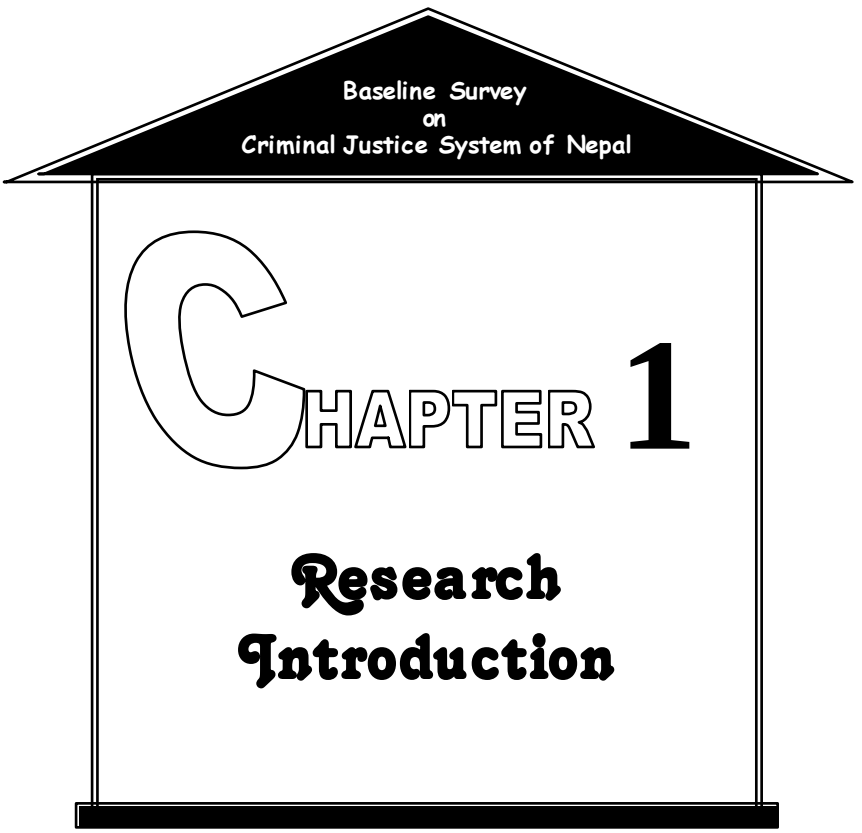


CHAPTER 1

Research Introduction

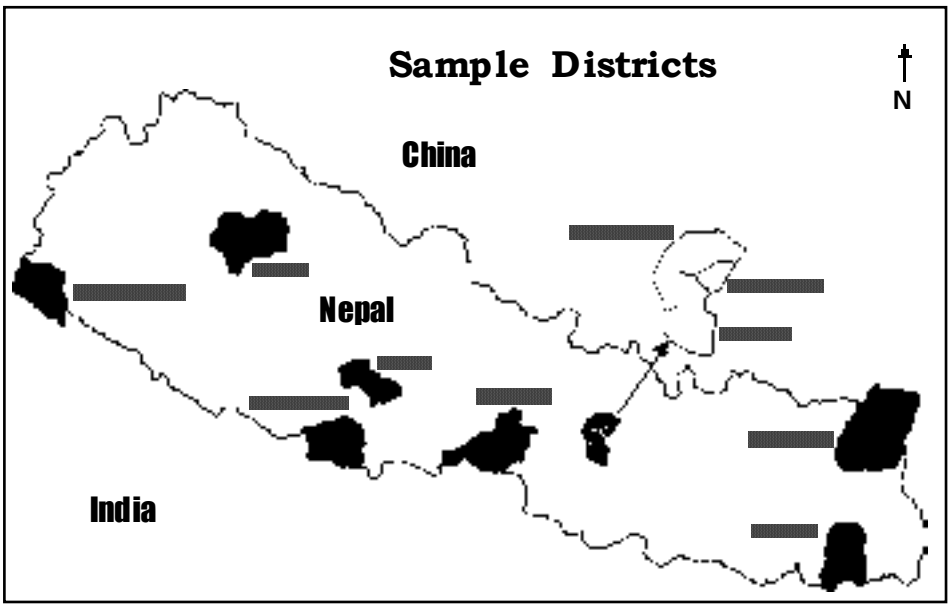
1.1. General Background:

This is a study of the current practices and procedures within the criminal justice system (CJS) of Nepal, which commenced on December 20th 2001. The research study was financially supported by DANIDA/HUGOU and implemented by CeLRRd. Completion of the research was intended to be within a period of seven months thereby imposing severe time constraints. Due to this limited time frame, limited geographical coverage and restrictions in the subject matters to be covered, as outlined in the TOR, this study does not claim to be a comprehensive representation of current procedure and practices within the CJS. However, despite restrictions the study team has endeavored to cover all areas in as much as detail as possible.

A wide variety of crime occurs in every society every day. Robert King Merton once said "the anomie (a state of normalness) is then conceived as a breakdown in the cultural structure, occurring particularly when there is an acute disjunction between cultural norms and goals and socially structured capabilities of the members of the group to act in accordance with them."[1] "A crime is held to be an offence which goes beyond the personal and into the public sphere, breaking prohibitory rules or laws, to which legitimate punishments or sanctions are attached and which require the intervention of a public authority".[2] He further argues that "for a crime to be known as such it must come to the notice of and be processed through an administrative system or enforcement agency". Thus public authorities or law enforcement agencies such as courts of law, prosecution authorities and the police force play a vital role in the establishment of a crimeless society, maintaining a more effective criminal justice system. Crime can affect an individual's life, reputation and property. However, once a crime has been committed and state mechanisms become active in the function of their duty, the situation often occurs where the rights of others are affected: namely those suspected of having committed the crime. A fair and impartial trial is a mechanism that protects society and victims of crimes against injustice and in the meantime safeguards suspects against potential abuses of power by the state. Following the restoration of democracy in 1990, Nepal approved and passed a Constitution that envisaged institutionalizing an independent and competent justice system. Nepal has subsequently ratified several international human rights instruments that lay down minimum standards of justice. Before the advent of the democratic era Nepal had a traditional justice system where the basic values of human rights and justice were not a concern for the institutional mechanisms of the criminal justice system. However, in light of the new Constitution and subsequent developments a review of the criminal justice system is required to enable accommodation of these advances.

An effective criminal justice system plays a crucial role in the protection of human rights in a wider context than just the rights of suspects and those subjected to criminal justice. The criminal justice system can regulate the process of judicial decision making and therefore has an impact on the prevention of crime and the treatment of criminality. It thus protects ordinary people from the effects and harm of crime. More legalistically a criminal justice system can be defined as a scientific decision making entity in which components such as the police, prosecutors, courts and correctional institutions strive for a more secure and safe society, and for the protection of personal liberty[3] Thus, a combined sociological and legal perspective offered guidance for

research methods in conducting this field study. The study was carried out across the ten districts of Taplejung, Morang, Bhaktapur, Lalitpur, Kathmandu, Chitwan, Gulmi, Kapilbastu, Jumla and Kanchanpur. Several techniques and tools were utilized for



the collection of data. In light of the scope and nature of the study, the following methodologies were used to collect and analyze the information gathered about the functions, efficiency, problems and achievements of those involved in administering criminal justice.

The history of empirical research concerning the laws and justice systems in Nepal is short. Other than some observations from the Royal Commissions in the past, no empirical policy, no action research, nor any academic research activities were taken to mirror the conditions of the justice system, especially prior to 1990. Although, some reports from the Royal Commissions brought some problems faced by the Nepalese justice to light, they hardly looked into factors associated in the failures or successes of the system. These commissions never made any attempt to observe the responses of stakeholders to the system. Prior to restoration of democracy in 1990, the legal and judicial systems of Nepal had been fashioned within a spirit of prohibition on "pluralism" of political thought and ideology. The judicial system therefore could not enforce human rights. The justice system was marred by feudal characteristics, as there were no rights to fair trial guaranteed. In 1990, Nepal not only obtained a modern Constitution, guaranteeing a competent and independent justice system, but also ratified international human rights instruments like ICCPR, CAT and so on, to secure some minimum standards of justice to which each civilized nation has subjected to oblige to. The development therefore commissioned changes to the structures, notions, procedures and practices of the prevailing system of justice. Furthermore, these developments pointed to the need for an analysis of the situation of justice and rationalization of it.

With regard to the criminal justice system, aresearch study entitled "Analysis and Reforms of the Criminal Justice System in Nepal", carried out by CeLRRd in 1997-98, was the first most comprehensive study of its kind. This study opened doors for several other studies in the following days. However, the study could not represent the nation, as geographically

the study was limited to five administrative districts only. Moreover, the study could not cover all aspects of information on the criminal justice system of Nepal. In the following days, several studies were conducted by various institutions revealing the widespread information on the system. These studies have made tremendous efforts to identify problems and factors responsible for the weaknesses within the system. The present comprehensive study follows a series of similar ones, which, in a few words, purports to reveal the standard levels of procedures and the consistency of practices on human rights.

In summary, in helping to establish equal access to a fair and impartial criminal justice system for all, through strengthening and improving the capacity and performance of all those involved in effecting criminal justice, as was envisioned by the Constitution of the Kingdom of Nepal 1990, this study reviews the performance standards of all actors in light of the guidelines, principles and minimum standards outlined by the United Nations. The review of existing procedures was carried out with the objective of identifying their strengths and weaknesses. In addition, surveys were conducted of the socio-economic and demographic diversity of detainees/prison inmates; the nature of the crimes committed; the attitudes of various respondents; the mode of the legal process; the type and nature of problems such as torture; relevant procedures in relation to the funneling and filtering of cases; the effectiveness of police investigation; and the supervision of police officers. The analysis of the information was then carried out in the light of the standards laid down by the Constitution and those international human rights instruments ratified by Nepal. A wider objective was to provide a baseline report on numerous aspects of the criminal justice system of Nepal.

1.2. Objective of the Study

The basic aim of this study was to conduct a baseline survey of current procedures and practices of the criminal justice system of Nepal.

The specific objectives of the study were:

1. To assess the rationality of the criminal justice system in Nepal in the light of international standards.
2. To identify the strengths and weaknesses of the criminal justice system, and of the different components of the criminal justice system.
3. To evaluate the effectiveness of the investigating and supervising authority, and the effectiveness and impacts of SOCOs regarding the collection of objective and material evidence from the scene of a crime.

1.3. Scope of the study

This study covers the overall situation of the prevalent criminal justice, focusing on the stage of investigation. In order to cover numerous aspects of this subject matter, the study had been divided into six modules. The issues covered by those modules and the relevant research techniques are discussed under the research framework (See Box 1).

1.4. Sociological Perspective on Crime and the Criminal Justice System

To achieve smooth societal development, a stable social order is a condition precedent for all societies. However, maintaining social stability and order is a significant and expensive challenge. Systematically organized social control and socialization are

considered as a means of maintaining cohesive order in society. Therefore, the people's role is always crucial in maintaining social order. It is also equally true that the majority of people mostly follows and conforms to the bulk of existing social norms. However, some members of society knowingly, intentionally or unknowingly deviate from the existing norms of society. Hence, deviance takes place due to an unwillingness or reluctance to follow established norms. This is generally one of the major factors involved in the incidence of crime. In simple terms, deviance means diversion from the accepted path. According to Gerald R. Leslie (1992) the term deviance by itself refers to a characteristic or type of behavior that differs from the established norm[4]. it is said that crime and delinquency are the most obvious forms of deviance. For Emile Durkheim, the major and somewhat antagonistic and anomalous issue which keeps emerging is the function of deviance. In his view, crime is a normal phenomenon because a society devoid of it is utterly impossible[5]. Likewise, R.K. Merton, arguing from a structurally functional perspective, says that deviance takes place in society due to the imposition of unequal social status on members of society[6]. By connecting the relationship of culture, structure and anomie (a sociological term for the concept of deviance), he further says:

> *"...Cultural structure may be defined as that organized set of normative values governing behavior which is common to members of a designed society or group. And by social structure is meant that organized set of social relationships in which members of a society or group are variously included. Anomie is then conceived as a breakdown in the cultural structure, occurring particularly when there is an acute disjunction between the cultural norms and goals and the socially structured capacities of the members of the group to act in accordance with them..."*

To sum up, when cultural and social structure are mal-integrated, it creates a social condition of anomie[7].

Thus, crime and other deviant behaviors leads to the breakdown of social order. To prevent the breakdown of social order society needs the intervention of law enforcement authorities, such as the police, prosecutors, judges, lawyers.

For Marshall, a crime is an offence which goes beyond the personal and into the public sphere, breaking prohibitory rules or laws, to which legitimate punishments or sanctions are attached and which require the intervention of a public authority[8] He adds that "for a crime to be known as such, it must come to the notice of and be processed through, an administrative system or enforcement agency". Hence from different angles, public authorities such as politicians and ministers, and law enforcement agencies such as the courts, police and prosecutors play an important role in the prevention of deviance and the maintenance of the control mechanism known as the criminal justice system. However, the criminal justice system can only function as an effective and legitimate mechanism if it is also equally concerned with values such as human rights, and the need to protect the fundamental rights of the suspects, those accused and prisoners.

Among the modern social sciences, a sociological perspective is preferred in offering an explanation and analysis of the different issues existing in society today. Sociology has been divided into various sub-disciplines. Among them, the sociology of law has emerged for the systematic study of the interrelationship between society and the legal system. Hence, this study is an attempt to apply sociological theories of law in studying rationality and current standards of criminal practice and procedure.

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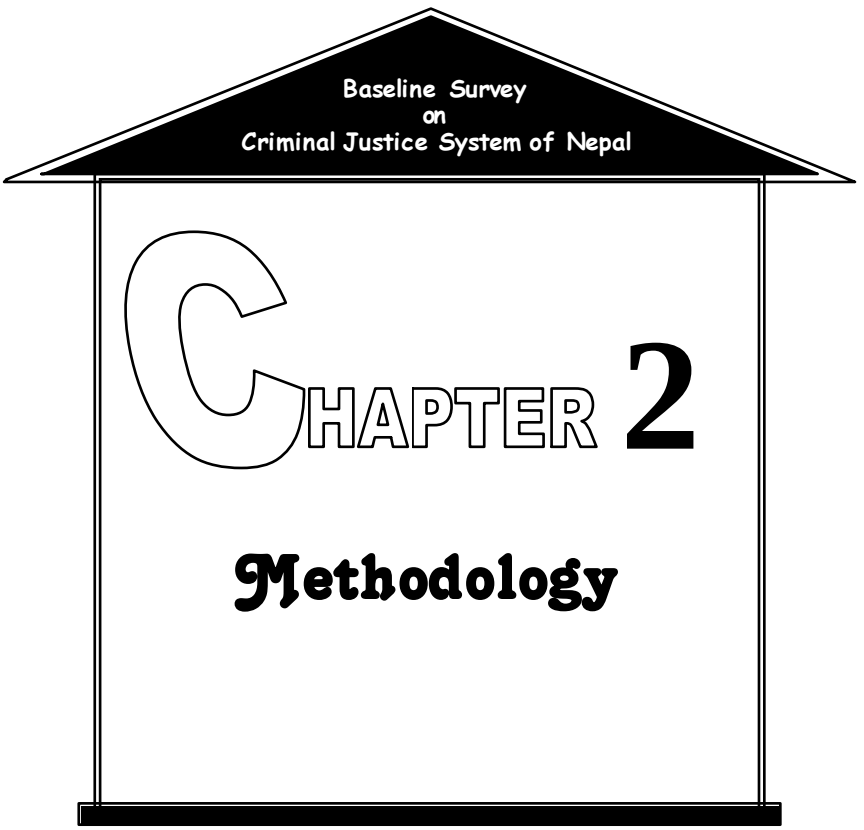


CHAPTER 2

Methodology

The research method adopted provided guidance for conducting this field study. The study was carried out across the ten districts of Taplejung, Morang, Bhaktapur, Lalitpur, Kathmandu, Chitwan, Gulmi, Kapilbastu, Jumla and Kanchanpur. Several techniques and tools were employed in the collection of data. Due to the scope and nature of the study, the following methodologies were used:

Figure 1: Research Framework

Scope	Issues to be Studied	Method
Module 1 The code of conduct of various actors within the Criminal Justice System in Nepal compared to UN standards.	• IHR Instruments E.g. UDHR, ICCPR etc. • International norms and practices in the conduct of a fair trial. • Existing Nepalese Acts. • Existing Practices.	• Review of the existing documents/literature. • Informal discussions/ interviews and meetings with relevant actors and human resources. • Key informant interviews.
Module 2	• FIR and its processes. • Search, seizure and arrest. • Interrogation of suspects. • Prosecution. • The issue of warrants and summons against an absconded accused. • The hearing of the case. • Interlocutory orders and the power of the Appellate Courts. • Sentencing. • Appeal. • Revocation of State Cases. • Execution.	• Review of existing documents. • Survey questionnaire. • FGD. • Observation. • Interviews of key informants. • Informal discussion and meetings.
Module 3 Filtering and Funneling Procedure.	• Numerical data with regard to the number of FIRs registered, acted upon, investigated, prosecuted and convicted. Also other potential outcomes.	• Survey questionnaire. • Key informant interview.
Module 4 Time and Motion Study of the Investigation of Crimes.	• Role and responsibilities of investigating officers. • Cooperation with prosecutors. • Concern of investigating officer to protect the human rights of the suspect/accused.	• Survey questionnaire. • Interviews of key informants. • Informal discussions and meetings. • Observations.
Module 5 Critical Analysis of the Occurrence and Nature of Torture.	• The occurrence and nature of torture. • Safeguards of the suspect from torture and inhuman treatment. • Remedy and rehabilitation for torture victims.	• Survey questionnaire. • Review of existing documents relating to torture. • Interviews of key informants. • FGD. • Observation. • Case studies.

Module 6 The state and quality of the Criminal Justice System.	• Level of rank of police officers involved in the investigation of crime: arrest; interrogation; observation; discovery of evidence at the crime scene; and extension of remand etc. • Cooperation between investigating officers and prosecutors. • Typical time frame for the submission of documents by the police to prosecutors. • Exercise of the right of prosecutors to instruct police officers on the legality of investigation. • State of legal representation of detainees during detention and at trial. • Trends of prosecution. • Trends of the courts in the granting or denying of bail. • Trends in witness testimony and typical duration. • Rate of conviction and acquittal. • Types of sentences passed by the courts. • Sensitivity of judges, prosecutors and police in matters of juvenile justice.	• Survey questionnaire • Interviews of key informants.

2.1. Review of Relevant Documents and Cases

Scientific research must be based on previously gathered knowledge. Previous studies cannot be ignored because they provide the foundation of the present study. For this purpose, literature on legal standards concerning codes of conduct (CC) for various actors within the criminal justice system, the criminal procedural law of Nepal, the situation with regard to torture, penal laws and case law from the sampled districts were all reviewed. The standard of procedural rules and codes of conduct under the Nepalese system were compared with the principles, guidelines and codes of conduct laid down by UN. Similarly, criminal procedural law and practices were assessed in the light of Article 14 of the Constitution of the Kingdom of Nepal 1990 and international human right instruments. Various studies on the criminal justice system and the local dispute resolution system were also reviewed. The relevant literature was collected and reviewed chronologically and sequentially. For this purpose, a comprehensive checklist was developed in advance which provided a crucial foundation for the development of the theoretical framework.

2.2. Design, Size and Selection of Sampling

Sampling is the process of obtaining information about an entire population by examining some parts of it. The sample districts and rationale for the selection are outlined in section 2.3 below. Due to the large number of total FIRs filed, only 25% of samples from the relevant districts from the last three consecutive years were selected for the case review. The cases were selected by applying a method of stratified sampling. The given samples were divided into various strata according to their nature. The regular marking method was then employed within the constituted clusters. In districts where the total number of FIRs was below fifty in a year, all cases were studied in order to report in as much detail as possible.

Similarly, key informants from relevant fields were selected for the questionnaire survey and interview. Responsible officials from all components of the criminal justice system; those involved in the implementation of criminal procedure guidelines; the head of the VDC; Municipality; DDC; human rights workers; prison officials; suspects/accused/prison inmates/ex-prisoners; and victims of the criminal justice system were those selected as key informants. A deliberate or purposive sampling method was applied while selecting the key informants. In selecting these informants the research team's decision was made on the basis of what was considered to be a be a typical representation of the entire population.

2.3. Study Area

This study covers ten districts out of the 75 Districts of Nepal. The selected districts and the reasons for their selection are outlined below.

S.No.	District	Rationale for the selection
a.	Taplejung	Eastern remote district with Limbu ethnicity.
b.	Morang	Industrialized, urban, and densely populated with multi-ethnicities. A comparatively advanced district (eastern development region).
c.	Kathmandu	Selected for SOCO pilot project.
d.	Lalitpur	Selected for SOCO pilot project.
e.	Bhaktapur	Selected for SOCO pilot project.
f.	Chitwan	Central development region with a topography of both hills and plains and a diversified cultural background (melting pot of diversity).
g.	Gulmi	Western region with Brahman, Chhetri and Magar ethnicities.
h.	Kapilvastu	Large number of cases in the plain, with a Muslim majority (western development region).
i.	Jumla	Remote district of the mid-western region with a large number of cases.
j.	Kanchanpur	Far western region with Tharu ethnicity.

2.4. Pilot survey

The pilot/pre-test study was a rehearsal for the main survey. Once the development of the questionnaire and the checklist was completed, the study team including the team leader and sociologist, carried out a reconnaissance visit to Chitwan from February 8th to February 13th 2002. The visit had the following objectives:

a. To review the size of the samples;
b. To test the strengths and weaknesses of the questionnaire and checklist and modify or improve them in accordance with any findings;
c. To test the relevance and applicability of the selected tools of practice and to modify, improve or replace them in accordance with any findings;
d. To assess the general level of respondent's understanding of the criminal law and justice and modify or improve research methods accordingly.

2.4.1. The Rationale Behind Selecting Chitwan for the Pilot Study:

Chitwan comprises several characteristics relevant to this study.

1. Chitwan's topography includes both hills and plain territory.
2. Chitwan's demographic distribution has a wide variety of caste, ethnicity, religion, culture and languages etc.
3. Chitwan is urbanized, developed and has a reasonably developed industrial sector.
4. Parts of Chitwan are still isolated and remote, and as such lack accessibility to modern development facilities.

The pilot study proved useful for verifying the quality of the documents developed. The tools proposed for the study were found to be appropriate and subject to certain modifications the questionnaires were also found to be appropriate. The most important outcome of the study was that the team had the opportunity to obtain information on the level of understanding of the general population of the criminal justice system. Awareness of this level of understanding facilitated modifications and improvements to both the survey questionnaire and the interview questions. In addition, the pilot study gave the opportunity to discover the potential constraints, problems and risks involved in the research.

2.5. Source of Data

Both primary and secondary data were obtained and processed in the course of researching this project. Primary data was generated from the questionnaire survey, interviews, observation, FGD and case study. Secondary data was obtained from published and unpublished articles, ethnography, filed and recorded cases, books and other related materials.

2.6. Data Collection Technique

Considering the types and nature of information required for the study, research tools such as the survey questionnaire, interviews of key informants, observation, informal discussion, Focus Group Discussion and Case Studies were utilized:

2.6.1. Survey Questionnaire

A pre-tested survey questionnaire is a useful and reliable method of collecting quantitative information. This tool was employed in order to extract basic information on the socio-economic background of the respondents (suspects/those having been

accused/convicts/ex-prisoners) as well as other experiences of detention in police cells and prison, pre-trial motions, trial hearings and post-trial motions. Similarly, questionnaires were used to obtain quantitative data from those respondents associated with the CJS, such as tribunal members, medical doctors, medico-legal experts, journalists, jailers, family members of prison inmates and human rights experts and activists. The survey questionnaire was originally developed in Nepali and the final version is in Annexes 1 to 15.

2.6.2. Key informant's Interview

The key informants, as well as those referred to earlier, included community leaders such as local social workers; the head of the Village Development Committee (VDC); Municipality; District Development Committee (DDC); Interest Groups (Organization of Women/Dalit and other minorities); university teachers; Criminologists; Victimologists; individuals involved in criminal procedural guidelines; and NGOs involved in the research and reform of the criminal justice system. For the interview of this category of key informants, checklists were separately developed. The checklist was originally developed in Nepali version and later translated into English (see Annexes 16 to 20). The checklists were used as a guide in the interviews if required.

2.6.3. Uncontrolled Observation

Observation helps build up a realistic image of the situation existing in the particular subject matter. Guidelines were prepared and developed for the observation of the interrogation process in the district police offices and local stations (including SOCO); the procedure within the Government Attorney's Office in taking a suspect's deposition; the framing of the charge sheet; and dealing of defense lawyers with clients in the private lawyers. Separate forms to record the observations of each actor were developed. Since these observations could provide a meaningful method of cross checking the information obtained from the questionnaire survey, the forms to be used for recording observations were developed having regard to the information sought in the questionnaire. Observation was considered as potentially the most important tool for obtaining qualitative information.

2.6.4 Informal Discussion/Interview

Conducting informal discussions and interviews is a useful tool for obtaining information, as well as identifying and contacting respondents and building a rapport. This tool was primarily used to extract information from key informants such as the elderly, individuals involved with criminal procedural guidelines, NGO activists, officials like CDOs, DFOs, doctors, journalists, suspects, prisoners.

2.6.5 Focus Group Discussion (FGD)

FGD was employed in order to obtain information through focusing the group on a specific or core issue of the study. FGD was used with those in prison for obtaining information on the torture situation, and the prison system specifically. For this purpose, a separate checklist for male and female inmates was developed. This assisted in discovering the existing trends and standards of the CJS, as well as the triangulation of the information gathered by the survey questionnaire.

2.6.6. Case Study

Case studies are a popular method of obtaining reliable qualitative data. They can assist in studying a particular issue or problem in depth. This is why the method of case study is often called a social microscope. This tool was used to reflect on the experiences of selected

suspects and prisoners, and certain major incidents or complaints reported to the NHR Commission and other institutions by torture victims, and sometimes recorded by the media.

2.7. Team Composition

The study team was comprised of a legal consultant (team leader), a sociologist consultant, a police consultant, a statistician/computer programmer, four research assistants (a government attorney with at least five years practical experience, a legal academic with at least three years teaching experience, a lawyer with at least five years practical experience and a sociologist with at least three years experience of field research) and other field members. The basis of the selection of the team members was their previous experiences in their respective empirical research work. After completion of the review of literature and pre-tests were carried out on the questionnaire and checklists, local field enumerators with legal backgrounds were employed. Two enumerators led by a researcher conducted the study in each district and consultants had supervised the work in districts. .

2.8. Orientation, Training and Workshop

Upon completion of the work of preparing the general checklist based on research objectives, the team leader along with other consultants had organized an orientation program for team members, which basically focused on the importance of the research, the tools to be employed, constraints, and the time frame of the research. A second orientation session was organized once the research tools were fully prepared and ready for use. This orientation was conducted in Chitwan prior to the pilot study being initiated. One more orientation and training session was conducted once the pilot study was completed. The core team, consultants and local field staff all participated in the orientation.

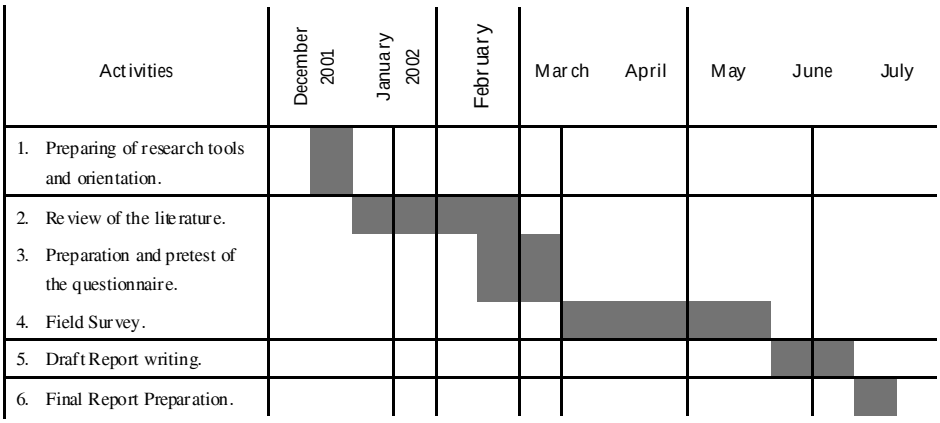
2.9. Field Work and supervision

As provided for by the study schedule, the field work was completed in a period of two months in March 2002 and every activity in the field was completed on time. The field work was supervised by the team leader, the sociologist and the police consultant.

2.10. Study Period

The study began on 20th December 2002. The team made great efforts to complete the work within the scheduled period of seven months. The revised time schedule is given below.

Box 3: Research Plan of Action



2.11. Data analysis and interpretation

The analysis and interpretation was carried out by the team collectively once the results had been processed. All quantitative data was coded and then carefully entered into a computer with the help of custom designed software. The results of this data processing were presented in various statistical forms such as percentages, ratios and frequencies. Similarly edition, readability and categorization of the qualitative data, and then the categorized data were presented on the basis of their nature and quality, and attempted to show relevant relationships. The research team reread the notes and texts again and prepared for the compilation of the report.

Tables, maps, pictures and figures are also presented where they are necessary and appropriate.

2.12. Limitations of the Study

Each and every study has its own limitations. No research can be free from restrictions and weaknesses due to the various constraints existing during the study period. Admittedly therefore, this study is not flawless.

The first limitation of the present study is in relation to the inadequacy of financial resources. The study was completed with a paucity of financial resources. Similarly, the timeframe was also a significant constraint. Because of limited resources and time, the team was forced to make the compromise of utilizing only 25% of FIRs as a sample for the study.

The second weakness in the study stems from the fact that the police were a focal point of the study. However, except for in few districts, an in adequate period of time was spent police officers. With the exception of police officers in the Chitwan district, only a very few officers from the other districts were positively interested in meeting and holding discussions with the team. By the nature of the study, it was not possible to inform officers of the nature of the research, but without such prior information the police officers were not prepared to allow research activities to take place. If prior information was given however, there would have been a risk that the results would have been tainted. Hence, pursuing the cooperation of police offices was an extremely troublesome task.

The third difficulty arose because the researchers were attempting to gather information about the real experiences of former prisoners of torture and inhuman treatment. Initially to contact such individuals was considered to be impossible. Although this was an incredibly difficult task it was made possible through the hard work of the field workers.

Fourthly, due to the unfavorable conditions in rural areas especially in light of the declaration of a state of emergency, the research team faced many problems of varying degrees of seriousness. To approach and convince officials like CDOs, DSPs, and DFOs to cooperate was a thorny obstacle. The general levels of indifference to academic activities such as that undertaken by the research team was occasionally a source of frustration and difficulty to the team. In some districts, despite several requests some officials were simply not prepared to meet and interact with the team. For instance, the CDO of Bhaktapur, despite all efforts refused to cooperate with the team. In the meantime, the existence of a state of emergency made travel so difficult as to become almost painful.

The five day long "Nepal Bandha" which occurred twice during the field study period was the last but by no means least of the problems facing the team in making this report. ●

CHAPTER 3

Criminal Justice System (CJS) in Nepal

3.1. Historical Perspective

Nepal has its own idiosyncratic legal system that developed in line with Hindu customs over the centuries. The Nepalese legal system is largely an offshoot of the Hindu legal system. Given Nepal's history and geographical and cultural diversity, it is quite remarkable that Nepal developed a unified and universally applicable legal system. Unlike India, Nepal generally does not recognize separate religious or customary laws for people of different ethnic or religious groups[1]. Although the laws relating to domestic relations are essentially Hindu, they have been adapted and modified so as to be applicable without causing serious tensions among the different ethnic and religious groups.

The molding of Nepalese society and law according to Hindu history began in the fourth century AD during the rule of the Licchavi kings. These kings replaced the non-Hindu Kirat rulers over much of what is modern Nepal. The most notable aspect of Hinduization during the Licchavi period was the introduction of the Hindu *Varna* (the classification of the population according to caste), and the attempt to allocate places within this system to all Nepalese, regardless of whether or not they were Hindus. However, there was no real systematic attempt to unify and codify Nepalese society until the late fourteenth century during the reign of King Jayasthithi Malla. During his reign, the *Manab Naya Sastra* (Legal Rules for Human Justice) was promulgated. It was a comprehensive codification of substantive and procedural rules based largely upon Hindu scriptures. Its publication marked a watershed in Nepali law because from that time to the present, codified law has been the primary source of authoritative law in Nepal. The *Manab Naya Sastra* put an end to the era of indefiniteness and ambiguity caused by reliance upon the numerous Hindu scriptures that were taken as the authorities.

Another landmark in the development of law in Nepal was the promulgation in 1853 during the rule of Prime Minister Jung Bahadur Rana of the *Muluki Ain* (General Code of Law of the Land). The *Muluki Ain* was a codification of all the laws of the land: civil, criminal, religious and customary. Its promulgation was accompanied by a special enactment dealing with succession to the throne, state affairs and the armed forces. It was an attempt, largely successful in its time, to provide a code comprehensive enough to run the national administration and govern the conduct of individuals[2].

The creation, development and implementation of a unified code of law and administration took many years. The governments of the Shah Dynasty and Rana family oligarchy focused on the extension of their own political control and development through buying the allegiance of the feudal political elite. They also manipulated the land tenure system in order to maintain their own positions, for example through the institution of the *Birta* tax system,[3] and also by the institution of inheritance through the male line. To ensure the defense of this system the Rana regime, like its predecessors, promulgated Hinduism as a societal system and the promulgation of the *Muluki Ain* was one of the most significant reinforcements of this system. Though the *Muluki Ain* provided for a unified system of law, it was intended to provide a legal basis and strength to the traditional system of caste hierarchy and male dominance.

Through incorporating the Hindu societal dogmas, the *Muluki Ain* defined the legal relations of individuals in terms of *Kul* (family kinship), *Santan* (family lineage), *Jat* (caste) and *Linga* (sex). Therefore, although the *Muluki Ain* abolished discrimination

based on wealth and position, its very preamble enshrined ancient discriminatory Hindu practices by citing the need for "punishment according to the caste of the offender but not the intensity of the crime". It also provided for less severe punishments for offenders of higher caste status[4]. Also, the *Muluki Ain* did nothing to counter sexual discrimination as, for example, it disallowed women from being called to court as witnesses.

In 1963 a *New Muluki Ain* replaced the original *Muluki Ain*. This new code attempted to introduce a genuinely secular and universal code of law through measures such as abolishing caste discrimination in the severity of punishment. However, the new code did little to combat discrimination against women.

The *New Muluki Ain,* unlike the original, was not an attempt to deal comprehensively with all aspects of the civil and criminal law. Rather, the new code sets out certain basic principles and is supplemented by numerous statutes dealing with specific topics. Clause 4 of the Section on Preliminary Arrangements specifically states that where there is a conflict between the provisions of the new code and a specific statute, the specific statutory provision shall prevail. Furthermore, as statutory provisions are required to be in accordance with the Constitution, the Constitution stands above these statutory provisions. Obviously, the *New Muluki Ain* exists as a codification of the common laws of the Nepalese people, and is impacts upon all areas of citizen's behavior not encompassed by the statutory laws. However, in the absence of separate criminal procedure and penal codes, it is the *New Muluki Ain*, which largely governs the procedures relating to criminal justice, the adjudication process in particular.

3.1.1. Brief Legal History till 1951:[5]

The full ancient history of Nepal is not known. The first dynasty of the kings that ruled Nepal was the *Gopalvansha* dynasty. It was followed by the dynasties of the *Mahispal* and the *Kirat*. From the point of view of the legal and judicial systems, the history of *Gopal* and *Mahispal* dynasties are insignificant. Historians have concluded that both the *Gopal* and *Mahispal* dynasties were Hindu and their rules were dependent on Hinduism. This conclusion is based on the *Sanskrit* (the language used by Aryan Tribes) names of the kings[6]. The *Kirat* however, were Mongoloid tribe and it is believed by historians that they originally migrated from some province of China to Nepal via Tibet[7]. Many Kings of the *Kirat* dynasty ruled ancient Nepal with cultured practices of life. Like Vedas (socio-legal and political codes of Hindus), *Mundhum* was the official socio-political and legal code of the *Kirat* people. *Mundhum* is found in two parts, the *Dhungsap Mundhum* and *Pesap Mundhum*. The *Dungasap Mundhum* is the older one, and can be compared with *Vedas* of Hindus. The *Pesap Mundhum* is divided into four parts, namely the *Shok Shok Mundhum*, *Yehang Mundhum, Sajji Mundhum* and *Sap Mundhum*. Of them, the *Yehang Mundhum* discusses on the story of an ancient leader of the people, who established the institutions and rules relating to marriage, mediation of disputes, conducts to be observed relating to the death and birth of human beings and several other laws. For instance, some of the important legal rules laid down by this *Mundhum* are as follows:[8]

a. No marriage and sexual relation can be established between mother and son, father and daughter and brother and sister.
b. No marriage and sexual relations can be had between cousins.
c. Marriage should be consummated between clans of dissimilar origins.

4. See, Preamble of the Muluki Ain, 1853, Published by Law and Justice Ministry, 1965 (2022 B.S) HMG/Nepal.
5. Bikram Sambat (BS) 2007.
6. See, Dr. Jagadishchandra Regmi, Nepalko Baidhanik Parampara, Tanneri Prakashan, at 11 (1979).
7. Ibid.
8. Id.,at 16

d. No person can inherit the ancestral property that is born out of illicit sexual relations.
e. The funeral of man and women must be observed after 4 days and 3 days respectively.
f. No recreation may be had by the family of a deceased for one year following death.

The *Kirat* dynasty developed a judicial system of their own. The King passed judgment and the witness had to swear on god before testimony was given. *Kuther, Suli, Lingwa*l, *Mapchok Tribunals* and *Kar Bisti* were the various courts which adjudicated the various types of legal and religious disputes which arose during the Kirat era.

The *Lichhavi* dynasty was founded by a section of warrior people from the *Vaisali* area, the Northern Gangatic Plain. *Briji* Sangh was the most powerful federation of the many tribes, of which *Lichhavi* was one. This federation was more a republic in nature than an Empire. *Lichhavis* were *Chettrias* (warriors), and in words of Manu, one of the ancient hermits who wrote the famous memoir called *Manu Smriti*, they were an uncultured people (*Manu Smritti*). The *Lichhavis* invaded Nepal and established their rule by defeating the *Kirats*. Subsequently, many kings of this dynasty ruled Nepal for a very long time. With their rule established, the *Lichhavis* introduced Hinduism as a societal base of their governance. Obviously therefore, the legal and justice system of the *Licchavis* was founded on the Hindu religion. The country was divided into centrally ruled and feudal ruled territories. The Lichhavi kings had been directly responsible for the centrally ruled territories. The feudal ruled territories were given autonomy of administration. Feudal lords were designated as the king of the feudal territory, and were subjected to taxes for the privileges granted to them[9].

The king was considered both as the chief lawmaker and adjudicator. In matters of judicial administration, the king acted through tribunals. The history of the *Lichhavi* period reveals the establishment of two important tribunals concerned with the adjudication of legal disputes within the complex of the Royal Palace. Of them, the *Paschimdhiakaran* (Western Tribunal), so called because it was situated west of the Palace, was concerned with issues relating to temples. The *Purbadhikaran* (Eastern Tribunal) was directly related to the legal disputes of the public in general. Another important institution created relating to the justice system was the office of *Sarbadandanayak* (Supreme Law Enforcement Officer). This institution can be compared to what is called the department of police today. This was also situated within the complex of the royal palace[10].

The penal system was based on *Smiritis* (memoirs written by Hindu Pundits). Offences were divided into simple and violent crimes. Those offences committed with full and harmful intent were defined as violent crimes. The crimes that involved physical force against the victim were called *'Sahas'*. The *'Sahas'* were divided into three categories, namely the *Pratham Sahas* (mild), *Madhyam Sahas* (stronger) and *Uttam Sahas* (strongest). The penalty varied in accordance with the degree of force used in the crime.[11]

The end of the *Lichhavi* dynasty was marked by the advent of the 'medieval era' in the history of Nepal. The medieval era is also known as the rule of 'Malla Dynasty'. During the medieval era Nepal was divided into several independent states. In that period, the term Nepal basically meant the territory within and around the Kathmandu Valley. Jumla was one of the powerful Kingdoms in the western part of Nepal. It was famous for establishing a higher regard to the law and justice. King Prithwi Pal Malla believed that only a society respecting the value of justice could be a civilized society. He proclaimed that religion meant justice, and the king being not above religion, was also not above the justice. He declared in a scripture written gold that religion (justice) punishes dishonest people and

9. See, Supra Note 6, at 25
10. See, Id., at 25-27
11. See, Id., at 32-33

protects the honest ones. Obviously, people from other states cited Jumla for it fame as a credible justice system.

The medieval kings like *Lichhavis* used Hindu texts as authoritative sources of law. *Manu Smritis, Yagavalakyay Smriti, Birahaspati Smritis and Narada Smritis*[12] had been regarded as the most authoritative source of laws and justice.

King Jayasthiti Malla was the most prominent king in the Kathmandu valley in terms of progression of the legal and judicial systems. Changes occurred with time. Obviously, it was not possible to regulate the affairs of society with the scattered religious texts. King Jayasthiti Malla was a learned man, who had in-depth knowledge of the religion and ethics. He also had extensive knowledge of the socio-economic and cultural situation of the country and the people. With the change in socio-economic relations, violence and crimes emerged as a problem with the potential to destabilize the society. King Jayasthithi was aware of this situation and decided to intervene with the help of strong laws. He believed in the preventative theory of punishment, and wanted to introduce a comprehensive law with a more severe penal system to act as a deterrence. During his reign, property was stolen from the store of the Pashupatinath temple. He collected all the thieves and ordered public beheadings as a deterrent[13]. He perceived the burglary of Pashupatinath as indicative of the deteriorating social order of the society. He therefore decided to establish a code of law and for this purpose a committee was formed. Mr. Kirti Nath Upadhaya, Kanyakunj Raghu Nath Jha Maithil, Shri Nath Bhatta, Mahi Nath Bhatta and Ram Nath Jha were been appointed as members[14]. With the help of these learned people, King Jayasthiti Malla enacted 4 laws: namely the Law on Houses, the Law on Area, the Law on Caste and Legal Rules for Human Justice (*Manab Naya Sastra)*. Particularly, the Rules for Human Justice were significant for laying down a unified system of criminal justice in Nepal for the first time. This law is primarily based on the concept of law expounded by the *Narada Smritis*[15]. The Rules for Human Justice is divided into 17 parts, which, *inter alia* include laws on Money Lending, Securities, Partnership, Gift, Wages, Theft, Marriage, Husband and Wife, Partition of Ancestral Property, Defamation and Violent Crimes.

Unfortunately, nothing is known about the administration of the laws enacted within the criminal justice system. It is therefore assumed that the court system operated in the same manner as in the *Lichhavi* period and no accounts are available to show that King Jayasthiti Malla effected changes in the structure of the judiciary and the criminal justice system.

As indicated above, the penal system was very severe. Offenders were frequently sentences to death. The penal system was based on the intensity of the crimes and the caste of the offenders. The Rules for Human Justice prohibited and made punishable inter-caste marriage. For instance, if a lower caste man married to upper caste woman he was punished either by having his penis cut off or being sentenced to death. King Jayasthiti Malla introduced fines as an important form of punishment of offenders and was done in order to increase the revenue of the government.

The laws also recognized the customary practices of the people. For instance, the husband of a women having an illicit sexual relationship with another man could kill the latter.

12. "Smritis" are the memoirs of the renowned Hindu religious text writers. The "Smritis" are called memoirs of the instructions about the conduct of human beings and the rules of social regulation issued by the god himself. These instructions had been delivered long back and passed down through the people. The memories were later recorded in writing. Therefore, it is believed that the "Smritis" command godly authority and are believed to be true without taints. These "Smritis" propound the rules of social behaviors, relations between male and female, the conduct of the king and his servants, crime and punishment and lay down moral guidelines for human behavior.

13. See, Supra note 6, at 167

14. See, Dr. Devendra Raj Poudel, Manab Naya Shastra-1 (Translated), Kanoon, vol. 7, Nepal Kanoon Kitab Company (Pvt.) Ltd., at 1 (1989)

15. Ibid.

Although the *Newar* community of the Kathmandu valley did not engage in this practice other communities exercised it as a right, and the law recognized it as the right of a husband.

Gorkha used to be one of the most powerful states in mid-west Nepal and it's ruler, King Ram Shah was known as a highly sensitive kings in regard to the promotion of justice. He was so dedicated to impartial and accessible justice that he became a legend of justice during the medieval period in Nepal. "Go to Gorkha if Justice is denied" is still a common saying amongst the people of Nepal.

King Ram Shah wanted to set up rules to mitigate the disorders created by the changes of time. Since, as he believed, disorders and injustices were rampant among the people and upset social harmony, he felt that urgent intervention was required. Hence, he devised a number of rules to be observed by the people. In effect, it was another important move in the history of Nepal to codify and implement a unified body of law in society. All the rules enacted by him related to the regulation of society and related to matters such as interest payable on loans, an accurate measurement system, preservation of the roads and forests and professions[16].

The modern period of Nepalese legal history begins in 1853, when the first comprehensive code of law was introduced. This period is called the modern period because this code introduced the concept of such a code being the authoritative source of law. Until this period, the Hindu scriptures had been treated as the only source of law. In this sense, the first code of law was also an introduction of the concept of secularization of the legal system. In 1850 Prime Minister Junga Bahadur Rana visited Europe and it is noticeable that inspiration for the legal code came from this visit.

The code of 1853 known as *Muluki Ain* (Code of the Law of Land) however was heavily influenced by the Hindu system. This is why the code includes provisions which actually reinforced the Hindu caste system. The *Muluki Ain* was divided into 163 sections, covering all aspects of social regulation.

The *Muluki Ain* entrusted the responsibility of adjudication to the officers of the court. This is the first time in Nepal that the jurisdiction of the court was defined. Clause 2 of the Section on "Complaint at the Court" provided that the officer of the court, the clerk and the chief of the police must adjudicate the dispute according to law as established by the code. The provision explicitly warned the authorities not to have resort to any rule not laid down by the code. The *Muluki Ain* had no provision however, to separate the institutions of investigation, prosecution and adjudication. Apparently therefore the judicial system followed the inquisitorial approach.

The Prime Minister Junga Bahadur Rana performed the codification of the law in 1853. He also laid down the basis for Nepal's administrative system. He set up *Muluki Adda* which was a sort of central office or Secretariat of the Government. After a visit to Europe he abolished punishment by mutilation and also, except for a certain category of serious offences the death penalty. He also partially abolished *Sati*, the practice of widows burning themselves in the cremation of their husband's bodies.

Prime Minister Chandra Shamsher Rana (1901-1929), a politically ruthless successor to Junga Bahadur, made some reforms in the court system, twice revising the *Muluki Ain*. The purpose of the revisions was to mitigate the severity of punishment. According to the revisions, those convicted of and imprisoned for civil offences were not to be put into irons[17]. Printed copies of the code were made available to the public for the first time.

The Court system in Nepal was obsolete and archaic consisting of four types of lower courts, namely *Itachapali, Koteling, Taksar and Dhansar*. The Supreme Court was called

16. Supra note 6, at 181-192
17. See, ILRR, Compilation of Workshop Papers, at 70, (1997)

Adalat Goswara. Although these courts were allocated different spheres of jurisdiction an overlap of civil and criminal jurisdictions existed in all of them. In difficult cases the courts conducted trial by ordeal.[18]

Prime Minister Chandra Shamsher abolished the *Taksar* and *Dhansar* courts and also sought to draw a distinction between civil and criminal jurisdictions by making *Adalat Diwani Koteling* responsible for civil matters and *Fauzdari Adalat Itachapali,* responsible for criminal cases. In 1906, a *Bhardari* Court of between 5 and 10 judges was created in 1908. The new tribunal became the court of appeal from decisions of the two Sadar Courts: the *Adalat Diwani Koteling* and *Fauzadari Adalat Itachapali*. These two courts, besides being courts of appeal for the decision of the provincial magistrates of the *Gauda* court of first instance, heard appeals from the decisions of the provincial magistrate of the *Gauda* courts in the hills and the *Goshwara* courts in the Terai.

Appeals from the *Bhardari* Court lay in the *Niksari* courts of which judges were drawn from high families, generally the Ranas, often Colonels, the Chief of the subordinate principalities of Nepal, the family of Rajgharana and a group of men with long experience in law and practices. The Niksari court dealt with petitions to the Prime Minister and the King, who was of course, the final court of appeal and justice in Nepal.

The system of courts clearly shows that the executive held full control over justice. The judges were generally drawn from amongst servants of the regime, and there was very little scope for the courts delivering judgment against the Rana and other elite families. This practice continued until the popular movement of the people in 1951 which ousted the regime.

3.1.2. Brief Legal History from 1951 to 1990

As discussed above, the operation of the inquisitorial system was the most significant feature of the justice system prior to 1951. That meant that the court assumed the role of investigator as well as adjudicator. Thus, the judges had the power of evidential discovery and the power to conduct judicial inquiry before sentence was passed. The theory that the prosecution should prove guilt beyond reasonable doubt had no application whatsoever in Nepal. Although the codification of the *Muluki Ain* had taken great inspiration from the Napoleonic code of France and the written law of England, it actually appeared to be merely a collection of Hindu dogmas and Nepalese customary laws.

Only after the establishment of an independent judiciary following the popular movement the way was cleared for the introduction of an adversarial system of justice in Nepal. The appointment of Mr. Hari Prasad Pradhan as the first Chief Justice of the *Pradhan Nayalaya* (Apex Court) who was trained in the Anglo-American legal system and a career judge in an Indian courts was catalytic in importing principles from the Anglo-American approach to justice into Nepal. The Constitution of the Kingdom of Nepal 1959, further accelerated the development of the judicial system towards an adversarial approach. By guaranteeing certain fundamental rights of the people, the Constitution widened the road for the operation of an adversarial system. Mushrooms of specific statutes which emerged during this period also assisted in enlarging the scope of an adversarial system. The State Cases Act 1961, was the most remarkable development in respect of recognizing the adversarial system in Nepal. This Act separated the powers of investigation and prosecution from adjudication, which in the past lay in the same body. Thus, the courts of law became disentangled from the investigative process. The State Cases Act listed the categories of cases to be defended by the state as a party. The role of the court was to then act as the 'umpire' of parties' dispute.

18. Ibid.

The salient feature of the Act can be summed up as follows:

- Certain cases specified the state to be a party. This new development did away with system of trial whereby the person acting as informer was obliged to provide the evidence necessary to prove the guilt of the defendant. This was a bizarre system rendering the informer subject to punishment on failing to prove a defendant's guilt. The State Cases Act 1961 shifted the burden of proof from the individual informer to the state.
- Prior to the promulgation of the State Cases Act 1961, the executive Government took no responsibility in the investigation of crime or the collection of evidence. This means that no prosecution system existed prior to the enactment of the Act. The Act therefore obliged the executive Government to conduct an appropriate preliminary investigation as far as possible.
- The enforcement of this Act largely relieved victims from the responsibility of involving themselves in the process of litigation and collection of evidence.

The three elements mentioned above virtually opened the way for the operation of the adversarial judicial system as a mainstream of the judicial system in Nepal. However, Section 3(6) of the Act retained the exceptional power for the court of law to reinvestigate the crime by the court itself, through prosecutors or through police personnel other than those involved in the preliminary investigation of the particular crime. In this way, the State Cases Act 1961 did not fully discard the long practiced inquisitorial system of justice.

Schedule One of the Act listed the following crimes as those to be investigated and prosecuted by the state:

- Cases relating to the Crown and the physical person of the royalty.
- Cases relating to treason.
- Cases under the Association and Organizations Control Act.
- Cases punishable under the Section on Murder of the *New Muluki Ain.*
- Cases connected to rape.
- Cases punishable under the Section on Theft of *New Muluki Ain.*
- Cases connected to the slaughter of Cows and crimes under Clause 8 of the Section on Animals of the *New Muluki Ain*.
- Cases concerning abuse or misuse of Governmental and public property.
- Cases connected to arms and ammunition.
- Cases punishable under the Section on Counterfeiting of Currency of the *New Muluki Ain.*
- Cases connected to forgery of documents containing the government seal or the signature of a government officer.
- Cases connected to conversion of religion and the propagation of, or attempted propagation of religious beliefs against the Hindu Religion.
- Cases connected to gambling.
- Cases punishable under the Section on Trafficking of the *New Muluki Ain.*
- Cases punishable under Clauses 2 and 10 of the Section on Marriage of the *New Muluki Ain.*
- Cases punishable under the Postal Act.
- Any other crimes to be declared to be tried under the Act as published through the Nepal Gazette by HMG as and when decided to be so.

The State Cases Rules 1961 came to elaborate the procedures of investigation and prosecution. Moreover, the Constitution of Nepal 1962, entrusted to the Attorney General the role of representing the state as a prosecutor. This way, the adversarial system became the fully established approach of the judicial system in Nepal. This is why the decade of 1960s is marked as revolutionary era for the development of the criminal justice system in Nepal.

The economic condition of the country however, was not sufficient to adapt to the new developments brought about by the Act. The State Cases Act 1961 required adequately equipped manpower and material resources for its effective implementation. The acute lack of trained manpower required for investigation and prosecution appeared to present a serious hurdle to the successful implementation of the Act. The Police Department and the Attorney General, designated as investigating and prosecuting agencies respectively, were acutely disorganized in terms of manpower, and poorly equipped in terms of facilities. The dearth of defense lawyers was another hurdle in the successful implementation of the Act. Due to the lack of facilities for the scientific investigation of crime, the confession of the accused became the sole basis of prosecution and a finding of guilt for many types of crimes. Since a confession was widely accepted by the courts as conclusive proof of guilt, the police concentrated on developing methods of extracting confessions from suspects rather than developing the skills of credible investigation based on a scientific approach. These practices compounded the situation and the confession became institutionalized as conclusive proof of guilt and the sole basis of a basis of the verdict of guilty[19].

In 1969[20] a commission was appointed to investigate and recommend on the appropriate reforms in the criminal justice system. The commission, headed by Supreme Court justice Bhagawati Prasad Singh, recommended that the Anglo-American approach would be an appropriate approach for Nepal. Based on the recommendation of this commission and the need to mitigate the weaknesses of the State Cases Act, the Evidence Act was enacted in 1974.[21] This Act was envisaged as a milestone for guiding the development of the criminal justice system in the right direction. As anticipated, the Act was largely successful in it's objective.

The Evidence Act 1974 introduced some of the most important principles of free and fair justice, thus improving the standard of criminal justice significantly. Some of the characteristic features of the Act are as follows:

- **Confession**: Section 9 of the Evidence Act made attempts to define the grounds for admissibility of a confession as evidence. Pursuant to the section 9 (2-A-1), for a confession to be admissible as evidence it must be made by the detainee in a state of consciousness. Further, the section stipulates that he/she must understand the consequences of what he/she has said or done. Pursuant to section 9 (2-A-2), the confession is admissible as a proof only on condition that it has not been obtained through the use of torture, force, threatening or through inducement. This provision has been highly catalytic in introducing a scrutinizing process before a confession is admitted by the court as proof of guilt.
- **Burden and Standard of Proof**: Section 25 expressly imposes an obligation on the prosecution to prove the guilt of the accused beyond reasonable doubt. This provision relieved defendants from the responsibility of discharging the onus of proof of his/her innocence. This provision was also important in terms of rendering the investigators and prosecutors responsible in discharging their obligation of collecting

19. Supra note 17
20. 2026 B.S.
21. 2031 B.S.

adequate evidence to prove guilt beyond reasonable doubt.

- Cross Examination of Witnesses: Another incredibly important feature of the Evidence Act was the introduction of a system of examining the evidence through giving oral testimony and being subjected to cross-examination. This system significantly upgraded the standard of the criminal justice system.

In 1973[22] a Law Commission[23] headed by Justice Nayan Bahadur Khatri was appointed by His Majesty the King Birendra Bir Bikram Shah Dev for preparing a draft Criminal Code so that the repetition and contradictions existing in various separate independent pieces of legislation could be remedied. The other members of the commission included Justice Bishownath Upadhaya of the Supreme Court, Mr. Ramananda Prasad Singh the Attorney General and Mr. Krishna Prasad Pant an Advocate and Member of the Judicial Committee. Mr. Chuda Raj Singh Malla, secretary of the Ministry of Law and Justice, acted as a Member Secretary.[24] The Draft Code was presented to the King along with a report, and published in the Nepal Gazette for public notice. The Code could become law upon adoption by the *Rastriya Panchayat*, the then legislature, yet it was never introduced as a bill.

The Draft Code appeared as a timely attempt to consolidate the scattered provisions of criminal law in the *New Muluki Ain* and various other specific statutes. In fact, the Draft Code was envisaged as replacing the *New Muluki Ain*, which was a general code of law as it incorporated both civil and criminal matters indiscriminately.

The Draft Code included the following universally recognized principles of criminal justice as the guiding principles of the criminal justice system in Nepal:

- No act not punishable by law shall constitute a crime.[25]
- No act performed with good intention shall constitute a crime.[26]
- No act of a judge, performed with the intention of exercising judicial authority during the process of judicial trial shall constitute a crime.[27]
- No act committed by child shall constitute crime.[28]
- No act committed by a person suffering from mental illness shall constitute a crime.[29]
- No act committed by a person intoxicated with toxicants shall constitute a crime.[30]
- No act that causes any injury or harm, and which is committed with the intention of murder and carried out or performed with the consent of the person injured shall constitute a crime.[31]
- No act that causes harm or injury, and which is carried out or performed with the intention of benefit to the person suffering the harm or injury shall constitute a crime.[32]
- No act carried out or performed for the benefit of a child or mentally ill person, which is undertaken with due care and the consent of the guardian shall constitute a crime.[33]
- No act performed with good intention but without the consent of the person or his/her guardians shall constitute a crime.[34]
- No act of passing on information with the intention of benefit to someone else shall

22. 2029 B.S.
23. The Law Commission was appointed by a Royal Proclamation on 29th, Jestha, 2029 B.S.
24. See, Conclusion of the Commission on Code on Criminal Procedures, Nepal Gazette. 2033/11/23.
25. Ibid., Section 7.
26. Ibid., Section 8
27. Ibid., Section 9
28. Ibid., Section 10
29. Ibid., Section 11
30. Ibid., Section 12
31. Ibid., Section 13
32. Ibid., Section 14
33. Ibid., Section 15
34. Ibid., Section 18

constitute a crime.[35]

- No act performed by a person under intimidation or use of force or threat to life shall constitute a crime.[36]
- No act committed with the intention of protecting from harm or injury shall constitute a crime.[37]
- No act committed in self-defense to protect life or property shall constitute a crime.[38]
- No act committed in the absence of a guilty mind or intent shall constitute a crime.[39]
- The punishment must reflect the severity of the crime.[40]

The above mentioned principles are applicable to a wide variety of offences.[41] The Draft Code defines the severity of crimes and provides for punishment accordingly. One of the most important features of the penal system adopted by the code is that it provides for wider discretionary power of judges in determining the terms and degree of punishment.[42] This feature is indicative of a reformative approach to punishment, allowing judges to pass sentence based on the individual offender. The Draft Code thus made attempts, albeit in a vague terms, to address the need for a sentencing policy which was capable of guiding the criminal justice system progressively.

It did not however come into force. A long time has passed since the draft was completed, and no action has been undertaken to enact it as law, despite a considerable need to reform the criminal legal and judicial system in Nepal. There is no reason for simply disregarding the code, and meanwhile the criminal justice system continues to exist in a state of chaos.

On December 5th 1976[43] Justice Bishownath Upadhaya, one of the members appointed to prepare the draft of Criminal Code was designated as the Chairperson of another Law Commission appointed by the King to prepare a Code on Criminal Procedures. As reported by the Nepal Gazette on March 6th 1977,[44] the commission submitted the Draft Code to the King on February 4th 1977.[45] It was envisaged as applying to the investigation, prosecution and judicial trial of numerous kinds of criminal cases. Obviously, if it had come into force it would have replaced the Section on Court Procedures and Punishment under the *New Muluki Ain*. As stated by the preface, the primary objective of the code was to bring about changes to traditional procedures and the penal system, and to meet the people's expectation for a competent and impartial criminal justice system.[46]

The proposed Draft Code consisted of the following 15 chapters:

- Preliminary.
- Information and Investigation of the Crime.
- Jurisdiction of the Court of Law.
- Commencement of the Prosecution.
- Arrest Warrant and Summons.
- Judicial Custody and Bailment.
- *Tarikh* (Appearance in the Court).

35. Ibid., Section 18
36. Ibid., Section 21
37. Ibid., Section 22
38. Ibid., Section 23
38. Ibid., Section 31
40. Ibid., Section 32
41. Ibid., Section 6
42. Ibid., Section 38
43. 20th Marga, 2033 BS
44. 23rd Falgun, 2033 BS
45. 22th Magh, 2033 BS
46. Paragraph 2 of the Preface of the Draft of the Criminal Procedure Code, 1977 (2033 B.S.).

- Power of Attorney.
- Transfer and Suspension of Cases.
- Evidence.
- Withdrawal and Conciliation of the Cases.
- Trial and Judgment.
- Appeal.
- Execution of the Judgment.
- Miscellaneous.

The report submitted with the draft specified that the code is applicable only to those criminal cases not under the jurisdiction of the Military Court. The definition of criminal cases under Clause 9 of the Section on Court Management in the *New Muluki Ain* includes *inter alia,* cases relating to divorce, matrimonial relations and religious matters within the scope of criminal procedures. The Draft Code however excluded such cases due to their civil nature.[47]

The Draft Code obliged an individual with information in relation to a crime to report it to the police and failure to do so is punishable. The responsibility of investigation is entrusted to the police, and wider powers are granted in order to do so.[48] The formation of separate civil and criminal courts was recommended by the report as a necessary reform of the criminal justice system.

Both the Codes mentioned above could have proved to be milestones if they had actually been enforced. Subsequently enacted statutes have attempted to make reformations in keeping with the spirit of the Codes but the overall effect has been insignificant. For instance, the Draft Criminal Procedure Code seems to have provided the basis for the amendment Clause 118 of the Court Management Section of the *New Muluki Ain*.

Despite the efforts discussed above, the administration of justice in Nepal has not made smooth progress. The lengthy procedures, conflicting and inconsistent laws and precedents, unscientific investigation and flawed sentencing policy continue to exist and hinder the free and fair course of justice. With the aim of addressing growing criticism, a Commission was appointed by the King to make recommendations for necessary reforms of the Nepalese criminal justice system in 1983.[49] The commission widely consulted with judges, lawyers, police, government attorneys and the general public in order to receive and pass on suggestions. However, the recommendations were never implemented. The Nepal Bar Association had endeavored to enhance the recommendations by collecting suggestions from lawyers throughout the country and the suggestions had therefore been widely discussed in a seminar held in Kathmandu.[50] Some of the recommendations adopted at the seminar, which were largely incorporated in the report of the commission, were as follows:

- Separate civil and criminal benches to hear and adjudicate cases must be established in the Supreme Court.

47. See, the Draft of the Criminal Procedure Code, Report, at 8, 2033.

48. See, Id., at 10-16.

49. The Commission was appointed on September 17th 1982 (1st Aswin, 2039 B.S.), was called "Justice Reform Commission" and was headed by retired Supreme Court Justice Ishori Raj Mishra. The other members of the Commission were Mr. Radhay Shyam Kamaro a member of the Rastriya Panchayat, the then legislature Mr. Surendra Bahadur Basnet, Mr. Kedar Nath Upadhaya a senior Government Attorney and Mr. Hari Prasad Sharma the Joint Secretary of the Ministry of Law and Justice. The Commission presented the report to the King and was published in the Nepal Gazette on September 5th 1983 (20th Bhadra, 2040 BS).

50. See, Nyaydoot, Vol. 39, Year 13, Nepal Bar Association. 1953 (2039 B.S.)

- Qualified legal experts must be appointed to the Supreme Court benches in order to help the judges in their research for reaching decisions in the cases.
- The district court must be given first instance jurisdiction over all cases. The prevailing system of granting jurisdiction over many cases to quasi-judicial bodies must be abolished.
- A system of separate civil and criminal benches in the district court must be immediately introduced.
- A writ of Habeas Corpus must be enacted as a separate piece of legislation.
- The Criminal Law Code and the Criminal Procedures Code must be promulgated as soon as possible.
- The death penalty should be abolished.

The salient feature of this era was to introduce and strengthen the adversarial system of justice in Nepal. The enactment of the State Cases Act 1961 and the Evidence Act 1974 largely succeeded in accomplishing that mission. The State Cases Act 1961 played a prominent role in disentangling the judiciary from the responsibility of conducting an inquiry of evidence. The remains of the inquisitorial system thus completely disappeared from the Nepalese judicial system and the developments brought the Nepalese judicial system closer to the Anglo-American system. With this development, the emergence of legal practitioners who could conduct defense work became essential. The Legal Practitioner Act 1968 was largely the result of this need. However, since the number of defense lawyers was vastly insufficient to meet this need, the provision of legal education to create a new and more substantial generation of lawyers became essential, this in turn giving rise to the increased number of law schools in the country.

3.1.3. Development of the Criminal Justice System Following Restoration of Democracy in 1990:

It has been sometimes debated that Nepal does possess a legal system of its own. In reality, Nepal does not have a separate and independent legal system. Although, some sections of the Nepalese legal system are deeply influenced by the orthodox Hindu jurisprudence, it is but more aligned with the Common Law System because the onus of proof rests on the plaintiff and the accused is entitled to benefit of doubt. Principles like right to silence have been incorporated by the Constitution of the Kingdom of Nepal. In short it can be aptly said that some portion of the Nepalese system is based on the Hindu jurisprudence whereas the rest is influenced by the Common Law System.

With the promulgation of the Constitution of the Kingdom of Nepal, 1990 the concept of an independent and competent system of justice, together with the concept of Rule of Law and a democratic criminal justice system have established. To uphold the concept of fair and impartial criminal justice as envisaged by the Constitution, the Legal Aid Act, has been enacted and enforced for providing legal assistance for the indigent and helpless persons. As a significant element of the independence of judiciary, His Majesty on the recommendation of the Judicial Council does the appointments and transfer of judges. The laws thus avoiding the circumstances that hold possibility of executive influence over the judiciary have defined the remuneration, privileges and other conditions of services.

The State Cases Act, 1993, has been enacted repealing the earlier one, which provided for the investigation of the crimes jointly by the police and the government attorneys. The new Act has been largely influenced by the recommendations of the Law Commission appointed to draft the Criminal Procedure Code. In conformity with the sprit of the proposed

Criminal Procedure Code, the new Act has relieved the courts and government attorneys from the burden of investigation. The mission of consolidation of the adversarial system is thus fully completed. The Present State Cases Act has defined the role of investigating and prosecuting agencies in a watertight approach.

The present Constitution has constituted a three-tier court system. Until and unless otherwise provided by law, the District Court undertakes the original jurisdiction and hears and disposes all the cases. Appeal and the Supreme Court have been empowered with the appellate jurisdiction against the decision of the District Court. Jurisdiction has been granted to the Appeal Court to hear writ of *Habeas Corpus* and *Mandamus*. Judicial works are to be performed in accordance with the accepted legal principles. And all order or decisions passed by the Supreme Court in respect of any case or judicial proceedings are binding upon all whereby considerable independence has been granted to the judiciary.

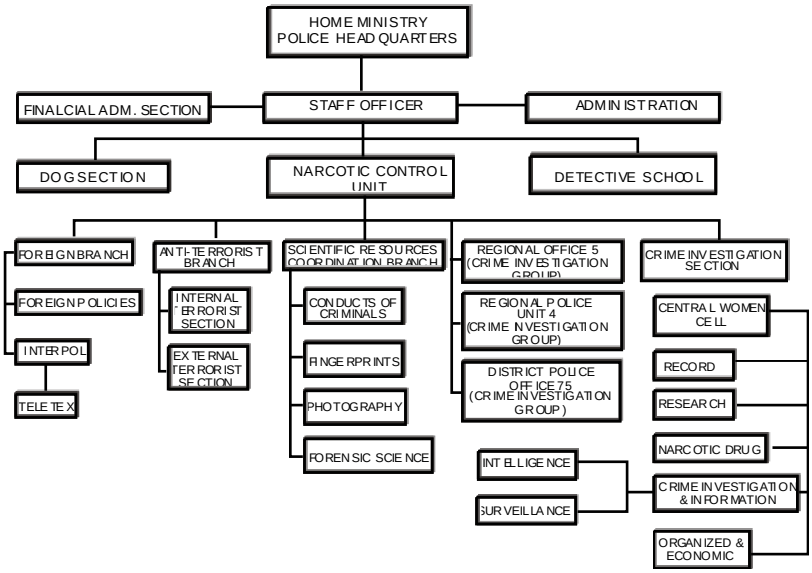
3.2 . Institutional Framework of the Criminal Justice System in Nepal

The investigation, prosecution and adjudication systems together with policy making and executing mechanism and appropriate sentencing policy form the framework of the criminal justice system of every country. Criminal justice system of Nepal has its own unique history of evolution of the framework. The present structure of the system has been a result of long historical evolution, yet, as reflected in the preceding chapter, it is found not very much progressive in terms of applying universal principles of criminal justice. The following chapter will reflect on the various aspects of the existing structural framework of the system.

3.2.1. Police Organization

The organization of Police, which works under the general supervision and control of the Home Ministry, is organized under the authority of the Police Act, 1956 and Police Rules 1993. The organization is headed by a career police officer - the Inspector General of Police (IGP). The police force, which functions generally under the command of the IGP and other officers appointed by His Majesty's Government of Nepal, is placed under five different working categories: the Public Police Force, the Armed Police Force, the Guard Police Force, the Riot Police Force and the Traffic Police Force. Within the Public Police Force, the Department of Crime Investigation, 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 the 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 Conducts of the Criminal, Fingerprints, Photography and Forensic Science are organized within the Scientific Resources Branch. Finally, the Central Women 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[51].

51. See, CID Magazine, Crime Investigation Department, Police Headquarter, at 6 (1997)



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

Regional and Zonal Offices are supervising and coordinating agencies, and as such do not directly involve themselves in criminal investigation functions. These offices perform the important role of connecting the District Police Offices with the Criminal Investigation Department at Headquarters in Kathmandu.

Current Policies and Programs: Nepal's police force still has a long way to go to recognize in practice the importance of specialization in the various fields of policing. As yet no concept exists of judicial police whose primary responsibility is to investigate crimes on behalf of the prosecution. The responsibilities of police officers are potentially many and varied. The job allocation and promotion of police officers and personnel are not based on specialized knowledge and skills. However, the moves are being made towards some job specialization and the introduction of modern technology to facilitate crime investigation more precisely and in a trustworthy manner[52]. The following recently established programs reflect on those positive developments:

(i) Women Cell: In the last few years women cells - the special investigation and enforcement unit to deal with crimes related to women have been created in Kathmandu, Lalitpur, Kaski and Morang districts, the main urbanized centers. This development is one part of the program of Police Headquarters to introduce specialization within the service. It is intended that such cells be created in 28 more districts in recent future.

(ii) The Special Crime Investigation Team: Under the first phase of the program for specialization of the services of police personnel, special crime investigation teams

52. See, Id. at 52-54

have been created in 28 districts. It is intended that the remaining districts be covered in the second and third phases of this program. The completion of this program will mark a great breakthrough in the crime investigation system.

(iii) Crime Trend Analysis: The Crime Investigation Department has recently introduced the use of computer software to help analyze crime trends to help expand the scope of the crime investigation system. According to this system, the types and pattern of criminal offences; the causes and victims of criminal offences; and the methods employed by the criminals are analyzed so as to help identify possible ways of preventing crime. The findings of this analysis are provided to police units involved in the investigation of criminal offences.

(iv) Fingerprints Examination: Fingerprints are considered as one of the most important evidence related to help in solving criminal offences as the identification of the criminals becomes much easier through fingerprint identification. A program to collect the fingerprints of criminals through the one digit system has been initiated by the establishment of the Central Fingerprints Bureau. The records of approximately 10,000 criminals have been scanned into a computer program.

(v) The Central Police Science Laboratory: Scientific equipment to help prove the accuracy and authenticity of proofs is a key aid in helping to solve crimes. The Central Police Science Laboratory has been established at the Police Headquarters to help the collection and examination of evidence. In this laboratory the examination of physical evidence including disputed writings and ballistics takes place. This Centre also provides a service to grassroots investigation units by collecting from them evidence relating to Biology, Serology, Chemistry and Narcotics and sending them on for examination to the National Forensic Science Laboratory functioning under liaison of the Ministry of Law and Justice in Kathmandu.

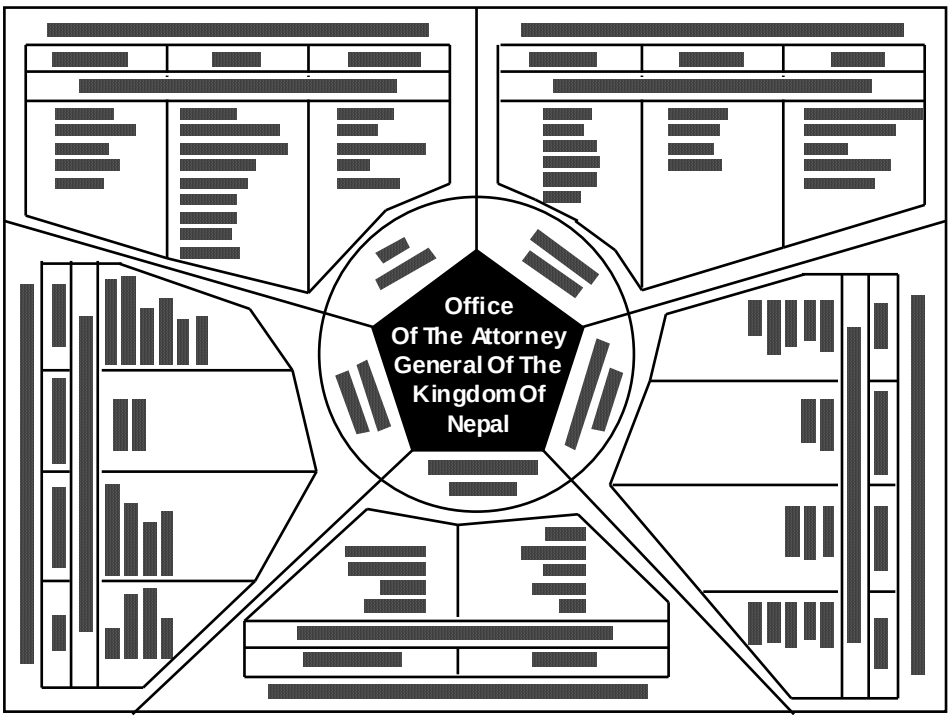
3.2.2. Office of the Attorney General of the Kingdom of Nepal

In Nepal, the prosecution of crimes is a constitutional responsibility of the Attorney General of the Kingdom. Article110 (2) of the Constitution provides that the Attorney General or officers subordinate to him should represent His Majesty's Government in 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.

Section 17 of the State Cases Act, 1993, has rendered the district government attorney as the authority in taking decision in matters pertaining to whether or not to initiate judicial proceedings against suspect. Hence, the Attorney General of the Kingdom of Nepal functions as a sole prosecution agency in Nepal.

Administrative Structure: Article 110(5) has enabled the Attorney General to delegate his or her functions, duties, and powers to their subordinates. Pursuant to this provision, the Attorney General has created district offices corresponding to the police investigation units, and appellate offices corresponding to the Appellate Courts. There are 75 district level offices and 16 appellate offices to discharge the responsibility of the Attorney General entrusted by the constitution. The subordinates of the Attorney General who function at the district level are government civil employees - the District government attorneys. Similarly, those working at appellate level are also civil employees, and are called Appellate government attorneys.

Section 17(3) of the State Cases Act, 1993, has, however, enabled the government attorney to



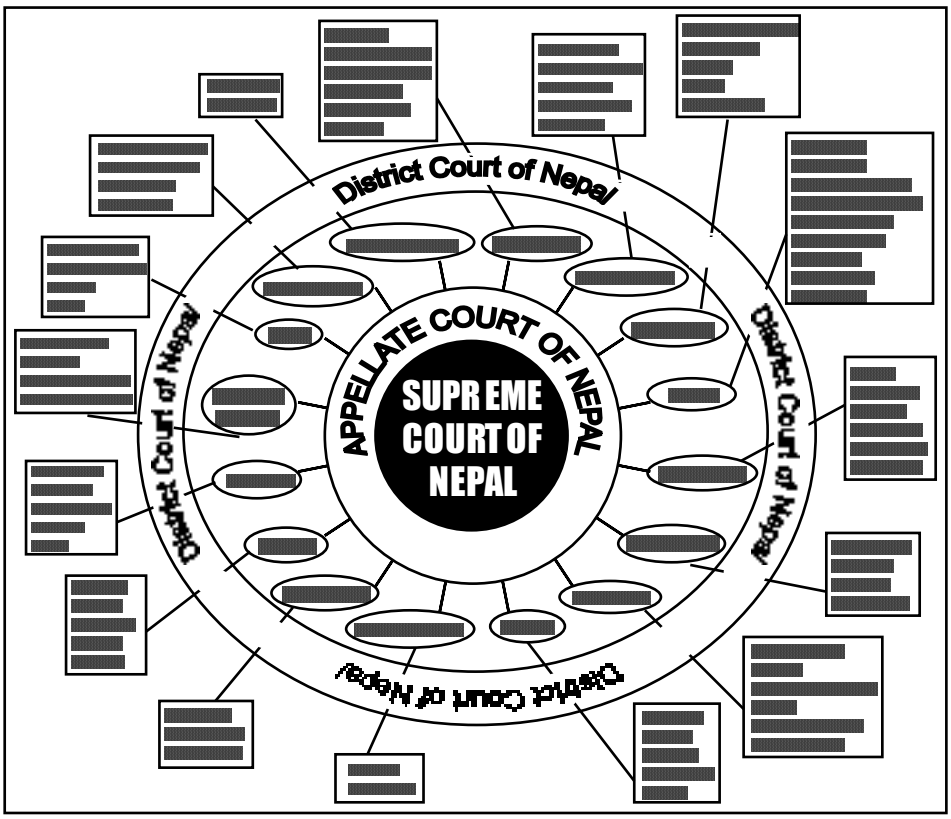
instruct police officers to conduct further investigations of a crime. The government attorney can issue a specific order to police officers to try and obtain specified evidence, or to record the deposition of specified witnesses. Upon his/her satisfaction that an investigation is fully completed, the charge sheet is framed. The power of identifying the applicable law ultimately lies with the government attorney - technically defined as the prosecution in Nepal.

3.2.3. Judiciary

Nepal does not have a separate criminal trial court or a criminal bench and as such there is a single bench system for judicial proceeding. Currently a Pilot Project on separate civil and criminal courts has been initiated through the funding of UNDP in four pilot districts namely Pokhara, Chitwan, Kapilvastu and Siraha. Courts with general jurisdiction therefore try the criminal cases. The present constitution provides for establishment of the district court as a court of first instance. The original jurisdiction for most of the judicial matters belongs to the district courts. The district courts possess jurisdictions over both the civil and criminal matters. The same sitting judge can decide civil and criminal matters simultaneously. Under present system the judges are not required to specialize in civil or criminal matters.

Supreme Court of Nepal: The highest court in Nepal is the Supreme Court, which is considered to be the court of record. Decisions made by 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/N's administrative machinery as they are of binding authority. However, the executive branch has often demonstrated reluctance to follow the precedents of the Supreme Court, which is not a healthy practice to strengthen the Rule of Law.

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 the record of judges and makes recommendations for their appointment. Provided the number of existing judges become insufficient at any time due to the 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 House of Representatives with two third majority of its total membership. The resolution becomes effective upon it's approval by the King. The Supreme Court is located in Kathmandu, the capital city of Nepal. The Supreme Court is considered to be a writ jurisdictional court whereby a single bench hears writ petitions and other subsequent hearings are heard by a divisional bench or a full bench as befits the gravity of the case. In most major constitutional cases the case is referred to a larger bench comprising of an odd number of justices. Decisions of the Supreme Court are final unless there is a flaw in the interpretation of the law or non-observance of past precedents whereupon; any case disposed is subjected to review.

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

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

The Article 88(1) provides very significant jurisdiction to the Supreme Court, under

which it can declare the legislation void for being inconsistent to the provisions of the Constitution. Supreme Court can make such declaration effective *ab initio* or from the date of the order made.

Appellate Courts: Immediately below the Supreme Court in the judicial hierarchy lie the Courts of Appeal located in various parts of the country, 16 in number at present. On the recommendation of the Judicial Council His Majesty appoints the Judges of the Courts of Appeal. The Courts of Appeal hear cases as one body or in the form of a divisional bench. The Court of Appeal, except for the writ of *Certiorari* (writ to quash illegal decision of the government) *Quo Warranto* (writ to remove the unauthorized person from post) and *Prohibition* (writ to stay operation of illegal decisions), has the right to exercise and hear other writ petitions. 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.

District Courts: Occupying the lowest level in the hierarchy of Nepal's courts are the District Courts. The District Courts also referred to, as the 'Courts of First Instance' are located in each of Nepal's 75 districts. All cases whether civil or criminal are subjected to a hearing by a one-body bench in the District Courts.

Jurisdiction of Various Levels of Courts: Article 85(1) of the Constitution of the Kingdom of Nepal has provided for the establishment of the courts of law with the above-mentioned hierarchical level. Article 85(2) allows the State to create special courts and tribunals to undertake judicial proceedings and judgement in especial categories of cases. However, the same Article explicitly prohibits the State to establish an especial court to adjudicate a particular case. This provision has been incorporated in the present Constitution considering the misuse of justice made by the preceding system, which allowed the Government to create especial courts to undertake proceeding of a particular case depriving the district courts of the usual jurisdiction. This practice left a big room for influence of the executive government in the judgement. Hence, the system was abolished by the present constitution in view of protecting the independence of judiciary.

For providing the jurisdiction of the various level of the courts and make necessary arrangement concerning judicial matters, the Parliament has enacted a Statute called "Judicial Administration Act" in 1991. Regarding the matters of jurisdictions, the Act provides for as follows:

First Instance Jurisdiction: if not otherwise provided by other Statutes, Section 7 of the Judicial Administration Act provides the district court with the first instance jurisdiction of all kind of cases within the territorial limitation of the given district. The jurisdiction includes the power to conduct trial or take necessary proceedings, and make the judgement. In addition, Clause 29 of the Section on Court Management of the New Muluki Ain prevails as a common law in matters of jurisdiction concerning the first instance of courts. Thus, anything not covered by the Judicial Administration Act, it is the said Clause of the Section On Court Management of the New Muluki Ain which prevails.

First Appellate Jurisdiction: Section 8 of the Judicial Administration Act provides for first appellate jurisdiction. A first-appeal-jurisdiction is a judicial proceeding to review the judgements of the first instance courts of law and tribunals. The review of the judgement concerns with the legal matters exclusively. It means that the first-appeal proceeding do not review the judgement in terms of the factual merit of the case. The Appellate Courts exercise the first-appeal jurisdiction. As per the section, the jurisdiction comprises the review of:

- Judgements made by the Districts Courts within the respective territorial limitation.
- Except otherwise provided by any other laws, the judgements made by any tribunals or authorities within the territorial limitation.

In certain cases, for instance a case having sentence of imprisonment exceeding 10 years, the lower courts are obliged to refer the judgement to the concerned Appellate Court for sanctioning (Sadhak Janch). In such circumstance, the Appellate Court exercise the appellate jurisdiction to scrutinize the judgement and make corrections in the said judgement if marred by defects. This process generally occurs when there is no appeal of the concerned defendant to challenge the judgement of the lower court. In the past, the courts allowed to have legal counsels' representation during *sadhak* hearing.

Presently, the Supreme Court has taken a decision to prohibit lawyers' appearance to represent persons convicted by lower courts, if the person has not personally appealed against the judgement. This decision does not indicate to positive attitude of the Supreme Court concerning fair and impartial justice. The representation or defense by lawyers in any type of judicial process is a basic and non-derogable human right as well as the fundamental element of due process of law. Thus any judicial hearing which involves process of applying judicial mind would amount to be denial of fair hearing if the representation of defense by legal counsel is restricted.[53]

Appellate jurisdiction is also exercised to quash the interlocutory orders of the lower courts.

The Supreme Court also exercises the first-appeal jurisdiction in certain cases. For instance, Section 8(3) of the Judicial Administration Act has enabled the Appellate Courts to exercise a jurisdiction of first instance. Such cases are generally designated by legislation. In such circumstance, the Supreme Court does exercise the first-appeal jurisdiction to review the lower court judgement.

Second Appellate Jurisdiction: According to Section 9 of the Judicial Administration Act, the jurisdiction of second appeal belongs to the Supreme Court. This jurisdiction is not available in all cases. As per the Section, the Supreme Court exercises the jurisdiction in the following cases:

- Cases in which the judgements of the first instance court and the appellate court are materially different.
- Cases in which the appellate court have made a judgement with sentence of imprisonment for a term of 10 years or exceeding it.

Besides the courts of law, several quasi-judicial bodies exist which are empowered to exercise judicial jurisdiction over minor offences specified by the Statutes. The Chief District Officer (DAO) can hear cases relating to public offences as prescribed in the Public Offence Act, 1970; cases relating to the Arms and Ammunition Act, 1963. Explosive Act, 1962 and the Public Security Act, 1990. Decisions of the Chief District Officer are subject to appeal to the Appellate Court. Further, there are several other tribunals and authorities established by various laws to adjudicate the criminal offences. Interestingly enough, some of these authorities not only adjudicate the offences but also investigate and prosecute the offenders. It means that there are some authorities that can investigate, prosecute and adjudicate simultaneously, which is apparently against the spirit of the modern criminal justice.

53. From the recent past, the Supreme Court has put restriction on appearance of lawyers on sadhak hearing, which is a process for reviewing legality of the judgement of the lower court if there is a lack of appeal from convicted person. The sadhak hearing takes place in an open court with all formalities of a regular court. However, judges in the Supreme Court have effectively entertained the practice of granting no allowance for appearance of lawyers in such hearings. Obviously, if a convicted person has failed to approach the Supreme Court with appeal for some reasons, his/her sentence is either confirmed or reversed without arguments of lawyers heard.

3.2.4. Ministry of Law and Justice

Ministry of Law and Justice is the line ministry for framing governmental polices concerning matters of law and administration of justice. This ministry plays vital roles in formulating legislation, and through the process of formulating legislation and policies, it is directly concerned with the matters of review and reform of the administration of the justice. Specifically, the Ministry, pursuant to His Majesty's Government (Work Division) Rules, 1990 (2047) performs, inter alia, the following responsibilities through:

- Providing consultation to HMG on formulating legislative Bills, Ordinances, Rules and Orders.
- Helping the various Ministries to draft Bills, Rules and Orders.
- Conducting research on existing laws, administration of justice and international legal instruments.
- Making recommendations on amendment of the Statutes and formulation of the new laws and reforms of the administration of justice.
- Providing opinion on legal issues.
- Providing consultation to HMG on ratification, acceptance, and accession of the multilateral treaty and agreement.
- Playing role in appointment of judges through membership of the Minister in the judicial council, an independent body to recommend to His Majesty's the King on appointment of the judges.
- Administering the scheme of the governmental free legal aid service.
- Performing liaison control on the National Forensic Science Laboratory.

To materialize the various functions described above, the Ministry functions through divisions set up to look after administration professionally. At present, the following divisions and sections operate as the specialized units:

- Drafting Division
- Internal Administration Division
- Judicial Administration Section
- Opinion Section
- International Law and Treaty Division

Some other institutions functioning in coordination with the Ministry are as follows:

Judicial Service Training Center: The Judicial Service Training Center, founded in 1982, functions in coordination of the Ministry to cater the need of various fresh and in-service training facilities in matters of law to the civil employees, the personnel under the judicial service in particular. The training programs of the center focus both on knowledge of law and practical skills of performing the designated obligation. The civil employees working in the field of law and justice start the career with a service-entry training course provided by the center. As such, the center is an institute directly involved in generating the prospective manpower to be involved in dispensing the justice in the country, as the judges in the court of first instance is exclusively elected from amongst these cadres.

Law Books Management Committee: The Law Books Management Committee is established under the Ministry of Law and Justice pursuant to the Development Committee Act, 1957. 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 to translate the Nepalese law into English and vice versa.

National Forensic Laboratory: The National Forensic Science Laboratory Development Committee was established under the Royal Nepal Science and Technology Academy in 1986 as per the recommendation of the Royal Justice Reform Commission appointed by the King in 1982. After the National Forensic Science Laboratory Development Committee (Formulation) Order 1995, 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 of the matters pertaining to forensic science. Besides, the laboratory conducts scientific tests of the living and non-living things, forensic evidence, physical and chemical matters in relation to justice. The laboratory also conducts training courses on forensic science to the employees of the concerned governmental and non-governmental institutions.

As mentioned above, the Ministry of Law and Justice can play significantly vital role in reformation and development of the criminal justice system through policy formulation and legislation. However, unlike some countries in the world, the Ministry of Law and Justice is not directly involved in the appointment of the judges, government attorneys and the investigators. However, it maintains close relations with the institutions involved in operation of the criminal justice system, and maintains good control of the system through policy matters and legislation.

3.2.5. Prison System

The history of Prison system in Nepal begins from 1914, when the present Central Jail had been established in Kathmandu. It was called "Sadar Jail", meaning a prison situated at country headquarters. The prison administration in those days had been placed under control of the incumbent military general. Right after the popular movement in 1951, the prison 's administration had been shifted to the control of Ministry of Home Affairs. Until Nepal was divided into 75 districts and 14 zones administratively, the prison administration in Kathmandu valley and outside had been put under take care of Valley Commissioner and Chief Officers *(Badahakim*) respectively. Subsequently, it was shifted to the control of the local administration, the chef district officer. In 1963, Prison Act had been promulgated for governing the affairs of the prisons. The Prison Regulation was adopted in 1964 in order to systematize the prison administration according to the changed context, yet no substantial changes had been effected by these legal instrument towards the improvement of the general conditions of the prisons and respect of the rights of the prisoners.

During the Panchayat Regime, the prisons had been taken as places for inflicting punitive treatment to the political prisoners. Obviously, overwhelmingly larger number of inmates used to be political detainees. Prison had been congested, ill equipped with basic facilities, and managed by untrained personnel. The government did never intend to improve the conditions of jails.

The prison system of Nepal consists of 73 prisons established in 71 districts, except in Bara, Dhanusa, Bhaktapur and Sunsari. The inmates from these districts have taken to jails to other districts. In Kahmandu and Dang Districts each has two prisons.

Prison Administration: Prisons are placed into four categories. Similarly, prisoners are divided into two groups, i.e. those receiving food allowance of "Category A" and "Category B". The convicted persons and those under trial are distinguished as "prisoners" and "detainees" respectively. There is a provision for keeping the prisoners and detainees in separate blocks, yet that is just impossible considering the present position of majority of jails, which are meagerly spacious, poorly lit, and lack minimum facilities like toilets, beds, common rooms and so on.

Prisoners and detainees have been provided similar facilities without distinction. They have been provided with dresses two times a year. Daily necessary commodities are supplied based on the category of the prisoners or detainees placed in. Those placed in "Category A" are entitled to obtain a quantum of 700 grams of rice and 20 rupees a day. With the 20 rupees, a prisoner has to purchase the vegetable, cooking oil, species, salt, milk and many other daily commodities. With the 700 grams of rice the prisoner has to support his/her subsistence three times a day. Those falling into the "Category B" obtain 700 grams of rice and 15 rupees a day.

Internal Administration of the Prison: For maintaining peace and order and good discipline, and in order to carry out the daily affairs of the prison, like cleaning of the compound and dormitories, the Prison Regulations had provided for appointment of various functionaries from amongst the prisoners themselves. These are as follows:

- Gateman (*Choukidar*): 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 distributions of the food and allowances. For serving as a gateman, he/she obtains curtailment of the prison term by rate of two months a year.
- Leader (*Naike*): *Naike* functions as assistance to the Gateman. He distributes the responsibility of the prisoners to clean the jail, informs the jailer about the behaviors of each prisoner, and helps the Gateman to arrange the meeting of prisoners with their relatives. For carrying these services, Naike obtains exemption in prison terms by rate of 1.5 month a year.
- Deputy Leader (Bhai Naike): He/she carries out the same function like Naike. He/she assists the Naike in discharging his/her responsibilities. For this, he/she is benefited of exemption of prison terms by rate 1 month a year.

These persons are selected from amongst the senior prisoners serving prison for conviction of crimes by the court or other institutions having the jurisdiction of making judgement.

Prison Management: Prison maintains record of each prisoner. The record comprises the detail biography of each prisoner. A standard form is distributed to the prisoners for supplying the information about them. The record also comprises the detail of the offence they are incarcerated for. For instance, this includes the total prison terms, the court making the judgement, the date for release and other information, if necessary.

The appeal record is another significant part of the management; this record includes details of the appeal procedures of the prisoners.

Privileges and Facilities:

1. Each prisoner is entitled to see his/her relatives twice a week under supervision of the jailer. The visit in a private place is restricted. The regulation maintains that the prisoner should stay inside the main gate and the visitor outside.
2. The letters of prisoners must be examined by the jailers before they are posted or sent out.
3. The letters received by the prisoners must be examined too by the jailers.
4. Two letters a week can be sent out following the scrutiny of the jailer.
5. The jailer may keep the letters with him if they are found to contravened to the national interest or the public interest or are found not proper for purpose of national security.

These provisions exist the general contravention of the fundamental rights of prisoners relating to privacy and social life.

3.2.6. Legal Profession in Nepal

Origin: Nepal became a democratic nation in 1951 after the overthrow of the century long autocratic Rana regime. With the nation in a state of disorder following the Rana autocracy, coupled with centuries long feudal system, and a series of painful events, the majority of educated people felt it was necessary to evolve a legal system capable of freeing people, protecting basic human rights and promoting socio-economic development. India, Nepal's southern neighbor, won independence from two centuries of British colonial rule in 1947, inheriting from the British the tradition of Common Law, the principles of constitutional government and the institutions of a liberal democracy. The Nepalese political movement was obviously influenced by the movement of independence of the Indian people and the liberal democracy that was established.

Influence of British Model: In 1951, 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 1949. For example, holding of popular franchise for the constituent assembly was thought as a means of adopting the 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 1959. 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. However, the impact of Common law remained only indirect, as the British had never colonized Nepal. However, because of the acute absence of educational facilities in Nepal, those Nepalese educated in India became the main way in which the influence of the British Common law legal system was felt in Nepal. The Nepalese political and administrative procedures and machinery had been designed to a considerable extent as per the British Model 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 strongly shaped its evolution. The Nepalese lawyers trained in expatriate educational institutes, and in particular in the Indian universities, in the past and still today, 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 or against the litigant. When the Law Practitioners Act 1968 was enacted, the remnants of the *Bokaha* system were fully eliminated.

The contribution of the following developments have played significant indirect roles in enhancement and institutionalization of the legal profession in Nepal.

Emergence of the Concept of Independent Judiciary: The concept of independent

judiciary was first introduced in Nepal by the Interim Constitution in 1951. Article 32(1) of the Interim Constitution enshrined the provision for the establishment of a *Pradhan Nayalaya (*The 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 bar (lawyer's association), judicial review of the legislative instruments and jurisdiction of prerogative writs (e.g., *Habeas Corpus)*. Subsequently, these concepts have been developed, and form the most notable characteristics in principle of the Nepalese judicial system,

The State Cases Act of 1961 was promulgated to codify the 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 upheld 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 1961 State Cases Act was repealed by a new Act in 1993, 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 Adversary System of Justice.

Nepal's Constitution aspires to establish an open society where people can have unrestricted assess to competent and credible justice. As such, the emergence of a strong and professional bar is fundamental to the smooth administration of justice. The judiciary must assume an activist role in order to protect and enforce the fundamental rights of the citizens, and a strong and professional bar is equally necessary for achieving the goal.

Interim Constitution: The history of the independent judiciary in Nepal dates back only to the 1950s. Prior to the promulgation of the 1951 Interim Constitution, an independent judiciary was merely a dream as the autocratic Rana regime wielded absolute power. The Rana Prime Minister held all the powers that a democratic Constitution separates into three organs of the state. The environment did not exist for the emergence of a proper legal profession. 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 1951.

In 1940, Prime Minister Padma Samsher had proclaimed a "*Sanad*" (executive directive having 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 the highest authority of judicial power. The following years saw the unprecedented rise of the people against the autocratic Rana regime, which eventually forced it to introduce certain reforms as in response. The Constitutional Act of 1947 providing for the establishment of an independent judiciary, was the result. 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.

The Interim Constitution in 1951 became the cornerstone of the legal profession in Nepal. The establishment of the *Pradhan Nayalaya* in 1952, under the Apex Court Act 1952, adorned with the jurisdiction of prerogative writs which meant that the Supreme Court was enabled to issue writs such as Habeas corpus, directly called for the establishment of a professional bar. The establishment of the *Pradhan Nayalaya* was received enthusiastically by the people, especially for its being adorned with prerogative jurisdictions. However, the prerogative jurisdiction of the court was not long tolerated as it restrained the executive government from exercising absolute power and it was revoked around 1957. This was a great setback to and challenge for 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 with mass demonstrations and much political opposition, and the Government was eventually forced to reinstate the jurisdiction. This was followed by the enactment of a landmark piece of legislation - the Civil Liberty Act, 1956, which enshrined certain rights of the people as inherent and inviolable

Section 17 (1) (2) and (3) of the 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 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 defense.

Supreme Court Rules, 1964: The Supreme Court Act of 1961 (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 of 2021 (1964), are 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. the agent, the pleader, advocate and senior advocate. Licenses were to be issued by the Supreme Court.

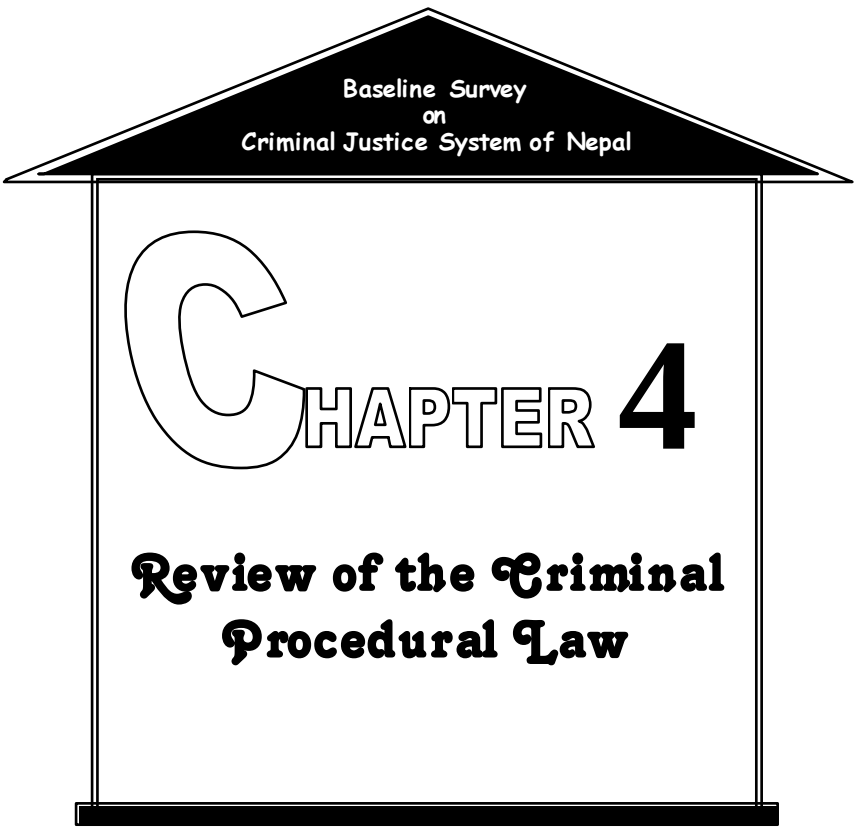
The Bar Council Act, 1993: The institutional recognition of the legal profession as an independent intellectual profession was completed with the passing of the Law Practitioners Act in 2025 (1968). This act was a breakthrough in the development of the legal profession in Nepal as it provided for three categories of lawyers - the pleader, advocate and the senior advocate. The pleader could represent the person in courts other than the Supreme Court. In 1993, the Bar Council Act repealed the former Act in order to facilitate the better protection of the rights and interest of the legal professionals and also to help ensure that they discharged their professional responsibility in a more dignified manner.

Under Section 6, the Act provided for the establishment of a Bar Council as an autonomous legal body to regulate the legal profession. Pursuant to Section 8 of the Act, the Bar Council is entrusted with the following responsibilities:

- conduct examinations for newcomers
- register legal professionals
- conduct follow-up actions to assess whether legal professionals have followed the prescribed codes of conduct (these codes are extensive and detail covering restriction on unethical behavior that can lead to disciplinary reprimand)
- Accept petitions concerning violations of the codes of conduct and make recommendations to the Discipline Committee for action
- Determine the procedures to be applied by the committees under the Act
- Encourage improvements in legal education and lay down the standards of education for lawyers in consultation with the university
- Launch refresher training courses for lawyers.

After the inception of this Act, the bar exam is 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 Bar Council consists of the Attorney General of the Kingdom of Nepal as the ex-officio president and the president of the Nepal Bar Association as Vice-president. The other members of the council are the Registrar of the Supreme Court, 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. ●

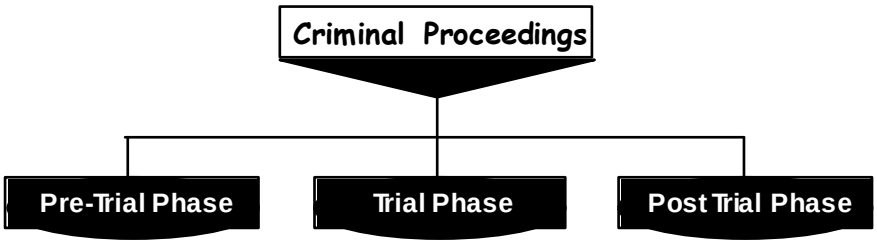
PART-I



CHAPTER 4

Review of the Criminal Procedural Law

Current Structure of Criminal Proceedings in Nepal



4.1. Pre-Trial Phase Procedure:

The pre-trial phase procedure basically comprises rules of procedure concerning investigation and prosecution of criminal offences. The State Cases Act, 2049 (1993) and Article 14 of the Constitution are fundamental laws governing procedures applicable during the pre-trial phase. However, the Section on Court Management of the *New Muluki Ain* also governs many aspects of general procedure concerning investigation and prosecution. The Court Management Section of the Muluki Ain basically governs matters of procedures concerning search and seizure, issuance of warrants and summonses for witnesses. Human Trafficking (Control) Act 2043, Narcotics Drugs (Control) Act, 2033 and Corruption (Control and Punishment) Act, 2059 are the specific laws governing the procedures concerning criminal offences of trafficking in human being, narcotic drugs and corruption, bribery and grafts respectively. In all types of criminal offences, this stage is highly vulnerable, as the risk of human rights violation is always large in this period.

Mostly, the police force is responsible to carry out the responsibility of the investigation. As mentioned in the previous chapter the institutional framework of the investigation is divided into five regional offices, fourteen zonal offices and seventy-five district offices. The Criminal Investigation Department at Police Headquarters is the apex authority for supervising the investigation works nationwide. The District Police Offices are the grassroots law enforcement agencies, and as such they are directly concerned agency for the investigation of the criminal offences within the jurisdiction specified by laws.

4.1.1. Key Actions and Stages of Investigation

Filing of Complaint or FIR: under the existing system, the State Cases Act, 2049, lays down the procedures relating to investigation. However, the procedures established by this Act are applicable only to criminal cases enshrined in Annex 1 of the Act. Any other cases, for the purpose of investigation, despite their criminal nature, are considered to be out of the jurisdiction of police, purely because they have not been incorporated under the said Annex. Obviously, the investigation power of the police confined to the criminal offences falling under the Annex 1 of the State Cases Act, and only those laws, which specifically confer the power on police. In the crimes included in the Annex and those specified by specific laws as to be investigated by the police, the investigation process usually starts when the first information report (FIR) of the given crime is lodged.

On FIR, The State Cases Act laws provides 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.[1]
- 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.[2]

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.[3]

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.[4]

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 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, the Supreme Court has established that the details of the facts of the crime are not mandatory requirements for the FIR.[5]

The offence of Trafficking in person follows somehow different procedure in relation to the FIR. Under Human Trafficking (Control) Act, the statement of informer needs to recorded at the office of prosecutor, and immediately attested by the court in presence of the victim.

Preliminary Report: Immediately after the crime is reported, pursuant to Section 7 of the State Cases Act, the investigating officer must submit a preliminary report to government attorney stating the facts of crime and the matters to be investigated. The government attorney shall on the basis of the preliminary report provide directions to the investigating officer as to how the investigation should be carried out. It shall be the duty of the investigating officer to adhere to the directions made by the government attorney.

The State's interest that a person's right should not be restrained nor any innocent person

1. Section 3(1), State Cases Act, 2049. Any person having knowledge that the crime mentioned in the Annex 1 has taken place or is likely 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.
2. See, Section 3.2. of the State Cases Act 2049.
3. See, Section 3.3. of the State Cases Act 2049.
4. See, Section 3.5. of the State Cases Act 2049.
5. See, Nepal Law Reporter, Supreme Court, Nepal, at 1039 (2044)

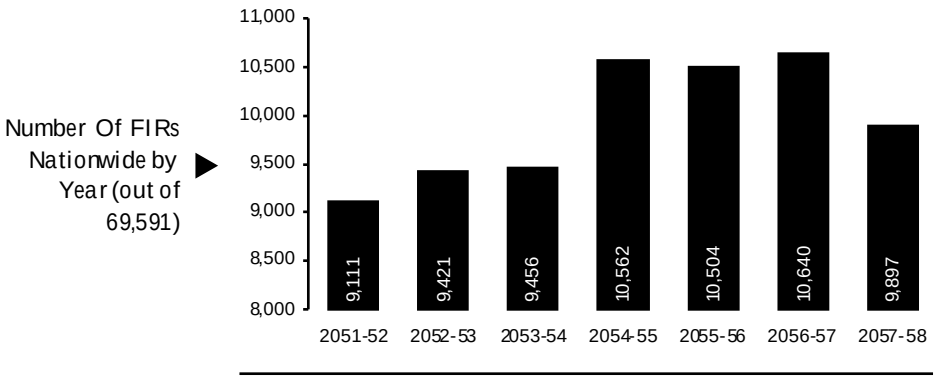
should suffer reflects in this provision. The preliminary report maintains a nexus between the investigation of the crime and the laws applicable thereto. It causes to attract the attention of the government attorney towards the crime. Therefore, the preliminary report should be a matter of grave concern for both the investigator and the prosecutor. However, since the Act is silent as to what information the report should contain, the utility of the report is largely tarnished, and thus it has been subjected merely to formality. The practical experience shows that the quasi-judicial bodies do not follow this provision. Hence, the prosecutors are virtually kept in dark on matters of investigation of offences, which fall under jurisdiction of the quasi-judicial bodies.

Current Situation: The condition of peace and security is deteriorating in the country. A large number of police force is deployed in the insurgency-infested areas for security purpose. Consequently, the investigation of crime is seriously affected. Many of the police stations have been withdrawn from prone areas, and thus the investigation of crimes in such areas is subjected to a condition of stagnation. Production of witnesses for testimony has also been seen as a problem in these areas, thus adversely affecting the prosecution. The following statistics plainly corroborate the statement:

Table 4.1: 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	1.17 Avrg.

Source : Crime Investigation Department, Police Headquarters.



The statistics present that in F/Y 2057-58, there was a significant reduction in number of FIRs, compared to the level of the previous years. The intensification of the Maoist terrorism and its effects might be the cause, as hundreds of police stations had been closed down in remote districts. This can be supported by evidence of a severe reduction in reported cases in some districts in western Nepal.[6]

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

6. See, CeLRRd, Research Report of Trial Court System in Nepal, Kathmandu, Nepal, at 67 (2002)

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 handcuffed and detained without interrogation.

Arrest is one of the most controversial issues in criminal justice system through out the world. Generally, an effective investigation requires normally the urgent and immediate arrest of suspects. However, the actions attached with arrest possess a threat to violation of the personal liberty and dignity of the person as they put physical restraint on a person. The current legal framework empowers the authority to arrest the suspect in the following grounds:

i. disclosure of the name in the FIR called *Kitanii Jaheri,*
ii. If no names have been disclosed in the FIR then the arrest is done only after certain stages of investigation is completed showing probable suspicion on some person.
iii. If investigation starts along with the report of police the arrest is made after or before the report.

Pursuant to the constitutional safeguard of liberty, no person arrested shall be detained for more than 24 hours without producing him/her before the judicial authority. However, in practice the investigators largely violate this provision. The research finding of CeLRRd has shown that in most of the cases the police do not give the notice to the suspect showing the date and the ground of arrest.[7] This gives the worst scenario of violation of human rights and fundamental rights of person particularly rights to be informed on the cause of the arrest.

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 in a case 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.[8]

The Supreme Court 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.

Physical and Mental Examination Report: Convention Against Torture 1984, in its Article 2(1) provides the provision that State parties of the convention are obliged to enact necessary legislation to prevent torture and other types of degrading treatment. To materialize this provision, the Torture Compensation Act, 2053,[9] while detaining and releasing any person, has obliged the police to conduct physical and mental examination of detainees, the report of which shall be submitted to the concerned District Court as prescribed in Sub-section (2). This is a mandatory provision of law. Pursuant to the sprit of the law, the judge should promptly look into the document and take prompt action provided foul is discovered.

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

7. See, CeLRRd, Analysis and Reform of the Criminal Justice System in Nepal, Kathmandu, Nepal, at 96, (1999)
8. See, Nepal Law Reporter, Supreme Court, at 701 (2044)
9. See, Section 3 of the Torture Compensation Act (2053)

Attorney has proved meaningless. Although the provision was made to prevent torture for the purpose of the extraction of a confession, this protection has not been guaranteed, as exclusively the police carry out interrogation in the absence of a Government Attorney. Article 14(3) of the Constitution guarantees the right not be compelled to witness against. 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 his/her 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. 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. 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.

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. According to the State Cases Act, the extension of the remand period is subjected to cause and grounds. However, this provision has been largely violated by the trial courts, as they have developed a habit of extending remand period without serious scrutiny of the documents, need and potentiality of torture suspects might undergo during protracted period of detention. In the past the trial courts even granted the extension of remand period in absence of suspects in the court. The situation has somehow been improved with the intervention of the Supreme Court. In Rameshwore P. Sonar v. Special Police Department, 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.[10] In *Shambhu B. Syanthang* v *District Police Office, Lalitpur* et.al., the Supreme Court observed that cases could be filed even after the expiry of the remand period.[11] In Dinesh *Chandra Gupta* et.al. v. *District Police Office,*

10. See, Nepal Law Reporter, Supreme Court, at 1, (2020)
11. See, Nepal Law Reporter, Supreme Court, at 571, (2049)

Sindhupalchok 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.[12] The judgments of the Supreme Court are therefore not consistent, and often they are contradictory with each other. 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.[13] 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: According to the procedure laid down by Clause 172 of the Court Management section of the Muluki Ain, if an investigating officer, upon information and after such inquiry as he/she thinks necessary, has sufficient reason to believe that objects of relevance with crime might be found hidden, then he/she 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

12. See, Nepal Law Reporter, Supreme Court, at 506, (2050)

13. See, Nepal Law Review, Nepal Law Campus, TU, (2035)

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. 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. 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. The law requires the officer executing a search warrant to make an announcement as to his purpose before breaking into a dwelling. 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.

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.

Clause 172 makes the following further provisions. 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 representative 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. *Revenue Investigation Department, HMG*,[14] 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 case, the Supreme Court went even further and stated that "where the document of question is not in conformity with the legal provision, it is not justifiable to indict such person on the basis of such document."

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.

14. See, Nepal Law Reporter, Supreme Court, at 224 (2049)

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 the 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 over a citizen's fundamental rights.

4.1.2. 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. As per Section 17(1) of the Act, the investigating officer can, on the other hand, ask for the termination of an investigation on the ground that there is a lack of adequate evidence for prosecution of the suspect. However, the final decision as to whether or not to prosecute is 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.[15]

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

15. See, Section 17.2 of the State Cases Act (2049)

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 Government Attorney may independently do the prosecution.

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*.

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. As per the Section 17 (1) (2) and (6) of the Police Act, 2012, such suspects, if apprehended, must be produced before a court within 24 hours of arrest, excluding the period of journey. 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.[16] Therefore, it can be concluded that anybody may arrest a co-suspect and submit him to the concerned authority.

4.2. Trial Phase Procedure:

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.

4.2.1. 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 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.

16. See, Nepal Law Reporter, Supreme Court, at 105 (2026)

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.

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 an 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 factor 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 or conviction is less than 3 years of imprisonment:

- Cases relating to 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.

Pursuant to Clause 118(1) of the Court Management Section, If the court deems it appropriate to grant bail, then the amount of bail or surety is determined by the following conditions:

- 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 Appellate Court quashes the trial court's order, 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 examination of witnesses takes place before the final hearing.

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

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 the court for the testimony of the defaulter prosecution witnesses again fixes a time. 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.

4.3. Post Trial Phase Procedure:

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

4.3.1. 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.

4.3.2. 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.

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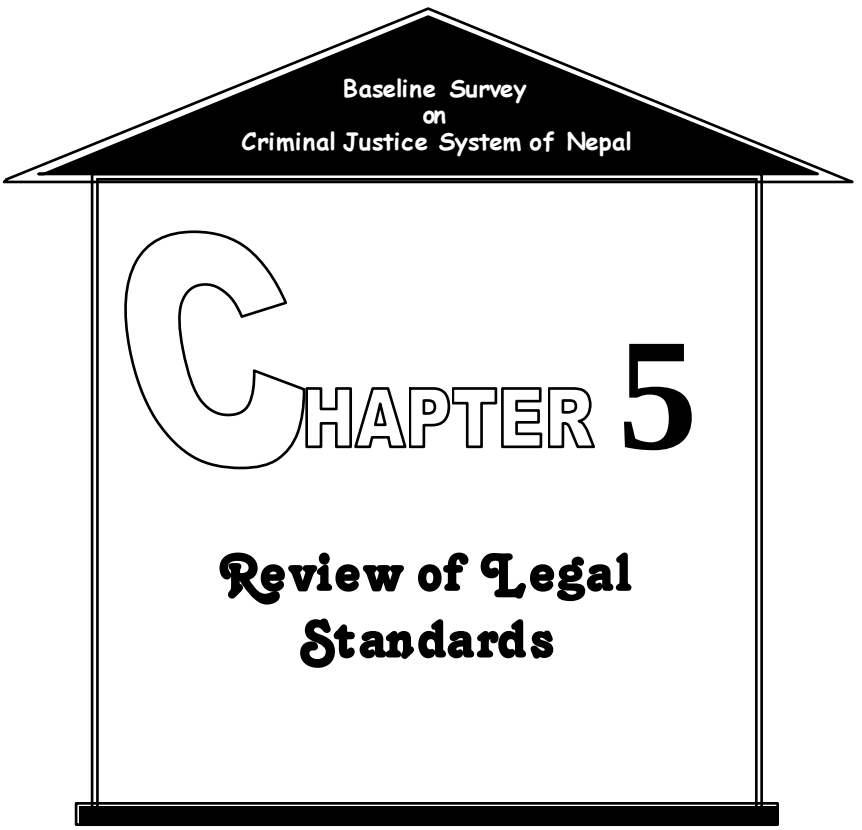

CHAPTER 5

Review of Legal Standards

5.1. International Human Rights Instruments Ratified by Nepal

Efforts for ratifying international instruments took momentum following the restoration of democracy in 1990. Although, His Majesty's Government of Nepal ratified some international treaties or conventions before 1990, it declined to ratify major international human rights instruments such as International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984. The situation for ratification of international human rights instruments before the restoration of the democracy was not encouraging, if fully antagonistic. Thus it would not be wrong to say that efforts for consolidation of the human rights regime in Nepal began subsequent to restoration of democracy in 1990.

Prior to 1990, HMG had acceded the following instruments:

These conventions had little significance in the internal situation of the Kingdom of Nepal then. The inclination of the *Panchayat*i Regime to accede these conventions was prompted not by its preparedness to accept obligations towards promotion of

Box 4: International Instruments Ratified or Acceded Before 1990

S.No.	International Instruments	Accession (a) Ratification (r)
1.	Slavery Convention, 1953	7 Jan. 1963 (a)
2.	Supplementary Convention on the Abolition of Slavery, The Slave Trade and Institution and Practices similar to Slavery, 1956	7 Jan. 1963 (a)
3.	Convention on the Prevention and the Punishment of Genocide, 1948	17 Jan. 1969 (a)
4.	Convention on the Elimination of All Forms of Racial Discrimination, 1965	30 Jan. 1971 (a)
5.	International Convention on the Suppression and Punishment Of the Crime of Apartheid, 1973	12 July 1977 (a)
6.	Convention on the Political Rights of Women,	26 April 1966 (a)
7.	International Convention Against Apartheid in Sports, 1985	March 1, 1989 (r)

source: http/www.untreaty.un.org

human rights, and in no way the regime was interested to set up a governance system that was guided by rule of law. The purpose of acceding those treaties and conventions was simply to hoax the international community that the regime was not negative to human rights regime. Thus, the regime preferred to select only those treaties and conventions that created no problems in its continuous suppression of individual liberty and freedoms. The regime had strictly closed down the doors for consideration of issues relating to racial problems. Moreover, the lower level of awareness among people on human rights, the issue of racial discrimination did not pose threat to the

regime. Thus, the regime perceived no threat for acceding the Convention on Elimination of All Forms of Racial Discrimination. Similarly, in the perspective of ban on political parties, the regime found no problem for acceding the Convention on Political Rights of Women. By acceding those treaties and conventions the then regime cleverly recorded its posture as a progressive nation, which was so important for hiding its despotic character. The regime preferred to stay back from acceding many other international instruments that could have direct impacts on the despotic political system.

5.2. Ratification of Human Rights Instruments Following Restoration of Democracy

In 1990, the democracy was restored through a popular movement of the people. The event brought a momentum about the accession or ratification of the international treaties and conventions on human rights. With the restoration of democracy, the Panchayati Regime, which ruled the country for 30 years in dark, came to an end. The coalition interim government of partners that lead the democracy movement took immediately over the reign of the governance. The Constitution that banned the political parties was abrogated ending the draconian rule. The restoration of democracy along with its prominent role of promulgating the new constitution volunteered to ratify the following important human rights instruments establishing a basis for the unconditional enforcement of the human rights instruments.

To date Nepal has acceded or ratified more than 16 international treaties and conventions, and the Parliament has already endorsed them. For securing domestic jurisdiction, the Constitution of the Kingdom of Nepal, 1990, requires approval of such treaties and

Box-5: International Human Rights Instruments Acceded or Ratified After 1990

S.No.	Instruments	Accession (a) or Ratification (r) Date
1.	International Covenant on Economic, Social and Cultural Rights, 1966	May 14, 1991 (a)
2.	International Covenant on Civil and Political Rights, 1966	May 14, 1991 (a)
3.	Optional Protocol on Civil and Political Rights, 1966	May 14, 1991 (a)
4.	Convention on the Elimination of All Forms of Discrimination Against Women, 1979.	April 22, 1991 (r)
5.	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.	May 14. 1991 (r)
6.	Convention on the Rights of the Child, 1989	September 14, 1990
7.	Convention on the Suppression of Immoral Trafficking and Protocol, 1949.	December 25, 1995 (a)
8.	Second Optional Protocol to the International Convention on Civil and Political Rights/Aiming at the Abolition of Death Penalty, 1989	June 4, 1998 (a)

Source: http/www.untreaty.un.org

conventions by the Parliament.[1] International treaties and conventions upon approval of the Parliament are theoretically enforced as the law of Nepal. As per Section 9(2) of the Treaty Act, 1993, the international treaties and conventions, in principle at least, upon approval by the Parliament have overriding position to domestic Statutes. Pursuant to the provision, the international treaty or convention prevails over the domestic law when the later contradicts with the former.

Despite such legal arrangements, it is often very difficult to enforce international treaties and conventions to domestic jurisdiction directly. Without having a comprehensive domestic legal structure, it is often difficult to obtain the state machinery to abide by the provisions of international treaties and conventions.

By ratification of various international treaties and conventions, including UDHR, the Kingdom of Nepal has virtually accepted to undertake responsibility for respecting human rights in strict sense. Indirectly, the international human rights treaties and conventions constitute a basis for the democratic governance system, where the State takes human rights in all circumstances as fundamental and inalienable rights of citizens. Obviously, by ratifying the international human rights treaties and conventions, the Kingdom of Nepal has agreed to accept the sanctity of international human rights instruments as the supreme law of the nation.

Therefore, unlike in the past regime, the post democracy-restoration government's act of ratifying the international human rights treaties and conventions is not simply an attempt to hoax the international community. Rather it is a genuine attempt to undertake obligations to protect and promote the human rights of citizens. Moreover, the ratification of international human rights instruments is a commitment of the State of Nepal to achieve humanization of the governance system.

Human rights are basic rights of the people universally. The applicability of the human rights instruments is therefore not dependent on choice of the rulers. As learned justice P.N. Bhagawati points out: " Human rights are as old as human society, for they derive from person's need to realize his/her essential humanity. They are not ephemeral, not alterable with time and place and circumstances. They are not the products of the philosophical whim or political fashion. They have their origin in the fact of the human condition, and because of this origin, they are fundamental and inalienable."[2]

By ratification of the Universal Declaration of Human Rights and other treaties and conventions, HMG/N has agreed to take without any reservation an obligation to administer the system of justice in accordance with a set of standards laid down by international human rights instruments. The system of justice offers the condition of legitimacy to the system of governance, and therefore, the justice is essentially administered in accordance with law. Justice *Bhagawati* says, " but the law must be one that commands legitimacy with the people, and the legitimacy of the law would depend upon whether it accords with justice."[3] Obviously, the act of ratification of the international instruments subjects the state and its government accountable to the people. The concept of justice, however, has no universal definition. It has meant different connotations to different people, in different societies, at different times. It is therefore, necessary to have a standard of values specifically of justice and governance, against which the law can be measured. Such a standard must necessarily be superior to the law itself, and would, therefore, constitute the highest rank in the legal hierarchy. The Universal Declaration of Human Rights is the instrument, which provide the standard to

1. See, Article 126 of the Constitution of Kingdom of Nepal (1990)
2. P.N. Bhagawati, Keynote address, at the Regional Judicial Colloquium, Georgetown, Guyana, See, Gender Equality and the judiciary, using *International Human Rights Standards to Promote Human Rights of Women and the Girl Child at the National Level* Ed. by Kristine Adamsand Andrew Byrnes. Commonwealth Secreate, 1997.
3. Ibid.

measure the law of each nation. The various other treaties and conventions, which followed the Declaration, elaborate the principles set in the Declaration. Hence, each nation, which has acceded the declaration, is obliged to give effect to the following great principles in practice:

1. *the principle of universal inherence:* every human being has certain rights, capable of being enumerated and defined, which are not conferred on him/her by any ruler, nor earned or acquired by purchase, but which inhere in him by virtue of his/her humanity.
2. *the principle of inalienability:* the act of any ruler or even his/her own act can deprive no human being of any of those rights.
3. *the rule of law:* where rights conflict with each other , the conflict must be resolved by the consistent, independent, and impartial application of just laws in accordance with just procedures.

Despite its strong commitment to respect human rights of people through ratification of several international human rights instruments, the Kingdom of Nepal has acutely flunked in the area of rationalizing or building a domestic legal regime in tune with international human rights law. Except few Statues, there are no new laws legislated for domestication of international human rights instruments. Even those few Statutes do not fully confirm the standards set forth by the international human rights instruments. This acute lack of domestication of the international human rights instruments indicates to insensitivity and inefficiency of lawmakers.

5.3. National Instruments Related to Criminal Justice System

Box 6 : National Instruments Related to Criminal Justice System

SN	Statutes	L/A	Major Provisions Inserted for Rationalization of Statute, and Weaknesses
1.	State Cases Act, 2049	L	**Important Improvements Made**: - State Cases Act 2017(1961) is repealed. - Section 15 prohibits detention of any person beyond 24 hours for investigation. - Section 15 (2) stipulates submission of detainees before the judicial authority for remand provided that the investigation is not completed within 24 hours. No detention at police custody is allowed beyond 24 hours without mandate of the judicial authority. - This sub-section also stipulates that the police must submit concrete causes and grounds for extension of remand.

SN	Statutes	L/A	Major Provisions Inserted for Rationalization of Statute, and Weaknesses
			- Section 15 (3) provides that person detained by police can request to the court for medical check up of the body. - Section 15(4) requires for satisfaction of reasonable grounds for extension of remand, which should not exceed 25 days in any case. **Inconsistency** For the purpose of avoiding vulnerability of torture, the Act requires police to record suspect's deposition in the presence of the Government Attorney. The power of interrogating suspects however implicitly lies on the police. The Act refers nothing to the right of suspects to remain silent, which has been recognized by the Constitution as one of the fundamental rights. Obviously, the Act fails to address the need of protecting suspects' right to remain silent. This fact leads us to conclude that the Act overshadows Article 14 of the Constitution. Some provisions of the Act, for being not in tune with the Constitution and the international human rights instruments like ICCPR, the legitimacy of the Act is obviously questionable. The right to remain silent is a basic right to fair trial. The Act has therefore failed to domesticate the right to remain silent, which is in explicit terms recognized by the ICCPR as an essential element of fair trial, and as such the basic minimum guarantee to the fair and impartial trial. Owing to the Act, the right of suspect to remain silent in the criminal charge is apparently in stake. Lack of provision for bail during police custody is another serious failure in the Act to domesticate the minimum standards of fair trial set forth by the international human rights instruments. This weakness in the Act necessarily results in compulsory detention of suspects in police custody irrespective of the gravity of the charge imposed.
2.	Vehicle and Transportation Act, 2049	L	**Important Improvements Made:** - Repealed the Transportation Act 2020, and National Transportation Act, 2026. - Sate Cases Act 2049 is made applicable for investigation and prosecution of crimes under this Act. **Inconsistency** This Act like State Cases Act fails to provide for bail for suspects during police custody.[4] Thus, the protection of suspect's liberty is apparently in stake under this Act. Traffic accident is not

4. The Act deals with the traffic accidents. The drivers, who commit the offence of manslaughter or cause injuries, are indiscriminately detained till they are produced at the court with charge sheet. The merit of the accident is not considered at all. The lacking of protection for privilege of bail unnecessarily amounts to deprivation of personal liberty.

SN	Statutes	L/A	Major Provisions Inserted for Rationalization of Statute, and Weaknesses
			necessarily a culpable crime to be punishable with terms of imprisonment. However, a person subjected to committing wrong under this Act is necessarily detained before being produced to the judicial authority. The Act therefore fails to satisfy the international standard that obliges the State party to refrain from imposing unnecessary detention.
3.	Printing and Publication Act, 2048.	L	- The Act repealed the previous Printing and Publication Act, 2039 enacted during the *Panchayati* regime. **Inconsistency** Section 7 of the Act, has made compulsory to register all commercial newspaper prior to its publication. Merely failing to do so, can be sentenced for up to six months imprisonment along with fine. The case has been listed in Schedule 1 of State Cases Act and is prosecuted by the police as other heinous offences, investigation with police custody.
4.	Torture Compensation Act, 2053.	L	**Important Improvements Made**: - Section 3 (1) prohibits acts of torture during investigation, interrogation and trial, or during any other types of detention. - Section 3(2) requires medical check up of suspect by the government medical officer or the senior police officer while taking into and releasing out of custody . The medical check up by senior police officer takes place when the government medical officer is not available. - Section 6 (1) provides for compensation upto Rs. 100,000 for victim provided that the infliction of torture is proved. Under this Section, the District Court, which is the court of first instance, is entrusted with power to take cognizance of the cases pertaining to the compensation against torture. - Pursuant to Section 7, the District Court may subject the concerned institution to departmental action against the person involved in the act of torture. **Inconsistency** The Torture Compensation Act does not define torture or custodial death a crime against law. Hence, the officials involved in the torture or custodial death are not personally subjected to the criminal liability under prevailing laws. The Act simply obliges the government to pay the compensation for torture. Perpetrators are therefore privileged to have unrestricted impunity for their criminal acts against detainees during their custody. For the Act fails to recognize torture as a criminal act, it exists in stark contradiction with the obligations under International Convention

SN	Statutes	L/A	Major Provisions Inserted for Rationalization of Statute, and Weaknesses
			Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984. The Act obviously fails to materialize Nepal's commitment to eliminate the torture and other cruel, inhuman or degrading treatment or punishment. Moreover, the Act ignores the independent medical practitioners' role for medical check up of torture victims. As the Act exclusively assigns the government medical officers and the senior police officers to conduct suspects' medical check up, it obviously opens up a room for misuse of authority to hoax the reality, and hide the incidents of torture. The Act in this connection is not only inconsistent to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, but also meaningless to protect detainees from torture during the police custody. The Act therefore obviously promotes a circumstance congenial for impunity to for perpetrators from acts of torture. Due to this circumstance, the trial courts are helpless to protect suspects from torture through motion for remand. By invoking the right to obtain medical check up during the remand motion suspects rather may put themselves in danger of reprisal from police personnel while they are returned to the custody. This circumstance in fact indicates to the complete lack of State's commitment to end the situation of torture.
5.	Human Rights Commission Act, 2053.	L	**Important Provisions**: - Section 11 (1) ensures that the commission, in relation to procedural matters, can have similar power to that of court for the purpose of taking action on petitions, complaints and conducting fact-finding missions. - Section 9(1) obliges the Commission to protect and promote human rights. To attain this goal, in accordance with Section 9(2), the commission, among other things, shall perform the following actions: • Investigation of petitions or complaints filed by victims or anybody else, or to investigate information received by the commission concerning violation of human rights, or any attempt to violate human rights, or negligence or recklessness committed by any person, institutions or organizations relating to human rights. • Investigation through its own mechanism or any institution of HMG or through any person, the incidents of human rights violation, or attempt thereto, or negligence or recklessness of any person, institutions or organizations resulting in violation of human rights.

SN	Statutes	L/A	Major Provisions Inserted for Rationalization of Statute, and Weaknesses
			• Study of international conventions and treaties on Human Rights, and make recommendations to HMG for effective enforcement and compliance thereof. - Section 13(1) empowers the commission to address any institution or authority for necessary action against culprits of human rights violation. - Section 13(2) further empowers the commission to dictate through its decision about the compensation, if necessary, to be paid to the victim. The Act is a landmark statue for promoting the prospect of the enforcement of international human rights instruments in Nepal. Importantly, the Act provides for the establishment of the National Human Rights Commission with authority to probe the incidents of human rights violation. **Weaknesses:** However, the power of the Commission is severely subjected to constraints, as it lacks power to execute its verdicts or decisions. The Commission's role being subjected to drawing recommendations only, its effectiveness to punish perpetrators of human rights is largely diminished or stagnated. As such the commission is simply restricted from playing a crucial role to punish perpetrators of human rights violations. The government's apparent reluctance to enable the commission's pro-active role for punishing perpetrators raises suspicion towards its positive attitude for consolidation of the international human rights laws in Nepal.
6.	Child-ren's Act	.	**Important Provisions:** - Section 7 prohibits children being subjected to torture or cruel treatment. However, the act of scolding and mild beatings by father, mother, member of family, guardian, or teacher for the interests of the child is not considered the violation of the provision of law, and as such it is not considered as the violation of the child right. - Section 11(1) exempts a child below 10 years from the criminal liability. - Section 11(2) subjects children, aged 10 to 14 years, to scolding or imprisonment not exceeding six months for acts constituting criminal offence. - Under Section 11(3), children aged above 14 years are sentenced for criminal acts with punishment, which is half to that of adult offenders. - Section 55(4) obligees the State to have a child bench for trying the offence committed by the child.

SN	Statutes	L/A	Major Provisions Inserted for Rationalization of Statute, and Weaknesses
			Inconsistency Although the Children's Act was enacted for giving effect to the Convention on Rights of Child, it largely failed to attain the goal. The Act declined to endorse many important aspects of the convention. The proviso of Section 7 of the Act explicitly permits infliction of torture on children by relatives and schoolteachers. This provision is apparently inconsistent with the Convention on Rights of Child. The definition of the child is one of such areas, where the Act largely fails to progressively deal with the best interests of the child. The Act seriously flunks in the need of giving an uniformed definition of the term child, and consequently it opens up a door for capricious treatment to the child for various purposes. The Act defines a person below 16 years of age as a child in Nepal. However, there are several laws, which define a child differently. The Election law, for instance, defines a person as a child who is below 18 years. It thus prevents persons under 18 years of age from participating in elections, whereas many other laws take 16 years as the age of puberty. In matters of criminal liability, the Children Act, apparently against the best interest of child, has lowered down the age to 12 years. The Section on Marriage of the Muluki Ain fixes 18 and 16 years as the age of puberty respectively for boys and girls for the purpose of marriage. Several other Sections of the Muluki Ain take 16 years as an age of puberty for various legal transactions. The Contract Act allows a person aged 16 years and above to enter into contractual obligations. The Labor Act defines a person aged below 14 years a child. Thus, laws of Nepal apparently create a state of confusion in relation to the definition of a child in terms of age. The Children's Act could not see this aspect of the problem, and thus it fails to protect the best interest of the children. The provision that makes 12 years as the minimum age for criminal liability is one of the most serious failures of the Act to domesticate the Convention on Rights of Child. Although, the Children Act prohibits ill treatment to, and abuse of, the children, it declines to provide an effective remedy for it. The judicial process for the remedy to the ill treatment or abuse is made totally obsolete and impracticable as the procedure for judicial remedy for ill treatment or f abuse of the children has been subjected to lengthy civil proceeding. The State has therefore declined to undertake responsibility of protecting the best interest of the children. By refraining to define abuse of the child as a criminal offence, the Kingdom of Nepal has also declined to recognize the vulnerability of the children.

SN	Statutes	L/A	Major Provisions Inserted for Rationalization of Statute, and Weaknesses
			Failure of securing juvenile justice system, with adequate diversion scheme, is another apparent weakness of the Act. As mentioned earlier, it has made 12 years as the minimum age for criminal liability, which is too low for the purpose. A child offender of the age between 14 and 16 years is subjected to be sentenced with half of the punishment to that of adult offenders. The rehabilitation of the children for his/her best interest has not been a prime focus of the Act. The welfare, reform and development of the child are therefore largely ignored by the Act.
7.	Legal Aid Act (1997)	.	**Important Provisions**: - The Act is envisaged to develop a system of free legal aid in order to help economically and socially incapable people to obtain free legal assistance on the cost of the State. **Inconsistency** - However the Act has failed to recognize the right to legal Aid in absolute term as it empowers the government to legislate regulations restricting access to legal Aid where the Central Legal Aid Committee thiks fit. The Regulations enacted by the Central Legal Aid Committee have declined to provide legal aid to the accused of crime such as crime of Human Trafficking, Narcotic Drugs, Corruption, Spying, etc. The sprit of the Act exists against the concept of fair trial, and as such it contradicts with the provisions of ICCPR securing the fair trial.
8.	Muluki Act, 2020	.	**Inconsistency:** The Act repealed the then existing Muluki Act of 1910 and all other prevailing "Sanad" and "Sawal" (Directives and Orders) issued before 2007 BS. The previous *Muluki Ain* was totally based on Conventional Caste System of Orthodox Hinduism. • The Act is the main governing law to regulate most of the procedural and substantial matters of civil and criminal proceeding. The provisions relating to search and seizure, arrest and detention, examination of witnesses, execution of judgments, serving of notice, etc. have very conventional provisions that do not meet practice of international standard. • Arrest: Under the Clause 116 of Court Management Chapter of the Act, authorizes police to arrest any warranted accused at any time. Clause 98 prescribes the list of offences where warrant is issued against the accused.

SN	Statutes	L/A	Major Provisions Inserted for Rationalization of Statute, and Weaknesses
			Search and Seizure: Clause 172 of the Court Management Chapter has authorized police having designation of Assistant Sub-inspector or higher, find fit for seizure of the evidence related with offence and they can notify the owner of the property after three days of such search.

[L (Legislated), A (Acted)]

Statutes mentioned in the Figure were envisaged to give effect to various provisions of the Constitution concerning human rights and competent and independent justice system. These Statutes, however, suffer from several inconsistencies with international human rights instruments. Based on their levels of consistency, one can conclude that the post-democracy-restoration era too has fallen short to achieve adequate rationalization of the legal system.

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CHAPTER 6

International and National Framework on Code of Conducts

Code of conducts for actors of CJS are important mechanism to ensure effective enforcement of the minimum international standards of fair and impartial trial. For the criminal justice system operates as an integrated system, although each actor maintains its full functional autonomy, the cooperation between actors with profound sense of delivering competent justice is indispensable duty of all. Thus, it is necessary for all of them to be guided by some concretely prescribed rules of professional behaviors. Such rules are generally defined as code of conducts. Obviously, such rules of behaviors play vital role in securing and promoting fair and impartial justice.

The Kingdom of Nepal practices a system of adversarial justice, where the roles of each actor are precisely defined. With some exceptions,[1] pursuant to Section 6 (1) of the State Cases Act, the responsibility of investigation is entrusted upon police, whereas the prosecution is done by the Attorney General of the Kingdom of Nepal through its subordinates- the government attorneys' offices at districts. The Preamble has envisioned a competent and independent justice as one of the basic structures of the Constitution. To achieve this goal, Article 84 of the Constitution entrusts upon the Supreme Court and its subordinate courts, including special courts and tribunals, the responsibility of carrying out administration of justice in accordance with the laws and the principles of justice. Article 14(4) guarantees the right to person arrested or in detention to obtain legal counseling from counsel of his/her choice. Obviously, this provision envisages for existence of an independent defense bar, as an essential element of the fair administration of justice.

Under the given scheme of the Constitution, the role of each actor is unavoidable, and by no means less important. Failure of one in its role would therefore necessarily affect the role of others, often manifestly resulting in the miscarriage of justice. Hence, each actor is required to act and behave in a way so that the role it has to play is not maligned. For this purpose, or in order for guaranteeing that each actor performs its duty with full alertness and high moral standard, a set of rules for code of conducts are established, which help to ensure proper professional behaviors and attitude from actors to their respective responsibility.

The United Nations has distinctly adopted minimum standards for code of conducts of law enforcement officials (police), prosecutors, judges, lawyers and medical practitioners.

6.1. Code of Conduct for Law Enforcement Officials 1979:

The code was adopted by the UN General Assembly Resolution No. 34/169 on 17 December 1979. Some important extracts from the code are as follows:

- Law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts. The term "law enforcement officials" includes all officers of the law who exercises police power, especially the power of arrest and detention.
- In performance of their duty, law enforcement officials must respect and protect human dignity and maintain and uphold human rights of all persons.
- Law enforcement officials must keep matters of confidential nature in their possession

in confidence, unless the performance of duty or needs of justice strictly require so.

- Law enforcement officials must not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment of punishment. Nor may any law enforcement official invoke superior orders or exceptional circumstances such as state of war or a threat of war or a threat to nation al security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.
- Law enforcement officials must ensure the full protection of the health of persons in their custody, and in particular, shall take immediate action to secure medical attention wherever required.
- Law enforcement officials must not commit any act of corruption. They must also rigorously oppose and combat all such acts.
- Law enforcement officials must respect law and this code of conduct, and to the best of their capability, prevent and rigorously oppose any violation of them.

Although these prescriptions of conduct do not legally bind States, they posses strong moral force behind them to oblige States to comply with. As a matter of fact, the code of conducts has been enforced by many nations through domesticating the principles adopted therein in the national legislation. The Government of Nepal has, however, done very little in this regard. Although, the Police Act, 2012, and the Police Regulations provide a set of rules for conduct of police personnel, there has been a complete lack of such rules with regard to law enforcement officials like forest officers, immigration officers, custom officers, medical inspectors, labor inspectors and so on who frequently engage in arrest, detention and prosecution of persons in offences under their jurisdictions.

The Police Act and Regulations provide for the following code of conducts:

- Civilized manner shall be demonstrated whilst carrying out investigation of female offender.
- Secrecy of undergoing investigation shall not be disclosed.
- The victim of offence shall be informed of the progress of investigation.
- If the case under one officer's responsibility is to be transferred to other by any reason, the progress particulars of the investigation so far made shall also be informed to him/her.
- Assistance shall be immediately rendered to citizens in case of natural calamities or cat astrop he.
- Police personnel must understand that they are in the post for protecting the life and property of the people and thus they have to behave accordingly.
- Police personnel should always act in a way so as to maintain dignity of their profession.

Several provisions of the Constitution and Statutes oblige law enforcement officials to abstain from resorting to such actions, which violate the human rights of persons.[2] However, the government has paid little attention to develop a demystified and concrete code of

conducts necessary for fostering a culture in works of law enforcement officials towards respect of human rights. Respect of human rights is not simply achieved by provisions imposing legal duty on law enforcement officials, it is, however, a matter of moral obligation of each human being too. To foster moral obligation to respect human rights among law enforcement officials will help to incapacitate the police personnel from invoking superior's order or exceptional circumstance as justifications for violation of human rights. However, besides certain provisions which oblige State to respect human rights of persons, no consolidated code of conducts is found existing in Nepal which requires police as well as several other law enforcement agencies to necessarily have their acts or behaviors founded on notion of respect to human rights. The situation, therefore, obviously indicates to the condition of lack of the code of conducts needed for protection of rights of people to fair trial or respect to human rights. The system of investigation in Nepal thus fails to domesticate the UN minimum standards of the code of conducts for law enforcement officials.

6.2. Guidelines on the Role of Prosecutors, 1990:

Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders have adopted The Guidelines on the Roles of Prosecutors on 7 September, 1990. The Guidelines have been adopted as basic minimum standards for code of conducts for prosecutors. Although, the Guidelines possess no binding obligation on the member States, their enforcement is envisaged to, and crucial for, the upliftment for the standard of fair trial and impartial justice. Some important extracts from guidelines are as follows:

- Prosecutors, as essential agents of the administration of justice, shall at all times maintain the honor and dignity of their profession.
- The office of prosecutors shall be strictly separated from judicial functions.
- Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consisted with local practice, in the investigation of crime, supervision of over the legality of these investigations, supervision of the execution of court decisions and exercise of other functions as representatives in the public interest.
- Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.
- Prosecutors must carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination.
- Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect.
- Keep matters in the possession confidential, unless the performance of duty or other needs of justice require otherwise.
- Consider the view and concerns of victims when their personal interest are affected and ensure that victims are informed of their rights in accordance with Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
- Prosecutor shall not initiate or continue prosecution, or shall make every efforts to stay proceedings, when an impartial investigation shows the charge to be unfounded.
- Prosecutors shall give due attention to the prosecution of crimes committed by

public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such practices.

In Nepal, the Attorney General's Office has issued, on 20/12/2058, a set of professional code of conducts. The said code of conducts derive force for application from Rule 35(2) of the Government Attorneys' Regulations, 2055. The development indicates an attempt on the part of Attorney General for domesticating the international code of conducts for prosecutors. Some of the important features, inter alia, included by the code are as follows:

- Government Attorney must respect and protect the rights of suspects and detainees guaranteed by the Constitution.
- Government attorneys shall give importance to interest of the public at large.
- Government Attorney must respect the human rights and human dignity always.
- Concrete grounds should be given while taking decision on whether a case is prosecutable or not.
- Government Attorneys shall be conscious of justice while prosecuting some one.

The UN minimum standards on prosecutors' code of conduct stipulate the prosecutor to abstain from having random prosecution of offences, as he/she has a primary obligation to act judiciously, and, in the mean time, he/she has to discharge all responsibility as an agent of the administration of justice. Studies in Nepal show that over 50% of cases prosecuted are not sustained at trial courts mainly due to absence of grounds for conviction[3] The severity of the violation of human rights is therefore apparent, which not only indicates to the poor state of justice, but also manifestly indicates to the lack of accountability of prosecutors. The UN standards on code of conducts for prosecutors stipulate closest attention of prosecutors for avoiding unfounded prosecutions. It specifically requires prosecutors to stop taking initiation or to discontinue prosecution if the charge has been founded not on impartial investigation. However, the prevailing circumstance of random prosecution show lack of inclination on the part of the Government to improve the condition of objectivity, fairness and impartiality of the prosecution system. It thus leads us to conclude that, in the lack of definite set of rules for code of conducts, the current prosecution system constitute a source for violation of human rights in Nepal. Although the present code of conducts has some important provisions enshrined, it fails to give attention towards responsibility of prosecutors to serve the interest of justice. Clause 1.7 of the Code of Conducts refers to " protection of the interest of state", but not to interest of justice.

6.3. Basic Principles on the Role of Lawyers, 1990:

The 8th UN Congress on the Prevention of Crime and the Treatment of Offenders on 7 September 1990 had adopted the Basic Principles on the Role of Lawyers. The principles have been adopted while recognizing the vital role of professional associations of lawyers to play in upholding professional standards and ethics. This instrument has enshrined many important principles, which outline the norms of lawyers' professional behaviors.

- Lawyers shall at all time maintain the honor and dignity of their profession as essential agents of the administration of justice.
- The duties of lawyers towards their clients shall include:

  i. Advising clients as to their legal rights and obligations and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients.

ii. Assisting clients in every appropriate way, and taking legal action to protect their interests

iii. Assisting clients before courts, tribunals or administrative authorities, where appropriate.

- Lawyers, in protecting rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance within the law and recognized standards and ethics of the legal profession.
- Lawyers shall always loyally respect the interest of their clients.

The modern system of administration of justice takes legal profession as an indispensable element of fair and impartial justice. The representation of lawyers in the judicial proceeding has been accepted as an indispensable element of due process of law, without which the judgment suffers from absence of legitimacy. However, a legal profession without strong code of conducts is a threat to justice; it is vulnerable to miscarriage of justice. It was one of the reasons that the UN 8th Congress took the issue of having set of principles to guide the legal profession.

Nepal has no long history of legal profession. In theory, initiated in 1952, it has a history of hardly a half-century. In reality, however, the history of professionally organized bar has no history more than three decades.[4] Only In 1968, when the Legal Practitioners' Act had been promulgated, it had been for the first time institutionalized as an independent statutory profession. It was the first law, which categorized lawyers, and it also laid the rules of conduct for lawyers. The Bar Council Act had been promulgated in 1994, which created an independent statutory body-Bar Council- to regulate the affairs of legal profession. Under the mandate of the Act, the council promulgated regulations precisely and comprehensively specifying the professional conducts of Lawyers. The code outlines the following rules of conduct:

- Lawyers shall not do anything contrary to the fundamental principles of legal professional ethics.
- Clients shall not be encouraged to file false cases
- Litigation shall not be initiated with a view of revenge and causing harassment to anyone.
- Lawyers shall not be, directly or indirectly, uncooperative to courts in matters of judicial proceedings.
- Judicial procedure shall not be abused or caused to be misused.
- Lawyers shall not stop or cause to stop or prevent the client from giving from true statement.
- No false propaganda with the purpose of spreading ill will shall be made in respect of the legal professionals or judges or Courts.
- In case of need for returning the case file to the party, on account of his tight schedule or inability, it shall be returned in a manner whereby the party will have sufficient time to hire another lawyer.
- Lawyers shall appear in court dressed in a formal black coat and on time, and shall behave respectfully to the bench as well as opponent lawyer. He/she shall not be

slanderous or envious to counterpart. Lawyers shall show respect to the court employees, they must argue politely and properly in one's turn.

- Lawyers, with a view to benefit clients, shall not invoke a repealed or inoperative law or Act or obsolete precedent.
- Lawyers shall not argue or refer fact, which is not included in the case file.
- Lawyers shall not involve themselves as lawyers, in cases related to the document where the validity of what is being probed, in which the one is a witness.
- No information revealed by a party, in a connection with the case, shall be disclosed.
- No advertisement, news publication, correspondence, circular or any type of slogan shall be given with a view of professional publicity.
- Visiting cards, letter pads or files printed or recorded shall not contain previous post nor shall it contain any post or status not related to the legal profession nor shall they have a big signboard displayed, with a view of professional advertisement. *Provided that this restriction shall not be a bar in publishing that one will be taking the cases of special nature due to his special study, expertise or experience, in those documents.*
- Lawyers shall take no remuneration in the form of percentage from the party, or no case shall be taken on contract basis.
- Lawyers shall not take alcohol or any other intoxicant while attending the court.
- No remuneration shall be fixed based on the consequence of the case.
- No false description shall be given, while demanded by the council.
- No document shall be signed with a view to certify a document prepared by a person other than himself or under one's direction and supervision or a legal professional employee in one's firm or chamber or pleader working with oneself.
- No tout shall be appointed to collect cases or brokerage commission be paid for such work.
- No drafting shall be done for both the parties in the same case, nor representation is done in the same case from the both sides.
- No contract or deed of transaction shall be made, thereby putting the client into loss and making profit for oneself, and no such document shall be created in the paper that is given with signature to use for power of attorney.
- No genuine document given by the party shall be tampered in collaboration with the opponent party, thereby making it useless.
- No document given by party shall be made available to the opponent party with a view to benefit the opponent party.
- No corruption shall be committed or induced.
- No criminal offence amounting to moral turpitude shall be committed.
- Senior advocates beside conducts mentioned hereinabove shall abide by the following additional code of conducts:
- No representation shall be made in any bench in any case without having an assistant professional, at least one.
- A senior advocate should generally avoid appearing in the tribunals.

As it is clear from rules mentioned before, the Bar Council has made utmost efforts to domesticate the basic principles on roles of lawyers adopted by the UN. These rules are comprehensive and pervasive in all aspects of the profession.

6.4. Basic Principles on the Independence of Judiciary, 1985:

It was adopted by the 7th United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 6, 1985. Subsequently, the UN General Assembly Resolution 40/32 of 29 November 1985 and 40/146 of 13 December 1985 endorsed it. The major objective of the document has been outlined as to secure and promote the independence of the judiciary within the framework of the national legislation and practice. However, the document takes view that no independence would be realized without concrete code of conducts to be followed by judges. Hence, the document outlines the following code of conducts for judges:

- Judges shall decide matters before them impartially, on the basis of facts and in accordance with law, without any restrictions, improper influence, inducement's, pressure, threats or interference, direct or indirect from any quarter or for any reason.
- Judges must ensure that judicial proceedings are conducted fairly and that the rights of parties are respected.
- Judges are free to form and join association of judges or other organization to represent their interest, to promote their professional training and to protect their judicial independence.
- Judges shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings and shall not be compelled to testify on such matters.

Although, the principles laid down in the document do not provide details of behaviors which judges are expected to carry out or refrain from, the dignity and honor attached to the job itself require extraordinarily high level of moral behaviors from them. Hence, they should do nothing, which impairs the quality of their performance and dignity of their personality. The Judicial Council Act, 1990, which is primarily a basis for recruitment, promotion of, and disciplinary action against, judges has made attempt to outline the standards of behaviors for judges, which are as follows:

As specified by the Judicial Council Act, 1990, the following acts of judges shall be deemed to be misconduct:

- Carrying out of any act amounting to corruption as per the prevailing law,
- Consumption of narcotics,
- Consumption of alcohol during Court hours.
- Involvement in irresponsible or disgraceful act not suited to one's post in public places or function.
- Involvement in politics. Provided that exercising of his electoral right in accordance with law shall not be deemed to be a misconduct.
- Making of judgment or performing an act under political or any other undue influence prohibited by law; or making no judgement or doing such an act as required to be done by law.
- Misuse of Court property knowingly, or abuse of one's facility
- Doing an act amounting to the violation of the prestige or dignity of the court, while sitting in the bench or doing any conduct, which is contrary to the expected discipline of the post.
- Commission of a criminal offence amounting to moral turpitude.

These rules of conducts are fairly largely capable of providing guidance for judges in matters of their professional obligations and required manners. In addition, the Supreme

Court has issued further more detail guidelines concerning the conducts of judges (SC Bulletin: 46). They are as follows:

- Judges shall not encourage, allow doing, or do any act by virtue of one's official capacity or personal capacity, which may tarnish the credibility or dignity of the court.
- No judge shall hear any dispute, concerning a company or body, in which the judge himself or any member of his family has a share.
- No judge shall be involved in a business of a brokerage nature such as sale or purchase of share or debenture or that of similar nature.
- No judge shall involve in any business directly or indirectly either alone or in group or in collaboration with any individual.
- No judge shall involve in raising money through donation, charity or assistance by any method for any purpose or accept any gift, donation or charity from any organization or individual, in a manner, which may affect his official duty.
- No judge shall acquire any financial benefit or any other facility than the ones prescribed by law or provided legitimately by the decision of His Majesty's Government.
- No judge shall allow any member of his family (mother, father, husband, wife son, daughter, daughter-in-law, elder brother, younger brother, elder sister, younger sister) to appear or involve in the disposing off the case in the Court.
- No judge shall decide a case in which any member of his family is involved as a legal professional.
- No judge shall misuse or allow to be misused any facility, which he has obtained as per the law, in his official capacity.
- No judge shall give interview through media or express his opinion, which tarnishes the credibility of the court or degrades its dignity in connection with a case, which is under the consideration of the court or is already decided.
- No judge shall express his opinion or reaction in a disputed matter of public concern, which is likely to be submitted to the Court, for any legal question or any subject matter of political nature or matter, which is already sub-judice before the court.
- No judge shall except from his closest friend, nearest relative or any member of his family accept any gift, donation or hospitality from any person or officer, who is in the process of submission in the court for judicial decision or under the consideration of court except.
- No judge shall vote, file his nomination or remain in the executive post of any type of any organization which is likely to affect his official duty, except the post related to justice and law.
- No judge shall carry out or get any transaction done with the persons who are parties to the case.
- No judge shall give his decision based on prejudice, envy, influence, discrimination, revenge or partiality.
- A judge shall always remain alert in maintaining impartiality and independence of judiciary. A judge shall always be well behaved toward his fellow judges.
- A newly appointed judge shall submit the full particulars of the real and personal property, which is in his name or in the name of his family members, and its source thereof, within thirty-five days from the date of such appointment. Other judges already in service shall submit their particulars within thirty-five days of coming into force of this code of conducts to the Secretariat of the Judicial Council. Such description shall be updated every two years.

- A judge shall always remain alert in not allowing anything to take place, which may affect the dignity or highest dignity of the court.
- A judge shall carry out his duty thinking that his dignity, honor, respect and reputation basically lies in the dignity, respect, honor and reputation of the court.

The rules are comprehensive, and as such fully domesticate the principles laid down in UN Basic Principles on the Independence of the Judiciary.

6.5. Level of Standard of Code of Conducts and Compliance Situation:

As it is clear from the discussion hereinabove , the Police Department and the Office of the Attorney General have yet not worked out detail rules of conduct for their officials. Police Regulation contains a few incidental references concerning what police personnel ought to do and refrain from doing. However, those references are far below to meet the standards laid down by the UN Code of Conducts for Law Enforcement Officials. The review of concerned laws and documents in the light of the said UN Code reveals the following gaps or weaknesses:

i. Through various Statutes, the power to take investigation, prosecution and adjudication on various criminal offences has been conferred on administrative tribunals like the District Administration Office (DAO), Custom Office, District Forest Office, Department of Immigration, Department of Medicine, etc. These executive agencies are fully accountable to the concerned ministries, and as such without doubt represent the interest of executive branch of the state. Therefore, the danger of misuse or abuse of power lurks there vitiating the circumstance of fair trial. Having no precisely worked out code of conducts for officials of these agencies which are entitled to exercise judicial power to convict and impose sentences, indicates to overwhelming vulnerability of the fair trial being jeopardized.

ii. None of the regulations concerning quasi-judicial power of those officials specify conducts to be followed by these officials while conducting investigation, prosecution and adjudication of criminal offences. Obviously, the possibility of mischief during trial by these officials is large.

iii. Neither the Department of Police, nor the Office of the Attorney General, nor other Departments having quasi-judicial power have adopted professional code of conducts for their officials as a mechanism to safeguard the fairness and objectivity in, and impartiality of, their jobs.

iv. The Judiciary and the Bar have been successful to work out comprehensive code of conducts, yet, the efficient and effective enforcement thereof is still suspected. Although, the media over the years has widely reported unprofessional conducts of judges and lawyers, the number of probes carried out so far is simply insignificant. Information obtained from the Judicial Council reveals over 20 incidents of misconduct of judges reported so far, of which 5 have been investigated (These figures need to reconfirmed). So far, no judges have been removed from the office under the charge of misconduct. Similarly, the information given by the Bar Council, only a negligible number of incidents have been addressed.

v. Bulk of misconduct reported by media relates to taking of bribe by judges.

vi. Sexual harassment, infliction of torture and custodial deaths are serious forms of violation of code of conducts in the Police Department. The following table gives a glimpse of situation (refer to chapter on fair trial).

Reports of Amnesty International, UN Rapporteur on Torture and several other institutions have confirmed the prevalence of misconduct with impunity. The following few examples will help to capsulate the situation:

1. According to an estimate, 35% of criminal cases are still tried by the executive tribunals like DAO, Forest Officer, Conservation Park Warden, Custom Officer, and so on. These authorities, in the pretense of performing honest duty to the government, prefer to act while conducting criminal trial with disregard of the constitutional guarantees and UN Code of Conducts for Law Enforcement Officials concerning fairness of proceeding. Interestingly enough, these authorities are solely and independently involved in investigation as well as the adjudication of offences. The impartiality of the justice is therefore simply not perceivable. It would be pertinent here to mention an observation of US Department State (1998) on DAO's judicial power. It maintains:

> *"... Public Offences Act permit arbitrary detention. The Act and its many amendments cover such crimes as disturbing the peace, vandalism, rioting and fighting. Under this Act, the Government detained hundreds of civil servants during a 55-day anti government strike in 1991. Human Rights monitors express concern that the Act vests too much discretionary power in the Chief District Officer (DAO currently known as DAO), the highest-ranking civil servant in each of the country's 75 districts. The Act authorizes the DAO to order detention, to issue search warrant, and to specify fines and other punishments for misdemeanors without judicial review. Few recent instances of use of the Public Offences Act have come to light, since it has become more common, particularly with the Maoist, to arrest people under the Public Security Act".*

   DAO has extensive power of judicial trial under various other Acts. The trials are generally carried out in absence of legal counsels. Formal motions of trial hardly take place. DAO, who is an administrative officer, is generally not interested to conduct trial. Subordinates are generally involved in preparing orders and verdicts taking his/her dictations. Since many of these Statues provide for punishment with terms of imprisonment, persons' liberty is obviously in stake as the trial in DAO and other executive officer's chambers are nothing but a mockery. The circumstances discussed above manifestly prevail against the following code of conducts of Law Enforcement Officials adopted by the UN General Assembly:

   - Law enforcement officials shall all times fulfill the duty of imposed upon them by law, by serving the community and by protecting all persons against illegal acts. The term "law enforcement officials" includes all officers of the law who exercises police power, especially the power of arrest and detention.
   - In performance of their duty, law enforcement officials must respect and protect human dignity and maintain and uphold human rights of all persons.
   - Law enforcement officials must not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment of punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as state of war or a threat of war or a threat to nation al security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.
   - Law enforcement officials must respect law and this code of conduct, and to the best of their capability, prevent and rigorously oppose any violation of them.

2. According to a study, only 56% of prisoners have access to lawyers during trial. Rest

others face trial without representation of lawyers [5] As per the study, none of them had been allowed to consult lawyers within 24 of the arrest. Many of them even had no knowledge of the right to have legal assistance. UN Commission for Human Rights' (1996) Working Group makes similar observation. It states:

> *"While the presence of counsel during custody is possible, the Working Group observed that it is not compulsory and noted instances where detainees had not received assistance from counsel for almost a year after their arrest".*

3. Investigation of crime in Nepal begins with arrest of suspects, and generally the arrest takes place immediately after the first information report (FIR) is lodged. The Government Attorney Office, which is a prosecuting agency in Nepal, is supposed to carry out filtering of cases once the investigation is completed. The Government Attorney has under Article 110 and State Cases Act, the final authority to decide whether or not to prosecute the case. This power is however hardly exercised. Obviously, there has been a trend of random prosecution leading to implausible ratio of failure at trial court. The following figure will amply present the remarkably low trend of filtering of cases at prosecution stage[6]

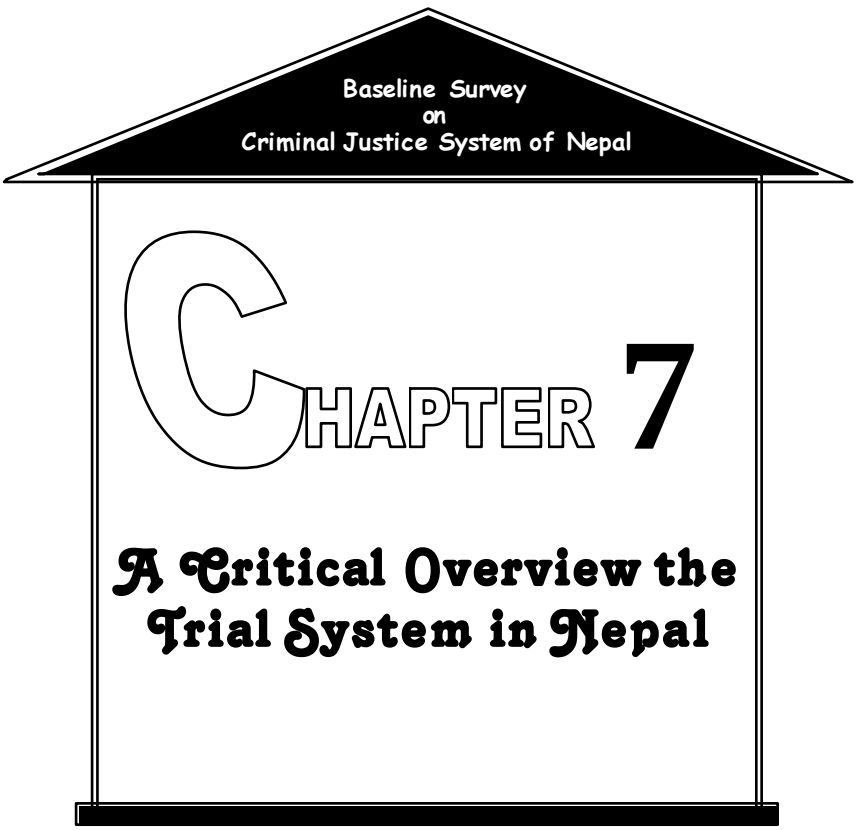
Table 6.1 : Remarkably Low Trend of Filtering of Cases at Prosecution Stages

Fiscal Year	Total FIRs	Cases Investigated by Police	Cases Filtered by Government Attorney	Percent
2051-52	9,111	6,098	364	5.97
2052-53	9,421	6,155	282	4.58
2053-54	9,456	5,641	291	5.16
2054-55	10,562	6,137	283	4.61
2055-56	10,504	6,028	268	4.45
2056-57	10,640	6,228	234	3.76

As shown by the table, the proportion of filtered cases at the stage of prosecution is on average merely 5% of the total cases investigated by the police[7] This situation shows extremely high level of random prosecution, and thus manifestly confirms the existence of a state of serious violation of the following UN Guidelines on the Roles of Prosecutors:

- The office of prosecutors shall be strictly separated from judicial functions.
- Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.
- Prosecutor shall not initiate or continue prosecution, or shall make every efforts to stay proceedings, when an impartial investigation shows the charge to be unfounded.

These three rules prohibit random prosecution of criminal offences. In the light that over 50% of charge sheets fail to sustain in the courts, it is clearly established that the random prosecution is phenomenon in Nepal, and as such show terrible violation of prosecutors' code of conducts. ●



CHAPTER 7

A Critical Overview the Trial System in Nepal

7.1. An Introduction to the Concept of a Fair Trial

The right to a fair trial is a basic human right associated with a competent and independent criminal justice system. The term 'fair trial' may be utilised in a variety of contexts. Moreover, it has different connotations in different places, at different times and for different purposes. Discussion of the concept of a fair trial often leads to contentious debate. The provision of a 'fair trial' is equated with the concept of due process: a trial is fair if it satisfies the substantive and procedural requirements of due process. As pointed by Justice Cruz, it is accepted that both substantive and procedural due process have established meanings. "Substantive due process requires the intrinsic validity of the law in interfering with the rights of the person to his/her life, liberty or property". The guarantee of procedural due process is one 'which hears before it condemns', proceeds upon inquiry and renders judgment only after trial. Justice Cruz enumerates the following requirements, imperative to ensuring procedural due process. Collectively these establish the foundation of a fair trial:

1. There must be an impartial court or tribunal clothed with judicial power to hear and determine the matter before it;
2. Jurisdiction must be lawfully acquired over the defendant;
3. The defendant must be given the opportunity to be heard;
4. Judgment must be based upon a lawful and legitimate hearing of the case.

In administrative proceedings, the following further elements of procedural due process must be guaranteed without exception:

1. The right to a hearing, which includes the right to present ones' case and submit evidence in support thereof;
2. The tribunal must consider the evidence presented;
3. The decision must be supported;
4. The evidence must be substantive;
5. The decision must be based upon the evidence presented at the hearing, or at least recorded and disclosed to the parties affected;
6. The tribunal or body or any of its judges must act of its own or his own independent consideration of the law and facts of the case and not simply accept or disregard the views of a subordinate in arriving at a decision; and
7. The tribunal must present its' decision to all controversial questions in such a manner that the parties to the proceedings can understand the various issues involved, and the reason for the decision.

7.2. International Legal Framework for Fair Trial

To ensure that all the elements of procedural due process discussed above are fully observed before somebody is condemned, international human rights instruments require the following minimum standards to be fully observed:

Any person under investigation with regard to the commission of an offence shall have the right to be informed of his/her right to remain silent and shall have the right to competent and independent legal advice and assistance, preferably of his/her own choice. If the person cannot afford the services of counsel, he/she must be provided with such

services.[1]

No person shall be subjected to arbitrary arrest and detention. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power.[2]

No one shall be subjected to torture or cruel, inhumane, or degrading treatment or punishment.[3]

In all criminal prosecutions, the accused shall be presumed innocent until proved to the contrary, and shall enjoy the right to be heard directly and through counsel.[4]

The suspect shall have the right to be informed of the nature and cause of his arrest or of the accusation made against him.[5]

The suspect shall have the right to a speedy, impartial and public trial by an independent tribunal.[6]

7.3. Nepalese Domestic Legal Framework Concerning Fair Trial

The rights enunciated by various articles of the UDHR, ICCPR and other international human rights instruments mentioned above, are defined as basic elements of or minimum standards for a fair trial. A fair trial is not possible without unrestricted access to these rights or maintaining these standards. The Constitution of the Kingdom of Nepal enshrines these rights in the following provisions and establishes them as fundamental rights in the pursuance of criminal justice:[7]

1. No person shall be deprived of their liberty save in accordance with the law, and no law shall be made which provides for capital punishment.
2. No person shall be punished for an act that was not punishable by law at the time the act was committed.
3. No person shall be prosecuted or punished for the same offence in a court of law more than once.
4. No person accused of an offence shall be compelled to be a witness against himself.
5. No person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture; nor shall he be subjected to cruel, inhumane or degrading treatment. Any person so treated shall be compensated in a manner as determined by law.
6. No person who is arrested shall be detained in custody without being informed as soon as possible of the grounds for his arrest; nor shall he be denied the right to consult with and be represented by a legal practitioner of his choice.
7. Any person arrested and subsequently detained in custody shall be brought before a judicial authority within twenty-four hours of arrest.

7.4. State of the Right to Fair Trial in Nepal

The following adverse conditions and weaknesses are widely acknowledged to exist in the criminal justice system of Nepal and manifestly indicate widespread violations of the right to a fair trial. The implication of this is that the protection of human rights within the Nepali criminal justice system lacks a solid foundation.

According to one estimate(AG Reports) 35% of criminal cases are still tried by executive tribunals such as the DAO, the Forest Officer, the Conservation Park Warden and Customs Officers.[8] DAOs also have extensive judicial power under various other Statutes. Trials conducted under these powers and those afforded by the Public Offences Act are generally carried out in the absence of legal counsel, and formal motions rarely take place. A DAO, who is an administrative officer, is generally not concerned with the conduct of the trial and subordinates are generally involved in the preparation of orders and verdicts through dictation. Many of these Statutes provide for punishment with a term of imprisonment. Therefore the fundamental human right of personal liberty is at stake. In these circumstances one must accept that trial by a DAO or any other executive officer's department is nothing more than farcical.

7.4.1. Legal Representation at Trial:

According to a recent study, only 56% of prisoners have access to lawyers during trial meaning that 44% of defendants face trial without legal representation.[9] As the study reveals, none of the respondents had been allowed to consult lawyers within 24 hours of arrest and many were not even aware of the right to legal assistance. A UN Human Rights Commission's Working Group has made a similar observation:[10]

> *"While the presence of counsel during custody is possible, the Working Group observed that it is not compulsory and noted instances where detainees had not received assistance from counsel for almost a year after their arrest."*

Article 14(5) of the Constitution of the Kingdom of Nepal guarantees to every citizen the right to legal counsel of their choice if they are accused with the commission of a crime. This constitutional provision confirms the principle recognized by international law in Article 11 of the Universal Declaration of Human Rights which provides for the right of a detainee or imprisoned person to acquire the services of a legal practitioner of his choice and subsequently to be defended by that practitioner. The International Covenant of Civil and Political Rights and the UN General Assembly Resolution 45, Basic Principles for the Treatment of Prisoners, also outlines the basic rights of detainees. However, the right to be defended by legal counsel is frequently violated or denied in Nepal. Almost without exception, detainees are refused access to legal counsel within the first 24 hours of arrest.[11] The following table gives a complete picture of this situation.

Table 7.1 : Picture of the Occurrence of Legal Representation at Trial

Particulars	Number	Percent
Total Respondents	321	100
Those with Legal Representation at Trial	181	56
Those without Legal Representation at Trial	140	44
Lawyers Hired	133 (out of 181)	73
Legal Aid Obtained	48 (out of 181)	27

7.4.2. Occurrence of Torture:

Torture is common in Nepal and is inflicted as a form of punishment as well as a means of extracting confessions. Investigators never rule out the use of every means or approach possible to extract a confession. Torture is encouraged as a consequence of reliance on confessions as the most superior form of evidence. A survey of prisoners revealed that police subjected 67% of the detainees to torture, for the purpose of extracting a confession.[12]

The Centre for Victims of Torture (CVICT) has reported that it has received some 1337 complaints of torture in the past three years. Devastatingly, those tortured included children.

Table 7.2 : Torture Cases (including Children)

Year	Male	Female	Juveniles	Total
1999	256	70	11	337
2000	637	110	12	759
2001	143	46	2	191

Source: CVICT

Similarly, the Informal Sector Service Centre (INSEC) has reported that 1294 people have been tortured in the last three years.

Table 7.3 : Torture Cases (including Children)

Year	Male	Female	Juveniles	Total
1999	411	36	9	456
2000	527	18	14	559
2001	264	10	5	279

Source INSEC Year book (1999, 2000, 2001).

The National Human Rights Commission has received 23 applications relating to torture in the year 2001. These figures collectively confirm the phenomenal use of torture in Nepal.[13]

According to both INSEC and CVICT, incidents of torture have sharply increased in recent years. The Human Rights Yearbook 2002 has reported 2195 cases of torture, whereas the National Human Rights Commission received only 34 complaints of torture. Torture is committed both by the State's security forces and Maoists rebels. The National Human Rights Commission received 138 complaints from victims of Maoist oppression. A study

conducted by CVICT for the National Human Rights Commission reported that 75% of torture victims had been tortured both physically and psychologically (CVICT 2001). As revealed by the study, in 67% of cases the police perpetrated torture and in 30% of cases the perpetrators were Maoists. As revealed by the study, the majority of victims claimed to have been tortured between April 1999 and March 2000. Approximately 59% of the victims were accused of being Maoists. The percentage of victims accused of being anti-Maoist was 27%. Both Maoists and the police had tortured seven percent of victims; the Maoists believing them to be anti-Maoist and the police believing the converse.

While assessing the rate of disability caused by torture, the study revealed the incidence of disability as being 57, 58, 66 and 48 in Jajarkopt, Rolpa, Rukum and Salyan respectively. This points to the conclusion that the incidence of torture is most prevalent in areas of Maoist insurgency, the consequence being severe physical and mental health problems.

The States' impunity to their involvement in torture, and the killing of people whilst in custody, is becoming a major threat to an improved human rights situation in Nepal. According to the Human Rights Yearbook 1997, one person was killed by the police and Forest Security Guards in 1992. In 1993 this number increased to seven. 1994 and 1995 saw a considerable decrease in this number, which remained one in both years. In 1996, the number of killings and torture by police and Forest Security Guards rose to four. In 1997, in a slight improvement from the previous year, it was three.

The following information will mirror the the situtaion of torture.

Box 7 : A Glimpse of Sexual Harassment, Infliction of Torture and Custodial Deaths

SN	Designation	Violation/act committed	Punishment	Remarks
1.	Superintendent of Police	Physical Assault on Police Constable Kutpit	Warning given not to repeat such actions.	Despite action promoted.
2.	DSP	Physical Assault on Police Inspector	Warning	
3.	DSP	Physical Assault on Asst. inceptor	Warning	
4.	Inspector	Person in custody died[14]	Suspension of grade	
5.	Inspector/ Doctor	Sexual Harassment (*Mahila Mathi Avdara Bybahar*)	Suspension of Grade	
6.	Inspector	Sexual Harassment	Suspension of grade	
7.	Sub-Inspector	Person in custody died	Suspension of grade	
8.	Sub-Inspector	Sexual Harassment	Action in progress	
9.	Sub-Inspector	Sexual Harassment	Service termination	
10.	Asst. Sub-Inspector	Sexual Harassment	Suspension of grade	
11.	Asst. Sub-Inspector	Physical Assault on priest	Suspended. Action in progress	
12.	"	Torture of person in custody	Suspension of grade	
13.	"	"	"	
14.	"	Attempt to Rape	Service termination	

15.	Head Constable	Torture of person in custody	Suspension of grade	
16.	"	Rape	Service termination	
17.	"	Rape	"	
18.	Constable	Physical assault on Priest	Suspended. Action in Progress	
19.	"	"	"	
20.	"	Torture of person in custody	Promotion Suspended	
21.	"	"	"	
22.	Inspector	Person in custody died	Grade suspension	
23.	Sub-Inspector	"	"	
24.	Asst. Sub-Inspector	"	"	
25.	"	"	"	
26.	"	"	Service termination	
27.	Constable	"	Promotion Suspension	
28.	Sub-Inspector	"	Service termination	
28.	Constable	Person in custody died	Service termination and implicated murder crime.	
29.	Asst. Sub-Inspector	"	Warning	
30.	"	Physical assault on DSP	Service Termination	
31.	"	"	"	
32.	"	"	"	
33.	"	"	"	
34.	"	"	"	
35.	"	Person in custody dead	Service termination and implicated in murder crime	

Information is based on record on disclipinary actions taken by police headquarters.

The actions taken against the perpetrators are simply not adequate, and as a matter of fact the situation is promoting the state of impunity. The state of impunity is therefore largely thwarting the emergence of culture of human rights in works.

Torture and death in custody have now become a common phenomenon. Since the declaration of the Peoples' War in 1996, 1661 people have been arrested and detained in custody. In 1992 more than one person died in detention. Similarly, more than one person was killed by torture in the same year. In 1993 there was a gradual rise in the number of people who died in detention, there being six recorded deaths. However, the number of those who died as a result of torture has been confirmed by reports as being approximately seven. There was a sudden rise in the number of people who died in detention in 1994 (the number exceeded 15) whereas the number of those who were tortured in detention fell to

approximately two. In 1995, the number of deaths in detention remained 15 and the incidence of torture remained the same as in the past. The year 1996 saw an increase in both death and torture of detainees: the number of deaths reached nearly 20 and the number of incidents of torture rose to four. In 1997, the number of deaths in detention shot up to 25, whereas the incidence of torture in detention decreased from that of the previous year.[15] However, the occurrence of torture has sharply increased with the intensification of Maoist insurgency and no action has been taken against the perpetrators. Remarkably such incidents do not constitute crimes under Nepalese law. This has been considered to be the major factor for increasing state impunity.

7.5. Some Additional Factors Vitiating the Situation of Fair Trial in Nepal:

Besides factors discussed above, there are several other factors that directly or indirectly impair the situation fair trial in Nepal.

7.5.1. An Excessive Civil Caseload in the Trial Courts:

The volume of civil cases in the trial courts is remarkably huge than that of criminal cases. The existing civil caseload takes 72% of judicial time at all levels.[16] The civil caseload therefore consumes a large portion of judicial time and this effectively imposes unacceptable delays to criminal trials.

7.5.2. Many Prisoners are Forced to Accept Trial Judgement:

Only 34.08% (10, 431 out of 30,605 cases at district court level) of defendants invoke the right to appeal against the judgement of the trial court.[17] Although this is mainly the result of defendants' ignorance of their right to appeal, a number of defendants avoid appealing against the judgment due to the provision of an increase in sentence by 10% provided the decision of the lower court is upheld. Some defendants also avoid appealing against the judgement of the trial court purely because the sentence imposed by the trial court is less than the time already spent in custody. In all these circumstances, the defendants' right to a fair trial is compromised. Moreover, prisoners are not necessarily imprisoned in districts under the jurisdiction of the District Court or Appellate Court that is to conduct the trial or appeal hearing. In a number of cases judgement is not timely, making it difficult for an accused to prepare for trial or appeal, and adhere to judicial procedural requirements. Obviously, many prisoners are not kept informed of the progress of their case, nor do they have legal representation.

7.5.3. An Excessive Overload of Cases Restricts the Possibility of a Fair Trial:

The average caseload of a trial judge is 708.84 per annum.[18] Under the present trial system, each criminal case takes place over several inconsecutive sessions before completion. This means that a judge has to perform a multitude of tasks in each case. In such a situation it is simply unreasonable to expect a judge to meet such an excessive caseload and one cannot expect to receive fair and impartial justice from a judge on whom such an incredible volume of work has been imposed. Ten years of Annual Reports of the Supreme Court (2047 to 2057), plainly show that the increase in the number of judges

over this period is negligible, whereas the caseload has increased sustantially in the following years. The increase in the number of judges is therefore insufficient to cope with the existing caseload. This situation indicates an element of apathy on the part of the State to meet the obligations undertaken under the Preamble and substance of the ICCPR and Article 14 of the Constitution of the Kingdom of Nepal 1990, to provide for the right to a fair trial. One can reasonably infer from this that the State lacks the sensitivity and reactivity to address the increasingly excessive caseload and that there is a lack of commitment on the part of the State to meet its obligation to provide fair, impartial and speedy justice.

7.5.4. Lack of an Effective Filtering and Funneling Mechanism:

The investigation of crime in Nepal begins with the arrest of the suspect which usually takes place immediately after the first information report (FIR) is lodged. After the investigation is completed the Government Attorney Office, which is the prosecuting agency of Nepal, is supposed to conduct a process of filtration on the cases presented to it. Under Article 110 (2) of the Constitution , the Government Attorney holds the final authority in deciding whether or not to prosecute a particular case. However, this power is however hardly exercised. As a result, a trend of indiscriminate prosecution leads to a high failure rate at trial. The following figures illustrate the remarkably low level of case filtration at the prosecution stage.[19]

Table 7.4 : Level of Case Filtration at the Prosecution Stage

Fiscal Year	Total FIRs	Cases Investigated by Police	Cases Not pursued by the Government Attorney	Percent
2051-52	9,111	6,098	364	5.97
2052-53	9,421	6,155	282	4.58
2053-54	9,456	5,641	291	5.16
2054-55	10,562	6,137	283	4.61
2055-56	10,504	6,028	268	4.45
2056-57	10,640	6,228	234	3.76

As shown by the table, the proportion of cases filtered at the stage of prosecution is on average merely 5% of the total cases investigated by the police. This situation shows an extremely high rate of indiscriminate prosecution and as such, is the potential cause of mass human rights violations. The results presented above lead to either of two conclusions:

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 case filtration. In other words, the Government Attorneys conduct almost random prosecution or they transfer the case files to the trial courts without any judicial scrutiny or consideration. Those prosecuting rarely require investigators to collect additional evidence indicating that the prosecution accepts case files from the police in *toto*. This suggests that Government Attorneys are not concerned with the filtering process, allowing the vast majority of cases to proceed to trial regardless of the strength of their evidential basis. Such practices have the

potential to result in serious violations of fundamental human rights.

It is hard to justify the first conclusion due to the fact that a large proportion of cases (between 40% and 50%) fails to result in the successful conviction of the defendant.[20] On the basis of the present conviction rate, one would be compelled to conclude that the Government Attorneys' office is not sufficiently active or efficient in filtering unfounded cases. The effect of this conclusion is necessarily the high prosecution failure rate and the currently excessive judicial caseload. On this basis one must further conclude that a large number of cases with no or insufficient evidential foundation are pursued, leading to unnecessary deprivation of personal liberty.

7.5.5. Prevalence of Statutes Vitiating Fair Trial:

Due to the prevalence of a number of Statutes empowering various executive institutions to conduct criminal trials, the criminal justice system of Nepal is subjected to an extreme state of departmentalization. It is concerning and worthy of note that many of these institutions, as well as investigating offences, may also be responsible for the prosecution and adjudication of them. Further, these institutions also have the power to pass sentence. This includes the power to impose a sentence of imprisonment, and in certain circumstances for a term of life. As referred to earlier, such institutions try approximately 35% of all criminal offences. In such a situation, the reality of the criminal justice system is inconsistent with the theoretical right to a fair trial as safeguarded by Article 14 of the Constitution and international human rights instruments. (for list statutes vitiating the fair trial refer to chapter on overview of the strength and weaknesses of the criminal justice system).

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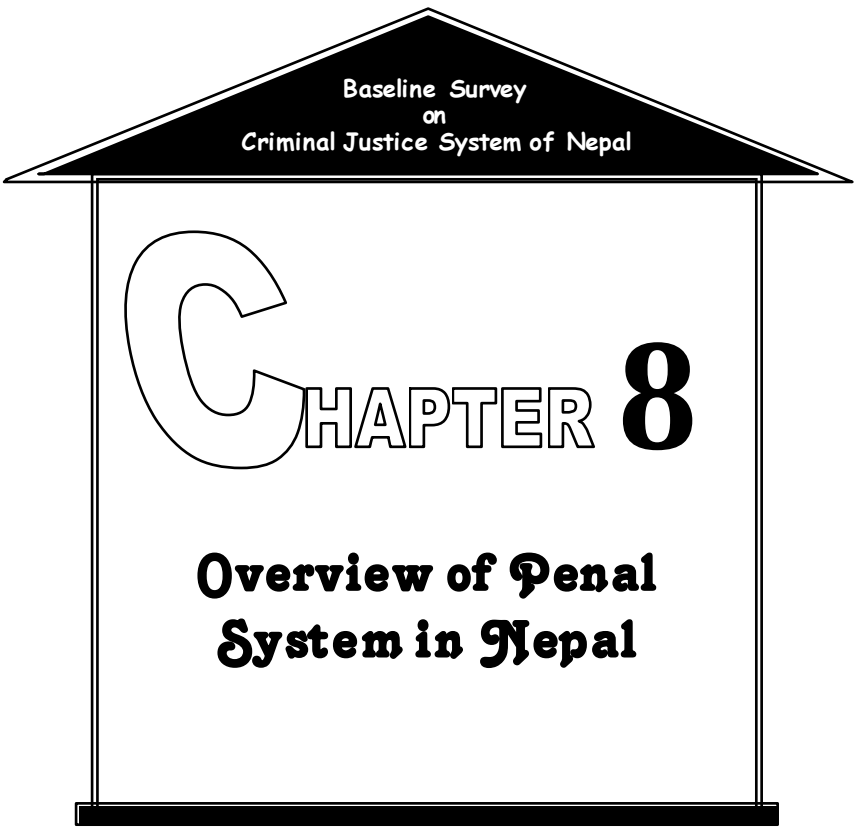

CHAPTER 8

Overview of Penal System in Nepal

The penal system in Nepal is inefficient and, by any measure, inhumane. The main problem lies with prison management. The existing prison system focuses on punishment and there has been no attempt to introduce a reformative or rehabilitative regime. Prisoners are locked away and ignored. No consideration has been given to reform the prison laws for making the prisoners entitled to enjoy their basic rights. Despite the Children's Act has stipulated the establishment of correction homes for juvenile offender, the child offenders are indiscriminately incarcerated into jails along with adult prisoners.

The history of prison system in Nepal begins from 1914, when the present Central Jail had been established in Kathmandu. It was called "*Sadar Jail*", meaning a prison house situated at the capital. The prison administration in those days had been placed under the control of the incumbent military general.[1] Right after the popular movement in 1951, the prison administration had been shifted to the control of Ministry of Home Affairs. Until Nepal was administratively divided into 75 districts and 14 zones, the prison administration in Kathmandu Valley and outside had been placed under the control of the Valley Commissioner and Chief Officers (*badahakim*) respectively. Subsequently, it was shifted to the Chief District Officer (DAO).

The Prison Act was enacted in 1963, and the Prison Regulations in 1964. However, these legislative instruments hardly changed the rudimentary conditions of the prisons. During the *Panchayati* regime the prisons were effectively used for penalizing or torturing the political leaders and activists. Prisons had been virtually converted into places by all means potential for punitive treatment. Obviously, the prisons had deliberately been reduced to congested places lacking even basic facilities for human lives.[2] The *Panchayati* regime therefore deliberately continued the ill condition of the prison inherited from the past. Even after the restoration of the democracy, the government has hardly done anything to ameliorate the conditions of the prisons.

Department of Prison Management was established in 2050 for coordination of prison affairs, and conducting reform activities. However, the change is still not spectacular. There is hardly any change in the attitudes of the jail administrators to inmates.

8.1. Physical Infrastructure of Prisons and Human Rights Situation:

The Overwhelming majority of prisons in Nepal is being housed in old dilapidated buildings[3]. Walls and ceilings of many of them are on the verge of collapse threatening lives of prisoners. The roof of the building leak and rooms are damp due to the lack of ventilation and the cold earthen floors. The foul smelling toilets make life miserable for prisoners. For instance women prisoners in Jhapa are kept in a half-collapsed building whilst in Morang the prisoners are kept in a completely collapsed building. In Nawalparasi prison, the toilets, kitchen and living rooms are linked with each other and are in pitiful conditions.[4]

Prisons in Terai and urban areas are over crowded with some having around twice as many prisoners as their exaggerated official capacity. A study done by CIVIT in Bhimphedi (Makwanpur) prison reveals 114 inmates whereas the official capacity of the prison is 45

inmates. Many prisons like Birtanager, Bahirawa, Kathmandu, Kavre, Nepalgung and so on are located in built up and core city area, which may lead to strained relations with neighbors. The situation also prevents the possibility of expanding the accommodations of these prisons.[5] As per the source of Prison Management Department, the number of inmates at the end of 1999 was about 6000.[6] However, the figure is sharply increased since in the wake of the increased phenomenon of Maoist insurgency. The prisons are therefore implausibly crowded.

The number of prisoners has sharply been increased over the last few years. The current estimated figure of prisoners throughout the country exceeds 10,000 inmates.[7] The figure of prisoners is still increasing with the intensification of the Government's action against Maoist rebels. For example, Sadar Khor and Rupendhi Prison are housing over double number of inmates than their estimated official capacity. From the prevailing situation of these jails, one can easily imagine the condition of life of inmates. Obviously, the prison itself is a kind of torture. In a given situation of protracted trial system due to human rights unfriendly procedural formalities, along with heavy civil caseload in the judiciary, the torturous life is imposed on person simply due to lack of progressive policy of the government towards reform and humane treatment of prisoners. Although, the international instruments, and even the Prison Act, 1963, stipulate separate detention of the convicted prisoners and those waiting the trial, the implementation of the said provision is seriously violated. Except in Kathmandu,[8] the convicted prisoners and detainees are indiscriminately incarcerated in the same prison.

8.2. Prison Expenditure and Human Rights Situation:

The following table presents the patterns and trends of government's expenditure for prison management:

Table 8.1 : Trend of Governments Expenditure for Prison Management *(in thousands)*

F/Y 2052-53	F/Y 2054-55	F/Y 2057-2058	F/Y 2058-2059
67100	105459	129425	139565
Increment	57.17%	22.72 %	7.83%

Source: Ministry of Finance

The budget allocated for prisons in F/Y 2052-53 is 0.001% of the total budget (51647805000). Similarly, in F/Y 2058-59, it is simply 0.001% (total budget 99792219000).

The following figures give further elucidation of the picture:

The total budget of the prisons in F/Y 2058-59 is Rs. 13, 95, 65,000. Of this amount Rs. 4, 61, 50,000, is earmarked for salary, which is 33.06% of the total expenditure. In this F/Y no budget is earmarked for development cost of the prisons. The budget earmarked for electricity, rent, office equipment, newspapers and printing, medicines, fuel and other is Rs. 1, 59, 15,000, which is 11.40% of total. Obviously, over 40% of the budget is expended for regular expenditure like salary, allowance and other services. The remaining 60% of

the total budget is utilized for foods, clothing, medicines and various other needs. The paucity of the budget is obvious, which is directly linked with the conditions in which the prisons of Nepal are subjected to. The lack of development budget for the prisons indicates to lack of policy on the part of the government to ameliorate the conditions of prisons, and the lack of sensitivity towards respect of human rights of prisoners. Lacking of budget allocation for staff training and prisoners' rehabilitation prisoners' point out to the predominance of government's rudimentary outlook to the prison.

8.3. Policy and Legislative Framework and Inconsistencies:

The Prison Act, and Regulations, 1963, administers prisons in Nepal. The Prison Act is an outdated piece of legislation, and is punitive in nature. The Act makes no provisions for reforms and rehabilitation of prisoners. A report of CVICT points out: "…. Nepal's prison legislation is outdated and inadequate for running a modern prison service. Prison Act and Regulations came into force in August 1963 and no substantial changes have been made to them. This shows the lack of concern that Nepal's governments have attached to prison reform".[9]

Historically, the penal system of Nepal is guided by a policy of "retribution", i.e. a person is incarcerated in the prison for penalizing his/her past action. The Nepalese penal system never adopted a policy of reforming the convicted persons for the objective of his/her rehabilitation. Consequently, the prisons have been intentionally reduced to the places lacking hygienic conditions of living, physically uncomfortable, isolated and congested.

8.4. Provisions of Legislation Contravening the International Human Rights Instruments:

The Prison Act was enacted in 1963. An amendment was carried out in 1989 (2046 BS). In 1992 (2048 BS), the further amendment in the Act was made. Neither of these amendments, however, adequately addressed the need of rationalizing the Act for humanizing the conditions of prisons and respecting the human rights of prisoners.

The following provisions of the Act prevail in contravention with the international Human rights instruments:

- **Preamble:** As the preamble states the "Maintenance of the Peace and Order" is the prime objective of the Act. Besides that, the preamble neither refers to the need of protecting fundamental rights and interests of prisoners nor of ameliorating jails into reform centers as objectives of the Act.
- **Section 14:** Section 14 (1) regulates the right of prisoner concerning his/her meeting or communication with persons outside the jail. It maintains:

  "*If any detainee or convict wants to meet someone or to correspond with someone or if someone wants to meet and correspond with a detainee or convict, they shall be allowed to do so, except as prescribed. However, nothing written in this sub-section shall obstruct the legal advisor of the detainee or convict from meeting the detainee or convict as prescribed*".

  Section 14(2) empowers jailers to destroy any correspondence to and from prisoners if that is found beyond the scope of limitation imposed. This provision exists in

contravention with standard laid down by Article 37 of the UN Standard Minimum Rules for the Treatment of Prisoners that allows prisoners to communicate with their family members and friends at regular intervals, under necessary supervision, both by correspondence and receiving visits. The right to destroy correspondence by the jailer is a draconian authority under the Prison Act. The term "necessary supervision" under the UN Standard Minimum Rules for Treatment of Prisoners does not allow the member states to enact laws violating the privacy of persons and allowing censorship to private correspondence.

- **Rule 26 (a) of Prison Regulations, 1964**: "All prisoners can…. meet their relatives and friends twice a week during office hours under the supervision of the jailer. While meeting with friends and relatives prisoners shall talk staying indoors of the prison." This provision is not only archaic, but also derogatory of the human dignity. The provision specifically restricts the meeting and the mode of free and private communication. The communication cannot be private as the meeting can take place only under the strict supervision of the jailer. In practice, even this restricted privilege of the meeting is made impossible to enjoy.[10] In some jails, the communication in mother tongue is strictly prohibited. The reason is that the jailer or his staff must understand all the communication. Painfully enough, all correspondences of the prisoners to and from are scrutinized and read by the jail authority against the right to privacy of inmates. As such they possess the power to screen or censor the letters, provided that the correspondence has maligned or is potential of maligning the national interest.[11]

The Prison Act and the Regulations give a punitive focus on the prison management system. These laws are therefore essentially guided, against international human rights laws, by retributive and deterrent principles of punishment. As it is plain from Section 24 of the Prison Act, the prison management is mostly concerned with perceived need of prison security, and detailing the punishments to be handed out to prisoners and prison officials who contravene the laws. The Act is silent on the need of reforming the prisoners. More importantly, the Act is restrictive in nature, so that it lays down number of particulars, which the prisoners are not supposed to do. Therefore, the following characters render the Prison Act a piece of regressive legislation.[12]

- The Prison Act does not maintain provisions for the prison service to assist the released prisoners.
- It does not allow prisoners maintain contact with the outside world for information and their development.
- The Act provides for no counseling service to prisoners to prepare themselves for release.
- It also does not specify the minimum space available for each prisoner.
- There is no provision in the Act for handling of prisoner's complaint against torture, cruel, inhuman or degrading treatment. The same is the situation of the information of their cases.
- The following provisions of the prison Regulations, 1963 effectively block the communication of the prisoners.

As it is clear from the provisions of law discussed earlier, the power to prescribe the mode of communication between prisoners and their relatives and friends lies with the prison authority. And as such it stands against the international human rights law, including the UN minimum standard for the treatment of prisoners.

The following additional weaknesses associated with the provisions of the Prison

Regulations reduce the prison and penal system of Nepal to complete inhumane condition, and as such are apparently derogatory of the human dignity:

- There are no provisions for keeping prisoners informed of proceedings of their cases. Obviously, the prisoners have no access to judicial proceedings.
- Prisoners can take newspapers, magazines and books, which are permitted by the jail authority inside prisons. Since there is no specific rule to guide what kinds of books, newspapers and magazines are allowed to take inside, prisoners have to be dependent on discretion of jail authority, which is often exercised capriciously against the interest of inmates.
- Prisoners are allowed to participate in the funeral of their relatives (father, mother, wife or husband, son or daughter), if there is no one except he/she to perform the rites, and he/she is in the jail around six miles of the prison (Rule 50).
- Prisoners re-arrested after absconding shall be punished by having their sentence increased by one and half times of the period of the imprisonment remaining at the time of their escape (Rule 24, e.3). For not having acceptable behavior, the prisoner, except woman and sick person, shall be fettered for a period not exceeding a month, if he/she has not been subjected to same punishment before. He/she shall be handcuffed too, if he/she had undergone punishment of fettering in the past. He/she shall be chained if he/she had undergone the punishment of fettering and handcuffed in the past (Section 22 .2 of Prison Act). This punishment is effectively used to quell the voice of prisoners.
- The Jailer shall have the right to punish and investigate crimes under Section 22(2), and no appeal shall be allowed against any order given by the jailer under this sub-section. This power is vulnerable of tyranny of jailer.
- If any detainee or prisoner tries to escape, they should be caught while trying to escape. If they use weapon or stick to prevent from being caught, or resort to verbal abuse ; any weapon can be used to prevent them from escaping. If they die as a result of a weapon being used against them, the person using the weapon shall not be subjected to punishment (Rule 44). Two unarmed prisoners who were not trying to escape were shot dead and killed during a disturbance at Nepalgunj prison in January 2001. The legislation gives no recourse for action to be taken against security personnel in cases such as this.[13]

The afore-mentioned provisions of the Prison Act and Regulations are in stark contravention with minimum penal guidelines and standards set out by several international human rights instruments. The UDHR is the most important international human rights instrument to guide the penal system in the world. To observe the prison laws of Nepal, the following provisions of the UDHR are found obviously neglected or ignored by the prison laws of Nepal:[14]

- All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
- Everyone has the rights to life, liberty and security of person.
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- Everyone has the right to recognition everywhere as a person before the law.

- All are equal before the law and are entitled without discrimination to equal protection of the law.
- Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the Constitution or law .
- No one shall be subjected to arbitrary arrest, detention or exile.
- Everyone is entitled in full equality to fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him.
- Everyone charged with penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

8.5. Practices Contravening the International Human Rights Instruments:

The practices concerning imprisonment and treatment of prisoners in Nepal are largely derogatory of the standard minimum rules laid down by the UN Standard for treatment of prisoners. The following practices and conditions seriously violate the rights of prisoners:

- **Prisons are Crowded and Poorly Managed**: Prisoners are crowded. Number of inmates incarcerated in the prisons is excessively higher to that of capacity. The facilities are poor. Most of Nepal's main prisons were built during the Rana period (1847-1950). The first prison was built in 1914 (Central Prison). A further 19 prisons were constructed during Rana times, and forty-four more during *Panchayat* regime. Seven more prisons have been constructed following 1990, some of them replace to the older ones. Total number of prisons officially has a capacity of holding around 7,300 prisoners. The official capacity, however, is not determined in accordance with the systematic criteria.[15] None of the prisons provide an adequate space for the prisoner. The capacity is determined by the rough and random estimation. If the process of determining the capacity is subjected to minimum requirements and systematic criteria, the given figure of the capacity gets reduced down to 50% of the present figure.
- **"Jails" Mean Places for Derogation of Humane Conditions:** The term "Karagar" a term equivalent of English tern "jail", means a place for confinement of persons in isolation from society. The term therefore carries a negative connotation with psychology that prisoners must be isolated and restricted from normal behaviour. In Nepal, the terms are deliberately understood in its derogative sense. People take "Karagar" as a place not for normal human being. "Karagar" has essentially been taken as a punishment. A prisoner therefore has no opportunity to feel that he/she has been there for education, change and reforms in behaviors. He/she takes the place as a punishment, and as such there is nothing to do with his/her past life. The treatment of prisoners by the government and prison administration is hardly different. It is why uniformed security guards with guns guard jails.

Further more derogative is the term "Khor". Painfully enough, no democratic government ever felt need of removing such derogative term for a place where human beings are housed. "Khor" is a term used in Nepal to mean a "shed or a place" to keep animal like dog, sheeps, goats, etc. It is also used to indicate a cage where the wild animals like tiger,

bear, etc. are locked in. Simply speaking, the term "Khor" is intentionally used to disregard the humane conditions of detention and rights of persons detained. A democratic government simply cannot go along with such a derogative meaning of prison. What created obstacles for democratic governments just to change the derogative identity of prisons like "Khor", is a baffling question for many people.

The derogative conditions of prisons are also obvious from the following practices in and around the prison complex:

1. In many times in the night the security guards shout typical warning word like "*khabardar*", meaning a threaten if one is involved in unacceptable behavior. Similarly, the word "*jagteraho*" meaning "keep waking up or do not sleep".
2. In various corners of the Jail complex and the main gate of the building, the uniformed security guards stand with guns.
3. While taking out for courts and hospitals, prisoners are handcuffed and chained with heavy and rudimentary iron chain.
4. Meeting of prisoners are guarded by security force with guns,
5. Prisoners are prohibited to communicate with their relatives in mother tongue,[16] and
6. In many of the prisons, the toilets are open.

These practices prevail not due to lack of resources and lack of awareness, but they are deliberately practiced to humiliate prisoners, which is a very effective psychological punishment. These practices severely violate the rights of prisoners to be recognized everywhere as a person before the law guaranteed by Article 6 of UDHR.

There are several other conditions or practices that create high risk for violation of prisoners' human rights. As presented by the infrastructure and budgetary situation, the prison management system of Nepal is conceptually outdated and obsolete. The conditions and practices are unacceptable to international human rights instruments. For instance, ICCPR Article 10(1) says: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human persons." However, the condition of prison in Nepal is far below to make dignified human life possible. Since the prisons are etymologically referred to as "*Karagar*" and "Khor", the motivation on the part of the Government to offer dignified life to prisoners is simply ruled out. The identity of prison with connotation of a place not for normal persons implies that the prison system in Nepal is still not prepared to take progressive outlook towards prisoners.

Despite several safeguards under international human rights instruments Nepal has ratified, the Nepalese government has given little attention to improving the management of its prison. Prisoners' rights continue to be abused due to inadequate facilities provided.[17] The following practices, which are still common, violate the rights of prisoners to fair trial impartial trial:

- Prisoners are frequently jailed in distant prisons, and for that they have not been able to defend their cases in person. They are equally deprived of precise information of their cases in the courts. This situation in fact deprives the prisoners of their rights to adequate hearing, which eventually results in conviction or disproportionate punishment.
- Since there has been no budget allocated for transportation of prisoners from jails to the courts, a great deal of poor prisoners are deprived of participating in the judicial process. Obviously, most of the judgements in the Appellate and District Courts are

made in absence of prisoners. Only those prisoners are lucky enough to witness the judicial proceedings, who can afford expenses for transportation. As a matter of fact, owing to lack of progressive outlook to help prisoners to have a fair and impartial hearing of their cases, the judicial system has been accessible only to those who have wealth.

- The distance of jails and court complex is one of the crucial factors for degraded treatment of prisoners. As the prisons do not provide transportation, and many prisoners cannot afford hiring transportation by themselves, there are only two options left for many prisoners, either they have to take long walk in chain, or to avoid exercising the right to fair trial
- Prisoners are not allowed have conversation with visitors in private. As there are no facilities in any jails for private conversation of prisoners with their lawyers and visitors. Prisoners have to converse with their attorneys in presence of security guards with guns.
- The conversations are fully guarded by the jail staff. For instance, a study carried out by CVICT in Terathum, Illam and Jhapa, the prisoners raised the following complaints:
  - conversation with family members in private was not allowed,
  - contact with lawyers was difficult, and if they had, they had not been able to speak with lawyers in private,
  - they were not assisted to participate in funeral and birth rituals of family members,
  - all the correspondence had been screened, read and some of them had been confiscated for no good reasons, and
  - they had no access to telephone conversations.

These complaints are equally true for prisons in other parts of the country.

The following additional weakness also amply reflect on the Government's lack of inclination to have effective policies towards improvement of the prison system in Nepal:

- There are insufficient prison personnel to mange the numbers of prisoners.
- The prison personnel are mostly untrained in handling the prisoners and their situation with due respect to their rights,
- There is no adequate policy for employment inside the prisons, and goods produced by prisoners are poorly marketed,
- There are no banking facilities to secure money earned by the prisoners,
- No special provisions are made for the accommodation and other needs of elderly prisoners, mentally sick prisoners, pregnant prisoners, and dependant children,
- The relation between the prisoners and the administrative staff and prison guards are strained, and
- There is lack of policy for adequate training for jail personnel and security guards.

The strained relations between prisoners and the administration often lead to the serious incidents in the prisons. The incident of Banke Jail can be taken for instance, where the administration resorted to firing to the prisoners leading to the death of two prisoners.

Government Initiatives: The government following restoration of democracy constituted several commissions for suggesting recommendations for reform of prisons. One of the major initiatives taken by government is the establishment of the Prison Management

Department, an institution for coordinated administration and planning of prisons. This initiative has brought a concept of training of prison administrators and formulation of policies for reforms in consultation and collaboration with civil society, prisoners and institutions concerned with protection and promotion of human rights. The initiatives have given some results.

- Firstly, the outer prison access of prisoners has increased. Prisoners access to information too has significantly increased. Access to mass media like radio and television too has significantly increased.
- Secondly', although the practice is different, the government has increasingly realized in principle that prisons must be reformative homes, but not the centers for punishment. This realization has provided access to organizations for welfare activities.
- Thirdly, various institutions like Parliament Human Rights Committee, National Human Rights Commission and Supreme Court are increasingly monitoring the prison system. Visits of prisons by these institutions have significantly increased over the years.

The government constituted several commissions to study the conditions of prisons and recommend for the suitable interventions. However, none of the Commissions' recommendations are found executed. These commissions have invariably identified the problems concerning prisons and management thereof as follows:

1. The penal system is inefficient, and by any measure, inhumane.
2. The main problem lies with prison management. The prison system focuses on punishment and there has been no attempt to introduce a reformative or rehabilitative regime.
3. Prisoners are locked away and ignored. No consideration has been given to make prison a productive institution, as done in the some of the more enlightened countries. The key problems identified are i) large scale overcrowding, ii) a lack of meeting basic minimum needs in terms of food, clothing, space etc, and iii) the poor conditions of buildings and other facilities.

The government has severely failed to understand the need of reforming jails, and develop a policy that the prison is a productive institution. The government has consistently failed to realize that converting prisons into productive institutions is helpful not only to reduce the government's subsidy in future, but also to rehabilitate prisoners back into society.

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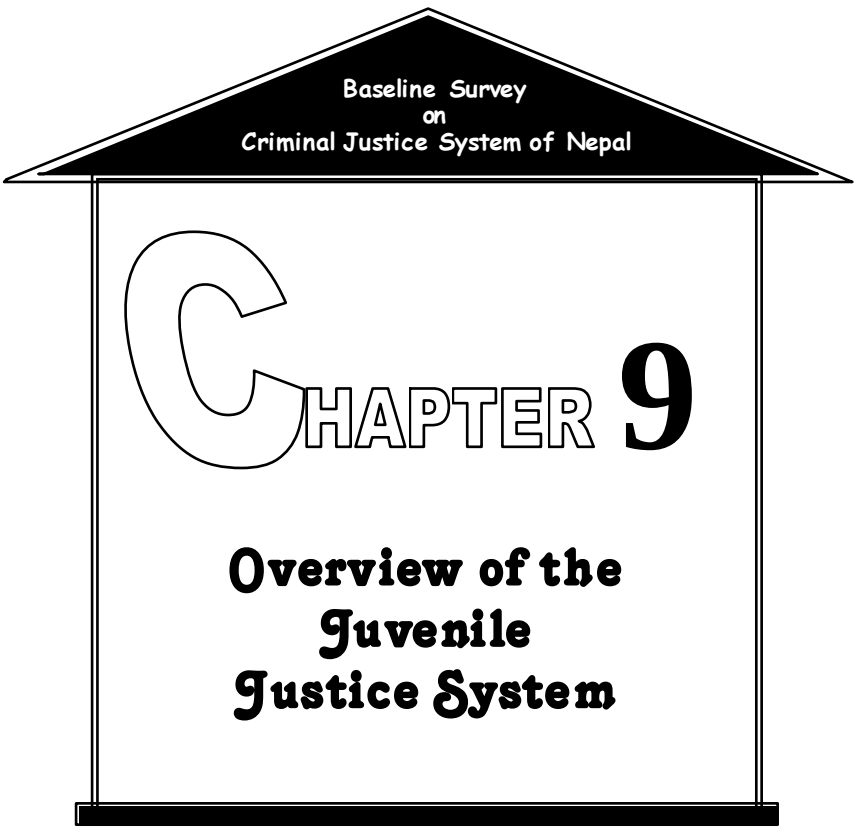

CHAPTER 9

Overview of the Juvenile Justice System

International human rights law considers children who violate the law to be victims of social hardship, neglect, violence, and deprivation. The situation of these young offenders is then often worsened by time spent in the criminal justice system. Children who go through the system, and experience such things as arrest, detention, investigation, prosecution, adjudication, and imprisonment, are more likely to develop tendencies toward criminal behavior. Thus, to prevent such a tragic circumstance, child offenders must be given special attention, treatment, and care. The Nepalese judicial system has, at least nominally, given such attention to child offenders. Nepal ratified both the Convention on the Rights of Child (CRC) and the Covenant on Civil and Political Rights (ICCPR). The CRC and ICCPR constitute the basic foundation of the juvenile justice system in Nepal.

9.1. State of the Juvenile Justice System in Nepal:

Nepal is a signatory to the CRC and adopted the CRC at its initial stage. In 1992, Nepal adopted the National Children's Act, which focuses on neglected children. Although the age of criminal liability set forth by the Act was a bit lower than that recommended by the CRC, the Act and the CRC nevertheless share many similar traits. Both require special treatment for children and prohibit their handcuffing in the courtroom. Unfortunately, the rules and guidelines promulgated under the Act are seldom enforced, and children are still treated much like adults in criminal proceedings.

At the moment, Nepal is in a transitional period with regards to juvenile justice; neither the traditional ways inspired by positive cultural values nor the tools of the modern justice system are being utilized to address juvenile delinquency. And while the number of child offenders in Nepal is relatively low, child crime nevertheless remains a critical issue. In the rural areas, small numbers of children are involved in petty crimes such as stealing, running away, sexual offences, etc. In the urban areas, the child crime situation is more alarming. There is a growing trend among urban children toward criminality. Urban youths participate in different types of crimes-thieving, pick pocketing, and robbery-and are exposed to other crimes-sexual offences, child prostitution, drug abuse, etc. Due to a variety of reasons, particularly drug abuse, this number is increasing rapidly.

The Children's Act of 1992 also prohibits the mistreatment of children during the detention period. Reports and surveys reveal that there are many children who are victims of illegal arrest and detention and who are imprisoned with adult offenders and exposed to physical and psychological torture. There are several ways to remedy this situation; one such way involves the judiciary. The Supreme Court of Nepal plays a major role in giving directions to the rest of the judicial system, as its decisions guide lower courts in their adjudication of cases. And while the Supreme Court has made some very progressive decisions and is currently moving in a positive direction with regards to juvenile justice, there are still major improvements to be made in the judicial approach to child crime.

A study on juvenile delinquency carried out by CWIN in 1996 shows that a majority of child offenders belong to the 14 -16 years age group. The study reports that approximately 81% of child offenders were detained in police custody and subsequently mistreated there. According to the survey, approximately 36 % were

beaten during interrogation, 11 % were forced into labor, 7 % were threatened and abused, 3 % were kept starving, 21 % were deported to the city border, and 3 % were sent to adult prisons[1]. The CWIN and other like studies show that there is a:

- Lack of proper laws with regard to child crime and the laws in place are not enforced/implemented;
- Lack of social awareness that impacts the perception of children in conflict with the law;
- Lack of understanding of the rights of the child;
- Lack of facilities for children;
- Lack of training for sensitizing law enforcement officials; and
- Lack of alternatives to incarceration and diversion possibilities.

The law provides for the establishment of juvenile courts. This provision, however, has not been enforced until recently. In the last 10 years, the Government has also failed to establish correction homes, where child offenders could be sent so as to reform their ways. In the absence of correction homes, child offenders have simply been thrown into jail. In examining several government replies to the Supreme Court regarding writ petitions filed on behalf of juveniles, it becomes clear that the government is not serious about giving special consideration and treatment to children.[2]

As a signatory of the CRC and ICCPR, Nepal has numerous responsibilities regarding juvenile justice. The CRC tackles the total rights of children from a holistic approach; it contains three Articles (Articles 37, 39, and 40) that deal particularly with the administration of juvenile justice. Article 37 concentrates on the treatment of child offenders and prohibits their torture. It also ensures that juveniles are protected from the arbitrary or unlawful deprivation of personal liberty. The Act stipulates that, "every child deprived of liberty shall be treated with humanity and respect, and he/she shall have the right to prompt access to legal and other appropriate assistance." Article 39 provides for the rehabilitation of children. It requires the government take all appropriate measures to promote the physical and psychological recovery and social integration of the child offender. Similarly, Article 40 calls for respect of the dignity of children. The Article recognizes the right of every child to be treated with dignity and to be presumed innocent until proven guilty. Moreover, the provision obligates the authorities to promptly inform the child of the charge levied against him/her and to dispose of the case quickly, competently, and impartially.

Furthermore, Article 40 of the CRC requires the government take action to adopt a distinctive system of juvenile justice with positive rehabilitative and reformative aims, rather than punitive ones. Despite the ratification of the Convention and the National Children's Act, however, the government has not made significant strides to put their provisions into effect. In sum, the deficient condition of the juvenile justice system can be explained, at least in part, by the following:

- Children are indiscriminately incarcerated in cells, lock-ups, and prisons alongside adult prisoners, with no regard paid to their living conditions or the privileges and safeguards assured to them by law.

- Despite being prohibited by law, children are often handcuffed like adult prisoners.[3] The government does not adequately consider the repercussions of this association with adult offenders.
- The State has not established juvenile courts and juveniles are thus tried in public court with all of the traditional formalities. The government does not adequately consider the effects of this on the child offender's state of mind.
- The State has not established correction homes.
- There is a tendency among police personnel to falsify the age of the child so that incarceration is easier. The courts are insensitive about such issues and often fail to act in the best interests of the children.

9.2. Number of Children Facing Trial or Under Imprisonment:

It is extremely difficult to get exact figures and information on juveniles detained and imprisoned in different facilities and prisons across Nepal. Nepal's Report to the Committee on the Rights of the Child in 1995 stated that there were no children serving out sentences in prison. There were, however, 63 children living in prisons because their parents had committed a crime.[4] The US State Department reported that approximately 140-144 children considered delinquent or accused of public offenses, including some below the age of 9, were incarcerated alongside adults in Nepal in 1997. In addition, the State Department reported that approximately 30 non-criminal dependent children lived in prisons with their inmate parent(s). These were official figures released by the Department of Prisons.[5] In 1998, the Department of Prisons' official reports concluded that there were no children serving jail time, although there were again non-criminal dependent children incarcerated with their parents (approximately 85 dependent children)[6]. A local NGO, however, challenged this finding, reporting that approximately 100 children considered delinquents or accused of public offenses were incarcerated with adults because the government had failed to establish a Juvenile Reform Home. In 2000, a children's rights organization reported that 75 children, 3 of whom were below the age of 10, were currently incarcerated in Nepal[7] In 2001, INSEC reported that there were 27 juveniles incarcerated in Nepal.[8]

Studies have shown that the majority of child arrests were for petty crimes, such as stealing small amounts of money, as well as for drug-related and public offenses.[9] Police randomly arrested individuals, especially street kids, and placed them in custody for a period of days or weeks. The police then eventually charged the detainees with a public offense. This is the crime juveniles are commonly charged with, as there is no provision requiring the presence of defense lawyers in such cases. Without the right to counsel, juveniles often are thus left completely at the mercy of the police.

9.3. Attitude of Government to Juvenile Justice:

Although the Nepalese government enacted laws and committed itself to the establishment of juvenile courts and corrections homes, the government has totally defaulted on those commitments. HMG, in fact, has not even *attempted* to set up juvenile courts. The Supreme Court of Nepal, however, has taken some initiative in this respect. Recently, the Court, through its internal circular to the trial courts, advocated the creation of juvenile courts under the authority of the Judicial Administration Act and District Court Regulations. Unfortunately, however, there is a big gap between rhetoric and action. The Court has yet to take action in support of its words and promises.

The Social Justice Committee of the National Assembly recognised this tragic reality. In its second annual report, the Committee criticised the government for failing to effectively implement the Children's Act.[10] INSEC observed that even though every district has established a juvenile bench and is entitled to establish child welfare committees, these bodies are "hardly functioning.[11] The Committee on the Rights of the Child listed this as a principle concern in 1996. In its Concluding Observations regarding Nepal's Report on the implementation of the CRC, the Committee expressed concerns about the "gap between existing legislation and its practical implementation".[12]

Nepal submitted its initial report to the Committee on the Rights of the Child in 1995. The report was supposed to be submitted in 1992. Nepal's second periodical report is currently due, but the government has yet to submit it. When considering the Country Report of Nepal in 1996, the Committee discussed the poor implementation of the Children's Act and recommended speedy steps to remedy the situation.

The Committee particularly expressed concerns over the minimum age for criminal responsibility. The current minimum age standard is not clearly defined and the government must provide a pragmatic approach for deciding such matters. There is, however, no internationally adopted minimum age for imposing criminal liability. Article 40(3)(a) of the CRC simply states that States must establish a "minimum age below which children shall be presumed not to have the capacity to infringe the penal law".[13] The Beijing Rules add to this the principle, stating that, "the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental, and intellectual maturity (Rule 4.1.) However, in its Concluding Observations on State Reports, the Committee repeatedly articulated a desire to set the highest possible minimum age. The Committee particularly criticized countries where the minimum age is set at 10 years or younger.[14] In this respect, Nepal falls below the mark. According to the Children's Act, only those children *younger* than 10 years of age are exempted from criminal responsibility. For those children 10-14 who commit a crime punishable by imprisonment, they can be punished for a maximum period of six months. If the child is between 14 and 16 years of age, the punishment will be half that given to an adult convicted of the same crime.

The minimum age of criminal responsibility should be considered in conjunction with the treatment of child offenders after the commission of an offense. In 1997, children below 9 years of age were imprisoned for criminal offenses.[15] In the Rukum district, a 13-year-old boy was arrested and accused of being a Maoist. He was then held for 6 months with 54 adults in a prison cell designed to house only 15 inmates, waiting for his trial to be scheduled.[16] In light of the concerns addressed in the remainder of this chapter, Nepal appears again to be in need of substantial reform in the juvenile justice system.

- In Nepal, it is difficult to determine the age of child offenders because formal birth registrations often cannot be located. Only children born in hospitals receive birth certificates in Nepal. And since most Nepalese children are born at home, they are never issued birth certificates.[17] The survey reveals that this lack of documentation has led to increased juvenile imprisonment. Many juvenile offenders report that investigating officers, absent official documentation to the contrary, falsify the ages of offenders, making conviction and sentencing easier. In its Concluding Observations, the Committee on the Rights of the Child specifically recommended that Nepal has to initiate more effective programs to register childbirth. Such a program might include mobile registration offices and school-based registration units[18] Despite these recommendations, Nepal has not initiated any such programs.
- In criminal cases, the police are authorized to arrest, investigate, and charge persons suspected of a crime. Unfortunately, the police often abuse this authority. Arbitrary arrests and detentions are commonplace. When child offenders are arrested, their age is determined only after they have been detained with adult prisoners. While the Constitution requires the police bring individuals before the court or DAO within 24 hours of their arrest, this timetable is rarely honoured. In many cases, the police fabricate the date of arrest and detain children for extended periods. The Beijing Rules (13.b), which state that the arrest, detention, or imprisonment of a child should be in conformity with the law, used only as a last resort, and imposed for the shortest appropriate period of time, is rarely observed.
- The National Children's Act dictates that a juvenile case should not be heard unless counsel represents the child. The right to consult a lawyer is enshrined in the Constitution as an undeniable right that cannot be dissolved even during a state of emergency. The Act also prescribes that children who cannot afford a lawyer should be appointed counsel by the court. When a child is arrested for a public offence, however, the court has no duty to appoint an attorney. Since public offences comprise the majority of juvenile arrests, the appointment of attorneys should be made mandatory in the DAO in such cases.

9.4. Torture of Juveniles:

Article 37(1) of the CRC, Article 7 of ICCPR, and the CAT prohibit the practice of torture. The Constitution of Nepal also guarantees the right to be free from torture. In addition, Section 15 of the Children's Act of 1991 states that child offenders should

not be subjected to handcuffs, fetters or solitary confinement. In some cases these rights have been protected. In *Balkrishna Mainali v. Ministry of Home Affairs*,[19] the Supreme Court of Nepal held that the handcuffing of children is "immoral" and specifically referred to Nepal's obligations under the CRC. Unfortunately, this progressive attitude is not the standard. INSEC has reported that 510 children under the age of 15 suffered human rights violations in 2001.[20] The case of the detention of the 13-year-old boy in Rukum demonstrates the frequency of poor treatment and human rights violations. For children, such treatment has potentially drastic consequences because it could stunt their physical and psychological development. Particular forms of punishment may be permissible when inflicted upon adults but may amount to cruelty or degradation when perpetrated against children. In the Nepalese penal system, where custody is synonymous with torture, such distinctions are not made and children are generally treated similarly to adults.

While international law accepts that juveniles may, under some circumstances, be deprived of their liberty and imprisoned, such deprivation must occur according to specific criteria. The most basic and fundamental condition is that children and adults must be separated while in custody. Article 10 (3) of the ICCPR provides that juvenile offenders shall be segregated from adults and accorded treatment appropriate to their age and legal status. Clause (a) of Article 37 of the CRC provides that States shall ensure that no child is tortured or subjected to other cruel, inhuman or degrading treatment or punishment. Clause (c) of this Article further dictates that States must ensure that every imprisoned child shall be separated from adults unless it is considered in their best interests not to be so. These international obligations are enshrined in Nepal's Children's Act. Section 15 of the Act provides that any minor convicted of a criminal offence must be separated from the adult prisoners.

9.5. Reintegration of Juveniles:

Since the objectives of the juvenile justice system are to prevent juvenile delinquency and to assist children in developing a sense of responsibility, the term rehabilitation should be interpreted so as to promote those objectives. Section 42 of the Children's Act provides that a child convicted of an offence and imprisoned shall be kept in a Juvenile Reform Home. Section 42(3) of the Act provides that until a Juvenile Reform Home is created, the government may temporarily send convicted juvenile offenders to juvenile welfare homes, orphanages, or centres established and operated by other bodies. This provision has been incorporated into His Majesty's Government's Ninth National Plan, which further instructs that child rehabilitation homes should be established in all five developing regions.

Despite these provisions, the mixed incarceration of juveniles and adults persists. Until recently, all detained and imprisoned juveniles were placed in the same facilities as adult prisoners. As previously mentioned, this treatment is detrimental to the development of the child. Prisons are overcrowded to more than twice their capacity and it is likely that adult prisoners abuse juveniles imprisoned in these institutions physically, emotionally, and sexually.

The issue of separating child offenders from adult offenders was raised before the Supreme Court in three landmark cases. In *Bablu Godia v. District Court of Nepalgunj et. al.*,[21] a writ petition was filed in the Supreme Court on behalf of CeLRRd that challenged the legality of detaining the juvenile petitioner and requesting that he be released into a Juvenile Reform Home, as required by law. The Supreme Court found for the petitioner and issued a writ of *habeas corpus* for his release. The Supreme Court also issued an order of *mandamus* in the name of the District Court and the government ordering that the petitioner serve his sentence in a Juvenile Reform Home.[22] The Supreme Court went on to affirm this important holding in *Keshav Khadka v. District Court, Dhankuta et. al.*[23] and *Pode Tamang v. H.M.G*[24] In both of these cases, an order of *mandamus* was issued to place the petitioners in Juvenile Reform Homes.

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CHAPTER 10

Overview of the Strengths and Weaknesses of the Criminal Justice System

This part of the study makes attempt to reveal strengths and weaknesses facing the criminal justice system of Nepal. This study is based on review of findings made by limited studies in the field of law and justice. For this purpose, the review of following available reports has been made:

10.1. Legal System and Legal Situation in Rural Areas of the Kingdom of Nepal :

The research was conducted by New Era in order to identify the people's attitude to litigation and judicial system. The research was confined in two districts, namely Makwanpur and Okhaldunga.[1] The study has suggested that the half of disputes are revolved around land and other are related with inheritance, marriage and domestic disputes, and those relating to livestock. More disputes occurred with family members than with neighbors, the government or landlords.

As per the study, the village leaders and elder man who have respect among villagers resolve the most of the disputes. As mentioned in the report people of the country have fears to approach before the officials or courts who are unknown to them to take their cases or grievances. As such they usually take their cases before the locally respected leaders or before elder people or locally renowned person. If such attempt could not become successful than only the matters goes to district level authorities such as police or DAO. The report also stated that no one rejected the idea to approach the district level authorities when deemed necessary. The report indicates to big scope of alternative dispute resolution system in Nepal.

According to the report, the general procedure to resolve the local dispute is informal and mostly of oral form. If somebody feels that s/he suffered a wrong, could approach to a local leader or leaders, and orally describe about the complaint together with his/her proofs in summary. The report states: "The leader(s) will then call on both the disputants, and both of them will be heard at public. And such leaders will decide the matter in consultation with other elderly people and villagers". Mostly such matters are resolved in mutual understanding of both parties. Mostly such decisions are awarded (if the wrongdoing is proved) by compensating or restoring the damaged caused. But if such damage is very small or negligible merely an apology from the wrongdoer may satisfy the aggrieved party.

Based on the field survey, the report revealed the following characteristics of dispute resolution in community:

10.1.1. Predominance of Oral Procedure

a. No formal hearing
b. No formal rule of evidence are applied
c. Circumstantial evidences also have significance.
d. No legal solution (Extra legal solution)
e. Mostly representative of local bodies is requested to act as impartial umpire.

1. See, New Era, A Study of the Legal System and Legal Situation in Rural Areas of the Kingdom of Nepal, Kathmandu, Nepal at 66, (1988)

10.2. Analysis and Reforms of Criminal Justice System in Nepal:

The research carried out by CeLRRd in 1998 in financial support of Danish Center for Human Rights is the most comprehensive study so far made in the field of criminal justice system. The main objective of the study was to analyze the standard of the criminal justice system in the light of the new Constitution- the Constitution of the Kingdom of Nepal 1990- and developments Nepal witnessed following the restoration of democracy, such as ratification of international human rights instruments, promulgation of the New State Cases Act, 1993, Torture Compensation Act 1997 and so on. The study investigated sampled case files in Saptari, Kathmandu, Syangja, Dadeldhura and Banke, 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:

- the structure of existing criminal investigation, prosecution and trial systems.
- the procedures applied in conducting investigation, prosecution and trial.
- the general time frame of the investigation of an offence, including time spent in pre-trial detention.
- the general timeframe for the trial of an offence in the trial court.
- the standards of mechanisms devised for the protection of detainees from torture.
- 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 study reported the following important findings:

a) 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 the public to the police had promptly reported only 9 percent of incidents. A delay in the reporting of criminal incidents can destroy or malign the quality of evidence.

b) FIRs were generally found to have been lodged by victims or close relatives of the 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.[2]

c) 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.[3]

d) 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.[4]

e) 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.[5] Therefore, prosecutors were not found to be alert to the protection of the innocent.

f) The investigation lacked coordination with the prosecution, as there were no instructions given by Government Attorneys to investigators. Prosecutors did not scrutinize the legality or fairness of the process of collecting or obtaining evidence.[6]

g) 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 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.[7]

h) 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.[8]

i) 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.[9]

j) Wealth was a determining factor in securing personal liberty in a large number of criminal cases. For 94% of accused, the trial courts on the condition of a property bond granted bail. 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.[10]

k) 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.[11]

These findings compel to conclude that the criminal justice system of Nepal is far from meeting the minimum 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 arrests, coupled with the grant of remand without scrutiny of grounds, are human rights violations of an

overwhelmingly serious nature.[12]

The police have not hardly developed any devices to "scrutinize" the objectivity, authenticity 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 with high rate of acquittals.

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. A large number of cases are therefore adjudicated without representation of lawyers.[13] The "justice" they receive is therefore questionable.

The said research has drawn up based on its findings several recommendations for reform:

10.2.1. Some other Major Weaknesses Identified by Research:

a. Constitutionally inconsistent laws:

The judiciary of Nepal sits 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 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 54 can be identified, see Figure below) 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. Annex 1 of the State Cases Act 2049 excludes offences under these Statutes, 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, and thus manifestly vitiate the possibility fair trial. 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.

Box 8: Statutes Vitiating the Possibility of Fair Trial:

SN	Statues	Punishment	L/A/ Not A	Provisions Inserted for Rationalization of Statute
1.	Immi-gration Act, 2049	Maximum five years imprison-ment or 50,000 fine or the both.	L	- Repealed the Act Concerning Foreigners, 2015. - Section 8(1) of this Act provides that an official designated by the Director General investigates any offence under this Act. - Section 8(2) grants to the investigating officer the power of arresting, search, acquire and possess goods related to offence and to prepare documents concerning offence exactly as granted to police by other laws. - This same Section also grants power to the investigating offer for detaining the suspect in the custody or to release him/her with or without bail. - The same Section provides that the suspect unable to furnish bond would be subjected to detention. - Section 10 (1) provides for the pecuniary sentence upto Rs. 50,000 and 5 years terms of imprisonment for any person who is found guilty of the crime under Section 5 of the Act. As per the Act, the Immigration Department solely carries out the investigation, prosecution and the adjudication. The Director General can appoint the investigating officer, and subsequently hears the case. He/she has the power to impose a term of imprisonment upto 5 years. The right to legal assistance is strictly denied. Since, the officials of the same institution are involved in arrest, interrogation, prosecution and conduct trial, the possibility of fair trial is totally dismissed.
2.	Forest Act, 2049	Maximum Five Years Imprison-ment, or fine, or both.	L	- Repealed Forest Act 2018 and Forest Conservation Act 2024. - Section 59(1) grants power to the Forest Officer or the police to arrest a person without warrant provided that there is a likelihood of his/her being absconded. - Section 65(1) designates District Forest Officer as the investigating officer for offences carrying a fine of Rs 10,000 and term of one year' simprisonment or both as sentence. - Section 60 (1) provides that crimes under the Act are investigated and prosecuted by an officer of Second Class level. - Section 60(2) requires for consultation with Government Attorney for prosecution. The Forest Office is solely responsible for investigation, prosecution and trial of the offence. The Act requires for consultation with Govemment Attorney for determining the applicable provision of law. However, the provision is far inadequate to ensure the fair trial. The access of suspects or accused to legal assistance is meaningless. The possibility of torture and unfair treatment is very high.
3.	Revenues Distortion (Investigation and Control) Act, 2052		Not A	- According to the Act, Director General investigates the offence, or an officer designated by DG or an officer designated by HMG. - The Director General tries the case. The situation is similar to that of laws mentioned above .

SN	Statues	Punishment	L/A/ Not A	Provisions Inserted for Rationalization of Statute
4.	Prohibition of Investment in Foreign Countries Act, 2021	Maximum five years imprisonment or 50,000 fine or the both.	Not A	- No investigating authority is designated in this Act. In such a situation, as per the general practice, the head of the institution may take the responsibility of investigation. - The authority to take trial of the offence is not designated too. In Such case pursuant to Section 7 of the Judicial Administration Act, the District Court is supposed to take adjudication of the offence. However, the Government by prescribing the investigating officer and the judicial authority can assume both the roles of investigation and adjudication.
5.	Medicine Act, 2035	Life Imprisonment for offences which have possibility of Harms to life Maximum 10 years of imprisonment and fine for possibility of harms to any part of the body Maximum five years of imprisonment or fine or both for other situation	Not A	- Medicine inspector carries out investigation. - Govt. Attorney does prosecution. - The courts do adjudication. Since a person having no legal background and training is involved in the investigation, the vulnerability to violation of persons' rights is great. Considering the degree of severity of the penalty envisaged by the Act, the danger of person being sentenced without fair trial is serious.
6.	Nepal Standard (Symbol) Act, 2037	Maximum one year of Imprisonment or fine, or both	Not A	- Investigation is conducted by the inspector - DAO tries the cases. Circumstance for violation of fair trial is obvious, as the DAO is an executive officer with responsibility of maintaining law and order. Since these officers do not have training to try cases using judicial mind the potentiality of fair trial being denied is large. There is no justification for empowering such officers, who do not necessarily have legal training, to try criminal cases that involve deprivation of individual liberty is always at great risk.
7.	Immovable Property Acquisition	Maximum six month Imprisonment or fine, or both	Not A	- Investigator is not identified.
8.	Necessary commodity Control (Power) Act, 2017	Maximum five years of Imprisonment or fine, or both	Not A	- (Included in Schedule 1 of the State Cases Act 2049). As such the investigation is done by the Police. - DAO is entitled to try the case.

SN	Statues	Punishment	L/A/ Not A	Provisions Inserted for Rationalization of Statute
9.	Begging prohibition Act,2018	Maximum three months' Imprisonment or fine, or both	Not A	- Investigator is not prescribed by the Act.
10.	Gambling Act,2020	Maximum one year of Imprisonment or fine	Not A	- Investigator is not prescribed by the Act.
11.	Corporation Act,2021	Maximum one year of Imprisonment or fine, or both	Not A	- Corporation itself is designated as investigator. - The concerned department does adjudication. The concemed department is not identified. It means that Govemment can designate any department as concerned department.
12.	Standard Measurement Act,2024	Maximum one year of Imprisonment or fine, or both	Not A	- Investigation is done by Inspector - District court tries the case.
13.	Insurance Act,2025	Maximum two year of Imprisonment or fine, or both	Not A	- Investigator is not prescribed by the Act.
14.	Marriage Registration Act,2028	Maximum three months' Imprisonment or fine, or both	Not A	- Investigator is not prescribed by the Act.
15.	Donation Act,2030	Maximum two years of Imprisonment or fine, or both	Not A	- Investigator is not prescribed by the Act. - District Court tries the case.
16.	Land Acquisition Act,2034	Maximum one month of Imprisonment or fine, or both	Not A	- Investigator is not prescribed by the Act. - DAO tries the cases.
17.	Smallpox control Act,2020	Maximum three months' of Imprisonment or fine, or both	Not A	- Local officer is designated as investigator. - DAO tries the cases.

SN	Statues	Punishment	L/A/ Not A	Provisions Inserted for Rationalization of Statute
18.	Epidemic Diseases Act,2020	Maximum one month Imprisonment or fine, or both	Not A	- Investigator is not prescribed by the Act - DAO tries the cases.
19.	Nepal medical Council Act,2045	Maximum three years of Imprisonment or fine, or both	Not A	- Any officer authorized by HMG - District Court tries the cases.
20.	Ayurvedic Medical Council Act,2045	Maximum six months' Imprisonment or fine, or both	Not A	- Investigator is not prescribed by the Act
21.	Things to Substitute Breast Feeding (Sells Control) Act,2049	Four Months of Imprisonment or fine, or both	Not A	- Investigation is done by Inspector - District Court tries the cases.
22.	Nepal Nursing Council Act,2052	Six Months' Imprisonment or fine, or both	Not A	- Pursuant to Act, a person specified by HMG does the investigation. He/she can be any person.
23.	Nepal Health Workers Council Act,2053	As specified by Rules	Not A	- Pursuant to Act, a person specified by HMG does the investigation. He/she can be any person.
24.	Land Measurement Act,2019	Maximum Six Months' Imprisonment or fine, or both	Not A	- Officer as specified by Rules/Land Revenue Officer does investigation.
25.	[redacted]	Maximum three months' Imprisonment or fine, or both	Not A	- Investigator is not designated by the Act, - Trial is taken Court specified by Rules
26.	Act relating to the Land,2021	Fine/ Confiscation of the Land	Not A	- Pursuant to Act, a person specified by HMG does the investigation. He/she can be any person.

SN	Statues	Punishment	L/A/ Not A	Provisions Inserted for Rationalization of Statute
27.	Food Act, 2023	Maximum Three years' Imprison-ment or fine, or both	Not A	- Investigator is not designated. - DAO tries the cases.
28.	Feeding Matters Act,2033	Maximum two years Imprison-ment or fine, or both	Not A	- Investigation is done by Inspector - DAO tries the cases.
29.	National Park and Wild life Conser-vation Act,2029	Maximum 15 years Imprison-ment or fine, or both	Not A	- Officer as specified by Rules conducts investigation. - Warden of the Park adjudicates the cases. The situation of the trial at the warden's office of the park is hopeless. Persons are simply incarcerated at personal whims of the warden, which is generally a clerical staff (Subba) without legal background. The rights guaranteed for fair trial are simply meaningless for this institution. How the State can empower such an institution to try criminal cases is mysterious.
30.	Land and Water Basin Conver-sation Act, 2039	Maximum one year of Imprison-ment or fine, or both	Not A	- Water Basin conversation officer is designated to investigate the cases. - Since, no institution is designated to try cases, the District Court may conduct trial.
31.	Water Re-sources Act,2049	Maximum 10 years Imprison-ment or fine, or both	Not A	- No investigator is designated. - Since, no institution is designated to try cases, the District Court may conduct trial
32.	Forest Act,2049	Maximum five years Imprison-ment or fine, or both	Not A	- District Forest Officer conducts the investigation. - District Court tries cases. - Crime punishable by ten thousand fines or one year imprisonment is investigated and adjudicated by Forest Officer.
33.	Import Export (Con-trol) Act,2013	Maximum one year of Imprison-ment or fine, or both	.	- Custom Officer conducts investigation. - The same officer also does prosecution and adjudication.
34.	[redacted]	Maximum three months' Imprison-ment or fine, or both	.	- Officer as specified by Rules does investigation. - Since, no institution is designated to try cases, the District Court may conduct trial

SN	Statues	Punishment	L/A/ Not A	Provisions Inserted for Rationalization of Statute
35.	Nepal Mines Act,2023	Maximum one year of Imprison-ment or fine, or both	Not A	- No investigator is designated. - Since, no institution is designated to try cases, the District Court may conduct trial
36.	Black Market-ing and some other social crime and punish-ment Act,2032	Life Imprison-ment ,or 10 years of imprisonment For possibility of harms to the life. For possibility of harms to any part of the body, 10 years of imprisonment For other situation, maximum five years of imprison-ment, fine or both	Not A	- Officer as specified by the rules does investigation. - Since, no institution is designated to try cases, the District Court may conduct trial
37.	Statis-tics Act,2015	Maximum five months' Imprison-ment or fine, or both	Not A	- DAO is designated to investigate the offence. - District Court tries the cases.
38.	Town Devel-opment Act,2045	Maximum one year of Imprison-ment or fine, or both	Not A	- Town Development Committee investigates the cases.
39.	Neces-sary Services Opera-tion Act,2014	Maximum one year of Imprison-ment or fine, or both	Not A	- Investigator is not designated.
40.	Tele commu-nication Act,2049	Maximum three years' Imprison-ment or fine, or both	Not A	- Investigator is not designated.
41.	Postal Act,2019	Maximum three years' Imprison-ment or fine, or both	Not A	- Regional Director investigates the offence. - District Court tries the case.

SN	Statues	Punishment	L/A/ Not A	Provisions Inserted for Rationalization of Statute
42.	Act Relating to Press and Publication 2048	Maximum one year of Imprisonment or fine, or both	Not A	- Local officer investigates the offence.
43.	National Broadcasting Act	Maximum one year of Imprisonment or fine, or both	Not A	- HMG investigates the case. - Officer as specified by Rules adjudicates.
44.	Civil Aviation Act, 2015	Maximum life Imprisonment or fine, or both	Not A	- Investigator is not designated. - District Court tries the case.
45.	Railway Act, 2015	Maximum one year of Imprisonment or fine, or both	Not A	- Local Zonal officer investigates the case.
46.	Ship Registration Act, 2027	Maximum two years' Imprisonment or fine, or both	Not A	- Registrar of Nepal Ship Office investigates the case.
47.	Public Road Act, 2031	Maximum one year of Imprisonment or fine, or both	Not A	- Department of Road investigates the case. It also adjudicates.
48.	Custom Act, 2019	Maximum two years' Imprisonment or fine, or both	Not A	- Custom Officer investigates and adjudicates.
49.	Water Tax Act, 2023	Maximum three months' Imprisonment or fine, or both	Not A	- Officer as specified by Rules investigates and adjudicates.
50.	Income Tax Act, 2031	Maximum two years' Imprisonment or fine, or both	Not A	- Tax Officer investigates and the, DAO and Director General adjudicate.
51.	Consumer Protection Act, 2054	Maximum 14 years Imprisonment or fine, or both	L	- Inspecting Officer investigates the offences.

SN	Statues	Punishment	L/A/ Not A	Provisions Inserted for Rationalization of Statute
52.	Nepal Special Service Act, 2041	Maximum 10 years' Imprison-ment or fine, or both	Not A	- Investigating officer is not designated. - The court to try offence under this Act is constituted by HMG. - The Appeal of the said court goes to the Supreme Court, and the hearing takes place in camera.
53.	Police Act, 2012	Maximum life Impris-onment or fine, or both	Not A	- Investigating officer is not designated. However, in practice the Police Department conducts the investigation of the offences. - Police Special Courts are established to try cases, which comprises the representative of the Police Department necessarily. - A Tribunal constituted by HMG hears the final appeal. - No appeal at any level of court of law is allowed. Only the military courts are exempted from the judicial control of the Supreme Court. However, against the provision of the Constitution, the Police Special Tribunals are frequently constituted which exercise the power to sentence offenders with even the terms of life imprisonment.
54.	Election Crimes and Punish-ment Act, 2047	Maximum two years of Imprison-ment or fine, or both	L	- Investigating Officer is not designated. - Special Court is established as per the recommendation of the Election Commission - Appeal is heard by the court specified by HMG

Legislated (L) Amended (A) Exists in Condition as before 1990 (not A)

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.

b. Same Institution has power to conduct investigation, prosecution and adjudication:

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.

c. Quasi Judicial Bodies have widespread power of sentencing with terms of imprisonment:

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.

d. Delegated legislation empower institution to conduct 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.

e. Law making process undermines 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.

f. Lack of integrated criminal procedural code:

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 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 character, 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.

g. Lack 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.
- Introduction of the concept of victimology as part of the legal system.

h. Lack of 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.

i. Misuse of 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.

j. Inadequate Torture Compensation Act:

The Torture Compensation Act, 2053, provides for compensation for torture victim committed by 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 the 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.

k. Irrational law on Bail:

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.

10.2.2. Administrative and Structural Improvements in the Criminal Justice System

The Constitution of the 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 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.

a. 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.

b. 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.

10.3. Impact of Corruption in Criminal Justice System on Women:

Women's accessibility to justice has also been identified as a serious problem of the criminal justice system in Nepal. CeLRRd in financial assistance had conducted the study with a main objective of exploring the situation of corruption in the criminal justice system and its impact on women for accessibility to criminal justice system. The study had been confined to certain cases directly related to women like trafficking for sexual exploitation, rape and violence against women. The study had been mainly concentrated on scrutiny of case files in the said areas of offence, and interview with the victims of crimes. The following findings had been brought out by the study:

- 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:[14]
    - 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.[15]
- 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 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.[16]
- 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.

10.4. A Preliminary Study on Law, Justice and Human Rights:

This study was commissioned by DFID in 1999. As referred to the Report, the prime objective of the study was to prepare an overview of the state of the rule of law, justice system and human rights, with particular emphasis on its contribution to good governance, and to identify potential areas for improvement that could be supported by donor intervention. The specific objectives of the study included the following:

- To review the current state of the rule of law, justice system and human rights.
- To identify the strengths, weaknesses, opportunities and threats of the current institutional and legal provisions relating to justice system and human rights.
- To examine the main changes in the areas of the rule of law, justice system and human rights since 1990.
- To evaluate the current access to justice system by the poor.
- To assess the role of donors' involvement in the past, present and their plans for future in the areas of rule of law, justice system and human rights.

- To identify the contribution of the rule of law, justice system and human rights to good governance.

The study in relation to judicial system outline the following findings:

Strengths

1. Strong and Independent Judiciary
   - Rule bound behaviour is secured.
   - Power of judicial review is vested in courts.
   - Competent judicial system is guaranteed by the Constitution.
   - There is constitutional and statutory safeguards of judiciary.
   - There is independence of judiciary in terms of power and functions.
2. Functioning of People Oriented Justice System
   - It provides justice to the people whose rights have been infringed.
   - It punishes wrongdoers thereby promotes peace and order in society.
   - It guards the right of individuals from State's intervention.
1. Strong Judicial System and Human Resources
   - Concept of complete justice has been introduced.
   - There are provisions to appoint competent judges.
   - Judicial activism with judge made law is increasing.
   - Legal Aid Act and Rules have supported justice system.

Weaknesses

1. Insufficient Access to Justice
   - Delayed justice persists.
   - Poor and needy are unable to get justice.
   - Expensive, traditional and lengthy process of justice exists.
   - Public faith in judiciary is decreasing.
2. Inadequate Communication
   - There is absence of two-way free flow of communication and information in judicial branches.
   - Misreporting of court decisions is often found.
3. Lack of Proper Documentation
   - The research system is ineffective.
   - Poor records system in Judicial Council, Judicial Service Commission (JSC) and judiciary exist.

4. Inadequate Management Capacity

- The performance of Judicial Council (JC) is inefficient.
- There is a lack of effective planning, supervision/inspection, follow up, and monitoring in delivery of justice.
- There is lack of effective court management procedures.
- Lack of clear cut demarcation of judicial matters prevail.
- There is entry of inefficient judges into judiciary.
- Unaccountability of judges and judicial manpower persist.
- Inadequate skilled manpower in Courts and Bar exist.
- There is lack of transparency in the appointment process of judges.
- There is no separate criminal and civil codes.
- Modernization of law is not accelerated.
- There is a lack of coordination among the members of JC, JSC, Bench, Bar, Ministry, Office of the Attorney General and the Police.
- Poor investigative system(e.g. Forensic Lab, Trained Investigation Agencies) persists.
- The judgment of the court is not effectively implemented.
- Arrears problem is pervasive (because of case avoiding, bench avoiding, etc.)
- There is politicization of bar and court in some respect.

5. Inadequate Resources

- Lack of adequate physical facilities and other resources for court management persist.

6. Lack of Proper Organizational Restructuring

- Specific courts and benches are inadequate.
- There is absence of separate civil and criminal benches.
- There is no camera court in sensitive cases (e.g. rape, divorce, etc.)

Local Conflict Mediation System in Surkhet and Kanchanpur District:

The purpose of the study was to find out ways and means of strengthening the mediation and arbitration capacity of the VDCs and Municipalities of Surkhet and Kanchanpur districts for resolving conflicts at local level. The study conducted by Development Associates for Rural and Regional Development (DEVA) covers legal, institutional and social issues relating accessibility to justice.

The following findings of the research are significant for reforms of criminal justice system:

- Almost 50% cases arrived before the local bodies are related with the personal property and relation. Local Self Governance Act, 1999 has empowered to local bodies to

settle small dispute by consulting both the disputed parties. But the Act has yet to come into force. Institutionalization of local arbitration system will help in reduction of unnecessary caseload in the courts. Arbitration is a simplified version of trial involving simplified rules of evidence. The report has revealed two types of dispute settlement methods.[17]

a. Formal: Where a claimant has to file a petition in the concerned VDC through a statement of claim with prescribed application fee. Such petition is formally registered in the record of VDC. Thereafter summon is issued to the respondent/s or a VDC staff is sent to inform the respondent and bring him to the VDC for his defense. After submitting response either in writing or verbally as the verbal statements put into written form from the defendant. VDC official who is deputed to here and settle the disputes, call both the parties to settle the dispute finally after completing the hearing procedure, such disputed issues are decided finally in a form of compromise or imposing certain minor liabilities to the wrong-doer.

b. Informal: It is the mostly applicable procedure at local levels of the country. In this process, parties generally make oral complaint to their ward representative or to the elder person in community, whom he trusts. Such people try to bring together to the concerned disputant persons to settle dispute by way of medication, conciliation and compromise, If they fail to settle the case, it is then referred to the VDC,

- When the local community or local representative fails to resolve the matter, than only such matters reached before the court or police. According to report[18] the dispute settlement process generally ends with either party reaching an agreement, or in conciliation or by imposing a simple fine.

The report recommends for institutionalization of the local arbitration system to help people having easy access to justice.

10.5. Trial Court System of Nepal with Special Reference to the Accessibility of Women to Justice:

The research had been undertaken by CeLRRd as a part of its continuous efforts to reform the criminal justice system of Nepal. The main objective of the study was to help strengthen the conditions of criminal justice system of Nepal. Specifically, the study had been conceived to identify weaknesses and strengths of criminal justice system, to analyze caseload patterns and types, logistic facilities, resource mobilization pattern and state's investment trends in justice, conviction and acquittal situations and over all to access the conditions of performance of the criminal justice system. The research had been primarily based on statistical information of the Supreme Court, Attorney General's Office, Police Headquarters and the Ministry of Finance of HMG. The study had brought out the following findings:

10.5.1. Performance of Judiciary:

As the reports annually published by the Supreme Court of Nepal presents, the volume of the national caseload has been found to be increasing every year. The proportion of civil

cases compared to criminal is very high. A large part of the overall caseload of the judiciary is therefore of civil nature. In the Supreme Court, the proportion of criminal cases is hardly over 10% of the total caseload. Criminal cases made up 25% of the caseload at Appellate Level and 36% at District Court Level.[19] These figures show that a significant number of criminal cases, compared to that of civil caseload, is filtered out of the system before reaching the Supreme Court. This is entirely the reverse of the situation regarding the civil cases. As the annual reports of the Supreme Court show, in F/Y 2056-57, civil cases made up 64% of the caseload at District Court level, 75% at the Appellate Level and 90% at the Supreme Court level.[20] These figures therefore totally rule out the conclusion of an effective filtering device or funneling system regarding civil cases.

Every year a large number of cases are left as backlog. As the studies show, at District Court level, the backlog of cases in F/Y 2047/48 was 61.94% of the total caseload. This figure was reduced to 41.15% of the total caseload in F/Y 2056/57. In the Appellate Courts, the backlog was 65.94% of the total caseload in F/Y 2047/48, which was reduced to 35.57% in F/Y 2056/57. However, in the Supreme Court, cases disposed of were 43.34% of the total caseload in F/Y 2047/48, and 43.45% in F/Y 2056/57.[21] Despite the reduction in the backlog of cases in the lower courts, there was a collection of a large number of cases in the Supreme Court. This shows that there is no effective filtering and funneling system in the court system. Cases disposed of by the lower courts are consistently accumulating in the Supreme Court. If the trend persists, the Supreme Court will come to a very unwanted situation in the future.

In four Himalayan courts, namely Rasuwa, Manang, Mustang and Dolpa, the caseload was found to be negligible. The total caseload of all four courts over ten years, from F/Y 2047 to 2057, was 953 cases. The average annual caseload per judge was 23.6 cases. From F/Y 2047 to 2057, the average monthly caseload ranged from 2.53 cases per month in Dolpa to 0.16 cases per month in Manang. In eighteen hill districts, the monthly caseload was found to be about 10 cases each in F/Y 2056/57. The highest monthly caseload was found in Pyuthan, at 14.83 cases, whereas in Dadeldhura it was 4.33 cases. However, the caseloads of these courts are not in proportion to their budgets. Each year, the four Himalayan courts consume Rs. 43,74,751.29 as their total expenditure, and the average cost per disposed case is thus Rs. 84,129.83. This is in striking contrast to all other districts, where the average cost per case is Rs. 3,610.75.[22]

The level of the caseload is quite high in comparison to the number of judges. In F/Y 2056/57, the national caseload at district level per judge was 708.84, which is a huge figure. In that year, the total number of judges nationwide was 237. The number of civil cases at each level was particularly high. At District Court level, the civil caseload per judge was 453 cases. It was 280 at Appellate level, and 1438 in the Supreme Court.[23] For the Appellate level and the Supreme Court, this figure should be doubled, as judges sit in benches of two.

10.5.2. Cases Filtering Situation:

From the statistical information available from the Criminal Investigation Department of Police Headquarters, and the Annual Reports of the office of the Attorney General of the Kingdom of Nepal, it can be observed that the number of FIRs filed has increased every year, except in F/Y 2057/58. The decrease in this year might be due to increased

insurgency and the withdrawal of police from many parts of the country. The annual average increment in FIRs from F/Y 2051 to 2058 is 1.17%. Filtering by the police seems to be effective. The percentage of FIRs filtered by police was 33.07%, 34.67%, 40.34%, 41.90%, 42.61% and 40.47% for F/Y 2051 to 2057 respectively.[24] However, it is not clear from these figures how many cases are still pending, and how many are genuinely filtered out. Thus, the true effectiveness of the filtering mechanism cannot be gauged. At the prosecution stage, the percentage of cases filtered out ranges from 3.76% in F/Y 2056/57 to 5.97% in F/Y 2051/52.[25] The filtering of cases has decreased over recent years. Over the fiscal years of 2051 to 2057, the failure rate of prosecutions in the trial court shows fluctuations, ranging from 41.25% to 44.09% of disposed cases. This indicates that prosecutors did not use effective filtering mechanisms to reduce the unnecessary criminal caseload in the court. Thus, one of the reasons for a high caseload is the lack of an effective filtering device at the prosecutorial stage. This failure rate indicates a seriously inefficient prosecutorial system, and it is also an evidence of a high level of human right violations. It clearly shows that at least 40% of suspects are tried without evidence. The success rate of the prosecution is further lowered if the cases of public offence tried by the DAO are discounted. In this case, the prosecution's success rate falls to 25%.

Murder, rape, drugs, robbery, arms and ammunition, trafficking, corruption, public offence and theft are the common crimes that are investigated and prosecuted. In all these crimes, there is no trend of strict conviction or acquittal. Even in the case of rape, the trial court acquits a large number of offenders. This shows the inefficiency of the prosecution.

10.5.3. Human Resources and the Caseload:

In this area again, data was only available for the fiscal years following F/Y 2051/52. In F/Y 2056/57, the number of staff in the judiciary at all levels, excluding judges, is 4,530.[26] There is no detailed information available on the categories of human resources at each court level. In the Supreme Court, in F/Y 2051/52, the total number of staff was 259. From this figure, 49.42% were not directly related to the work of judicial administration. This shows that a huge part of the human resources of the judiciary are not associated with the judicial function. There is thus an unnecessary burden on the justice system. The level of professional or highly qualified manpower in the Supreme Court is very low, and this must surely have an impact on the justice that can be delivered. The quality of human resource is further big problem in the lower levels of court.

10.5.4. Infrastructure and Physical Facilities Courts:

The situation of court infrastructure in Nepal is very poor. According to a study carried out by CeLRRd in ten districts, only 3 courts had adequate space for work. Only 6 courts had a few books. None of the courts had a library.[27] None of the courts had a fax machine. Only 4 courts had a photocopy machine. In the rest of the courts, the documents had to be copied by hand. This is a very lengthy and expensive process for parties. Only one court observed had a computer. However, 8 courts out of 10 had vehicles. In 4 courts, there was no toilet. This situation does not facilitate fair trial and competent justice. None of the courts observed are given any financial allocation for development by the government. Their budgets cover only salary, allowances and minor expenditures on fuel and stationery.

10.5.5. Financial Situation of Judiciary:

In F/Y 2058/59, the judiciary received 0.47% of the total national budget. This figure was 0.39% in F/Y 2057/58. However, in F/Y 2058/59, the executive branch consumed 99.33% of the total national budget.[28] In F/Y 2058/59, the total budget for 75 District Courts, 16 Appeal Courts, the Labor Court, Special Court, Revenue Tribunal and the Supreme Court was Rs. 472,715,000 (Finance Ministry). The judiciary receives hardly any allowance for development expenditure. In F/Y 2052/53, there was not a single rupee allocated for its development budget. In F/Y 2054/55, it was Rs. 23,744,000. In F/Y 2057/58 it was Rs. 95,000[29] and in F/Y 2058/59 it rose to Rs. 73,500,000.[30] These figures show that the judiciary is financially handicapped. Competent justice in such a situation can be nothing but a myth. The data shows the apathy of the State towards the judiciary. As the judicial budget is completely controlled by the Finance Ministry, the executive indirectly controls the independence of the court. The executive to control the independence of the courts has used financial deprivation as an effective means.

10.5.6. Population per Judge:

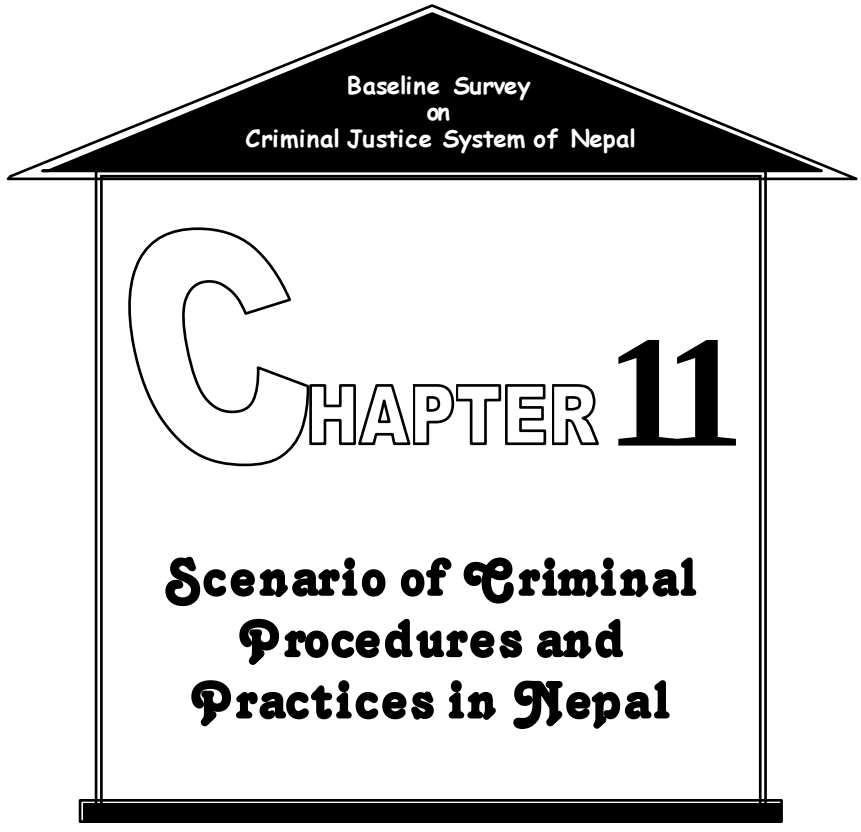
On a national level, there are 98,367 people per judge. At district level, there is one judge per 193,456 people. At appellate level, there is one judge per 236,885 people and at Supreme Court level, there is one judge per 1,289,705 people.[31]

As mentioned earlier, a large part of the caseload is taken up by civil cases. There is a lack of any effective filtering mechanism for cases of a civil nature. As a consequence, there are fewer resources and less time available to deal with criminal cases. It is in criminal cases that the possibility for violations of human rights becomes particularly acute. Overall, the judiciary is under great pressure. There is a large backlog of cases at all levels of the court structure. This must surely contribute to the delay in case disposal. However, the judiciary does not have the human or financial resources to deal with this situation. Its deprivation can be seen in the poor infrastructure and facilities of courts. A judiciary that is in financial stagnation can surely have less chance of delivering competent justice. This has not been acknowledged by the State. The executive has alienated the judiciary, leaving it without adequate support for its daily affairs, let alone its future development. The confidence of the public in the performance of the justice system is rapidly decreasing. The nation should realize that democracy and the rule of law cannot survive without an efficient judiciary. There is an urgent need to support the role of the judiciary, and ensure protection for the rights of all citizens.

The study has drawn up several recommendations for the improvement of the condition of criminal justice system. Some of them are as follows.[32]

●●

PART-II



CHAPTER 11

Scenario of Criminal Procedures and Practices in Nepal

11.1. Respondents and Variables for Analysis

This chapter is based on information from 75 respondents from both rural and urban areas of the country. The 75 respondents were either detainees or prison inmates, who had all been in jail for various periods of time. The age of respondents varied from 16 to 60 years. 20% (15 persons) of respondents were women. Information of socio-economic and residential characteristics of the respondents was explored as causative factors for the social dynamic within the criminal justice system.

This chapter thus attempts to establish trends between:

1. Gender and Crime
2. Age and Crime
3. Caste/Ethnicity and Crime
4. Educational Status and Crime
5. Marital Status and Crime
6. Family Structure and Crime
7. Occupation and Crime
8. Income and Crime
9. Monthly Earnings and Crime

The analysis in the chapter is based on both quantitative and qualitative data. The bulk of information has been extracted from a questionnaire survey, which had 75 respondents. This has been supported by feedback obtained through focus group discussion (FGDs) and case studies.

11.2. Socio-Economic and Demographic Features of Detainees/Prison Inmates

11.2.1. Sex

The majority of detainees and prison inmates interviewed in the course of the baseline survey were male. This was a trend noticed in all districts, from the results of all three major analytic schemes. Out of 75 detainees and prison inmates to respond to the survey questionnaire, 80% of respondents were male, and 20% female. Where 77.8% of participants in FGD were male, only 22.2% were female. Of subjects selected for case study, 80% were male and 20% female. In certain districts there was a particularly high occurrence of crimes committed by males. In Lalitpur, Kanchanpur and Taplejung, the findings of the questionnaire showed no incidence of female crime at all. In Chitwan, males made up 87.5 % of total respondents. In Gulmi, this figure was 85.7% and in Morang, 77.8%. Outside Kathmandu, the greatest number of females questioned were found in Bhaktapur, Kapilbastu and Jumla. (Table 11.1)

Table 11.1: Distribution of Detainee/Prison Inmate by the Sampled Districts - Sex

District	Survey					FGD					Case Study				
	F	%	M	%	Total	F	%	M	%	Total	F	%	M	%	Total
Kathmandu	5	41.7	7	58.3	12	5	50.0	5	50.0	10	3	37.5	5	62.5	8
Lalitpur		0.0	6	100.0	6		0.0	5	100.0	5		0.0	4	100.0	4
Bhaktapur	1	33.3	2	66.7	3					0					0
Kapilbastu	2	33.3	4	66.7	6		0.0	4	100.0	4	1	25.0	3	75.0	4
Chitwan	1	12.5	7	87.5	8		0.0	4	100.0	4	1	25.0	3	75.0	4
Gulmi	1	14.3	6	85.7	7		0.0	4	100.0	4	1	25.0	3	75.0	4
Jumla	3	33.3	6	66.7	9					0	1	25.0	3	75.0	4
Kanchanpur		0.0	9	100.0	9		0.0	4	100.0	4	1	25.0	3	75.0	4
Taplejung		0.0	6	100.0	6		0.0	4	100.0	4		0.0	4	100.0	4
Morang	2	22.2	7	77.8	9	5	50.0	5	50.0	10		0.0	4	100.0	4
Total	15	20.0	60	80.0	75	10	22.2	35	77.8	45	8	20.0	32	80.0	40

Source: Baseline Survey 2002

Note : The table regarding to districtwise are Horizentally developed where as crimewise (except Table No. 11.31) in Vertical

The geographic distribution of these crimes should be considered in relation to their nature. The table 11.2 indicates absolute majority (88.9%) of the crime related to murder were in Jumla followed by Kapilbastu (66.7%).

Table 11.2: Relation between Sampled Districts and Crimes of Detainee/Prison Inmate

District	Attempt to commit murder	%	Dacoit	%	Fraud and Cheating	%	Murder	%	Narcotics	%	Others	%	Rape	%	Theft	%	Trafficking	%	Total
Kathmandu		0.0	1	8.3	2	16.7	1	8.3	1	8.3	2	16.7	1	8.3	1	8.3	3	25.0	12
Lalitpur		0.0	1	16.7		0.0	2	33.3		0.0	1	16.7	1	16.7	1	16.7		0.0	6
Bhaktapur		0.0		0.0		0.0		0.0	2	66.7		0.0		0.0		0.0	1	33.3	3
Kapilbastu		0.0		0.0		0.0	4	66.7		0.0		0.0	1	16.7		0.0	1	16.7	6
Chitwan		0.0	2	25.0		0.0	1	12.5	1	12.5	1	12.5	1	12.5		0.0	2	25.0	8
Gulmi	2	28.6		0.0		0.0	3	42.9		0.0	1	14.3	1	14.3		0.0		0.0	7
Jumla		0.0		0.0		0.0	8	88.9		0.0		0.0		0.0	1	11.1		0.0	9
Kanchanpur		0.0		0.0		0.0	3	33.3		0.0	1	11.1	2	22.2	3	33.3		0.0	9
Taplejung	1	16.7	2	33.3		0.0	2	33.3		0.0		0.0	1	16.7		0.0		0.0	6
Morang		0.0		0.0	2	22.2	2	22.2	3	33.3	2	22.2		0.0		0.0		0.0	9
Total	3	4.0	6	8.0	4	5.3	26	34.7	7	9.3	8	10.7	8	10.7	6	8.0	7	9.3	75

Source: Baseline Survey 2002

The most of crimes relating to traffic accident were found in areas such as Bhaktapur (33.1%) and Kathmandu (25%). As shown by the questionnaire, the crime of highest prevalence amongst males was murder. 35% all crime reported murders involved males (21 respondents). The number of male accused in comparison with females in all criminal cases studied is higher. Comparatively, the involvement of females in both violent and "petty" crime is smaller. The greatest incidence of female criminality is found in the offences of murder (33.3%), trafficking and drug-related crime, respectively 20% of total respondents for these crimes. (Table 11.3). Similar pattern of data were also found FGD and Case studies (Table 11.4 and 11.5)

Table 11.3: Relation between Crime and Sex Collected from Survey

Crime Type	Female	%	Male	%	Total
Attempt to commit murder		0.0	3	5.0	3
Dacoit		0.0	6	10.0	6
Fraud and Cheating	2	13.3	2	3.3	4
Murder	5	33.3	21	35.0	26
Narcotics	3	20.0	4	6.7	7
Others	1	6.7	7	11.7	8
Rape		0.0	8	13.3	8
Theft	1	6.7	5	8.3	6
Trafficking	3	20.0	4	6.7	7
Total	15	20.0	60	80.0	75

Source: Baseline Survey 2002

Table 11.4: Relation between crime and sex participant in the FGD

Crime	Female	%	Male	%	Total
Rape		0.0	2	5.7	2
Murder	5	50.0	11	31.4	16
Trafficking		0.0	11	31.4	11
Theft		0.0		0.0	0
Abortion		0.0		0.0	0
Dacoit		0.0	1	2.9	1
Narcotic	5	50.0	9	25.7	14
Poaching		0.0	1	2.9	1
Attempt to Murder		0.0		0.0	0
Total	10	22.2	35	77.8	45

Source: Baseline Survey 2002

Table 11.5: Relation between crime and sex collected by Case Study of Detainee/ Prison Inmate by Sampled Districts

Crime	Female	%	Male	%	Total
Rape		0.0	2	6.3	2
Murder	2	25.0	15	46.9	17
Trafficking	3	37.5	1	3.1	4
Theft		0.0	5	15.6	5
Abortion	2	25.0		0.0	2
Dacoit		0.0	4	12.5	4
Narcotic	1	12.5	3	9.4	4
Poaching		0.0	1	3.1	1
Attempt to Murder		0.0	1	3.1	1
Total	8	20.0	32	80.0	40

Source: Baseline Survey 2002

There may be a geographic relation to the nature of these crimes - hence, the prevalence of male crime, typically of violent or petty extreme - in urban and border areas. However, there is no neat conclusion. The prevalence of male crime is also high in several more remote and underdeveloped regions. Female crimes may be of certain type, but they do not correlate to one geographic area alone. These findings indicate the complexity and interrelation of crime's causal factors.

It can be asserted that the involvement of males and females in criminal activity is of significantly different nature and degree. This conclusion can be based on the quantitative figures, but also qualitative feedback. Key informants of the survey have also stated that the proportion of male detainees and prison inmates is overwhelmingly greater than that of female. As observed by a lawyer from Taplejung: "The number of female detainees/ prison inmates is comparatively smaller as they generally do not involve in deviant behavior. They are generally kind hearted, and also do not drink alcohol". Similarly, a key informant in Jumla said, "Generally, women are not involved in deviant behaviour as in patriarchal society like Nepal where women are less involved in affairs beyond family".

The pattern of the sex distribution detainees and prison inmates uncovered by the survey indicates the following important sociological trends in relation to the CJS:

1. Men commit an overwhelmingly large number of criminal offences, and as such the criminal justice system is largely a matter of concern for men.
2. As men constitute the majority of the population of detainees or prison inmates, the human rights agenda and reforms of criminal justice system are predominantly male controlled affairs.
3. Deviance in Nepalese society is a male dominated phenomenon, and women, being subject to restrictions on socialization, have less instance for deviant behavior.
4. The population of women being significantly smaller in prison, their representation in prison affairs is minimal.

11.2.2. Age

Of all age groups noted by the survey, the overwhelming majority of those involved in the criminal justice system were aged between 25 to 32 years. 36% of respondents to the questionnaire fell into this age group. (Table 11.6) 26.7% of participants of the FGDs (Table 11.7) and 35% of subjects of case studies selected for analysis (Table 11.8) were also in this category. This is a trend that may be connected to the high proportion of detainees and prison inmates aged between 17 to 24 years. 25.30% of respondents to the questionnaire (Table 11.6) were of this group, proportions which are significantly higher than those for detainees and prison inmates in age groups greater than 33 years.

Table 11.6: Distribution of Detainee/Prison Inmate by the Sampled Districts - Age

District	Below 16	%	17 - 24	%	25 - 32	%	33 - 40	%	41 - 48	%	Above 48	%	Total
Kathmandu		0.0	4	33.3	5	41.7	1	8.3	1	8.3	1	8.3	12
Lalitpur		0.0	3	50.0	3	50.0		0.0		0.0		0.0	6
Bhaktapur		0.0	1	33.3	1	33.3	1	33.3		0.0		0.0	3
Kapilbastu		0.0	3	50.0	1	16.7	1	16.7		0.0	1	16.7	6
Chitwan		0.0		0.0	5	62.5	3	37.5		0.0		0.0	8
Gulmi		0.0	2	28.6	4	57.1	1	14.3		0.0		0.0	7
Jumla	1	11.1	1	11.1	3	33.3		0.0	3	33.3	1	11.1	9
Kanchanpur		0.0	4	44.4	3	33.3	1	11.1	1	11.1		0.0	9
Taplejung		0.0		0.0	1	16.7	3	50.0	1	16.7	1	16.7	6
Morang		0.0	1	11.1	1	11.1	3	33.3		0.0	4	44.4	9
Total	1	1.3	19	25.3	27	36.0	14	18.7	6	8.0	8	10.7	75

Source: Baseline Survey 2002

Table 11.7: Distribution of Detainee/Prison Inmate Participating in Focus Group Discussion (FGD) by the Sampled Districts - Age

District	< 16		17-24		25-32		33-40		41-48		> 48		Total
	No	%	No	%	No	%	No	%	No	%	No	%	
Kathmandu			3	30	2	20	2	20.00	2	20	1	10	10
Lalitpur					2	40	3	60					5
Bhaktapur			Not available										
Kapilbastu					2	50	1	25	1	25			4
Chitwan			1	25	1	25	1	25			1	25	4
Gulmi			1	25	1	25			1	25	1	25	4
Jumla			Not allow to conduct FGD										
Kanchanpur							1	25			3	75	4
Taplejung					2	50	1	25	1	25			4
Morang			4	40	2	20	1	10	2	20	1	10	10
Total			9	20	12	26.67	10	22.22	7	15.56	7	15.56	45

Source: Baseline Survey 2002

Table 11.8: Distribution of Detainee/ Prison-inmate Selected for Case Study in Sampled Districts - Age

District	< 16		17-24		25-32		33-40		41-48		> 48		Total
	No	%	No	%	No	%	No	%	No	%	No	%	
Kathmandu			3	37.50	1	12.50			1	12.50	3	37.50	8
Lalitpur					1	25	2	50			1	25	4
Bhaktapur					Not Available								
Kapilbastu			1	25	1	25	1	25	1	25			4
Chitwan					2	50	1	25			1	25	4
Gulmi			1	25	2	50	1	25					4
Jumla			1	25	2	50			1	25			4
Kanchanpur					2	50	2	50					4
Taplejung					1	25	2	50	1	25			4
Morang			1	25	2	50	1	25					4
Total			7	17.50	14	35	10	25	4	10	5	12.50	40

Source: Baseline Survey 2002

This trend is a possible indicator of an increase in the delinquent potential of young people as they progress towards adulthood. It is one that is reflected across the spectrum of crime. Offences involving youth aged between 25 to 32 years were reported for all categories of crime examined by the survey, a phenomenon unique to this age group alone.

As for other age categories, the greatest number of offences reported for respondents of the questionnaire aged 25 to 32 and 17 to 24 were of murder (37.0% and 21.1% respectively). (Table 11.9) while among the participants of FGD is below 20 years (66.7%) and case studies is between 29 to 35 years (64.3%) (Table 11.10 & 11.11) However, occurrences of robbery (Dacoity) and theft were particularly high in comparison to other groups, something also observed in the survey case studies. This is possibly related to the habits and social practices of young people of this age, and in particular, of young males. It may be relevant to consider that males committed the majority of thefts and all cases relating to robbery. These trends suggest a need for delinquency prevention measures to address the disaffection of male youth that can contribute to their involvement in petty offences - a possible precursor for involvement in more serious crime.

Table 11.9: Relation between Crime and Age of Detainee/Prison Inmate by Sampled Districts

Crime	Age												
	< 16	%	17 - 24	%	25 - 32	%	33 - 40	%	41-48	%	> 48	%	Total
Attempt to murder		0.0		0.0	2	7.4	1	7.1		0.0		0.0	3
Dacoit		0.0	1	5.3	4	14.8	1	7.1		0.0		0.0	6
Fraud and Cheating		0.0	1	5.3	2	7.4		0.0		0.0	1	12.5	4
Murder	1	100.0	4	21.1	10	37.0	4	28.6	4	66.7	3	37.5	26
Narcotics		0.0	2	10.5	2	7.4	1	7.1		0.0	2	25.0	7
Others		0.0	3	15.8	1	3.7	2	14.3		0.0	2	25.0	8
Rape		0.0	4	21.1	1	3.7	2	14.3	1	16.7		0.0	8
Theft		0.0	3	15.8	2	7.4		0.0	1	16.7		0.0	6
Trafficking		0.0	1	5.3	3	11.1	3	21.4		0.0		0.0	7
Total	1	1.3	19	25.3	27	36.0	14	18.7	6	8.0	8	10.7	75

Source: Baseline Survey 2002

Table 11.10: Relation between crime and age participant in the FGD

Crime	Age										
	< 20	%	21-28	%	29-35	%	36-43	%	44>	%	Total
Murder	2	66.7	2	28.6	5	38.5	3	27.3	4	36.4	16
Rape	1	33.3		0.0		0.0	1	9.1		0.0	2
Trafficking		0.0	3	42.9	2	15.4	3	27.3	3	27.3	11
Narcotics		0.0	1	14.3	6	46.2	3	27.3	4	36.4	14
Dacoit		0.0	1	14.3		0.0		0.0		0.0	1
Poaching		0.0		0.0		0.0	1	9.1		0.0	1
Total	3	6.7	7	15.6	13	28.9	11	24.4	11	24.4	45

Source: Baseline Survey 2002

Table 11.11: Relation between crime and age participant in Case Study

Crime	Age										
	< 20	%	21-28	%	29-35	%	36-43	%	44>	%	Total
Murder		0.0	6	42.9	9	64.3		0.0	4	44.4	19
Rape		0.0		0.0		0.0		0.0	1	11.1	1
Trafficking		0.0		0.0		0.0	1	50.0		0.0	1
Narcotics		0.0	2	14.3	1	7.1		0.0	2	22.2	5
Dacoit		0.0	2	14.3	2	14.3		0.0	1	11.1	5
Abortion	1	100.0	1	7.1		0.0		0.0		0.0	2
Theft		0.0	1	7.1	2	14.3	1	50.0		0.0	4
Attempt to Murder		0.0	2	14.3		0.0		0.0	1	11.1	3
Total	1	2.5	14	35.0	14	35.0	2	5.0	9	22.5	40

Source: Baseline Survey 2002

Among questionnaire respondents, there was high involvement in narcotic-related crime, trafficking, and rape - trends, which can also be supported by feedback from FGDs. However, they were not the preserve of youth alone. Respondents to the questionnaire reported high involvement in narcotics related crime among those aged between 17 and 24 (10.5%) and 25 to 32 (7.4 %), although, this was also observed among those aged 33 to 40 (7.1%), and the greatest proportion was found among those aged over 48 years (25.0%). Incidents of trafficking involved a significant proportion of respondents aged 17 to 24 (5.3%) and 25 to 32 (11.1%). Out of 8 cases of rape, the highest number of offences was reported by those in the group 17 to 24 years (21.1%). However, respondents aged between 33 and 40 (14.3%) and 41 to 48 years (16.7%) were reported as highly involved. (Table 11.9)

The findings of this study do not clearly indicate a development of criminality according to age, however in trafficking quite young and adult were reported as not involved. The involvement of certain age groups both young and old in the same crime could indicate a predilection to the committal of offences by certain groups as they mature. However, this assumption could only be verified by an analysis of rates of re-offending among youth accused and committed of crime. A study that followed the path of certain offenders in and out of crime would be instructive, to indicate what types of crime were most likely to lead to further criminality, and how interventions to prevent this could be most effective.

The incidence of crime according to age was found to follow the same pattern in most areas, being most prevalent in age groups 17 to 24, 25 to 32 and 33 to 40. Overall, the highest proportion of detainees and prison inmates in the sampled districts fell in the groups aged 25 to 32 and 17 to 24 years. This was most noticeable in Chitwan, where 62.5% of questionnaire respondents were found to be aged 25 to 32 and from case study also 50% (Table 11.8). In Lalitpur, 50% of questionnaire respondents were aged 17 to 24 and the remaining 50% aged between 25 and 32. (Table 11.6) 30% of FGD participants in Kathmandu were aged 17 to 24. (Table 11.7) In Gulmi, 57.1% of questionnaire respondents were aged between 25 to 32 years. (Table 11.6) Among older age groups, certain figures are particularly striking. 75% of FGD participants in Kanchanpur were aged over 48 years (Table 11.7). 50% of questionnaire respondents in Taplejung were aged between 33 to 40. (Table 11.6) 60% of FGD participants in Lalitpur were aged 33 to 40 years. (Table 11.7)

The geographical distribution of crime according to age is necessarily related to the nature of the offence - and thus the social conditions that facilitate it to arise. However, the survey data cannot present a clear pattern. There is no particular geographical region in which crimes of a certain age group consistently occur. This can be observed in an analysis of the incidents where youth crime is greatest. From the data, crimes committed by youths are seen to occur most frequently in areas that are urbanized and highly developed. However, they are also prevalent in districts which are more remote and lacking in development opportunities. The data indicates a need for in-depth study at district level into the type of crimes prevalent in certain areas - and thus, the age groups which are most likely to commit them. This would allow a greater understanding of the groups susceptible to situations of criminality. Furthermore, it could lay ground for recommendations on how to prevent youths becoming involved in crime, and the best way to facilitate their reintegration into society if this occurred.

11.2.3. Caste/Ethnicity

In Nepal's post-democratic era, there is increasing scope for lines dividing castes and ethnic groups to be blurred. However, in the majority of communities they are still deeply drawn. In many places, membership of a particular caste or ethnic group may determine one's social sphere and the nature of one's conduct within it. The expression of criminal deviance in society must be considered in relation to these rules - both in terms of how it can arise, and the way in which offenders are dealt with by society.

The findings of the questionnaire survey showed that the majority of respondents were Chhetri (32%), followed by Brahmin (21.3%) and Dalit (12%). Respondents of Limbu and Newar ethnicity made up 8% respectively of total respondents. (Table 11.12). Case studies show the majority (25%) among all caste and ethnicities are the Chhetris. (Table 11.13). However, FGD indicated the highest position was held by Newar and Tamang (15.6% each) (Tabel 11.14). These figures broadly follow the proportions of castes and ethnic groups nationwide((CBS 1991)

Table 11.12: Distribution of Caste/Ethnicity of Detainee/Prison Inmate by the Sampled Districts

District	Brahmin	%	Chhetri	%	Dalit	%	Darai	%	Gurung	%	Limbu	%	Newar	%	Others	%	Rai	%	Tamang	%	Total
Kathmandu	3	25.0	3	25.0	1	8.3		0.0	1	8.3		0.0	1	8.3	1	8.3	1	8.3	1	8.3	12
Lalitpur		0.0	2	33.3	1	16.7		0.0		0.0		0.0	2	33.3		0.0		0.0	1	16.7	6
Bhaktapur		0.0	1	33.3	1	33.3		0.0		0.0		0.0	1	33.3		0.0		0.0		0.0	3
Kapilbastu	1	16.7	1	16.7	1	16.7		0.0	1	16.7		0.0	1	16.7	1	16.7		0.0		0.0	6
Chitwan	4	50.0	1	12.5		0.0	1	12.5		0.0	1	12.5		0.0		0.0		0.0	1	12.5	8
Gulmi	3	42.9	1	14.3	2	28.6		0.0		0.0		0.0	1	14.3		0.0		0.0		0.0	7
Jumla		0.0	9	100.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0	9
Kanchanpur	1	11.1	5	55.6	2	22.2		0.0		0.0		0.0		0.0	1	11.1		0.0		0.0	9
Taplejung	1	16.7	1	16.7		0.0		0.0		0.0	3	50.0		0.0	1	16.7		0.0		0.0	6
Morang	3	33.3		0.0	1	11.1		0.0		0.0	2	22.2		0.0	3	33.3		0.0		0.0	9
Total	16	21.3	24	32.0	9	12.0	1	1.3	2	2.7	6	8.0	6	8.0	7	9.3	1	1.3	3	4.0	75

Source: Baseline Survey 2002

Table 11.13: Caste/Ethnicity Distribution of detainee and prison inmate selected for case study by sample district

District	Brahmin		Chettri		Limbu		Tharu		Newar		Dalit		Others		Total
	No	%	No	%	No	%	No	%	No	%	no	%	No	%	
Kathmandu	1	12.5		0.0		0.0		0.0	3	37.5		0.0	4	50.0	8
Lalitpur		0.0	1	25.0		0.0		0.0		0.0		0.0	3	75.0	4
Bhaktapur															0
Kapilbastu		0.0		0.0		0.0	2	50.0		0.0	1	25.0	1	25.0	4
Chitwan		0.0	1	25.0		0.0		0.0		0.0		0.0	3	75.0	4
Gulmi	1	25.0	2	50.0		0.0		0.0	1	25.0		0.0		0.0	4
Jumla		0.0	4	100.0		0.0		0.0		0.0		0.0		0.0	4
Kanchanpur	1	25.0	1	25.0		0.0		0.0		0.0	2	50.0		0.0	4
Taplejung		0.0	1	25.0	3	75.0		0.0		0.0		0.0		0.0	4
Morang		0.0		0.0		0.0		0.0	2	50.0		0.0	2	50.0	4
Total	3	7.5	10	25.0	3	7.5	2	5.0	6	15.0	3	7.5	13	32.5	40

Source: Baseline Survey 2002

Table 11.14: Caste/Ethnicity Distribution of detainee and prison inmate participating in FGD by sample district

District	Brahmin		Chettri		Newar		Magar		Limbu		Shrepa		Tamang		Rai		Dalit		Others		Total
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	
Kathmandu	2	20.0	1	10.0	4	40.0	1	10.0		0.0		0.0	1	10.0		0.0		0.0	1	10.0	10
Lalitpur		0.0		0.0	2	40.0		0.0		0.0		0.0	3	60.0		0.0		0.0		0.0	5
Bhaktapur																					0
Kapilbastu		0.0		0.0	1	25.0		0.0		0.0		0.0		0.0		0.0	2	50.0	1	25.0	4
Chitwan	1	25.0	1	25.0		0.0		0.0		0.0		0.0	1	25.0		0.0	1	25.0		0.0	4
Gulmi		0.0	1	25.0		0.0	1	25.0		0.0		0.0		0.0		0.0	2	50.0		0.0	4
Jumla																					0
Kanchanpur	2	50.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0	1	25.0	1	25.0	4
Taplejung		0.0		0.0		0.0		0.0	2	50.0	2	50.0		0.0		0.0		0.0		0.0	4
Morang	1	10.0	1	10.0		0.0		0.0	1	10.0		0.0	2	20.0	2	20.0		0.0	3	30.0	10
Total	6	13.3	4	8.9	7	15.6	2	4.4	3	6.7	2	4.4	7	15.6	2	4.4	6	13.3	6	13.3	45

Source: Baseline Survey 2002

It is interesting to observe the differences in crimes committed by each group. Among Brahmin questionnaire respondents, after incidents of murder (31.3%), offences of fraud and cheating (18.8%), rape (18.8%) and trafficking (18.8) were most commonly reported. From the case studies, 75% Limbu were recorded in only Taplejung due to their traditional homeland. Comparatively, incidents of murder involving Chhetris were far more frequent than those involving Brahmins. Incidents of murder were of the highest occurrence among Chhetris (50%), with other offences all in minor proportion. Among the Limbu, Rai and Tamang, no incidents of murder were reported by questionnaire respondents. Rather, the crime of highest frequency was robbery (Dacoit). (Table 11.15)

Table 11.15: Relation between Crime and Caste/Ethnicity

Crime	Brahmin	%	Chhetri	%	Dalit	%	Darai	%	Gurung	%	Limbu	%	Newar	%	Others	%	Rai	%	Tamang	%	Total
Attempt to murder		0.0	2	8.3	1	11.1		0.0		0.0		0.0		0.0		0.0		0.0		0.0	3
Robbery	1	6.3		0.0		0.0		0.0		0.0	3	50.0		0.0		0.0	1	100.0	1	33.3	6
Fraud and Cheating	3	18.8		0.0		0.0		0.0		0.0	1	16.7		0.0		0.0		0.0		0.0	4
Murder	5	31.3	12	50.0	2	22.2		0.0	1	50.0		0.0	3	50.0	3	42.9		0.0		0.0	26
Narcotics	1	6.3	2	8.3		0.0		0.0		0.0	1	16.7	1	16.7	1	14.3		0.0	1	33.3	7
Others		0.0	2	8.3	2	22.2	1	100.0		0.0		0.0	1	16.7	2	28.6		0.0		0.0	8
Rape	3	18.8	2	8.3		0.0		0.0		0.0	1	16.7	1	16.7	1	14.3		0.0		0.0	8
Theft		0.0	3	12.5	2	22.2		0.0		0.0		0.0		0.0		0.0		0.0	1	33.3	6
Trafficking	3	18.8	1	4.2	2	22.2		0.0	1	50.0		0.0		0.0		0.0		0.0		0.0	7
Total	16	21.3	24	32.0	9	12.0	1	1.3	2	2.7	6	8.0	6	8.0	7	9.3	1	1.3	3	4.0	75

Source: Baseline Survey 2002

However, in FGDs, trafficking was reported to be the crime of highest occurrence (83.3%) among the Tamang. Murder and drug related crime were particularly high among Chhetris and Newars. (Table 11.16). In case studies, murder related crime was higher among the Chhettris (Table 11.13 and 11.17)

Table 11.16: Relation between Crime and Caste/Ethnicity participated in the FGD

Crime	Sherpa	%	Tharu	%	Dalit	%	Chettri	%	Brahmin	%	Newar	%	Rai	%	Limbu	%	Tamang	%	Magar	%	Muslim	%	Gurung	%	Total
Murder	1	50.0		0.0	3	50.0	3	37.5		0.0	3	33.3	2	66.7		0.0	1	16.7	1	50.0	1	100.0		0.0	15
Trafficking	1	50.0	1	100	1	16.7	1	12.5	1	25.0	2	22.2		0.0	1	50.0	5	83.3		0.0		0.0		0.0	13
Drugs		0.0		0.0	2	33.3	3	37.5	2	50.0	4	44.4		0.0		0.0		0.0	1	50.0		0.0	1	100.0	13
Narcotics		0.0		0.0		0.0	1	12.5		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0	1
Rape		0.0		0.0		0.0		0.0	1	25.0		0.0		0.0	1	50.0		0.0		0.0		0.0		0.0	2
Poaching		0.0		0.0		0.0		0.0		0.0		0.0	1	33.3		0.0		0.0		0.0		0.0		0.0	1
Total	2	4.4	1	2.2	6	13.3	8	17.8	4	8.9	9	20.0	3	6.7	2	4.4	6	13.3	2	4.4	1	2.2	1	2.2	45

Source: Baseline Survey 2002

There can be a social justification for these crimes, perhaps relating to the norms and values of certain groups or the developmental opportunities to which they have access. The prevalence of fraud and cheating among Brahmins could be related to the employment of this group in white-collar sectors. The high incidence of relatively petty offences, and minimal occurrence of violent crime such as murder among certain ethnic groups of "hill-dwelling" origin could possibly be related to the particular communal values of these

Table 11.17: Relation between Crime and Caste/Ethnicity selected for Case Studies of Detainee/Prison Inmate by Sampled District

Crime	Sherpa	%	Tharu	%	Dalit	%	Chettri	%	Brahmin	%	Newar	%	Rai	%	Limbu	%	Tamang	%	Magar	%	Gurung	%	Terai Group (Marwadi/Gupt a/Sahu)	%	Giri	%	Kumal	%	Total
Murder		0.0	1	50.0	2	66.7	8	80.0	2	50.0	2	33.3		0.0		0.0	1	50.0		0.0	1	50.0	2	66.7	1	100		0.0	20
Trafficking		0.0		0.0	1	33.3		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0	1
Drugs	1	100		0.0		0.0		0.0		0.0	3	50.0		0.0		0.0		0.0		0.0	1	50.0		0.0		0.0		0.0	5
Dacoits		0.0	1	50.0		0.0		0.0		0.0		0.0	1	33.3	1	100	1	50.0	1	100		0.0		0.0		0.0		0.0	5
Rape		0.0		0.0		0.0		0.0		0.0		0.0	1	33.3		0.0		0.0		0.0		0.0		0.0		0.0		0.0	1
Abortion		0.0		0.0		0.0	1	10.0	1	25.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0	2
Theft		0.0		0.0		0.0	1	10.0		0.0	1	16.7	1	33.3		0.0		0.0		0.0		0.0	1	33.3		0.0		0.0	4
Attempt to Murder		0.0		0.0		0.0		0.0	1	25.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0	1
Poaching		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0	1	100	1
Total	1	2.5	2	5.0	3	7.5	10	25.0	4	10.0	6	15.0	3	7.5	1	2.5	2	5.0	1	2.5	2	5.0	3	7.5	1	2.5	1	2.5	40

Source: Baseline Survey 2002

groups. These incidences undoubtedly have a geographical connection that is closely related to the cultural guidelines of the group. A person's geographic connections - in terms of present situation and family origin - can have a significant impact on their socialization, and conditions that may "push" them into criminality. Certain castes and ethnic groups continue to reside in specified areas of the country. Hence, the majority of questionnaire respondents, case studies and FGD participants from Taplejung were Limbu. Most Newars participating in the survey were from Kathmandu and Lalitpur. Other groups may have migrated from where they were born; many of Tamang ethnicity are traditionally from hill regions, although those questioned where residing in urban areas and the Terai. The majority of what are often classed as "urban" crimes, i.e.: murder, narcotics and to some extent, trafficking, were committed by groups largely residing in such areas. Of all murders, the highest number were attributed to Chhetris. As a caste group, Chhetris are spread throughout the country. A high number of questionnaire respondents were found in the hill district of Jumla; however, there was also a significant presence in the border and built-up areas of Kathmandu, Lalitpur, Chitwan and Kanchanpur.

11.2.4. Educational Status

The majority of respondents to the baseline questionnaire had completed primary education (32.0%). However, the second largest group were illiterate (26.7%). (Table 11.18) This was a trend contrasted by that for subjects of the case study and participants in FGDs. 42.5% of case study subjects were literate, i.e.: able to read and write. (Table 11.19) Of FGD participants, the majority were literate (31.1%), and the second largest group were those who were illiterate (26.7%) followed by those who had primary level (24.4%) (Table 11.20) The largest proportion of illiterate respondents were found in Kathmandu. This is unlikely to be due to standards of education provided by institutions in the capital - but could be related to the access of certain groups to educational facilities. A high number of respondents in Kathmandu were also found to have completed primary, secondary and higher education levels. However, there are many communities who may not have such opportunities. The city is attractive for many people as a destination for labour migration and escape, which brings a diversity of groups into the capital. These may include people who have already passed the age where they can join the formal education sector, and those who may be prevented from entering education due to social pressures within and outside the family. Such factors which could also explain the high level of illiteracy found among FGD participants in Morang, which could otherwise be recognized as one of Nepal's most developed districts (Table 11.18 to 11.19).

Table 11.18: Distribution of Educational Status of Detainee/Prison Inmate in Study Areas

District	Illiterate	%	Literate	%	Primary Education	%	Secondary Education	%	Higher than the above mention	%	Total
Kathmandu	5	41.7		0.0	3	25.0	2	16.7	2	16.7	12
Lalitpur	1	16.7		0.0	2	33.3	1	16.7	2	33.3	6
Bhaktapur	1	33.3		0.0	1	33.3	1	33.3		0.0	3
Kapilbastu	3	50.0		0.0	1	16.7	1	16.7	1	16.7	6
Chitwan	1	12.5	1	12.5	3	37.5	3	37.5		0.0	8
Gulmi		0.0		0.0	4	57.1	1	14.3	2	28.6	7
Jumla	3	33.3	4	44.4		0.0	1	11.1	1	11.1	9
Kanchanpur	1	11.1		0.0	4	44.4	3	33.3	1	11.1	9
Taplejung	3	50.0		0.0	3	50.0		0.0		0.0	6
Morang	2	22.2		0.0	3	33.3	3	33.3	1	11.1	9
Total	20	26.7	5	6.7	24	32.0	16	21.3	10	13.3	75

Source: Baseline Survey 2002

Table 11.19: Distribution of Educational Status of Detainee/Prison Inmate selected for case study by sample district

District	Illiterate		Literate		Primary Level		Secondary		Higher Education		Total
	No	%	No	%	No	%	No	%	No	%	
Kathmandu	2	25.0	1	12.5	1	12.5	2	25.0	2	25.0	8
Lalitpur		0.0		0.0	1	25.0	1	25.0	2	50.0	4
Bhaktapur											0
Kapilbastu	3	75.0	1	25.0		0.0		0.0		0.0	4
Chitwan	1	25.0	2	50.0		0.0	1	25.0		0.0	4
Gulmi	1	25.0	1	25.0		0.0	1	25.0	1	25.0	4
Jumla		0.0	4	100.0		0.0		0.0		0.0	4
Kanchanpur	1	25.0	2	50.0	1	25.0		0.0		0.0	4
Taplejung		0.0	4	100.0		0.0		0.0		0.0	4
Morang		0.0	2	50.0	1	25.0	1	25.0		0.0	4
Total	8	20.0	17	42.5	4	10.0	6	15.0	5	12.5	40

Source: Baseline Survey 2002

Table 11.20: Distribution of Educational Status of Detainee/Prison Inmate for the participating FGD by sample district

Districts	Illiterate		Literate		Primary Level		Secondary		Higher Education		Total
	No	%	No	%	No	%	No	%	No	%	
Kathmandu	3	30.0	3	30.0	1	10.0	1	10.0	2	20.0	10
Lalitpur		0.0	1	20.0	3	60.0		0.0	1	20.0	5
Bhaktapur											0
Kapilbastu		0.0	2	50.0	2	50.0		0.0		0.0	4
Chitwan	1	25.0	1	25.0	1	25.0	1	25.0		0.0	4
Gulmi		0.0	2	50.0	2	50.0		0.0		0.0	4
Jumla											0
Kanchanpur	3	75.0	1	25.0		0.0		0.0		0.0	4
Taplejung		0.0	3	75.0	1	25.0		0.0		0.0	4
Morang	5	50.0	1	10.0	1	10.0	2	20.0	1	10.0	10
Total	12	26.7	14	31.1	11	24.4	4	8.9	4	8.9	45

Source: Baseline Survey 2002

A lack of education is a significant factor in the emergence of crime. Overall, for both respondents to the questionnaire and FGD participants, there seemed to be a reasonable level of involvement in formal education at primary level, before a slow decline in the standard through secondary and higher level education. The data of the survey indicates that a lack of education is undoubtedly a factor determining criminal deviance. As something that both causes and is denied by conditions of poverty and disadvantage - it is inextricably linked to the occurrence of crime. Criminal behaviour is often a form of rebellion against established powers. The most powerless are thus those most vulnerable to the development of tendencies of criminal deviance.

This has been an issue addressed by international human rights instruments. Principle 7 of the Declaration of the Rights of the Child proclaims that every child shall be entitled to education that will "promote his general culture and enable him to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society." A fundamental principle of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") is that Member States develop conditions that ensure juveniles' meaningful life in the community "... which, during that period in life when she or he is most susceptible to deviant behavior, will foster a process of personal development and education that is as free from crime and delinquency as possible"[1].

Policies specifically targeted at the prevention of juvenile delinquency should incorporate such considerations. The United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines") state that delinquency prevention measures should involve:

"The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection".[2]

These are standards that should not be neglected for juveniles found guilty of crime. Hence, Rule 26.1 of the Beijing Rules provides that:

"The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society".

The trend for the least educated to be involved in crime is one that should be considered when educational strategies are formed and applied. There is a need for educational policies and practices that stretch to include both genders, and those from all social backgrounds and age groups. This could go some way to reducing criminal tendencies. It is also important that education and developmental schemes are incorporated into the treatment of offenders after disposition. This would help to prevent recidivism and facilitate the integration of those who have committed crime back into their communities.

11.2.5. Marital Status and Family Structure

The majority of questionnaire respondents were married (72%). (Table 11.21) This was also true of participants in FGDs (82.2%) (Table 11.22) and subjects of case studies (75%) (Table 11.23).

Table 11.21: Distribution of Marital Status of Detainee/Prison Inmate by the Sampled Districts

District	Married	%	Single	%	Total
Kathmandu	9	75.0	3	25.0	12
Lalitpur	1	16.7	5	83.3	6
Bhaktapur	3	100.0		0.0	3
Kapilbastu	5	83.3	1	16.7	6
Chitwan	7	87.5	1	12.5	8
Gulmi	3	42.9	4	57.1	7
Jumla	6	66.7	3	33.3	9
Kanchanpur	7	77.8	2	22.2	9
Taplejung	5	83.3	1	16.7	6
Morang	8	88.9	1	11.1	9
Total	54	72.0	21	28.0	75

Source: Baseline Survey 2002

Table 11.22: Distribution of marital status of Detainee/Prison Inmate collected from FGD by the sample district

District	Unmarried		Married		Total
	No	%	No	%	
Kathmandu	1	10.0	9	90.0	10
Lalitpur	1	20.0	4	80.0	5
Bhaktapur					0
Kapilbastu		0.0	4	100.0	4
Chitwan	2	50.0	2	50.0	4
Gulmi	1	25.0	3	75.0	4
Jumla					0
Kanchanpur		0.0	4	100.0	4
Taplejung	1	25.0	3	75.0	4
Morang	2	20.0	8	80.0	10
Total	8	17.8	37	82.2	45

Source: Baseline Survey 2002

Table 11.23: Distribution of marital status of Detainee/Prison Inmate from case study by the sample district

District	Unmarried		Married		Total
	No	%	No	%	
Kathmandu	3	37.5	5	62.5	8
Lalitpur		0.0	4	100.0	4
Bhaktapur					0
Kapilbastu	1	25.0	3	75.0	4
Chitwan		0.0	4	100.0	4
Gulmi	1	25.0	3	75.0	4
Jumla	1	25.0	3	75.0	4
Kanchanpur		0.0	4	100.0	4
Taplejung	1	25.0	3	75.0	4
Morang	3	75.0	1	25.0	4
Total	10	25.0	30	75.0	40

Source: Baseline Survey 2002

The greatest proportion of questionnaire respondents had less than 5 members in their family (49.3%). (Table 11.24) Respondents with nuclear families were most frequent, although only by a small majority (52.7%). (Table 11.25) In this respect, the prevalence of crime in this could be slight indication at the pressures imposed by need to care for a family.

Table 11.24: Number of the Family members of Detainee/Prison Inmate in the Study Areas

Districts	1 to 5	%	6 to 10	%	Above 10	%	Total
Kathmandu	6	50.0	5	41.7	1	8.3	12
Lalitpur	3	50.0	1	16.7	2	33.3	6
Bhaktapur	3	100.0		0.0		0.0	3
Kapilbastu	2	33.3	4	66.7		0.0	6
Chitwan	2	25.0	6	75.0		0.0	8
Gulmi	7	100.0		0.0		0.0	7
Jumla	3	33.3	5	55.6	1	11.1	9
Kanchanpur	5	55.6	4	44.4		0.0	9
Taplejung	3	50.0	2	33.3	1	16.7	6
Morang	3	33.3	5	55.6	1	11.1	9
Total	37	49.3	32	42.7	6	8.0	75

Source: Baseline Survey 2002

Table 11.25: Type of Family

Districts	Joint	%	Nuclear	%	Total
Kathmandu	5	41.7	7	58.3	12
Lalitpur	4	66.7	2	33.3	6
Bhaktapur	1	33.3	2	66.7	3
Kapilbastu	3	50.0	3	50.0	6
Chitwan	5	62.5	3	37.5	8
Gulmi	5	71.4	2	28.6	7
Jumla	4	44.4	5	55.6	9
Kanchanpur	1	11.1	8	88.9	9
Taplejung	3	50.0	3	50.0	6
Morang	5	55.6	4	44.4	9
Total	36	48.0	39	52.0	75

Source: Baseline Survey 2002

11.2.6. Occupation, Monthly Income and Expenditure:

The occupation of 45.7% of questionnaire respondents was agriculture. 13.6% were involved in laboring, whereas 19.8% had been occupied in business, and 16% in the service. (Table 11.26) A similar distribution was shown for participants in FGDs and subjects of the case studies.(Table 11.27 & 11.28)

Table 11.26: Distribution of Occupation of Detainee/Prison Inmate in the Study Districts

Districts	Agriculture	%	Business	%	Daily Wages	%	Others	%	Service	%	Sports/ Games	%	Total
Kathmandu	4	33.3	3	25.0	3	25.0		0.0	2	16.7		0.0	12
Lalitpur	2	33.3		0.0	1	16.7	1	16.7	1	16.7	1	16.7	6
Bhaktapur		0.0	1	33.3	1	33.3		0.0	1	33.3		0.0	3
Kapilbastu	1	14.3	3	42.9	1	14.3		0.0	2	28.6		0.0	7
Chitwan	5	55.6	2	22.2		0.0	1	11.1	1	11.1		0.0	9
Gulmi	1	14.3	2	28.6	1	14.3		0.0	3	42.9		0.0	7
Jumla	8	72.7	2	18.2		0.0		0.0	1	9.1		0.0	11
Kanchanpur	5	50.0	2	20.0	2	20.0		0.0	1	10.0		0.0	10
Taplejung	6	100.0		0.0		0.0		0.0		0.0		0.0	6
Morang	5	50.0	1	10.0	2	20.0	1	10.0	1	10.0		0.0	10
Total	37	45.7	16	19.8	11	13.6	3	3.7	13	16.0	1	1.2	81

Note: Due to the multiple response, the total number is 81. *Source: Baseline Survey 2002*

Table 11.27: Distribution of occupation of Detainee/Prison Inmate participating in FGD in the study district

District	Agriculture		Business		Wage/labor		Service		Others		Total
	No	%	No	%	No	%	No	%	No	%	
Kathmandu	3	30.0	6	60.0		0.0	1	10.0		0.0	10
Lalitpur	3	60.0	1	20.0		0.0	1	20.0		0.0	5
Bhaktapur											0
Kapilbastu	3	75.0	1	25.0		0.0		0.0		0.0	4
Chitwan	1	25.0	1	25.0	1	25.0		0.0	1	25.0	4
Gulmi		0.0		0.0	4	100.0		0.0		0.0	4
Jumla											0
Kanchanpur	4	100.0		0.0		0.0		0.0		0.0	4
Taplejung	4	100.0		0.0		0.0		0.0		0.0	4
Morang	5	50.0	2	20.0		0.0	2	20.0	1	10.0	10
Total	23	51.1	11	24.4	5	11.1	4	8.9	2	4.4	45

Source: Baseline Survey 2002

Table 11.28: Distribution of occupation of Detainee/Prison Inmate selected for Case Study in the Study Districts

District	Agriculture		Business		Wage/labor		Service		Others		Total
	No	%	No	%	No	%	No	%	No	%	
Kathmandu	1	12.5	4	50.0	1	12.5		0.0	2	25.0	8
Lalitpur		0.0	1	25.0		0.0	2	50.0	1	25.0	4
Bhaktapur											0
Kapilbastu	2	50.0		0.0	2	50.0		0.0		0.0	4
Chitwan	2	50.0	1	25.0	1	25.0		0.0		0.0	4
Gulmi	2	50.0	1	25.0	1	25.0		0.0		0.0	4
Jumla	2	50.0		0.0	2	50.0		0.0		0.0	4
Kanchanpur	1	25.0	2	50.0	1	25.0		0.0		0.0	4
Taplejung	3	75.0		0.0	1	25.0		0.0		0.0	4
Morang	1	25.0	2	50.0	1	25.0		0.0		0.0	4
Total	14	35.0	11	27.5	10	25.0	2	5.0	3	7.5	40

Source: Baseline Survey 2002

The district wise distribution was also fairly consistent among questionnaire respondents and participants of FGDs and case studies. The majority of those working in agriculture were

found to be in Jumla, a high number were also reported in Kanchanpur, Taplejung and Morang. These districts are all "agricultural". However, for certain occupational categories, the data shows no clear geographical trend. Occupations of an "urban" nature were not restricted to urban areas alone. Hence, data from FGDs and the questionnaire shows that the majority of business persons to be accused of or have committed crime were in Kathmandu and Morang, two of Nepal's most highly developed regions. However, they were a high proportion in Kapilbastu, an area of mixed economic character. Most labourers were found in Kathmandu, and also Gulmi, a remote hill region. The majority of those working in the service industry were found in Kathmandu, Kapilbastu, Gulmi and Morang. (Table 11.26)

The occupations of detainees and prison inmates and their geographical distribution give some indication of areas and persons that may be most susceptible to criminal involvement. From the survey data, it could be suggested that in some agricultural areas and among certain farming populations, one of the causal factors of crime could be economic need. However, this conclusion may be too simplistic. As seen from the data regarding the monthly income of detainees and prison inmates surveyed, although the majority of questionnaire respondents (50.7%) had earned less than 3000 NRs. per month, a large number were of middle-income, earning a monthly wage of between 3000 to 5000 NRs. This trend was observed in each district. (Table 11.29). For the majority of respondents in all districts, monthly expenditure was mid-range, between 2001 and 3000 NRs. (38.7%). The second largest group reported monthly outgoings of between 3001 and 5000 NRs. (25.3%). (Table 11.30) The consistency of this data for all districts suggests that in the sampled areas, exacerbators of crime were not purely financial.

Table 11.29: Distribution of Monthly Income of Detainee/Prison Inmate by Sampled Districts

Districts	Less than 3000	%	From 3000 to 5000	%	From 5000 to 10000	%	Above 10000	%	Total
Kathmandu	3	25.0	7	58.3	1	8.3	1	8.3	12
Lalitpur	2	33.3	2	33.3	2	33.3		0.0	6
Bhaktapur	2	66.7	1	33.3		0.0		0.0	3
Kapilbastu	3	50.0	2	33.3	1	16.7		0.0	6
Chitwan	3	37.5	4	50.0	1	12.5		0.0	8
Gulmi	3	42.9	2	28.6	2	28.6		0.0	7
Jumla	7	77.8	1	11.1	1	11.1		0.0	9
Kanchanpur	6	66.7	2	22.2	1	11.1		0.0	9
Taplejung	5	83.3	1	16.7		0.0		0.0	6
Morang	4	44.4	4	44.4		0.0	1	11.1	9
Total	38	50.7	26	34.7	9	12.0	2	2.7	75

Source: Baseline Survey 2002

Table 11.30: Distribution of Monthly Expenses of Detainee/Prison Inmate by Sampled Districts

District	Less than 2000	%	From 2001 to 3000	%	From 3001 to 5000	%	Above 5001	%	Total
Kathmandu	2	16.7	7	58.3	1	8.3	2	16.7	12
Lalitpur		0.0	3	50.0	2	33.3	1	16.7	6
Bhaktapur	2	66.7	1	33.3		0.0		0.0	3
Kapilbastu	2	33.3	2	33.3	1	16.7	1	16.7	6
Chitwan	2	25.0	1	12.5	4	50.0	1	12.5	8
Gulmi		0.0	4	57.1	1	14.3	2	28.6	7
Jumla		0.0	3	33.3	2	22.2	4	44.4	9
Kanchanpur	2	22.2	5	55.6	2	22.2		0.0	9
Taplejung	2	33.3	3	50.0		0.0	1	16.7	6
Morang	2	22.2		0.0	6	66.7	1	11.1	9
Total	14	18.7	29	38.7	19	25.3	13	17.3	75

Considering economic situation with an attempt to establish trends between nature of crime by economic group the following were indicated: 50% of murders were committed by respondents with an income of less than 3000 NRs, 30.8% of murders were committed by people in the income group from 3000-5000 NRs. monthly. In comparison, the respondents involved in trafficking had a higher occurrence of involvement from the middle income group: 57%, while 42.9% were from the less than 3000 NRs. income group. The cases of theft were overwhelmingly committed by respondents from the low income group by 83.3%, while the majority of accused of rape were also found here, 62.5%.

If rape and theft are considered as "less sophisticated" crimes, involving only little or no organization, the trend is thus that a higher percentage of the respondents from the least advantaged income groups committed crime of cruder character and that a higher percentage of respondents from higher income groups were involved in the criminality which renders organizations and networking necessary, such as trafficking and fraud.

The cases of fraud and cheating were also overwhelmingly carried out by respondents from the middle income group (75%), while only 25% of the less than 3000 NRs. of income were involved in fraud.

When taking occupation into consideration, a similar pattern may be established, as the respondents making earnings from agriculture largely were involved in "less sophisticated" crimes, thus 66.6% of rape related crime were farmers, as were 71.4% of thieves. The trend of respondents involved in trafficking were that 42% made a living on business, and 50% of respondents involved in fraud and cheating were in "service" positions. Social positions that involve the accumulation of extended social networks might then be conditional factors affecting the nature of crime.

An exception to this trend may be drawn from the finding that 57.1% of respondents involved in drug-related crime (Narcotics) had earnings of less than 3000 NRs. per month, and 42.9% earned from 3000-5000 NRs. monthly. What should be taken into consideration when looking at the data for narcotic-related crimes in the survey is that this is a crime involving complexity beyond the category. For example, respondents that are drug-addicts may be included in the category.(Table 11.31)

Table 11.31: Relation between Income and Crime

Crime Type	Above 10000	%	Bet. 3-5000	%	Bet. 5-10000	%	Less than 3000	%	Total
Attempt to murder		0.0		0.0		0.0	3	100.0	3
Dacoit		0.0	3	50.0	1	16.7	2	33.3	6
Fraud and Cheating		0.0	3	75.0		0.0	1	25.0	4
Murder	1	3.8	8	30.8	4	15.4	13	50.0	26
Narcotic		0.0	3	42.9		0.0	4	57.1	7
Others	1	12.5	3	37.5	2	25.0	2	25.0	8
Rape		0.0	2	25.0	1	12.5	5	62.5	8
Theft		0.0		0.0	1	16.7	5	83.3	6
Trafficking		0.0	4	57.1		0.0	3	42.9	7
Total	2	2.7	26	34.7	9	12.0	38	50.7	75

Note : The table is vertically developed *Source: Baseline Survey 2002,*

11.3. Procedures in Relation to Funneling and Filtering Mechanism in Criminal Procedure

The sample study carried out filtering and funneling situation in ten sampled districts will in detail analyze the situation of FIRs by types of crimes, actions and results. The study will present a scenario of the effectiveness of the filtering device. The study will also show a paradigm funneling of criminal justice system, and factors associated with it. Right now a description is given to show national situation of effectiveness of the filtering device and funneling system based on the information extracted from annual reports of the Criminal Investigation Department (CID) headquarter and office of the Attorney General. This study is primarily based on national data available from the police and the Attorney General Office.

Criminal proceeding starts with registration of the FIR of offence taken place. Registration of FIR is a process by which a crime, and if possible the identity of the offender are brought to the notice of the investigating officer. The investigation of the suspect generally starts upon registration of the FIR. The process of investigation then advances to the arrest followed by the interrogation and detention of the suspect, if necessary. Further, the investigation process advances for the purpose of gathering and scrutinizing evidences. Hence the investigation of suspect and collection and scrutiny of evidence is the primary stage of criminal proceedings.

Based upon the available evidence and scrutiny thereof the investigating officer decides as to whether to initiate process of prosecution or not. If there are ample evidence against the suspect to initiate the prosecution the police has to submit the suspects before the court and ask for the remand to continue detention of the suspects. If there is no evidence then the person is released by the police. For this purpose Article 14(7) of the Constitution of the Kingdom of Nepal 1990 and the Section 15 (1) of the State Case Act 1993 give a period of 24 hours to the police. Pursuant to Section 17 (2) of the State Cases Act 1993, once the suspect is submitted before the court and remand for detention is obtained the power to drop the case lies with the Attorney General.

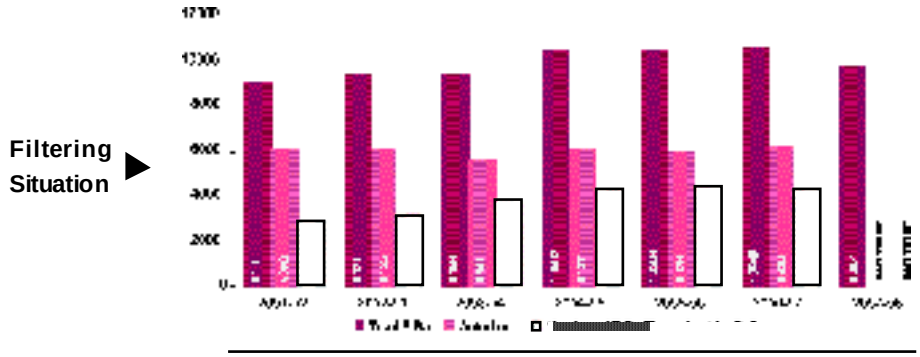
The filtering of the criminal cases is therefore possible either when the police submits the suspect before the court within 24 hours of arrest, or when the prosecutor along with the charge sheet submits the suspect before the court within 25 days.[3]

11.3.1. Number of FIRs Filing (From 051/052 to 057/058)

Based on the statistical information at national level obtained from the CID the situation of filtering out of FIRs is as follows:

Table 11.32: Filtering Situation of FIRs at Investigation Stage

F/Y	FIRs	Increment %	FIRs acted on	Filtered out FIRs	Filtration %
051/52	9111[4]		6098[5]	3013	33.07
052/53	9421[6]	3.40	6155[7]	3266	34.67
053/54	9456[8]	0.37	5641[9]	3815	40.34
054/55	10562[10]	11.70	6137[11]	4425	41.90
055/56	10504[12]	-0.55	6028[13]	4476	42.61
056/57	10640[14]	1.26	6228[15]	4412	40.47
057/58	9897[16]	-6.98	Not available	-	-
Total	69551	1.17			41.94



As per the statistics average annual growth rate of FIRs is 1.17%. It can be inferred from this situation that the crime rate is rising, though slowly. However, in F/Y 2057/58, there was a sharp reduction in the registration of FIRs compared to the levels of the previous years. However, no concrete reason for this has been found. Neither the police nor Attorney General Office have made any attempt to investigate on the matter. The intensification of Maoist insurgency in many parts of the country and resultant evacuation of the police offices from many parts may be one of the probable causes. This can be supported by evidence of a severe reduction in reported crime in certain districts in western Nepal. To sum up, the statistics elicit the following trends:

1. The growth rate of crime is not always consistent: there are fluctuations.
2. The filtering rate at the police ranging from 33.07% to 40.47% shows in principle a satisfactory performance of filtering devices at the stage of investigation. Effective use of filtering device is supposed to strengthen the situation of human rights as it prevents random arrest of suspects. The effective use of filtering device also relieves the work burden of prosecution and eventually the trial court, which in turn is positive to consolidate the fair trial.

However, the review of the statistics is unable to explore the systematically worked out grounds on which the filtering device must be grounded. In such situation, the risk of human rights violation is always apparent. In lack of concrete criteria, it is not necessary that all filtered out cases are founded on fair and impartial grounds. As shown by the statistics, the proportion of FIRs that are reportedly filtered out during the last two years is simply incredible. It is obvious from the figures that a large number of cases have not been acted on. From the interview with police officers at sample districts during the study, it has been revealed that some FIRs could not be acted on simply because the police could not approach the scene of crime due to security risk. It implies that all the cases not acted on do not constitute the category of filtered out cases. Therefore, the number of cases not acted on also includes the cases, which are in pending situation.

11.3.2. FIRs Investigated

The proportion of filtered cases at the stage of prosecution is negligible. The gap between the proportion of filtered cases and that of failure rate at the court is incredibly big. The following table gives a clear picture of the situation.

Table 11.33: Filtering of Cases at Prosecution Stage

F/Y	Total FIRs	No of cases submitted to Government Attorney	Cases filtered by Govt. Attorney	Filtered %
051/52	9111	6098	364[17]	5.97
052/53	9421	6155	282	4.58
053/54	9456	5641	291	5-16
054/55	10562	6137	283[18]	4.61
055/56	10504	6028	268	4.45
056/57	10640	6228	234[19]	3.76
057/58	9897	Not available		

The proportion of filtered cases at the prosecution stage is so low as compared to the proportion of failure of prosecuted case in the trial court. The low proportion of filtration rate could suggest either of two conclusions:

1. The investigation of 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 evidences. It seems that the prosecution accept case files from the police *in toto*. This suggests that Government Attorney are not concerned in filtering process, and prevent a large unfounded cases from reaching to the court. The failure to prevent such situation in the one hand results in unnecessary use of resources, and on the other causes violation of human rights of suspects.

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 rate, one would be compelled to conclude that Government Attorneys offices are not suitably active and efficient in filtering out unfounded cases. This necessarily leads to higher rate of failed conviction in the trial courts and is a cause of their excessive caseload.

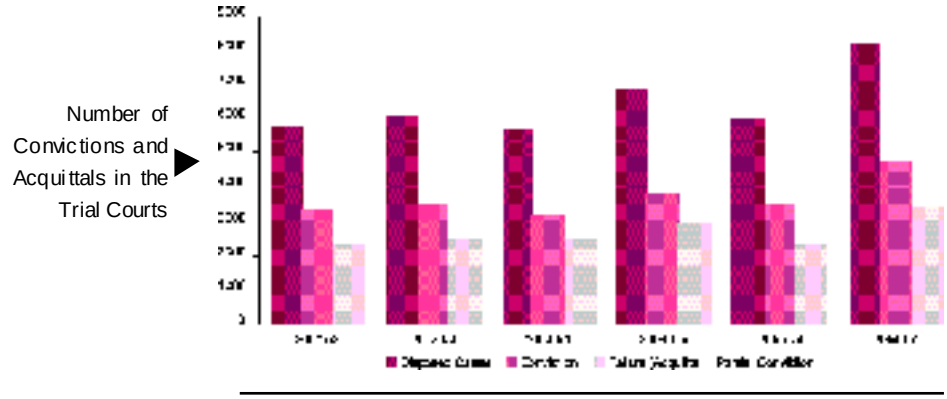
11.3.3. National Situation of Conviction Rate

The following statistics show an extremely grim condition of prosecution's failure rate at the trial court.

Table 11.34: Conviction and Acquittal Ratio at Trial Court Level (table no 39, pg 60)

F/Y	Total Case	Disposed cases	Conviction	Success (conviction) %	Failure (acquittal Partial Conviction)	Failure %
051/52	13183	5763	3386	58.75	23.77	41.25
052/53	13528	6076	3594	59.15	24.82	40.85
053/54	13093	5692	3212	56.43	24.80	43.57
054/55	15349	6831	3819	55.91	30.12	44.09
055/56	15172	5946	3593	60.43	23.53	39.57
056/57	16182	8236	4751	56.69	34.15	42.31

Source: Respective Years' Annual Reports of Attorney General Office.



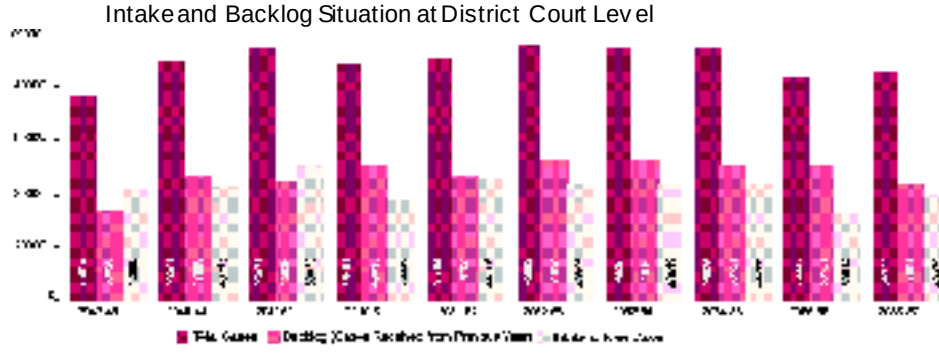
As the above figures show, at the trial level prosecution faces a serious failure, the average rate being 41.94%. According to the information collected during the Focused Group Discussion with resource persons involved in development and orientation of the Criminal Procedural Guidelines, the failure rate goes further likely to 75%, if the public offence cases are removed from the list . Other key informants like judges, lawyers and government attorneys corroborate this statement. This situation obviously indicates to inefficiency of any filtering device at the prosecution stage. On the basis of the statistics the following conclusion can be drawn:

1. The lack of effectiveness of filtering device at prosecution stage is one of the reasons of huge caseload of the judiciary, which not only causes delay in trial but results in unnecessary incarceration of accused in judicial detention thus depriving the individual liberty and many other basic rights. A study shows average 50% of caseload backlog in the trial court.[20] This situation is not caused by a lack of appropriate law, but by a lack of initiative to implement a device effectively.

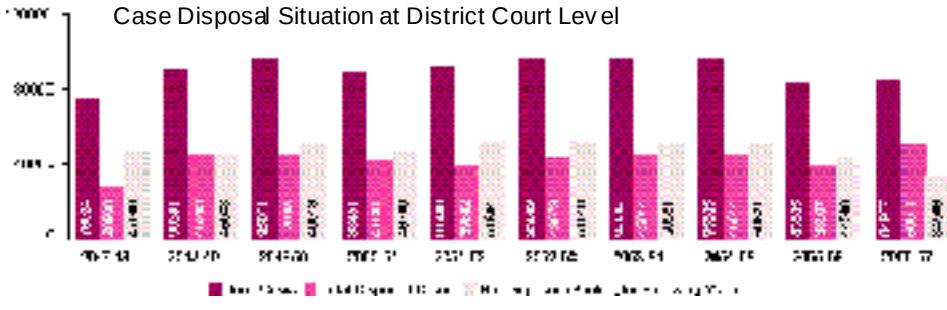
Table 11.35: Backlog Situation of Cases

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[21]	28,938	38.06	47,086	61.94
2048/49	47,086	43,215	90,301[22]	45,263	50.12	45,038	49.88
2049/50	45,038	50,033	95,071[23]	45,158	47.50	49,913	52.50
2050/51	49,913	38,538	88,451[24]	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[25]	95,889[26]	43,973	45.86	51,916	54.14
2053/54	51,916[27]	43,619	95,535	45,014[28]	47.12	50,521	52.88
2054/55	50,521[29]	44,286	95,535	45,014[30]	47.12	50,521[31]	52.88
2055/56	50,521	33,014	83,535	38,937[32]	46.61	44,598	53.39
2056/57	44,598[33]	40,379	84,977	50,011[34]	58.85	34,966	41.15

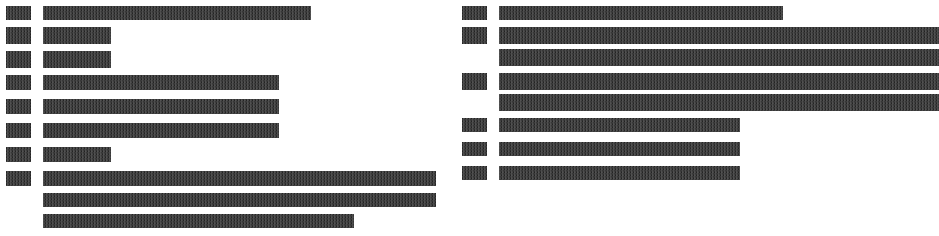
Intake and Backlog Situation at District Court Level



Case Disposal Situation at District Court Level



1. The failure rate or the acquittal of a large number of cases suggests possible violations of human rights in great number of cases. The higher rate of acquittal attaches two important consequences. Firstly, the trial against suspects is meaningless and as such



seriously maligns their liberty; and secondly, it causes a great trouble to victims of crimes as they are thus subjected to miscarriage of justice. The failure of prosecution especially in the cases related to women is of devastating impacts, as the situation not only subjects them to injustice, but also necessarily affects their lives due to stigma created by the crimes. The situation leads to the loss of confidence of the people to the system of justice.

Table 11.36: Conviction and Acquittal Situation

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[35]	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)
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

1. Investigations and prosecutions are not generally based on the legality, authenticity and reliability of evidence.
2. The role of prosecutors is largely confined to that of a bridge between the police and the courts. The prosecutors generally do not take decisions judiciously, which is violation of the UN Guidelines for Prosecutors. The prosecutors interviewed during study accept this fact. For instance, a prosecutor at Kanchanpur district says: "Government Attorneys have to discharge the responsibility of administrative works as well as prosecution which involves judicial mind. The duality of responsibility hampers to strict compliance of the code of conducts".

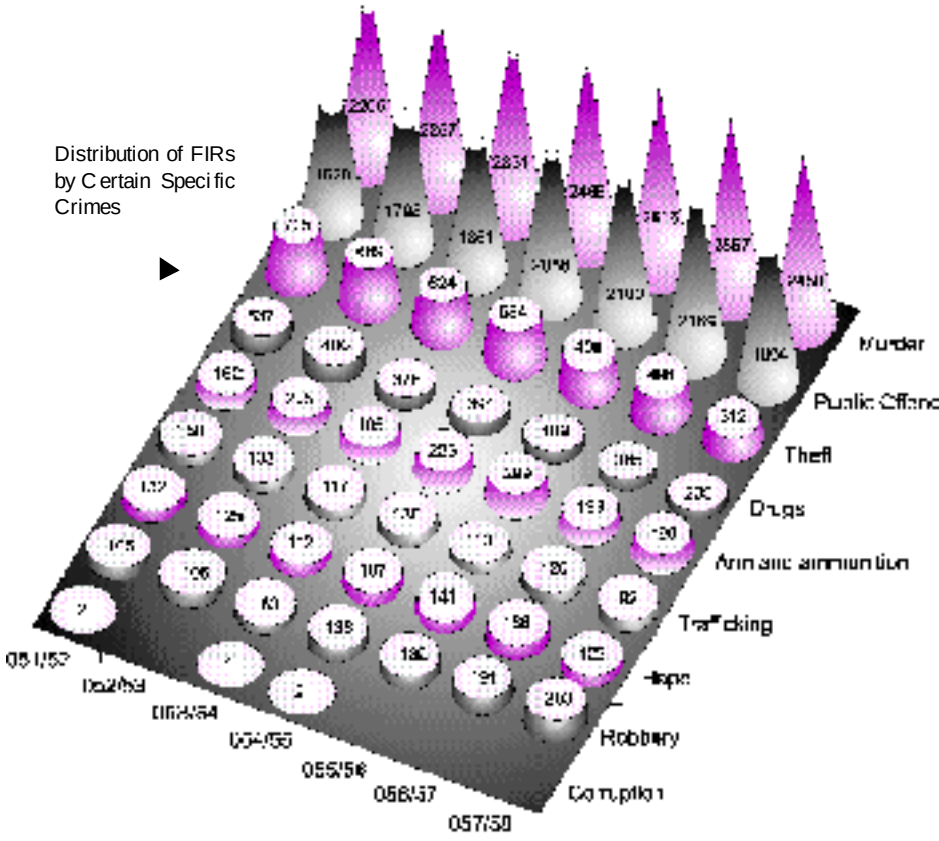
11.3.4. National Scenario of FIRs by the Type of Crime

Analysis in this part is based on the data supplied by the CID. FIRs included in this part of the analysis do not perfectly match those used to show the situation of filtration at the investigation and prosecution stages above. The figures used on those tables are based on the report published by the Police Headquarters in FY 2056-57 on the annual Police Day.

Since the report does not furnish desegregated 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.

Table 11.37: Distribution of FIRs by Certain Specific Crimes

Crime	051/52	052/53	053/54	054/55	055/56	056/57	057/58
Murder	2206	2257	2331	2489	2616	2557	2450
Public Offence	1620	1798	1861	2086	2100	2169	1864
Theft	705	689	624	584	490	498	312
Drugs	537	480	378	394	409	385	235
Arm 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



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 FY 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 too. 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 second hypothesis seems to be more valid as the prevalent law on theft was absolutely archaic till recent past, which, before it was amended, allowed to forfeit 10% of the total value of property stolen upon the recovery of the property. Therefore, people who sustained a loss of property because of theft frequently abstained from moving to legal proceedings, as they do not want to lose 10% of the value of their property if it is recovered through the court. Instead, they preferred to get the property back through informal process at the police office. This process thus avoided the prosecution of offenders. In such conditions, cases of theft were not even recorded in the police office, and offenders were 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, which might be a possible cause for the decreasing trend of crimes of the theft.

Cases relating to public offence are heard by the DAO, 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. DAOs who pass judgments in these cases are not from a legal background, except a few exceptions, and as such judgments are often not formulated by a judicial mind. If we exclude these cases from the list of successful prosecutions, the numbers of failed conviction increase dramatically showing the criminal justice system simply a mockery.

11.3.5. Comparative Situation of FIRs and Prosecution in Important Cases for the Last Three Years:

It is not necessary that all FIRs are true information of crime. Obviously, it is not necessary to initiate investigation being dependent on FIR. Although, FIR can constitute important evidence for prosecution of suspect, it cannot be a sole evidence for arrest, detention and investigation of suspect and prosecute him/her. The first and foremost responsibility of police investigator is therefore to conduct probe of the truth of the information lying in the FIR. Generally, a significant number of FIRs are not investigated.

Prosecution starts when investigation is completed. Investigation ends when adequate objective and material evidences are collected, which support the information provided

by the FIR. However, the relevancy and authenticity of the evidence need to be clearly and objectively established before the prosecution is advanced. Before the prosecution is made, the government attorneys are stipulated to see if: there are adequate evidences to support prosecution of the suspect,

- the evidences are legally collected, so that there is no mistake of law rendering the sanctity of evidence invalid,
- there is adequate law to establish that the alleged act is a crime under the law, and
- the alleged crime falls under the jurisdiction of the police or prosecutors.[36]

Consideration of these factors during investigation and prosecution will provide a significant potentiality for filtering out the unfounded cases. In this concern, however, the criminal justice system of Nepal does not sound doing well, which is one of the major causes for implausibly big rate of prosecution failure in the trial and superior courts.

Table 11.38: Situation of Filtering of Cases by Types of Cases

Crimes	F/Y 055/56		F/Y 056/57		F/Y 057/58	
	FIR	CS	FIR	CS	FIR	CS
Murder	650	460	630	482[37]	646	-
Rape	159	148	219	162	157	
Drugs	409	385	385	418[38]	235	
Robbery	132	111	191	100	383	
Arm and ammunition	299	285	198	228[39]	199	
Trafficking	110	118	120	129[40]	92	
Corruption	0	14	0	3	0	
Public Offence	2100	2073	2169	2169	1864	-
Theft	553	621	498	770[41]	312	-

The statistics present some very important trends concerning filtering and funneling of the cases.

1. The statistics show that murder is common form of crime. It constitutes a major part of the crime caseload for investigation and prosecution. The figures show that prosecutors filter out significant sizes of cases. It also shows that the murder is a crime where prosecutors are interested to exercise the discretion to prosecute or not prosecute the cases.

2. As shown by the statistics the crime of public offence, which is tried by the DAO, is investigated and prosecuted with total disregard of filtering device. The DAO being an executive officer is loyal to the Government and is often inclined to serve the interest of the Government rather than the interest of justice. In total the crime of public offence constitute the category of cases that is randomly prosecuted.
3. Drugs, trafficking, and rapes are other category of cases that has generally randomly prosecuted too.

11.3.6. Current Procedure and Practices Concerning Filtering of Cases

The following analysis is based on findings established by the sample study carried out in ten sampled districts. The sample study had followed the following methods:

a) Identification of General Universe: Schedule 1 of the State Cases Act, 1993, specify the types of crimes to be investigated by the police, and prosecuted by the government attorneys. However, police offices in districts receive hundred of first information reports which do not relate to criminal offences specified by Schedule 1. So that the first task of the study team was to select FIRs related to criminal offences under Schedule 1 out of total general universe.

b) Fixation of Specific Universe: In the second stage of the study the team fixed the specific universe of the data collected.

c) Sampling of Data Collection: Out of the total specific universe of data collected, the study team, by applying stratified sampling method, determined 25% of FIRs for detail and comprehensive study of the current procedures and practices of filtering situation. Wherever the size of universe was found less than 50 FIR the census method was applied.

d) Case study method was applied for extracting information from selected FIRs. It focused on the following details:
   - Date, address, and other details of person filing FIR,
   - The fact details of the incident of criminal offence,
   - Preliminary report, whether it was submitted to government attorney or not, and whether the investigating officer was designated or not.
   - Time, mode, place, etc. of arrest of suspect,
   - Whether the remand for detention was obtained or not,
   - Whether the deposition of the witnesses were made or not,
   - Whether the investigation documents had been timely submitted to government attorney or not,
   - Whether the charge sheet along with the suspect was submitted at the court or not, and the types of sentence asked for,
   - Whether the accused was convicted or acquitted, and
   - Whether the judgment of the trial court was sustained or reversed by the superior courts.

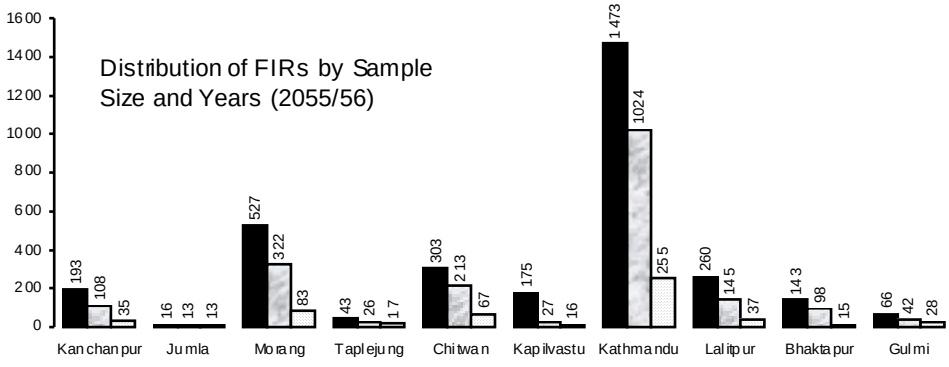
The study team also looked for the following additional information:

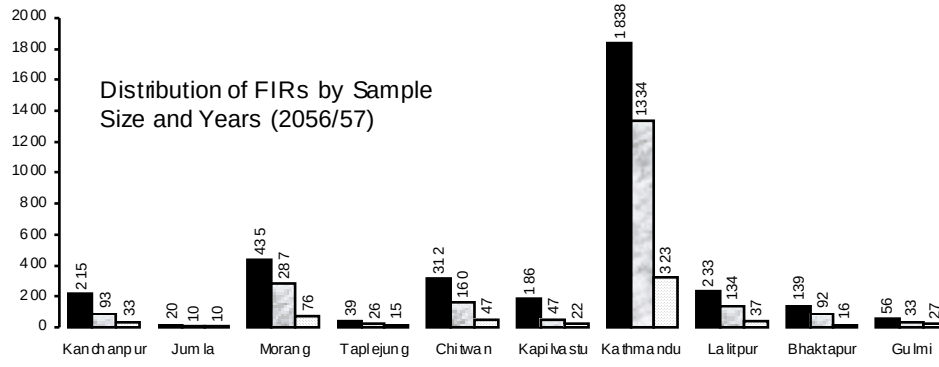
- Types of criminal offences randomly prosecuted
- Types of cases generally not prosecuted
- Type of criminal offences where police did not detain the suspect.

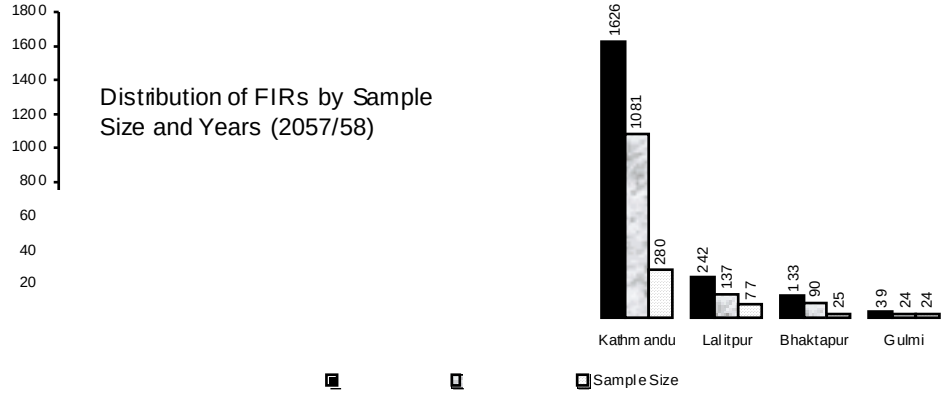
Common forms of human right violation committed by police during investigation.

Table 11.39: Distribution of FIRs by Sample Size and Years:

Districts	2055-56					2056-57					2057-58				
	Total No Of FIR	Universe of FIR	%	Sample Size	%	Total No Of FIR	Universe of FIR	%	Sample Size	%	Total No Of FIR	Universe of FIR	%	Sample Size	%
Kanchanpur	193	108	56	35	32	215	93	43	33	35	200	96	48	26	27
Jumla	16	13	81	13	100	20	10	50	10	100	13	8	62	8	100
Morang	527	322	61	83	26	435	287	66	76	26	397	245	62	68	28
Taplejung	43	26	60	17	65	39	26	67	15	58	29	18	62	17	94
Chitwan	303	213	70	67	31	312	160	51	47	29	366	201	55	71	35
Kapilvastu	175	27	15	16	59	186	47	25	22	47	179	44	25	21	48
Kathmandu	1473	1024	71	255	25	1838	1334	73	323	24	1626	1081	66	280	26
Lalitpur	260	145	56	37	26	233	134	58	37	28	242	137	57	77	56
Bhaktapur	143	98	69	15	15	139	92	66	16	17	133	90	68	25	28
Gulmi	66	42	60	28	67	56	33	59	27	82	39	24	62	24	100







The total figures of FIRs given in the table above comprise FIRs reporting crime incidents. The figures under total universe exclude FIRs, which relate to suicide and accidental homicides (*bhabitabya)* The observation of record system and the study of documents therein presents that such FIRs are registered in a book called "No. 10 Dairy". The study of the "Diary" reveals the following important facts:

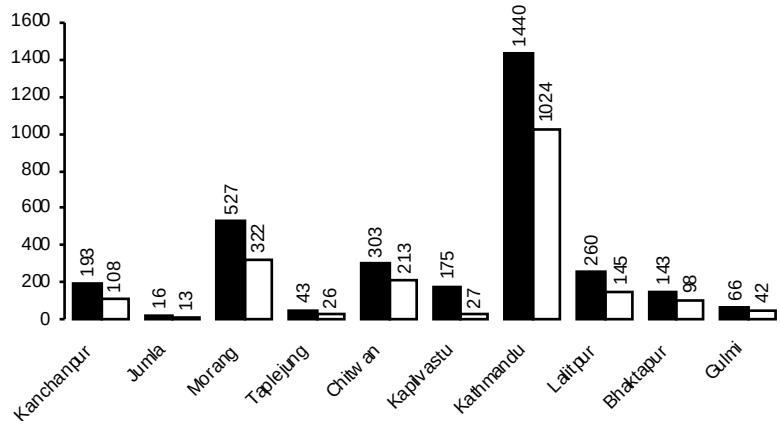
1. FIRs containing detail information of crime incidents and suspects are registered in this Dairy, so that the investigation of criminal offences generally starts upon the registration of the FIR .
2. Investigation of some crime starts with "Report" of the police personnel, who obtains information on the crime somehow. This report is also registered in the said Dairy.
3. In incidents of suicides, which are reported by the relatives or friends and so on, which are, too, registered in the said Dairy. Sometime, where the deceased is unidentified or having no one to look after him/her, the report is made by the police themselves, and as such is registered in the diary.
4. The reports of death of persons in the hospital, where they had been brought to the hospital due to some injuries or sickness like heart attack, brain hemorrhage, and who had been brought to the hospital in an unconscious state, are necessarily registered in the said Diary.
5. Similarly, incidents of deaths due to unexpected events like persons been killed by falling trees, landslide, flood in the river, hit by animals, exposed to electrical shock, food poisoning, etc. too are registered in the said Diary.

Obviously, the "No 10 Dairy" contains several such FIRs of incidents, which really do not need investigation. However, since information of all such incidents are registered in the same Dairy, the volume of FIRs in each police office looks huge. Hence, the total figures of FIRs in the table above do not necessarily represent incidents of criminal offences. The universe of FIRs therefore excludes all those FIRs, which are not related with criminal offences. As the Table below shows, an average 40% of FIRs registered in the "No 10 Diary" are filtered out, for being not matters requiring investigation.

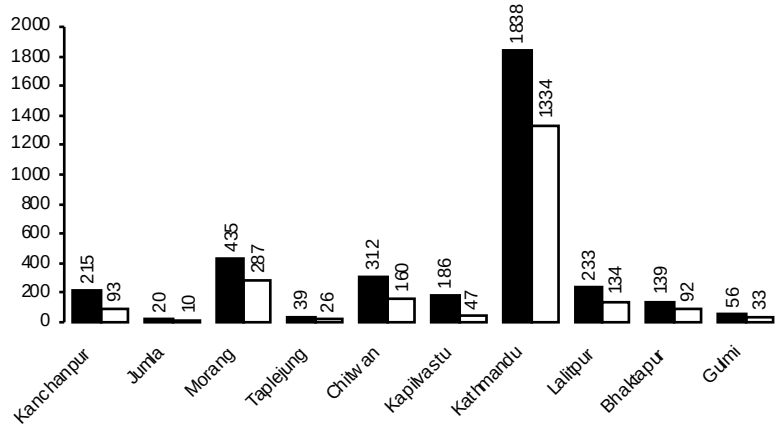
Table 11.40: Comparative Filtering Rate of Three Years

Districts	2055/56			2056/57			2057/58		
	Total FIR	Specific Universe[42]	%	Total FIR	Specific Universe	%	Total FIR	Specific Universe	%
Kanchanpur	193	108	56	215	93	43	200	96	48
Jumla	16	13	81	20	10	50	13	8	62
Morang	527	322	61	435	287	66	397	245	62
Taplejung	43	26	60	39	26	67	29	18	62
Chitwan	303	213	70	312	160	51	366	201	55
Kapilvastu	175	27	15	186	47	25	179	44	25
Kathmandu	1440	1024	71	1838	1334	73	1626	1081	66
Lalitpur	260	145	56	233	134	58	242	137	57
Bhaktapur	143	98	69	139	92	66	133	90	68
Gulmi	66	42	60	56	33	59	39	24	62
Avarage %			59.9			55.8			56.7

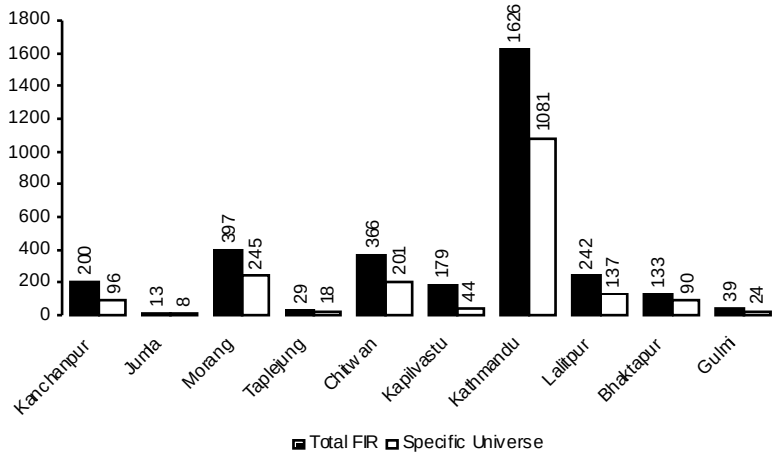
Comparative Filtering Rate of Three Years (2055/56)



Comparative Filtering Rate of Three Years (2056/57)



Comparative Filtering Rate of Three Years (2057/58)



The total gape between the total figure of FIRs and specific universe indicates to proportion of filtered FIRs before the investigation starts. The gape of figures between total FIRs and specific universe comprises FIRs, which are generally not falling within the jurisdiction of police. This figure also comprises FIRs, which relate to suicide and accidental homicides (*bhabitabya)* . Therefore, the figure of specific universe in fact constitute the FIRs which fall under the category of crimes which fall under the jurisdiction of police and as such require investigation.

As shown by the table above, the total figure of FIRs of Jumla district is comparatively smaller to others, the main reasons being the comparatively very smaller and scattered population, economically backward state of development, which keeps population away from advanced forms of criminality, the disturbance created by Maoist insurgency, prevalence of practice of conventional method of dispute resolution, etc. The observation and interview with key informants reveal general distrust of common people over the formal system of justice, the investigation in particular. The Chairperson of DDC, one of the key informants, argues that the common people in Jumla has no trust on the police system, hence they prefer to stay back from reporting the crime in the police office. Specifically, Jumla being very backward in terms of infrastructure development lack circumstances of crimes which have direct nexuses with development like traffic accidents, money laundering, currency counterfeiting.

Although the rate of filtered out cases in Kapilvastu is very big the reasons are quite different. The study of the record system in the police office in this district reveals some unique features:

a) "No. 10 Dairy" consists of a large number of FIRs relating to suicide. For instance, 40,44 and 37 FIRs of suicide are reported respectively in the F/Y 055/56,056/57 and 057/58. Similarly, 28,22 and 19 FIRs of "*accidental homicides (bhabitabya)*".

b) "No. 10 Dairy" also comprises FIRs of incidents of death of persons in hospital like heart attack, etc. Similarity of this situation is found in other districts also.

These types of FIRs are not considered pertinent in terms of crime investigation. Because of overwhelmingly large number of such FIRs being registered in the "No. 10 Dairy", the rate of filtering is huge in case of Kapilvastu district.

Similarly in the case of Lalitpur "No. 10 Dairy" contains abundance of FIRs on incidents like accidental homicidies "*(Bhabitabya)*", suicide, deaths in hospital. As the information collected from the diary, 115 FIRs are found related to those incidents only in the F/Y of 2055/56. Similarly, "No. 10 Dairy" contains 99 and 105 similar FIRs in F/Y 2056/57 and 2057/58 respectively. The situation of Lalitpur is not different then that of Kathmandu as the number of suicide FIRs exceeds 200 every year. As found in the "No 10 Diary" of the Kathmandu District Police Office, the numbers suicides in 2055, 2056 and 2057 are 188, 223 and 226 respectively.

The total number of FIRs and the sample size taken for the study present certain important trends concerning pattern of crime and investigation. These trends can be outlined as follows:

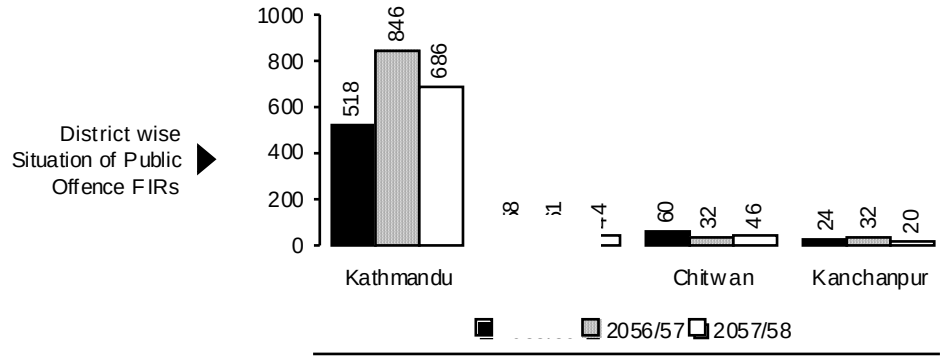
1. The rate of FIRs is found significantly bigger in districts in Terai than that of districts in Hill. This is quite obvious from the total number of FIRs in Jumla, which is comparatively smaller to districts in Terai and with urban set up. District like Morang and Kathmandu that have a wider urban set up possess higher volume of FIRs, thus meaning the high rate of frequency of crimes. The higher rate of crimes in Terai and urban set up also indicates to break down of tradition values and resultant deviance.
2. The rate of crimes has generally maintained the consistency of growth pattern, with some fluctuations from district to district and year to year, except Hill districts, which possess reverse trend, i.e. the gradual reduction in FIRs.
3. As described above on the basis of "No. 10 Dairy", incidents of suicide are increasing and as such are one of the reason for high number of FIRs in Terai and urban districts.

The detail breakdown of FIRs by types of criminal offences presents some more important trends.

Firstly, all sample districts contained high frequency of FIRs regarding public offence, the crime that is tried by the DAO, the executive officer in the district. The DAO generally does not have legal background, and serves the government's interest as rule. He/she is therefore vulnerable to violate procedures of fair and impartial trial. DAO themselves confirm this statement. For instance, DAO of Kanchanpur accepts that the notice of arrest to suspect is not given at the moment of arrest. Such notice is given only after the suspect is put into lock up. This practice obviously contradicts the guarantee offered by the Constitution under Article 14 of the Constitution. The following figure of some districts, for instance, help to elicit the situation.

Table 11.41: District wise Situation of Public Offence FIRs

Districts	2055/56	2056/57	2057/58
Kathmandu	518	846	686
Lalitpur	58	61	44
Chitwan	60	32	46
Kanchanpur	24	32	20



Secondly, the high frequency of public offence cases is potential of widespread violation of human rights.

Thirdly, in contrast the frequency of FIR's is found negligible in criminal incidents like treason, ballistic substance, black marketing, counterfeiting of currency, arson, illegal use of foreign currency, etc. One of the reasons for such low frequency of FIRs in such crimes is that the suspects are rather charged with public offence under Public Offence Act, so that the DAO can have jurisdiction. The intention behind such affair is to hoax the fair trial, and try cases to suit the interest of the government. A university teacher from Kanchanpur says: "The political influence is the major cause behind such prosecutions". This situation indicates to prevalence of political element in the criminal justice system.

Last but not the least, FIRs on theft, rape, murder, narcotic drugs, trafficking of women, traffic accidents and fraud are found having high frequency in all sampled districts, except remote hill districts like Jumla and Taplejung.

11.3.7. Situation of Action on FIRs in Sampled Districts

A great number of FIRs are simply not investigated or acted on, as they are not in any way concerned with the jurisdiction of the investigating agency. For instance, there has been a trend of people approaching police with complaints in the form of FIR against somebody on issue of civil matters like contractual obligations, debts, etc. The police have no

jurisdiction to entertain this kind of complaints. So that these kinds of FIRs are not formally registered, and thus they are not acted on by the police offices. This is the first step of filtering process.

Several other FIRs, which are subject to jurisdiction of police, are simply filtered out under several grounds.

1. As observed by the survey team in all districts, FIRs, which contain no detail information on suspect like name, surname, address, etc., are generally filtered out or not acted on.
2. Similarly, as observed during the field survey period, in crime like polygamy, FIR is not registered straight away. As the practice is found first of all the spouse of complainant is called on at the police office, and an attempt for compromise between couples is made. If not succeeded, only then the FIR is registered. This practice is also effectively entertained as a device of filtering. However, this practice is highly vulnerable of influence.

> *The survey team in Kathmandu on 2059/2/27 observed a case in Kathmandu District Police Office where a wife had filed the FIR against husband for polygamy. The police arrested pthe husband and his alleged second wife and put them in the custody for two days. Subsequently, a compromise was made between recalcitrant couples, and the detained husband and his alleged second wife were released out from the custody.*

3. Sometime people lodge more than one FIR. In such condition, all FIRs are registered but action is not taken in all of them. Based on the authenticity and reliability of information, one of the FIR is entertained and others are filtered out. Sometimes, all FIRs are put together in a single number and is acted on.
4. As observed by the study team in petty criminal incidents like pick pocketing, animal theft, etc., FIRs are not straight away registered for action. Rather the suspect is arrested and an attempt to compromise between the complainant and suspect is made. If successful, the FIR is filtered out.

> *The survey team on 2058/12/21, in Kapilvastu district police office, from the study of a register recording compromise between complainants (Milapatra Diary), made on 2058/12/12, found that a criminal case on ''goat theft'' had been compromised. The FIR was not acted on. Once the FIR was obtained, the suspect had been arrested and brought to the District Police Office. The procedure applied between the time of arrest and compromise made is not oblivious. As the Milapatra Diary reveals the suspect was caused to pay Rs 950/- as the cost of allegedly stolen goat. The suspect was then released from custody, which is generally not recorded officially.*

11.3.8. Filtering FIRs during Investigation Period

As the Table below shows, the filtering of FIRs during investigation is around 17%. It means that a very large number of FIRs advance to investigation process, that is arrest and detention of suspects. On average, 4% of FIRs are subjected to pending due to the following reasons:

1. Names and address of the suspects are not specified,
2. A number of FIRs are posted, but the informers never turn up to the police office to verify them. However, the prevailing law requires that the informers must authenticate FIRs posted from the post office personally by coming to the police office. „These kinds of FIRs are either politically motivated, and or inspired by vested interest of informers, the sole objective being to harass the persons", the investigating officers said in the FGD. Investigating officer of Chitwan Police office says, „ Trafficking and Narcotic drug crimes are generally chosen for these objectives".
3. Sometimes criminals themselves volunteer to file FIRs to hoax the police in their mission of investigation.

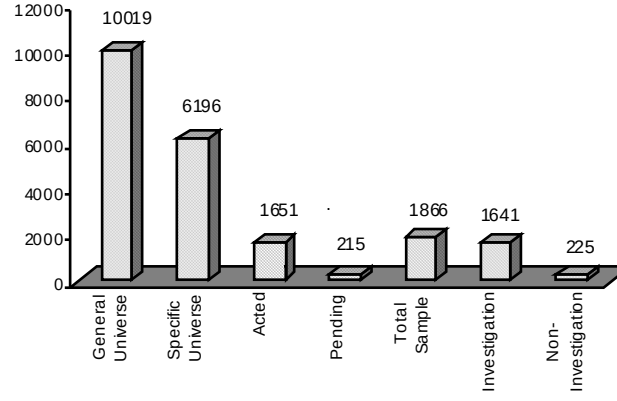
These kinds of FIRs are generally not entertained. Key informants representing the political sector, however, have something quite different to say. Deputy Mayor of the Bharatpur Municipality opines that the police function under instruction of ruling party and therefore FIRs against offenders attached with ruling political party are generally thrown into dustbin.

Nevertheless, the survey reveals that the proportion of FIRs undergoing investigation is huge. The situation simply shows that there has hardly been a practice of careful scrutiny of FIRs. The finding of the survey therefore very much confirms the common allegation of people against police, i.e. „ condemned first and hear later". The high proportion of failure of prosecution at trial ultimately rests on the practice of messy investigation.

Table 11.42: Filtering of FIRs in Investigation Stage (3 Years total)[43]

Content	Lalitpur	Bhaktapur	Kathmandu	Morang	Taplejung	Gulmi	Kanchanpur	Kapilvastu	Chitwan	Jumla	Total	%
General Universe	735	715	4904	1359	111	161	608	548	829	49	10019	
Specific Universe	416	280	3439	854	70	99	297	118	574	49	6196	61.84
Acted	107	41	858	219	48	60	87	55	154	22	1651	26.64
Pending	45	15	78	9	1	18	7	6	27	9	215	13.02
Total Sample	152	56	936	228	49	78	94	61	181	31	1866	30.12
Investigation	105	41	858	212	48	60	87	55	153	22	1641	87.94
Non- Investigation	47	15	78	16	1	18	7	6	28	9	225	12.38

Filtering of FIRs in Investigation Stage (3 Years total)

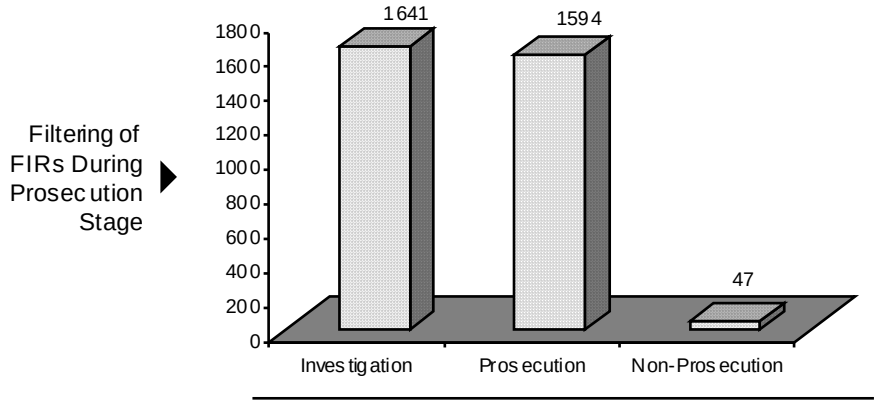


Within the specific universe, 25% of cases are sampled out by applying stratified method. The figure of the percent sampled out for study comprises both the pending and investigated cases.

Even though the proportion of FIRs facing non-investigation is smaller, it involves many risks. If the filtering is based on concrete grounds and well-established criteria, it would definitely assist in consolidation of the strength of the investigation system thereby creating a favorable situation for protection of human rights. However, the filtering of FIRs might be very much used to serve certain vested interests of some individuals or groups.

Table No. 11.43: Filtering of FIRs During Prosecution Stage

Content	Lalitpur	Bhaktapur	Kathmandu	Morang	Taplejung	Gulmi	Kanchanpur	Kapilvastu	Chitwan	Jumla	Total	%
Investigation	105	41	858	212	48	60	87	55	153	22	1641	
Prosecution	105	37	841	207	48	57	87	53	139	20	1594	97.14
Non-Prosecution®	0	4	17	5	0	3	0	2	14	2	47	2.86



The condition of prosecution is obvious from the table itself, as around 97% of cases get through to the trial. The situation therefore impels us to conclude that the prosecutors' role is hardly more than to pass on cases to trial courts. The survey manifestly shows a practice of random prosecution. To compare the rate of prosecution of cases with that of its failure at the trial court, the situation is really frightening. The existing rate of failure of prosecutions gives rise to certain significant issues for discussion as to the standard of the criminal justice system, if we consider the following accounts:

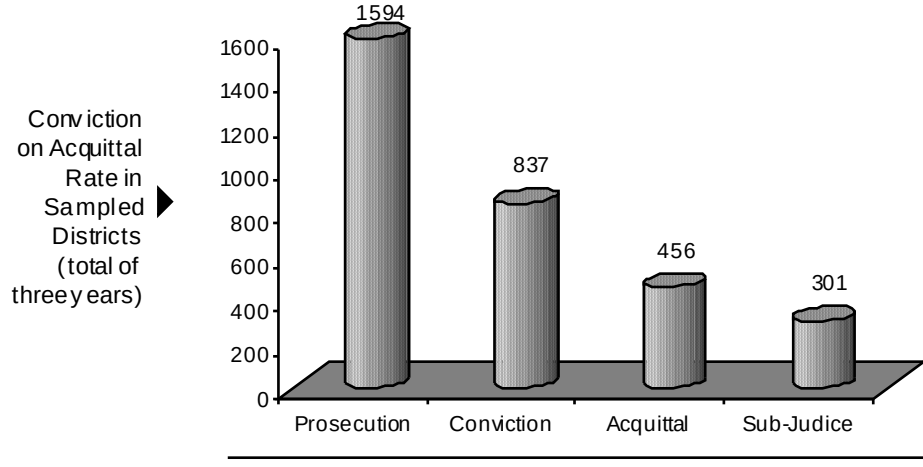
1. A suspect is generally arrested once the FIR is lodged against him. The substance and credibility of the FIR is never considered before the alleged suspect is subjected to arrest and detention. Investigation generally progress to obtain evidence against the suspects, and, in this course, often forgets that somebody else, too, might have committed the crime. In such state of investigation, if the prosecution is made without giving careful attention to facts and evidence, the alleged suspect has nothing but to face the trial which generally takes couple of years to complete. In a given situation where above 50% of prosecutions fail, the human rights of persons is obviously in stake.

2. Since the investigation system is largely characterized by confession-oriented practice, the investigating agency's primary approach would be to make attempt for extracting confession from the suspects. The torture then becomes a regular part of the investigation system. However, the state of random prosecution shows that the government attorneys are generally not concerned with practice and procedures applied to conduct the investigation. This fact therefore impels us to conclude that the government attorneys do not feel obliged to act judiciously and impartially.

3. Since implausibly huge number of cases is not sustained at the trial court, and the failure of the prosecutions is further larger in the superior courts, the pain imposed on victims and their families is obvious. Since, the existing system do not allow victims to pursue their cases, the prosecutors are fully unaccountable to their performances. In such state of affairs, the corrupt practices might plague the system threatening its whole fabric.

Table 11.44: Conviction on Acquittal Rate in Sampled Districts (total of three years)

Content	Lalitpur	Bhaktapur	Kathmandu	Morang	Taplejung	Gulmi	Kanchanpur	Kapilvastu	Chitwan	Jumla	Total	%
Prosecution	105	37	841	207	48	57	87	53	139	20	1594	
Conviction	51	25	411	149	27	33	55	24	55	7	837	52.51
Acquittal	33	6	274	26	12	18	19	16	45	7	456	28.61
Sub-Judice	21	6	156	32	9	6	13	13	39	6	301	18.88



As the table presents, the success rate of the prosecutions is merely 54% on average. This proportion of failure is devastating in the criminal justice system. On the one hand, it obviously indicates to lack of efficiency and sincerity on the part of prosecutors leading to massive violation of human rights, and on the other hand, the system can be a paradise for professional criminals. This proportion of success is secured due to public offence cases as the rate of success of these cases is very high. If we ignore the public offence cases, the success rate may drop down to 25 percent making the whole criminal justice system a mockery.

Table 11.45: Randomly Prosecuted Cases

Crimes	Public Offence	Traffic Accident	Theft	Fraud	Trafficking	Narcotic Drugs	Polygamy	Ballistic Substance
Total Sample	857	305	193	93	53	145	38	8
Investigation	845	259	185	84	46	134	38	8
%	98.6%	84.92	95.85	90.32	86.79	92.41	100	100
Non-Investigation	12	46	8	9	7	11	0	0
%	1.4	15.08	4.15	9.68	13.21	7.59	0	0
Prosecution	829	258	178	83	45	130	36	8
%	98.11	99.61	96.22	98.81	97.83	97.01	94.74	100
Non-Prosecution	16	1	7	1	1	4	2	0
%	1.89	039	3.78	1.19	2.17	2.99	5.26	0

The survey reveals that offences listed in the table are most randomly prosecuted cases. In comparison, conventional crimes like murder, theft other than robbery, and abortion are less randomly prosecuted. Yet, the rate of prosecution even in those kinds of cases is not less than 60% on average. The types of crimes, which are adjudicated by quasi-judicial bodies like DAO, are most severely randomly prosecuted. As it is evident from the table, 99% of public offence cases are subjected to prosecution. Merely 3% of non-prosecution of cases forwarded by police by prosecutors press on every one to conclude that the government attorneys' have no creative role in the criminal justice system.

The random prosecution is described as a result of the inefficiency of the prosecutors to perform their roles. Out of 13 sitting trial court judges interviewed during the survey, only 15% them feel that government attorneys are capable of discharging their responsibility with required standard of performance. 31 % of respondents rule out the capability of government attorneys to perform the responsibility at the level of required standard. A majority, 54 %, of them views that they are capable only to a certain extent. On the whole, 85% respondent judges are not positive towards the current standard of government attorneys (Table no. 11.205). Moreover, 67% of respondent judges indicate to lack of seriousness and skill as the major cause for rampant inefficiency of prosecutors (Table no. 11.206). Most interestingly, 85% of respondents judges feel changes in behaviors government attorneys following the orientation on "Criminal Procedural Guidelines, a manual jointly developed and implemented by Attorney General's Office, Police Headquarters, Nepal Bar Association, Judges' Society and CeLRRd (Table no. 11.210).

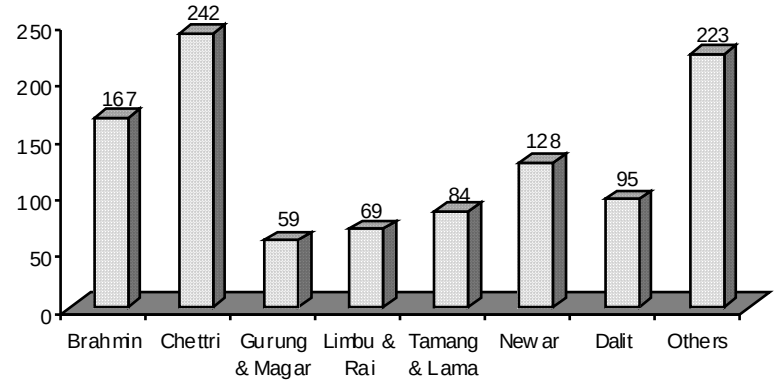
11.3.9. Community Severely Affected by Random Investigation and Prosecution Systems

Disadvantaged and socio-economically backward are communities worse affected by the random investigation and prosecution system. As the table below shows, the population of Dalit, and indigenous community constitute majority in total alleged in criminal offences. However, in the given conditions of investigation and prosecution systems, it is simply hard to believe on fairness and impartiality of justice. In a state of absolute predominance of Brahmin and Chettri castes in the all components of justice system, the degree of vulnerability of injustice to marginalized communities is added.

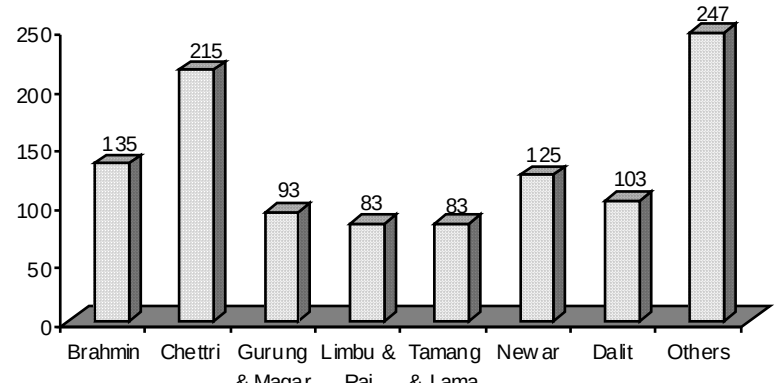
Table 11.46: Distribution of Accused by Ethnicity

Caste	055/56	%	056/57	%	057/58	%
Brahmin	167	15.65	135	12.45	163	13.78
Chettri	242	22.68	215	19.83	205	17.33
Gurung & Magar	59	5.53	93	8.58	94	7.95
Limbu & Rai	69	6.47	83	7.66	96	8.11
Tamang & Lama	84	7.87	83	7.66	114	9.64
Newar	128	12	125	11.53	109	9.21
Dalit	95	8.90	103	9.50	112	9.47
Others	223	20.90	247	22.79	290	24.51
Total	1067	100	1084	100	1183	100

Distribution of Accused by Ethnicity 2055/056



Distribution of Accused by Ethnicity 2056/057



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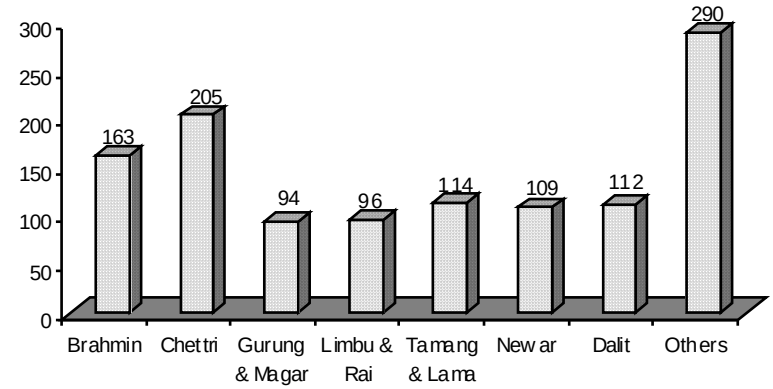

11.3.10. Some Major Findings:

1. The system of registering FIRs is unsystematic as all types of information on criminal incidents are recorded in the "No. 10 Diary" as FIRs. The legal status of the documents giving simple information of incidents like suicide, and FIR, which is evidence in it, is different. The system of recording both types of documents in the same Diary is characterized unsystematic approach to investigation of crime.
2. Only a very insignificant number of FIRs are filtered out as there is no system of serious scrutiny . FIR is taken as a legal basis for arrest of person, which essentially encourages to random investigation of offences leading to serious vulnerability of human rights violation of alleged suspects.
3. Prosecution does not function as an independent and impartial component of criminal justice system. In view of the unusually high proportion of prosecutions made without proper scrutiny of investigation documents, one can conclude that the role the prosecutors are supposed to play in securing fairness and impartiality of justice is largely tarnished.
4. Since, no prosecutors use filtering devices to block unnecessary and unfounded cases reaching the courts, the random prosecution thus occurred has obviously been one of the causes of huge backlog of cases in the courts and resultant delay in justice.
5. The implausibly high proportion of failure to sustain prosecution at the trial courts and the superior courts not only indicate to inefficiency of prosecutors, but also raises suspicion to the objectivity, impartiality and fairness of the investigation system in particular and the criminal justice system at large.

11.4. Mode of Criminal Proceedings in Nepal

The main processes under the present criminal justice system are investigation, prosecution and adjudication. These treatment of respondents during these three processes has been systematically analyzed below.

11.4.1. Filing of First Information Record (FIR)

Investigation begins when the FIR is lodged in the nearest police station to where the offence has been perpetrated, as set down in the State Cases Act 1993.[44] The provision that a preliminary report must be sent to the prosecutor's office has good justification - it can ensure that the investigation will proceed with the supervision and involvement of prosecutors. However, in practice, it is merely taken as a formality.

Most key informants (members of interest groups, lecturers, VDC chairmen and Mayors) reported that police do not file all cases. They focus their efforts on cases in which there is political or economic motivation. However, serious cases were automatically filed after information was received.

Arrest

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. The current survey supports the findings of the earlier CeLRRd survey showing that 93.3% of respondents were not provided with an arrest slip at the time of arrest (Table 11.47). Furthermore, even though the warrant should contain information on causes and grounds of arrest, only 20% of respondents stated that this information was not included (Table 11.48).

Table 11.47: Sincerity of the Police on Arrest Slip

Crime Type	No	%	Yes	%	Total
Attempt to murder	3	4.3		0.0	3
Dacot	6	8.6		0.0	6
Fraud and Cheating	3	4.3	1	20.0	4
Murder	23	32.9	3	60.0	26
Narcotics	7	10.0		0.0	7
Others	8	11.4		0.0	8
Rape	8	11.4		0.0	8
Theft	5	7.1	1	20.0	6
Trafficking	7	10.0		0.0	7
Total	70	93.3	5	6.7	75

Source: Baseline Survey 2002

Table 11.48: Involvement of Cause and Ground of Arrest Stated in the Arrest Slip

Crime Type	Yes	%	No	%	Total
Attempt to murder		0.0		0.0	0
Dacoit		0.0		0.0	0
Fraud and Cheating	1	25.0		0.0	1
Murder	2	50.0	1	100.0	3
Narcotics		0.0		0.0	0
Others		0.0		0.0	0
Rape		0.0		0.0	0
Theft	1	25.0		0.0	1
Trafficking		0.0		0.0	0
Total	4	80.0	1	20.0	5

Source: Baseline Survey 2002

66.7% of female respondents were arrested by male police (Table 11.49). The State Cases Act, Section 10.1, provides for a female police officer to frisk and physically touch the body of a female arrestee, yet 30% of female respondents had been physically touched by the male investigating officer at the time of arrest (Table 11.50). Mostly on robbery and theft (2 each), the number of accused to be involved were 33.3% each (Table 11.51).

Table 11.49: Sensitivity of the Police while arresting Female

Crime Type	Female Police	%	Male Police	%	With the help of a female	%	Total
Attempt to murder	1	25.0		0.0		0.0	1
Fraud and Cheating		0.0	1	10.0	1	100.0	2
Murder	2	50.0	3	30.0		0.0	5
Narcotics	1	25.0	2	20.0		0.0	3
Others		0.0	1	10.0		0.0	1
Theft		0.0	1	10.0		0.0	1
Trafficking		0.0	2	20.0		0.0	2
Total	4	26.7	10	66.7	1	6.7	15

Source: Baseline Survey 2002

Table 11.50: Way of Arrest Female (By Male Police)

Crime Type	By dragging you	%	By holding both hands	%	Others	%	Properly	%	Total
Murder	1	100.0					2	40.0	3
Narcotics			1	33.3	1	100.0	1	20.0	3
Others							1	20.0	1
Theft			1	33.3					1
Trafficking			1	33.3			1	20.0	2
Total	1	10.0	3	30.0	1	10.0	5	50.0	10

Source: Baseline Survey 2002

Table 11.51: Number of Accused to be Involved in the Crime

Crime Type	1	%	2	%	3	%	4	%	5	%	6	%	7	%	Above that	%	Total
Attempt to murder	1	5.9	1	7.7			1	11.1									3
Dacoit							2	22.2	1	14.3	2	33.3			1	14.3	6
Fraud and Cheating			1	7.7	1	7.1	2	22.2									4
Murder	7	41.2	5	38.5	4	28.6	2	22.2	3	42.9	1	16.7	1	50.0	3	42.9	26
Narcotics	2	11.8			3	21.4			1	14.3					1	14.3	7
Others	2	11.8	2	15.4	1	7.1	1	11.1	1	14.3					1	14.3	8
Rape	5	29.4	2	15.4					1	14.3							8
Theft			1	7.7	2	14.3					2	33.3			1	14.3	6
Trafficking			1	7.7	3	21.4	1	11.1			1	16.7	1	50.0			7
Total	17	22.7	13	17.3	14	18.7	9	12.0	7	9.3	6	8.0	2	2.7	7	9.30	75

Source: Baseline Survey 2002

The majority of respondents (34.7%) stated that they had been arrested in their residence. 18.7% had been arrested while walking in the street and 12% at the shops (Table 11.52). Arrests mainly took place in the morning hours (42.7%), while 29.3% of respondents were arrested in the afternoon and 12% at night (Table 11.53).

Table 11.52: Place of the Arrest

Crime Type	House	%	Others	%	Self	%	Shop	%	While Walking	%	Total
Attempt to murder	1	3.8		0.0		0.0	1	11.1	1	7.1	3
Dacoit	1	3.8	3	20.0		0.0	1	11.1	1	7.1	6
Fraud and Cheating		0.0		0.0	2	18.2	1	11.1	1	7.1	4
Murder	9	34.6	5	33.3	4	36.4	4	44.4	4	28.6	26
Narcotics	1	3.8	1	6.7		0.0	1	11.1	4	28.6	7
Others	4	15.4	1	6.7	1	9.1		0.0	2	14.3	8
Rape	3	11.5	3	20.0	2	18.2		0.0		0.0	8
Theft	4	15.4		0.0	2	18.2		0.0		0.0	6
Trafficking	3	11.5	2	13.3		0.0	1	11.1	1	7.1	7
Total	26	34.7	15	20.0	11	14.7	9	12.0	14	18.7	75

Source: Baseline Survey 2002

Note: Three cases which are excluded at the sub-chapter "Remand" is included here

Table 11.53: Crimewise Distribution of Time of Arrest

Crime Type	Afternoon	%	Evening	%	Morning	%	Night	%	Total
Attempt to Murder	2	9.1			1	3.1			3
Dacoit	3	13.6			3	9.4			6
Fraud and Cheating	1	4.5	1	8.3	1	3.1	1	11.1	4
Murder	3	13.6	4	33.3	14	43.8	5	55.6	26
Narcotics	3	13.6	1	8.3	3	9.4			7
Others	3	13.6	2	16.7	1	3.1	2	22.2	8
Rape	3	13.6	1	8.3	4	12.5			8
Theft	1	4.5	3	25.0	2	6.3			6
Trafficking	3	13.6			3	9.4	1	11.1	7
Total	22	29.3	12	16.0	32	42.7	9	12.0	75

Source: Baseline Survey 2002

70.1% of respondents stated that their family had not been informed of their arrest (Table 11.54) and 34.4% reported that the police had insulted and acted rudely at the time of arrest against Section 10(1) of the State Cases Act. (Table 11.55). 33.3% of respondents who had to travel to Police headquarters had been handcuffed at the time of arrest and had to travel in their handcuffs from the village to the District HQ (Table 11.56).

Table 11.54: Status of Information Provided to Family Members about Arrest

Crime Type	Yes	%	No	%	Total
Attempt to murder	3	15.0			3
Dacoit	1	5.0	5	10.6	6
Fraud and Cheating	2	10.0	2	4.3	4
Murder	7	35.0	16	34.0	23
Narcotics			7	14.9	7
Others	2	10.0	6	12.8	8
Rape			5	10.6	5
Theft	3	15.0	2	4.3	5
Trafficking	2	10.0	4	8.5	6
Total	20	29.9	47	70.1	67

Source: Baseline Survey 2002

Table 11.55: Crimewise Distribution of Behaviour of the Arresting Officer

Crime Type	Advisory	%	Civilized and polite	%	Curt	%	General	%	Insulted	%	Others	%	Rude	%	Total
Attempt to Murder							3	11.5							3
Dacoit	1	50.0	1	16.7	2	33.3	3	11.5							7
Fraud and Cheating													2	18.2	2
Murder			2	33.3	2	33.3	11	42.3	3	27.3	1	50.0	2	18.2	21
Narcotics	1	50.0			1	16.7	1	3.8	3	27.3			2	18.2	8
Others			2	33.3	1	16.7	2	7.7	1	9.1			2	18.2	8
Rape							2	7.7	1	9.1	1	50.0	1	9.1	5
Theft									1	9.1			2	18.2	3
Trafficking			1	16.7			4	15.4	2	18.2					7
Total	2	3.1	6	9.4	6	9.4	26	40.6	11	17.2	2	3.1	11	17.2	64

Source: Baseline Survey 2002

Table 11.56: Treatment of the Police while Bringing from Far Off Place

Crime Type	By Vehicle	%	Hand-cuffed	%	Hands tied	%	Others	%	Walking briskly	%	Total
Dacoit	1	8.3	2	20.0					1	20.0	4
Fraud and Cheating	1	8.3									1
Murder	1	8.3	3	30.0			1	50.0	1	20.0	6
Narcotics	2	16.7	2	20.0							4
Others	3	25.0			1	100			1	20.0	5
Rape	1	8.3	1	10.0					1	20.0	3
Theft	1	8.3									1
Trafficking	2	16.7	2	20.0			1	50.0	1	20.0	6
Total	12	40.0	10	33.3	1	3.3	2	6.7	5	16.7	30

Source: Baseline Survey 2002

As per international provisions, if instruments of restraint are used as a precaution against escape during transfer they should not be applied for any longer time than is strictly necessary.[45] In their transport to or from institutions, it is prohibited to subject prisoners to any unnecessary physical hardship on the journey.[46] Persons should also be protected from any form of cruel, inhuman or degrading treatment. However, 66.7% of respondents reported that they were not provided with food or water in the detention facility (Table 11.57). The trend of cost borne was neither good nor bad. Only two cases were found during field survey (Table 11.58). Only 33.8% respondents stated that they had belongings with themselves during the arrest (Table 11.59). Among them, 69.6% detainee an inventory of their belongings were not maintained (Table 11.60). These are violation of the fundamental right protecting the humanity of persons, one laid down in Article 14 (4) of the Constitution of the Kingdom of Nepal.

Table 11.57: Accommodation and Fooding Status (If Spent a Night)

Crime	Yes	%	No	%	Total
Dacoit			2	50.0	2
Murder	2	100.0	1	25.0	3
Others			1	25.0	1
Total	2	33.3	4	66.7	6

Source: Baseline Survey 2002

Table 11.58: Trend of Cost Borne (If Spent a Night)

Crime Type	Police	%	Self	%	Total
Murder	1	100.0			1
Theft			1	100.0	1
Total	1	50.0	1	50.0	2

Source: Baseline Survey 2002

Table 11.59: Record of Belongings

Crime Type	Yes	%	No	%	Total
Attempt to murder			3	6.7	3
Dacoit	1	4.3	5	11.1	6
Fraud and Cheating			3	6.7	3
Murder	9	39.1	16	35.6	25
Narcotics	1	4.3	4	8.9	5
Others	5	21.7	3	6.7	8
Rape	4	17.4	4	8.9	8
Theft	2	8.7	3	6.7	5
Trafficking	1	4.3	4	8.9	5
Total	23	33.8	45	66.2	68

*Note: **7 respondent do not have any belongings.***

Source: Baseline Survey 2002

Table 11.60: Inventory Maintenance of Belongings (If Suspect has Belongings)

Crime Type	Yes	%	No	%	Total
Dacoit		0.0	1	6.3	1
Murder	3	42.9	6	37.5	9
Narcotics		0.0	1	6.3	1
Others	2	28.6	2	12.5	4
Rape		0.0	4	25.0	4
Theft	1	14.3	1	6.3	2
Trafficking	1	14.3	1	6.3	2
Total	7	30.4	16	69.6	23

Source: Baseline Survey 2002

On arrival at the police station, 48% of respondents were placed directly in detention cells (Table 11.61). Similarly, 20% detainee were kept by sitting with handcuffs and 8% even standing with handcuffs (Table 11.62). This goes against the presumption of innocence that is a foundation of the law of criminal procedure. Persons may only be placed in detention after grounds for this have been determined and stated to them. Thus, in Nepal, this may only take place after the interrogation and formulation of the arrest and detention slips.

Table 11.61: Crimewise First Time Location At Police Station

Crime Type	In Custody	%	In Office	%	In a separate room	%	In detention	%	Others	%	Within the office premises	%	Total
Attempt to Murder							3	8.3					3
Dacoit					1	6.7	3	8.3	2	100.0			6
Fraud and Cheating			1	33.3			3	8.3					4
Murder	4	50.0	1	33.3	6	40.0	10	27.8			5	45.5	26
Narcotics					2	13.3	5	13.9					7
Others	2	25.0			3	20.0	2	5.6			1	9.1	8
Rape	1	12.5			1	6.7	5	13.9			1	9.1	8
Theft	1	12.5	1	33.3			2	5.6			2	18.2	6
Trafficking					2	13.3	3	8.3			2	18.2	7
Total	8	10.7	3	4.0	15	20.0	36	48.0	2	2.7	11	14.7	75

Source: Baseline Survey 2002

Table 11.62. Condition of Suspect at First Location in Police Station

Crime Type	In detention without handcuffs	%	In the room of office without any handcuffs	%	Others	%	Sitting with handcuffs	%	Standing with handcuffs	%	Total
Attempt to Mmurder	1	5.9	2	5.6		0.0		0.0		0.0	3
Dacoit	3	17.6	1	2.8		0.0	1	6.7	1	16.7	6
Fraud and Cheating		0.0	4	11.1		0.0		0.0		0.0	4
Murder	6	35.3	10	27.8		0.0	6	40.0	4	66.7	26
Narcotics		0.0	5	13.9		0.0	2	13.3		0.0	7
Others	1	5.9	5	13.9	1	100.0	1	6.7		0.0	8
Rape	3	17.6	2	5.6		0.0	3	20.0		0.0	8
Theft	2	11.8	3	8.3		0.0		0.0	1	16.7	6
Trafficking	1	5.9	4	11.1		0.0	2	13.3		0.0	7
Total	17	22.7	36	48.0	1	1.3	15	20.0	6	8.0	75

Source: Baseline Survey 2002

The Universal Declaration of Human Rights 1948, Article 14, as signed by Nepal, states:

"Every person accused of criminal charges shall be presumed to be innocent unless proven guilty". As such, the lack of conduit at the time of arrest, and the obvious disregard for discretion becomes an act of prejudice which is in sharp contrast to the provisions of international law. Most of the qualitative information regarding arrests obtained from FGDs and semi-structured interviews reveal similar responses to the above-mentioned quantitative information.

Most of the respondents from FGDs reported they were not provided with an arrest slip at the time of arrest. The police beat and tortured suspects in order to obtain confessions. A key informant (anthropologist) from Kathmandu said, 'After the arrest of the suspect, the police can dismiss the case if it is minor and some powerful pressure takes place. If serious, they proceed to investigation.' Another key informant (chairman of the DDC) from Chitwan, reported a similar situation.

Other VDC chairmen supported this story. It was reported that after the arrest of a suspect, police proceeded with the case (a chairman from Gulmi reported that police made arrests without arrest slips) through interrogation, statement and other stages. The Chairman from Kapilwastu said 'If the suspect is powerful and wealthy, beating and torture would be nominal or vice versa.'

Issuance of Warrant and Summon Against an Absconded Accused

Warrant and Summons

At informal discussions in several VDCs the chairmen expressed their concern about the random arrest happening in the village. It was reported that arrests were carried out without warrants and that it is a general trend to arrest people on subjective suspicion of the police.

VCD Chairmen thus claimed that in most cases arrest were unlawfully carried out.

Search and Seizure

If an investigating officer has sufficient reason to believe that objects with bearing for a case might be hidden, then he might conduct search and seizure. Pursuant to Clause 172 (4) of the Court Management Section of *Muluki Ain,* the investigating officer must enlist the objects seized and the list signed by 2 witnesses. In 72% of the cases such seizure had taken place (Table 11.63). Among them, the majority (74.1%) of a search was conducted at the police station and only 16.7% at the crime of scene (Table 11.64). On the basis of Muluki Ain, the search should be conducted in the day, but 18.5% search took place at night (Table 11.65).

Table 11.63: Crimewise Conduction of Search

Crime Type	Yes	%	No	%	Total
Attempt to Murder	1	1.9	2	9.5	3
Dacoit	4	7.4	2	9.5	6
Fraud and Cheating	3	5.6	1	4.8	4
Murder	23	42.6	3	14.3	26
Narcotics	5	9.3	2	9.5	7
Others	4	7.4	4	19.0	8
Rape	5	9.3	3	14.3	8
Theft	6	11.1			6
Trafficking	3	5.6	4	19.0	7
Total	54	72.0	21	28.0	75

Source: Baseline Survey 2002

Table 11.64: Crimewise Place of Conducting Search

Crime Type	At Home	%	At the crime scene	%	At the police station	%	Others	%	Total
Attempt to Murder		0.0		0.0	1	2.5		0.0	1
Dacoit		0.0		0.0	4	10.0		0.0	4
Fraud and Cheating		0.0	1	11.1	2	5.0		0.0	3
Murder	1	25.0	6	66.7	15	37.5	1	100.0	23
Narcotics		0.0	2	22.2	3	7.5		0.0	5
Others		0.0		0.0	4	10.0		0.0	4
Rape		0.0		0.0	5	12.5		0.0	5
Theft	2	50.0		0.0	4	10.0		0.0	6
Trafficking	1	25.0		0.0	2	5.0		0.0	3
Total	4	7.4	9	16.7	40	74.1	1	1.9	54

Source: Baseline Survey 2002

Table 11.65: Crimewise Time of Conducting of Search

Crime Type	Afternoon	%	Don't know	%	Morning	%	Night	%	Total
Attempt to Murder	1	4.2							1
Dacoit	1	4.2			3	17.6			4
Fraud and Cheating	1	4.2			1	5.9	1	10.0	3
Murder	8	33.3	3	100	8	47.1	4	40.0	23
Narcotics	3	12.5			2	11.8			5
Others	2	8.3					3	30.0	5
Rape	2	8.3			1	5.9	1	10.0	4
Theft	4	16.7					1	10.0	5
Trafficking	2	8.3			2	11.8			4
Total	24	44.40	3	5.60	17	31.5	10	18.5	54

Source: Baseline Survey 2002

Though the law requires for a body search of the investigating officer upon his demand for a search of suspects property, 42.6% of respondents claimed that the investigating officers body had not been searched. (Table 11.66) Since the power of the police in cases of search and seizure are uncontrolled by any courts, the matters thus are often used with coercion and disputes often arise in the courts. 94.4% of respondents thus stated that a list of inventory of goods seized from them, were not made and a receipt thereof never handed over (Table 11.67). Though, the law requires the similar gender of search officer, 20% female informants reported the search officers were male for even female suspects (Table 11.68).

Table 11.66: Knowledge of Respondent on Checking of Body of the Officer Conduction the Search Frisked Before Conducting any Search

Crime Type	Yes	%	No	%	Don't know	%	Total
Attempt to Murder		0.0		0.0	1	3.3	1
Dacoit		0.0		0.0	4	13.3	4
Fraud and Cheating		0.0	2	8.7	1	3.3	3
Murder	1	100.0	10	43.5	12	40.0	23
Narcotics		0.0	2	8.7	3	10.0	5
Others		0.0	3	13.0	2	6.7	5
Rape		0.0	3	13.0	1	3.3	4
Theft		0.0	2	8.7	3	10.0	5
Trafficking		0.0	1	4.3	3	10.0	4
Total	1	1.9	23	42.6	30	55.6	54

Source: Baseline Survey 2002

Table 11.67: Status of Inventory of the seized Goods and Receipt Provided

Crime Type	Yes	%	No	%	Total
Dacoit			2	11.8	2
Fraud and Cheating			1	5.9	1
Murder	1	100.0	5	29.4	6
Narcotics			1	5.9	1
Others			2	11.8	2
Rape			4	23.5	4
Trafficking			2	11.8	2
Total	1	5.6	17	94.4	18

Source: Baseline Survey 2002

Table 11.68: Gender of Search Officer (In cases where suspect is Female)

Crime Type	Female police	%	Male police	%	Total
Attempt to Murder	1	8.3		0.0	1
Fraud and Cheating	2	16.7		0.0	2
Murder	4	33.3	1	33.3	5
Narcotics	2	16.7	1	33.3	3
Theft	2	16.7	1	33.3	3
Others	1	8.3		0.0	1
Total	12	80.0	3	20.0	15

Source: Baseline Survey 2002

Out of the total participants (45) in FGDs, only one participant (Shyam Lal B.K.) from Chitwan reported that seizure took place. He added the police seized his belongings, including a watch, cash and materials in kind, which in total were worth 46 thousand Rupees. They have still not yet been returned to him.

Custody

There are a number of provisions in international and national law to safeguard the rights of suspects before and during placement in custody. Some of the most important are in regard to the physical treatment of suspects by arresting officers and institutional personnel. Section 15 (2) of the State Cases Act, 2049 provides that a suspect may request a court to instruct a medical check up to be conducted. If the request is granted, an independent medical practitioner must carry out the check. In 2053, this procedure was made compulsory by Section 3(2)(f) of Nepal's Torture Compensation Act, which states that all suspects are entitled to a medical check up on the point of entering and leaving the police office, hence even before interrogation is carried out. A medical practitioner should conduct this, and if such person is unavailable, seniors police officer should conduct the medical checkup. The purpose of this provision is to safeguard the suspect against mistreatment while in custody. The findings of the survey questionnaire indicate that for a majority of respondents, this check up did not take place. 88% of respondents stated that a physical check up before placement in custody did not occur. The majority of these (33.3%) were in the case of murder. This provision has been in place since the enactment of the Torture Compensation Act in 2053. However, it has been ignored to a serious degree. In all cases of narcotics, robbery (Dacoit) and theft - check ups were not carried out (Table 11.69).

Table 11.69: Status of Physical Checkup Conducted before Keeping in Custody

Crime Type	Was conducted	%	Was not conducted	%	Total
Attempt to murder	1	11.1	2	3.0	3
Dacoit		0.0	6	9.1	6
Fraud and Cheating	1	11.1	3	4.5	4
Murder	4	44.4	22	33.3	26
Narcotics		0.0	7	10.6	7
Others		0.0	8	12.1	8
Rape	3	33.3	5	7.6	8
[redacted]		0.0	6	9.1	6
Trafficking		0.0	7	10.6	7
Total	9	12.0	66	88.0	75

Source: Baseline Survey 2002

The majority of check ups took place in the afternoon (55.6%). This is a positive trend. It can be read in conjunction with trends in arrest practice. Section 110 of the Muluki Ain states that an arrest shall not take place before or after sunset - a provision that gives some measure of protection to suspects from abuses of police authority that could take place 'under cover of darkness'. Check ups of suspects should be conducted at the time of arrest. The questionnaire found only one case of check up being committed at night (Table 11.70). The current trend for check ups indicated by the survey, and hence arrests are in accordance with the safeguards of Nepalese law.

Table 11.70: Time of Physical Checkup Conducted before Keeping in Custody

Crime Type	Afternoon	%	Evening	%	Morning	%	Night	%	Others	%	Total
Attempt to Murder	1	20.0									1
Murder	1	20.0					1	100.0			2
Others	1	20.0									1
Rape	2	40.0							1	100.0	3
Theft			1	100.0	1	100.0					2
Total	5	55.6	1	11.1	1	11.1	1	11.1	1	11.1	9

Source: Baseline Survey 2002

Article 14 (5) of the Constitution of Nepal states that:

"No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest".

All suspects have the right to information regarding decisions that will affect their liberty. This guarantee is also found in international law. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988, provides that both a detained person and his counsel shall receive prompt and full communication of any order of detention and any reasons thereof.[47] The findings of the survey questionnaire show that a high percentage of respondents were not granted this privilege. 41.3% of respondents did not receive a detention slip on being placed in custody (Table 11.71). And informants reported that it had contained the grounds and reasons for their detention (54.2%) (Table 11.72). However, it should be a matter of concern that 45.8% of respondents did not know whether these grounds had been included in the detention slip they received. This indicates a lack of awareness of criminal procedure and basic rights on the part of suspects. It also shows a failure of police and defending counsel to alert suspects to the reasons for their detention and explains the procedures of which they were part. Such actions go against the spirit of provisions of international and national law to ensure a detainee's full appreciation and participation in processes affecting their liberty. They are also in contravention with the obligation of authorities in this regard. As

[redacted]

stated by Principle 13, "Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights."[48]

Table 11.71: Status of Detention Slip Provided During the Course of Detention

Crime Type	Was provided	%	Was not provided	%	Total
Attempt to Murder	2	4.5	1	3.2	3
Dacoit	5	11.4	1	3.2	6
Fraud and Cheating	2	4.5	2	6.5	4
Murder	17	38.6	9	29.0	26
Narcotics	4	9.1	3	9.7	7
Others	3	6.8	5	16.1	8
Rape	4	9.1	4	12.9	8
Theft	4	9.1	2	6.5	6
Trafficking	3	6.8	4	12.9	7
Total	44	58.7	31	41.3	75

Source: Baseline Survey 2002

Table 11.72: Status of Detention Slip having the Ground and Reason of Detention

Crime Type	Yes	%	No	%	Total
Attempt to Murder			1	9.1	1
Dacoit	2	15.4			2
Fraud and Cheating			1	9.1	1
Murder	5	38.5	6	54.5	11
Narcotics	1	7.7	1	9.1	2
Others	2	15.4	1	9.1	3
Theft			1	9.1	1
Trafficking	3	23.1			3
Total	13	54.2	11	45.8	24

Source: Baseline Survey 2002

In Nepal, the management of custodial facilities for pre-trial detention is the responsibility of the "custody officer" - a member of police personnel. In practice, the individual in this role changes frequently - an area for concern when the accountability inherent to this post is considered. All police personnel have access to the detention facility for those in pre-trial detention. Thus, the treatment reported by respondents is that of police staff, as managed by the custody officer.

The Standard Minimum Rules for the Treatment of Prisoners are international standards governing the institutional treatment of detainees. Respect for the humanity and decency of detainees is emphasized throughout - with concern for provision of facilities that ensure protection for detainee's health and well being. The findings of the questionnaire survey suggest that in Nepal, these are the basic rights that are being denied.

82.7% of respondents reported that custody was uncomfortable. The remainder stated that conditions had been moderate. In no case was custody stated to be comfortable (Table 11.73). 80% of detainees stated that there was not sufficient space for all the detainees in custody (Table 11.74). These conditions are not in accordance with standards laid out in international law. Provisions regarding facilities for accommodation are set down in Rules 9 to 14 of the Standard Minimum Rules for the Treatment of Prisoners. For all places where prisoners must live and work, for sleeping accommodation in particular, considerations of space, ventilation and temperature should be key, in order to meet "all requirements of health".[49]

Table 11.73: Crimewise Condition of the Custody

Crime Type	Mediate	%	Uncomfortable/Miserable	%	Total
Attempt to Murder	1	7.7	2	3.2	3
Dacoit	2	15.4	4	6.5	6
Fraud and Cheating	1	7.7	3	4.8	4
Murder	4	30.8	22	35.5	26
Narcotics	1	7.7	6	9.7	7
Others			8	12.9	8
Rape	2	15.4	6	9.7	8
Theft	1	7.7	5	8.1	6
Trafficking	1	7.7	6	9.7	7
Total	13	17.3	62	82.7	75

Source: Baseline Survey 2002

Table 11.74: Status of sufficient Space at the Custody

Crime Type	Yes	%	No	%	Total
Attempt to Murder	2	13.3	1	1.7	3
Dacoit	1	6.7	5	8.3	6
Fraud and Cheating	1	6.7	3	5.0	4
Murder	6	40.0	20	33.3	26
Narcotics	2	13.3	5	8.3	7
Others	1	6.7	7	11.7	8
Rape	1	6.7	7	11.7	8
Theft			6	10.0	6
Trafficking	1	6.7	6	10.0	7
Total	15	20.0	60	80.0	75

Source: Baseline Survey 2002

Case Study No. 1

Laxmi Shahi Shrestha, held in Mahila Bandi Griah of Kathmandu, was accused of drug trafficking. She was arrested while she was going to pay the electricity tariff in New road in Ashad 2053. She was brought directly to Hanumandhoka and was immediately tortured. At first, she was beaten by a female police officer, to obtain confession. During the beating, her hair was pulled out, she was beaten with a stick, and walked on by booted police officers. After that, Ms. Shrestha was beaten by male police with a stick. She was beaten about her forehead until she bled. Afterwards, she could not even walk. She was also asked for money by the police. She was beaten and tortured in the morning and evening. However, she did not complain to anyone, as she did not know how.

After a few days, she was brought to the office of the public attorney where her statement was recorded just as it had been in the police office. She did not have a chance for its revision. She was not tortured in the public attorney's office.

Ms. Shrestha has not hired a defense lawyer to represent her due to financial incapacity .

She reported that the condition of the detention cell was miserable, covered in fleas and bed-bugs. The cell in Hanumandhoka was very dirty. There was not sufficient sleeping room for each suspect. She was not able to see any visitors for three months.

Rules 12 to 14 of the Standard Minimum Rules for the Treatment of Prisoners govern sanitary installations for detainees. The prime concern is that these should be "adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner. 52% of respondents (39 persons) reported they had toilet facilities in their place of detention. If they wished to go to the toilet, the remaining 48% of detainees had to be taken to a place where they could do so by a guard (Table 11.75). The Standard Minimum Rules for the Treatment of Prisoners set out provisions regarding personal hygiene, clothing and bedding. For the maintenance of hygiene, all detainees should be able to wash themselves, to wear clean clothes and have clean bedding. They are also entitled to "maintain a good appearance compatible with their self-respect". Rule 16 states that all detainees be provided with facilities for the proper care of hair and beard, men being enabled to shave regularly. For survey respondents, facilities to wash clothes were provided to only 11.6% (14 persons). 5% of respondents (6 persons) were able to shave (Table 11.76).

Table 11.75: Provision of Toilet inside the Custody

Crime Type	No	%	Yes	%	Total
Kathmandu		0.0	12	100.0	12
Lalitpur	3	50.0	3	50.0	6
Bhaktapur	1	33.3	2	66.7	3
Kapilbastu	4	66.7	2	33.3	6
Chitwan	3	37.5	5	62.5	8
Gulmi	3	42.9	4	57.1	7
Jumla	4	44.4	5	55.6	9
Kanchanpur	4	44.4	5	55.6	9
Taplejung	6	100.0		0.0	6
Morang	8	88.9	1	11.1	9
Total	36	48.0	39	52.0	75

Source: Baseline Survey 2002

Table 11.76: Districtwise Provision of Facilities inside the Custody

Districts	Bathroom	%	Drinking water	%	Newspaper	%	Nothing	%	Radio	%	Shaving	%	Television	%	Washing clothes	%	Total
Kathmandu	6	20.7	11	37.9	1	3.4	1	3.4			4	13.8			6	20.7	29
Lalitpur	1	14.3	4	57.1			2	28.6									7
Bhaktapur	1	20.0	3	60.0							1	20.0					5
Kapilbastu	2	20.0	6	60.0											2	20.0	10
Chitwan	2	15.4	3	23.1	3	23.1	3	23.1							2	15.4	13
Gulmi	3	23.1	4	30.8	1	7.7	2	15.4			1	7.7			2	15.4	13
Jumla			5	55.6			4	44.4									9
Kanchanpur	2	16.7	6	50.0	1	8.3	2	16.7							1	8.3	12
Taplejung			1	12.5	3	37.5	3	37.5	1	12.5							8
Morang	2	13.3	4	26.7	2	13.3	4	26.7	1	6.7			1	6.7	1	6.7	15
Total	19	15.7	47	38.8	11	9.1	21	17.4	2	1.7	6	5.0	1	0.8	14	11.6	121

Note: Multiple Responses. *Source: Baseline Survey 2002*

Drinking water should be available to detainees whenever they need it. 38.8% of respondents (47 persons) had this facility (Table 11.76). As per international provisions, it is the responsibility of institutional administration to provide food for prisoners, although untried prisoners may procure this at their own expense if they wish. The majority of respondents to the survey questionnaire received their food free of cost (68%). 25.3% paid for their food in full (Table 11.77).

Table 11.77: Districtwise Provision of Providing Food in Custody

District	Partial Payment	%	By paying	%	Free of cost	%	Others	%	Total
Kathmandu			1	8.3	11	91.7			12
Lalitpur			1	16.7	5	83.3			6
Bhaktapur					3	100.0			3
Kapilbastu			3	50.0	3	50.0			6
Chitwan	1	12.5	3	37.5	4	50.0			8
Gulmi			4	57.1	3	42.9			7
Jumla			2	22.2	5	55.6	2	22.2	9
Kanchanpur			2	22.2	6	66.7	1	11.1	9
Taplejung			2	33.3	4	66.7			6
Morang			1	11.1	7	77.8	1	11.1	9
Total	1	1.3	19	25.3	51	68.00	4	5.3	75

Source: Baseline Survey 2002

The health of detainees is one of the key concerns guiding international rules for their institutionalization, and there are numerous instruments making specific provision for health services for all those placed in custody. These include provisions declaring the right of all detainees to health services available in the country without discrimination on the grounds of their legal situation.[50] Medical care should be free of charge and provided to detainees "wherever necessary".[51] Medical services of institutions should be organized "in close relationship to the general health administration of the community or nation''.[52] There should be access for all to dental services[53] and special provision for those requiring psychiatric care[54], specialist treatment[55] and women who have been or are due to give birth.[56] Hospital facilities provided in an institution must have adequate equipment, facilities and pharmaceutical supplies, and a staff that are suitably trained.[57]

This survey has not been able to take into account all criteria for medical care of detainees that are found in international standards. However, it has assessed the number of those who had been subject to illness while in custody and had been provided treatment thereon. The majority of detainees reported that they had remained well. However, 48% had fallen ill (Table 11.78). This may be informative to considerations of the general standards of care that are currently available to detainees. If illness did not originate from custody itself - then there would still appear to be a need for high levels of care, for example through quality hygiene and nutrition, to prevent the physical decline of those who may have already contracted or be particularly susceptible to ill health.

Table 11.78: Crimewise Morbidity Rate while in Custody

Crime Type	Yes	%	No	%	Total
Attempt to Murder	2	5.6	1	2.6	3
Dacoit	1	2.8	5	12.8	6
Fraud and Cheating	1	2.8	3	7.7	4
Murder	18	50.0	8	20.5	26
Narcotics	3	8.3	4	10.3	7
Others	3	8.3	5	12.8	8
Rape	3	8.3	5	12.8	8
Theft	2	5.6	4	10.3	6
Trafficking	3	8.3	4	10.3	7
Total	36	48.0	39	52.0	75

Source: Baseline Survey 2002

A more concerning finding regards the provision of treatment to those who had suffered illness. Of those that had fallen sick while in custody, 58.3% did not receive a health check. (Table 11.79) This is in blatant disregard of international guidelines and obligations for those responsible for institutional care. It also goes against national law. Section 15(1) (h) of the Police Act states that anyone in custody that is injured or ill should receive immediate health assistance and care after arrest.

Table 11.79: Crimewise Status of Medical Examination

Crime Type	Was checked	%	Was not checked	%	Total
Attempt to Murder	1	6.7	1	4.8	2
Dacoit			1	4.8	1
Fraud and Cheating	1	6.7			1
Murder	7	46.7	11	52.4	18
Narcotics	1	6.7	2	9.5	3
Others	2	13.3	1	4.8	3
Rape	1	6.7	2	9.5	3
Theft	2	13.3			2
Trafficking			3	14.3	3
Total	15	41.7	21	58.3	36

Source: Baseline Survey 2002

As one of the most basic human rights, the right to health and its protection in situations of custody should be an area for particular scrutiny. The findings of this study suggest that existing standards may not be adequate. Further study into the medical requirements and available facilities of institutions would be beneficial, with particular consideration of groups requiring special treatment, for example, expecting mothers.

Detainees are entitled to be "kept informed regularly of the more important items of news"[58] through access to the public media. 9.1% of respondents (11 persons) had access to newspapers, 1.7% (2 persons) to the radio, and one respondent of the 75 was able to watch TV. (Table 11.76) Detainees should also be allowed, under necessary supervision, to communicate with family and reputable friends regularly, both by correspondence and by receiving visits.[59] Communication with the outside world, in particular family and legal counsel, should not be denied for more than a few days.[60] Positively, 73.3% of respondents reported that they had been granted permission to meet with their relatives. 60% of those to whom permission had been denied were suspected of murder (46.15% of those suspected of committing this crime), a possible explanation for the restriction on contact (Table 11.80).

Table 11.80: Crimewise Permission Granted to Meet with Relatives in Custody

Crime Type	Yes	%	No	%	Total
Attempt to Murder	1	1.8	2	10.0	3
Dacoit	5	9.1	1	5.0	6
Fraud and Cheating	4	7.3			4
Murder	14	25.5	12	60.0	26
Narcotics	7	12.7			7
Others	8	14.5			8
Rape	6	10.9	2	10.0	8
Theft	3	5.5	3	15.0	6
Trafficking	7	12.7			7
Total	55	73.3	20	26.7	75

Source: Baseline Survey 2002

The most serious finding of all is the report by 17% of respondents (21 persons) that they had no facilities while in detention, not even the provision of bathroom and drinking water in the place in which they were held. This is a gross violation of the human rights of detainees - and it is one of great scale, across a number of districts. Those responsible for management of detention facilities, at all levels, should take note of these conditions, and take immediate action for their remedy.

Cross-District Comparison of Detention Facilities

The treatment of detainees according to certain categories has been examined by degree. However, it is also useful to consider the provision of certain facilities in the different sample districts. Thus, in most districts, respondents stated that bathroom facilities and drinking water were available. However, in Jumla and Taplejung, no bathroom facilities in detention were reported at all. Districts in which the greatest range of facilities, i.e.: where access to media and washing facilities were available in addition to drinking water and bathroom, were reported to be Kathmandu, Chitwan, Gulmi and Morang (Table 11.76). These figures are necessarily a reflection of the numbers of detainees to be held in certain districts. For example, in the aforementioned districts, crime rates (and thus the number of detainees) are reasonably high.

However, the data also show the development of the region and attitudes of personnel responsible for the management of detention facilities. Jumla is a district where there is a high incidence of crime, hence there are a greater number of suspects in detention. However, as reported by respondents to the survey questionnaire, for 55.6% (5 persons) drinking water was the only facility available in the place they had been detained. For 44.4% (4 persons), there were no facilities at all (Table 11.76). Such conditions are a violation of detainee's most basic rights.

They are a matter for particular concern when as in Jumla, there is pressure on the system through the number of suspects requiring institutional care. When even the most essential services are denied, there is high probability that more secondary considerations of importance to large numbers of detainees, such as sufficient spacing in accommodation, will be overlooked.

Discrimination in Custody

It is a guiding principle of all instruments concerning the institutionalization of detainees that their provisions be applied without discrimination of any kind.[61] 58.7% of respondents to the survey questionnaire reported that they did not feel they had experienced discrimination while in custody (Table 11.81). This is a positive finding. However, the experience of the remainder of respondents requires serious consideration. 41.3% of respondents felt they had faced discriminatory treatment by personnel in charge of detention. 35.5% of these had been accused of murder (42.31% of those suspected of this crime or 11 persons). The majority of those suspect of drug-related crime also reported such treatment (85.71% or 6 persons). 42.86% of those suspects for trafficking (3 persons), 50% of those accused of theft (3 persons), robbery (Dacoit) (2 persons) and attempted murder (1 person). (Table 11.81)

Table 11.81: Discriminated Behavior in Custody

Crime Type	Yes	%	No	%	Total
Attempt to Murder	1	3.2	2	4.5	3
Dacoit	2	6.5	4	9.1	6
Fraud and Cheating	1	3.2	3	6.8	4
Murder	11	35.5	15	34.1	26
Narcotics	6	19.4	1	2.3	7
Others	2	6.5	6	13.6	8
Rape	2	6.5	6	13.6	8
Theft	3	9.7	3	6.8	6
Trafficking	3	9.7	4	9.1	7
Total	31	41.3	44	58.7	75

Source: Baseline Survey 2002

The most commonly reported single ground of discrimination was caste. Half of those reporting such treatment were Dalits, although those of "higher" castes also stated it to have occurred in their cases. One Brahmin and one Chhetri respondent stated they had been discriminated against on the grounds of caste. A large proportion of respondents, across all categories of crime, stated discriminatory treatment on "other" grounds (economic status, political influence and personal contact etc.) - hence personal relationship or locality. By far the greatest number of such incidents related to the crime of murder. This may have some connection to the stigmatization that accrues from what is the most violent of crimes. A positive finding from the study was the low incidence of discrimination on grounds of sex and economic situation (9.1% and 3% respectively) - two aspects by which discrimination is commonly reported in most social situations.

Only three respondents felt they had been discriminated against because of sex - all of these were females. One respondent reported discrimination due to their economic condition. (Table 11.82). The table 11.83 shows that 17.3% respondents were chained during custody, which is contrary to the UN Standard of Minimum Rule for the Treatment of Prisoners.

Table 11.82: Ground of Discrimination in Custody

Crime Type	Caste	%	Economic Condition	%	Nationality	%	Others	%	Sex	%	Total
Attempt to Murder	1	12.5									1
Dacoit							2	10.0			2
Fraud and Cheating							1	5.0			1
Murder	2	25.0	1	100			7	35.0	1	33.3	11
Narcotics	1	12.5					4	20.0	2	66.7	7
Others							2	10.0			2
Rape	1	12.5					2	10.0			3
Theft	2	25.0					1	5.0			3
Trafficking	1	12.5			1	100	1	5.0			3
Total	8	24.2	1	3.0	1	3.0	20	60.6	3	9.1	33

Source: Baseline Survey 2002

Table 11.83: Status of Chained/Handcuffed during Custody

Crime Type	No	%	Yes	%	Total
Attempt to Murder	3	4.8			3
Dacoit	3	4.8	3	23.1	6
Fraud and Cheating	4	6.5			4
Murder	19	30.6	7	53.8	26
Narcotics	7	11.3			7
Others	8	12.9			8
Rape	6	9.7	2	15.4	8
Theft	5	8.1	1	7.7	6
Trafficking	7	11.3			7
Total	62	82.7	13	17.3	75

Source: Baseline Survey 2002

Legal Representation

The Constitution of the Kingdom of Nepal 1990 guarantees the right of every individual to free and fair legal representation by a legal professional of their choice. Although this right is guaranteed in all circumstances, in practice it is rarely afforded. In this survey, 69.3% of a total of 75 respondents were not aware of their right to consult with a defense lawyer whilst in custody. Among the 26 individuals held on suspicion of murder, more than 70% were not aware of this right (Table 11.84). Amongst the 23 respondents who were aware of their right to legal representation, six gave multiple responses, which is why Table 11.85 indicates 29 respondents. Of those aware of this right, 24.1% reported that they were capable of hiring a lawyer but of these 24.1%, only 34.5% reported that they actually went on to do so. 20.7% reported to be incapable of hiring a lawyer, 13.8% did not hire a lawyer and 6.9% were not permitted to meet with a lawyer.

Table 11.84: Awareness of Respondent about the Right to consult with Lawyer during Custody

Crime Type	No	%	Yes	%	Total
Attempt to Murder	3	5.8			3
Dacoit	4	7.7	2	8.7	6
Fraud and Cheating	1	1.9	3	13.0	4
Murder	20	38.5	6	26.1	26
Narcotics	4	7.7	3	13.0	7
Others	6	11.5	2	8.7	8
Rape	5	9.6	3	13.0	8
Theft	5	9.6	1	4.3	6
Trafficking	4	7.7	3	13.0	7
Total	52	69.3	23	30.7	75

Source: Baseline Survey 2002

Table 11.85: Capability of hiring Lawyer in Custody

Crime Type	Capable	%	Have hired	%	Have not hired	%	Incapable	%	Not Allowed to Meet	%	Total
Dacoit	1	14.3			1	25.0	1	16.7			3
Fraud and Cheating	1	14.3	2	20.0							3
Murder	2	28.6	4	40.0			1	16.7	1	50.0	8
Narcotics	2	28.6	2	20.0							4
Others			1	10.0	1	25.0	1	16.7			3
Rape			1	10.0			2	33.3			3
Theft									1	50.0	1
Trafficking	1	14.3			2	50.0	1	16.7			4
Total	7	24.1	10	34.5	4	13.8	6	20.7	2	6.9	29

Source: Baseline Survey 2002

Table 11.86 clarifies that of the total respondents, 32% respondents did not meet a lawyer. All of those cases involving offences, 50% of dacoit did not meet lawyers.

Table 11.86: Opportunity and Period to meet Lawyer by Respondent in Custody

Crime Type	After 24 Hours	%	Between 11 - 20 days	%	Between 2 - 5 days	%	Between 21 - 30 days	%	Between 31 - 60 days	%	Between 6 - 10 days	%	More than 60 days	%	Never	%	Others	%	Total
Attempt to Murder							1	7.1									2	25.0	3
Dacoit			1	16.7			1	7.1					1	20.0	3	12.5			6
Fraud & Cheating			1	16.7	1	33.3			1	10.0			1	20.0					4
Murder	1	100	2	33.3			5	35.7	7	70.0	1	25.0	2	40.0	5	20.8	3	37.5	26
Narcotics			1	16.7			1	7.1	1	10.0					3	12.5	1	12.5	7
Others			1	16.7			2	14.3			1	25.0			3	12.5	1	12.5	8
Rape							2	14.3			2	50.0			3	12.5	1	12.5	8
Theft					1	33.3	2	14.3					1	20.0	2	8.3			6
Trafficking					1	33.3			1	10.0					5	20.8			7
Total	1	1.3	6	8.0	3	4.0	14	18.7	10	13.3	4	5.3	5	6.7	24	32.0	8	10.7	75

Source: Baseline Survey 2002

The DDC president of Jumla and vice president of Morang reported that private lawyers neglected professional ethics in the provision of services to their clients. However, a lecturer from Purbanchal University reported knowledge of lawyers who did act in accordance with professional ethics.

Case Study No. 2

All the case studies from the sampled districts demonstrate that the conditions of custody in each district were very poor, except in some institutions for women's custody. While in custody, no-one is given the chance to meet his or her private lawyer. If they made such a request to the police or the government attorney, it would be ignored. Such conditions in Nepalese detention cells should be improved to protect the human rights of suspects.

Very few participants of FGDs had hired a lawyer during the time of the registration of charge sheets in the court. Most of them had not hired one due to a lack of knowledge and economic condition. Nobody reported receiving free legal assistance from the court.

The VDC chairmen reported that one defense lawyer attempted to save his client from imprisonment. However, on the whole, there was found to be a lack of service oriented lawyers.

Interrogation

After the arrest takes place, the interrogation of the arrestee begins. Whilst this questioning should be carried out in the presence of the prosecutor, in practice it is conducted in the police station. The baseline survey has indicated that out of 75 respondents, a high proportion (85.3%) indicated their names and addresses had been identified upon arrest. Therefore, 14.7% did not offer this information. In the case of suspects charged with narcotic related offences, all reported that their name and address was identified during interrogation (Table 11.87).

Table 11.87: Name and Address Identified during Interrogation

Crime Type	Yes	%	No	%	Total
Attempt to Murder	2	3.1	1	9.1	3
Dacoit	5	7.8	1	9.1	6
Fraud and Cheating	4	6.3		0.0	4
Murder	19	29.7	7	63.6	26
Narcotics	7	10.9		0.0	7
Others	7	10.9	1	9.1	8
Rape	7	10.9	1	9.1	8
Theft	6	9.4		0.0	6
Trafficking	7	10.9		0.0	7
Total	64	85.3	11	14.7	75

Source: Baseline Survey 2002

Of the 64 respondents whose names and address had been identified during arrest, the largest group (39.4%) stated that this took place immediately on arrest and 31.3% stated it to have occurred at the police station (Table 11.88).

Table 11.88: Place of Interrogation

Crime Type	During interrogation before the govt. attorney	%	During interrogation while in custody	%	Immediately upon arrest	%	Others	%	Upon producing at the police office	%	Total
Attempt to Murder		0.0		0.0		0.0	1	10.0	1	5.0	2
Dacoit		0.0	1	11.1	1	4.2	1	10.0	3	15.0	6
Fraud and Cheating		0.0		0.0	3	12.5		0.0	1	5.0	4
Murder	1	100	2	22.2	7	29.2	4	40.0	4	20.0	18
Narcotics		0.0	1	11.1	3	12.5		0.0	2	10.0	6
Others		0.0		0.0	3	12.5	2	20.0	2	10.0	7
Rape		0.0	1	11.1	2	8.3	1	10.0	3	15.0	7
Theft		0.0	3	33.3	2	8.3	1	10.0	1	5.0	7
Trafficking		0.0	1	11.1	3	12.5		0.0	3	15.0	7
Total	1	1.6	9	14.1	24	37.5	10	15.6	20	31.3	64

Source: Baseline Survey 2002

Table 11.89 shows that out of 75 respondents, 11 respondents were surrendered and only 64 replied the question of whether their age was identified in interview or not. Of these, a large proportion (79.7%) answered in the affirmative.

Table 11.89: Knowledge of Respondent on Age Identified

Crime Type	Yes	%	No	%	Total
Attempt to Murder	1	2.0	2	15.4	3
Dacoit	6	11.8		0.0	6
Fraud and Cheating	3	5.9		0.0	3
Murder	12	23.5	8	61.5	20
Narcotics	6	11.8	1	7.7	7
Others	7	13.7		0.0	7
Rape	5	9.8	2	15.4	7
Theft	5	9.8		0.0	5
Trafficking	6	11.8		0.0	6
Total	51	79.7	13	20.3	64

Source: Baseline Survey 2002

Table 11.90 indicates that an Inspector conducted 21.8% of the interrogations, 21.8% were conducted by a Sub-Inspector, 19.8% by an Assistant Sub-Inspector and 14.9% by a Head Constable. Table 11.91 demonstrates that the highest single proportion of respondents (25.3%) reported interrogation by a single person; 22.7% were questioned by three people; 17.3% by four people and 16% by more than five. Table 11.92 reveals that 37.9% of respondents were questioned on the full details of the case; 32.3% were questioned as to matters relating to a co-accused and 16.1% were questioned as to whether the offence had been committed or not.

Table 11.90: Position of Interrogation Officer in the Study Areas

Crime Type	Assistant sub-inspector	%	Constable	%	Head constable	%	Inspector	%	Not asked	%	Others	%	Sub-inspector	%	Total
Attempt to Murder		0.0		0.0	1	6.7		0.0		0.0		0.0	2	9.1	3
Dacoit	2	10.0		0.0	1	6.7	1	4.5		0.0	1	8.3	3	13.6	8
Fraud and Cheating	2	10.0		0.0	1	6.7	1	4.5		0.0		0.0	2	9.1	6
Murder	4	20.0	4	44.4	7	46.7	10	45.5		0.0	3	25.0	5	22.7	33
Narcotics	1	5.0	2	22.2		0.0	1	4.5		0.0	3	25.0	1	4.5	8
Others	1	5.0	2	22.2		0.0	1	4.5	1	100	2	16.7	1	4.5	8
Rape	3	15.0	1	11.1	1	6.7	3	13.6		0.0	2	16.7	4	18.2	14
Theft	6	30.0		0.0	2	13.3	3	13.6		0.0		0.0	3	13.6	14
Trafficking	1	5.0		0.0	2	13.3	2	9.1		0.0	1	8.3	1	4.5	7
Total	**20**	**19.8**	**9**	**8.9**	**15**	**14.9**	**22**	**21.8**	**1**	**1.0**	**12**	**11.9**	**22**	**21.8**	**101**

Source: Baseline Survey 2002

Table 11.91: Number of Interrogated People

Crime Type	Four	%	More than 5	%	One	%	Others	%	Three	%	Two	%	Total
Attempt to Murder	1	7.7	1	8.3	1	5.3		0.0		0.0		0.0	3
Dacoit	1	7.7		0.0	2	10.5	1	33.3	1	5.9	1	9.1	6
Fraud and Cheating		0.0		0.0	2	10.5		0.0	2	11.8		0.0	4
Murder	6	46.2	4	33.3	5	26.3		0.0	8	47.1	5	45.5	28
Narcotics	2	15.4		0.0	1	5.3		0.0	2	11.8	2	18.2	7
Others		0.0	1	8.3	4	21.1	1	33.3		0.0	1	9.1	7
Rape	1	7.7	1	8.3	2	10.5		0.0	2	11.8	2	18.2	8
Theft		0.0	2	16.7		0.0	1	33.3	2	11.8		0.0	5
Trafficking	2	15.4	3	25.0	2	10.5		0.0		0.0		0.0	7
Total	13	17.3	12	16.0	19	25.3	3	4.0	17	22.7	11	14.7	75

Source: Baseline Survey 2002

Table 11.92: Particular of the Respondent Interrogated at the Police Station

Crime Type	As to whether or not offense was committed	%	Nothing related with offense was asked	%	On matters relating to evidence	%	On matters relating to the co-accused	%	On property statement	%	On the full discrimination of the case	%	Others	%	Total
Attempt to Murder		0.0		0.0		0.0	2	5.0		0.0	2	4.3		0.0	4
Dacoit	2	10.0		0.0		0.0	4	10.0		0.0	4	8.5	1	33.3	11
Fraud and Cheating	2	10.0		0.0	2	28.6	2	5.0		0.0	2	4.3		0.0	8
Murder	9	45.0		0.0	3	42.9	18	45.0	3	60.0	16	34.0		0.0	49
Narcotics	3	15.0	1	50.0		0.0	4	10.0		0.0	4	8.5		0.0	12
Others	1	5.0	1	50.0		0.0	3	7.5		0.0	5	10.6	1	33.3	11
Rape	1	5.0		0.0	1	14.3	4	10.0	1	20.0	5	10.6		0.0	12
Theft	1	5.0		0.0		0.0	1	2.5		0.0	3	6.4	1	33.3	6
Trafficking	1	5.0		0.0	1	14.3	2	5.0	1	20.0	6	12.8		0.0	11
Total	20	16.1	2	1.6	7	5.6	40	32.3	5	4.0	47	37.9	3	2.4	124

Source: Baseline Survey 2002

Most of the participants in FGDs reported interrogation had been carried out by ASIs and head constables. Very few participants reported that inspectors carried out interrogation. Most participants stated that, during the time of interrogation, the police beat and tortured suspects as they liked, both mentally and physically.

Statement

Table 11.93 shows that there is a wide range between the time a suspect is arrested and when his statement is taken. Amongst 75 respondents, 37.3% made their statement three to five days after their arrest, 22.7% six to twenty days after arrest and 20% after one to two days. 34.9% of respondents had their statement taken by an Assistant Sub-Inspector, 18.6% by a Sub-Inspector and 15.1% by a Head Constable. However, multiple responses by some have unfortunately distorted the figures slightly (Table 11.94).

Table 11.93: Range of the Days for the Statement Recorded

Crime Type	1-2 day	%	3-5 days	%	6-20 days	%	Above 20 days	%	Immediately	%	Others	%	Total
Attempt to Murder		0.0	2	7.1		0.0		0.0	1	16.7		0.0	3
Dacoit	1	6.7	2	7.1	1	5.9	2	50.0		0.0		0.0	6
Fraud and Cheating	1		3										4
Murder	3	6.7	9	32.1	5	29.4	2	50.0	3	50.0	4	80.0	26
Narcotics	2	20.0		0.0	4	23.5		0.0	1	16.7		0.0	7
Others	3	13.3	2	7.1	2	11.8		0.0	1	16.7		0.0	8
Rape	2	20.0	4	14.3	1	5.9		0.0		0.0	1	20.0	8
Theft		13.3	4	14.3	2	11.8		0.0		0.0		0.0	6
Trafficking	3	20.0	2	7.1	2	11.8		0.0		0.0		0.0	7
Total	15	20.0	28	37.3	17	22.7	4	5.3	6	8.0	5	6.7	75

Source: Baseline Survey 2002

Table 11.94: Status of the Police to take the Statement

Crime Type	Assistant sub-inspector	%	Constable	%	Head Constable	%	Inspector	%	Other	%	Sub-inspector	%	Total
Attempt to Murder	2	6.7		0.0	1	7.7		0.0		0.0		0.0	3
Dacoit	1	3.3		0.0	2	15.4		0.0		0.0	3	18.8	6
Fraud and Cheating	3	10.0		0.0		0.0		0.0		0.0	1	6.3	4
Murder	10	33.3	5	55.6	6	46.2	3	30.0	2	25.0	5	31.3	31
Narcotics	2	6.7	2	22.2	1	7.7	2	20.0	1	12.5		0.0	8
Others	2	6.7	1	11.1	1	7.7	2	20.0	2	25.0	1	6.3	9
Rape	3	10.0	1	11.1		0.0	1	10.0	2	25.0	3	18.8	10
Theft	5	16.7		0.0	1	7.7	1	10.0		0.0	1	6.3	8
Trafficking	2	6.7		0.0	1	7.7	1	10.0	1	12.5	2	12.5	7
Total	30	34.9	9	10.5	13	15.1	10	11.6	8	9.3	16	18.6	86

Source: Baseline Survey 2002

Table 11.95 indicates that in a high proportion of cases (49.3%) a Government Attorney was not present. Table 11.96 shows that for those respondents who made their statement in the presence of a Government Attorney some felt him/her to be rude and humiliating (12.8% and 14.9% respectively).

Table 11.95: Present of the Government Attorney during the Statement Record

Crime Type	No	%	Yes	%	Total
Attempt to Murder	1	2.7	2	5.3	3
Dacoit	4	10.8	2	5.3	6
Fraud and Cheating	3	8.1	1	2.6	4
Murder	14	37.8	12	31.6	26
Narcotics	2	5.4	5	13.2	7
Others	6	16.2	2	5.3	8
Rape	2	5.4	6	15.8	8
Theft	3	8.1	3	7.9	6
Trafficking	2	5.4	5	13.2	7
Total	37	49.3	38	50.7	75

Source: Baseline Survey 2002

Table 11.96: Dealing of Government Attorney to the Suspect

Crime Type	Curt	%	General	%	General abusing	%	Insulted	%	Like a criminal	%	Like an innocent	%	Others	%	Rude	%	Total
Attempt to Murder		0.0	2	9.1		0.0		0.0		0.0		0.0		0.0		0.0	2
Dacoit		0.0	2	9.1	1	33.3		0.0	1	33.3		0.0	1	14.3	1	16.7	6
Fraud and Cheating		0.0	1	4.5		0.0		0.0		0.0	1	33.3		0.0		0.0	2
Murder		0.0	6	27.3	1	33.3		0.0		0.0		0.0	2	28.6	2	33.3	11
Narcotics		0.0	2	9.1	1	33.3		0.0	1	33.3	1	33.3		0.0	1	16.7	6
Others	1	100	1	4.5		0.0		0.0		0.0		0.0	1	14.3		0.0	3
Rape		0.0	2	9.1		0.0	2	100		0.0	1	33.3	1	14.3	1	16.7	7
Theft		0.0	2	9.1		0.0		0.0	1	33.3		0.0	1	14.3	1	16.7	5
Trafficking		0.0	4	18.2		0.0		0.0		0.0		0.0	1	14.3		0.0	5
Total	1	2.1	22	46.8	3	6.4	2	4.3	3	6.4	3	6.4	7	14.9	6	12.8	47

Source: Baseline Survey 2002

The interviews conducted for the purpose of taking the statement were in 29.5% of cases led by an Assistant Sub-Inspector and 17.9% by a Government Attorney (Table 11.97). These results indicate that the law provides insufficient practice guidelines.

Table 11.97: Position of the Interviewer during Statement

Crime Type	Assistant sub-inspector	%	Government attorney	%	Inspector	%	Others	%	Sub-inspector	%	Total
Attempt to Murder	2	8.7	1	7.1		0.0		0.0		0.0	3
Dacoit	1	4.3	1	7.1		0.0	3	15.8	2	12.5	7
Fraud and Cheating	3	13.0	1	7.1		0.0		0.0	1	6.3	5
Murder	7	30.4	5	35.7	3	50.0	8	42.1	3	18.8	26
Narcotics	2	8.7	1	7.1		0.0	2	10.5	2	12.5	7
Others	1	4.3		0.0		0.0	4	21.1	2	12.5	7
Rape	1	4.3	2	14.3	1	16.7	1	5.3	3	18.8	8
Theft	4	17.4		0.0	2	33.3		0.0	2	12.5	8
Trafficking	2	8.7	3	21.4		0.0	1	5.3	1	6.3	7
Total	23	29.5	14	17.9	6	7.7	19	24.4	16	20.5	78

Source: Baseline Survey 2002

An equally crucial role in this context is that of actually writing the statement. In a relatively small proportion of cases the statement was written by a Constable, a Sub-Inspector or the accused himself. In 32% of cases the statement was written by an Assistant Sub-Inspector, but in 33.3% of cases the respondent replied 'other' when asked who wrote his/her statement (Table 11.98).

Table 11.98: Position of the Writer

Crime Type	Assistant sub-inspector	%	Constable	%	Sub-inspector	%	Government attorney	%	Others	%	Self	%	Total
Attempt to Murder	1	4.2		0.0		0.0		0.0	2	8.0		0.0	3
Dacoit	1	4.2		0.0	1	11.1		0.0	4	16.0		0.0	6
Fraud and Cheating	3				1								4
Murder	5	20.8	4	30.8	3	33.3	2	66.7	12	48.0		0.0	26
Narcotics	2	12.5	2	15.4		0.0		0.0	3	12.0		0.0	7
Others	1	8.3	1	7.7	1	11.1		0.0	4	16.0		0.0	7
Rape	3	4.2	2	15.4	2	22.2		0.0		0.0	1	100	8
Theft	5	12.5	1	7.7		0.0		0.0		0.0		0.0	6
Trafficking	3	12.5	3	23.1	1	11.1	1	33.3		0.0		0.0	8
Total	24	32.0	13	17.3	9	12.0	3	4.0	25	33.3	1	1.3	75

Source: Baseline Survey 2002

When asked if the accused felt compelled to give evidence against himself, 66.7% of the 75 respondents replied in the affirmative. Of those cases involving charges of theft the figure was 100% (Table 11.99).

Table 11.99: Situation to be compelled a witness against the themselves

Crime Type	No	%	Yes	%	Total
Attempt to Murder	2	8.0	1	2.0	3
Dacoit	2	8.0	4	8.0	6
Fraud and Cheating	2	8.0	2	4.0	4
Murder	9	36.0	17	34.0	26
Narcotics	1	4.0	6	12.0	7
Others	4	16.0	4	8.0	8
Rape	2	8.0	6	12.0	8
Theft		0.0	6	12.0	6
Trafficking	3	12.0	4	8.0	7
Total	25	33.3	50	66.7	75

Source: Baseline Survey 2002

55.6% of the 18 female respondents felt that their statement was given due weight (Table 11.100). These figures are fairly equally matched but have been slightly distorted due to multiple responses.

Table 11.100: Ways of obtaining statement

Crime Type	Others	%	Seriously	%	Total
Attempt to Murder		0.0	1	10.0	1
Fraud and Cheating		0.0	2	20.0	2
Murder	2	25.0	5	50.0	7
Narcotics	3	37.5		0.0	3
Others		0.0	1	10.0	1
Theft	1	12.5		0.0	1
Trafficking	2	25.0	1	10.0	3
Total	8	44.4	10	55.6	18

Source: Baseline Survey 2002

As indicated by Table 10.101, a disturbing 82.7% of respondents were not provided with an opportunity to submit their evidence. At 100%, this problem is even more acute when the charges involve narcotics.

Table 11.101: Provision of opportunity to submit evidence

Crime Type	No	%	Yes	%	Total
Attempt to Murder	2	3.2	1	7.7	3
Dacoit	3	4.8	3	23.1	6
Fraud and Cheating	3	4.8	1	7.7	4
Murder	22	35.5	4	30.8	26
Narcotics	7	11.3		0.0	7
Others	7	11.3	1	7.7	8
Rape	8	12.9		0.0	8
Theft	4	6.5	2	15.4	6
Trafficking	6	9.7	1	7.7	7
Total	**62**	**82.7**	**13**	**17.3**	**75**

Source: Baseline Survey 2002

The suspect should always be given the opportunity to read his or her statement after it is recorded. Table 11.102 demonstrates that the majority of suspects (78.7%) do not get this opportunity and solely with regard to the offence of murder this figure is nearly 80%.

Table 11.102: Reading of the Statement after Recording

Crime Type	No	%	Yes	%	Total
Attempt to Murder	2	3.4	1	6.3	3
Dacoit	4	6.8	2	12.5	6
Fraud and Cheating	3	5.1	1	6.3	4
Murder	19	32.2	7	43.8	26
Narcotics	6	10.2	1	6.3	7
Others	8	13.6		0.0	8
Rape	6	10.2	2	12.5	8
Theft	5	8.5	1	6.3	6
Trafficking	6	10.2	1	6.3	7
Total	59	78.7	16	21.3	75

Source: Baseline Survey 2002

Remand

Article 14(6) of the Constitution of the Kingdom of Nepal 1990 provides for the production of the arrested person before a judicial authority within twenty-four hours of arrest, excluding the period of journey. Out of 75 respondents, three were not produced before

Table 11.103: Distribution of Time Taken before Producing to the Court

Crime Type	After 1 day	%	After 2 days	%	After 3 days	%	After 4 days	%	More than 4 days	%	Others	%	Within 24 hours	%	Total
Attempt to Murder		0.0		0.0		0.0		0.0	2	11.1		0.0	1	11.1	3
Dacoit		0.0	1	20.0	1	11.1		0.0	4	22.2		0.0		0.0	6
Fraud and Cheating		0.0		0.0	2	22.2		0.0		0.0	2	12.5		0.0	4
Murder	2	40.0	1	20.0	3	33.3	3	30.0	3	16.7	9	56.3	4	44.4	25
Narcotics	1	20.0		0.0	1	11.1	2	20.0	1	5.6	1	6.3	1	11.1	7
Others		0.0	1	20.0		0.0	1	10.0	2	11.1	1	6.3	1	11.1	6
Rape	1	20.0	1	20.0	2	22.2		0.0	2	11.1		0.0	2	22.2	8
[redacted]		0.0	1	20.0		0.0	1	10.0	3	16.7	1	6.3		0.0	6
Trafficking	1	20.0		0.0		0.0	3	30.0	1	5.6	2	12.5		0.0	7
Total	5	6.9	5	6.9	9	12.5	10	13.9	18	25.0	16	22.2	9	12.5	72

Note: See three cases in the text *Source: Baseline Survey 2002*

the court for legitimate reasons. Kharim Khan (suspect) was legally proceeded from the police station, Kedar Upreti (ex-prisoner) was already in court and Suk Ram Darai's presence was not necessary (forestry related case). The remaining results (only 72) show that 25% were produced after more than four days after arrest, 22.2% replied 'other' and 13.9% after four days (Table 11.103). Table 11.104 shows the time of the court appearance. 40.3% were taken at 12 o'clock, 22.2% at 10 o'clock, 11.1% between 12 and 2 o'clock and 9.7% between 2 and 3 o'clock.

Table 11.104: Crime-wise Distribution of time of day when Detainee taken to Court

Crime Type	10 o'clock	%	11 o'clock	%	12 o'clock	%	12-2 o'clock	%	2-3 o'clock	%	3-4 o'clock	%	4-5 o'clock	%	Others	%	Total
Attempt to Murder		0.0		0.0	2	6.9	1	12.5		0.0		0.0		0.0		0.0	3
Dacoit	1	6.3	1	100	2	6.9		0.0	1	14.3		0.0	1	33.3		0.0	6
Fraud and Cheating	1	6.3		0.0	3	10.3		0.0		0.0		0.0		0.0		0.0	4
Murder	6	37.5		0.0	8	27.6	2	25.0	2	28.6	1	33.3	1	33.3	5	100	25
Narcotics		0.0		0.0	3	10.3	3	37.5	1	14.3		0.0		0.0		0.0	7
Others	1	6.3		0.0	3	10.3	1	12.5		0.0		0.0	1	33.3		0.0	6
Rape	2	12.5		0.0	4	13.8		0.0	2	28.6		0.0		0.0		0.0	8
Theft	2	12.5		0.0	2	6.9		0.0	1	14.3	1	33.3		0.0		0.0	6
Trafficking	3	18.8		0.0	2	6.9	1	12.5		0.0	1	33.3		0.0		0.0	7
Total	16	22.2	1	1.4	29	40.3	8	11.1	7	9.7	3	4.2	3	4.2	5	6.9	72

Source: Baseline Survey 2002

During the period of remand, the majority of suspects (61.1%) reported that the judge was present. 2.8% did not know whether the judge was present or not (Table 11.105).

Table 11.105: Crimewise Distribution of Presence of Judge

Crime Type	Yes	%	No	%	Unknown	%	Total
Attempt to Murder	3	6.8		0.0		0.0	3
Dacoit	2	4.5	4	15.4		0.0	6
Fraud and Cheating	4	9.1		0.0		0.0	4
Murder	15	34.1	10	38.5		0.0	25
Narcotics	5	11.4	2	7.7		0.0	7
Others	4	9.1	2	7.7		0.0	6
Rape	4	9.1	2	7.7	2	100	8
Theft	3	6.8	3	11.5		0.0	6
Trafficking	4	9.1	3	11.5		0.0	7
Total	44	61.1	26	36.1	2	2.8	72

Source: Baseline Survey 2002

Of the 44 respondents for whom the judge was present a majority of 61.4% were not asked questions by the judge. 100% of suspects accused of drug related offences were not asked questions by the judge about the alleged incident (Table 11.106). Table 11.107 indicates that out of 72 respondents, 65 (90.3%) could not hire a lawyer. Thus, legal aid program should be extended throughout the country.

Table 11.106: Crimewise Distribution of Question Raised by Judge

Crime Type	Yes	%	No	%	Total
Attempt to Murder	1	5.9	2	7.4	3
Dacoit	2	11.8	3	11.1	5
Fraud and Cheating	3	17.6	1	3.7	4
Murder	5	29.4	7	25.9	12
Narcotics		0.0	5	18.5	5
Others	1	5.9	3	11.1	4
Rape	1	5.9	3	11.1	4
Theft	2	11.8	1	3.7	3
Trafficking	2	11.8	2	7.4	4
Total	17	38.6	27	61.4	44

Source: Baseline Survey 2002

Table 11.107: Crimewise Distribution of hiring Legal Service

Crime Type	Yes	%	No	%	Total
Attempt to Murder		0.0	3	4.6	3
Dacoit	2	28.6	4	6.2	6
Fraud and Cheating	1	14.3	3	4.6	4
Murder	2	28.6	23	35.4	25
Narcotics		0.0	7	10.8	7
Others	1	14.3	5	7.7	6
Rape		0.0	8	12.3	8
Theft		0.0	6	9.2	6
Trafficking	1	14.3	6	9.2	7
Total	7	9.7	65	90.3	72

Source: Baseline Survey 2002

Table 11.108 illustrates that out of 72 respondents, 29.2% were remanded on three occasions, 23.6% four times, 19.4% two times and 18.1% over five times. Of seven trafficking cases, two suspects were remanded only once, and out of seven cases involving narcotics, one suspect was remanded only once.

Table 11.108: Number of Times Remand Given

Crime Type	Once	%	Twice	%	Thrice	%	Four times	%	Five times	%	Above that	%	Unknown	%	Total
Attempt to Murder		0.0		0.0	3	14.3		0.0		0.0		0.0		0.0	3
Dacoit		0.0	1	7.1	2	9.5	1	5.9		0.0	1	7.7	1	50.0	6
Fraud and Cheating		0.0		0.0	1	4.8	2	11.8		0.0	1	7.7		0.0	4
Murder		0.0	7	50.0	5	23.8	4	23.5	2	100	6	46.2	1	50.0	25
Narcotics	1	33.3	2	14.3		0.0	3	17.6		0.0	1	7.7		0.0	7
Others		0.0	1	7.1	2	9.5	1	5.9		0.0	2	15.4		0.0	6
Rape		0.0	3	21.4	3	14.3	2	11.8		0.0		0.0		0.0	8
Theft		0.0		0.0	2	9.5	3	17.6		0.0	1	7.7		0.0	6
Trafficking	2	66.7		0.0	3	14.3	1	5.9		0.0	1	7.7		0.0	7
Total	3	4.2	14	19.4	21	29.2	17	23.6	2	2.8	13	18.1	2	2.8	72

Source: Baseline Survey 2002

Note: Three respondent were directly present at court so remand was not applied to them.

All VDC chairmen of the sampled districts stated that, from time to time, the police detained suspects for up to 25 days in remand.

The Mayor of Mahendranagar in Kanchanpur district, Surya Bahadur Kuwar, reported that the police cannot be trusted to carry out fair investigations. The Mayor of Kapilwastu, Ram Das Gupta, reported that police informed the local authorities of crimes happening in the community. The Deputy Mayor of Bharatpur reported that sometimes the police informed him of such crimes. However, the Deputy Mayor of Biratnagar reported that he was not informed of any crimes by the police.

Views of the Police in Sampled Districts

Views of the police on the nature of criminal proceedings were an important part of the survey. Of atotal of 52 key informants, the majority (51.9%) stated that they always issued an arrest slip when arresting a suspect. However, 19.2% stated that they issued such slips only in some cases, and an equal number did not issue an arrest slip at all. None of the respondents from Lalitpur reported in the affirmative. The highest number of officers stating that they did issue such slips was in Jumla (85.7% of officers interviewed in this area). The majority of respondents who did not issue arrest slips to suspects stated that this was not due to lack of awareness, but rather lack of practice (54.5%). 27.3% said pressure on time led to the failing. (Table 11.109 and 11.110).

Table 11.109: Issuance of Arrest Slip when arresting a Suspect

District	Generally not issued	%	Give to some	%	No	%	Yes	%	Total
Kathmandu	2	25.0	2	25.0	1	12.5	3	37.5	8
Lalitpur		0.0		0.0	4	100		0.0	4
Bhaktapur	1	20.0	3	60.0		0.0	1	20.0	5
Kapilbastu		0.0	1	20.0	2	40.0	2	40.0	5
Chitwan	1	16.7	1	16.7	2	33.3	2	33.3	6
Gulmi		0.0		0.0		0.0	3	100	3
Jumla		0.0		0.0	1	14.3	6	85.7	7
Kanchanpur	1	16.7	2	33.3		0.0	3	50.0	6
Taplejung		0.0		0.0		0.0	5	100	5
Morang		0.0	1	33.3		0.0	2	66.7	3
Total	5	9.6	10	19.2	10	19.2	27	51.9	52

Source: Baseline Survey 2002

Table 11.110: Reason for arresting without an Arrest Slip

District	Aware but no in practice	%	Being in haste	%	Others	%	Unware of it	%	Total
Kathmandu	4	80.0	1	20.0		0.0		0.0	5
Lalitpur	4	100		0.0		0.0		0.0	4
Bhaktapur	2	100		0.0		0.0		0.0	2
Kapilbastu	1	50.0		0.0	1	50.0		0.0	2
Chitwan	1	20.0	2	40.0	1	20.0	1	20.0	5
Jumla		0.0		0.0		0.0	1	100	1
Kanchanpur		0.0	2	100		0.0		0.0	2
Morang		0.0	1	100		0.0		0.0	1
Total	12	54.5	6	27.3	2	9.1	2	9.1	22

Source: Baseline Survey 2002

Views of police were sought regarding the "Criminal Procedural Guidelines", a handbook on best practice in the CJS that has been developed by all its sectors, and disseminated for use by actors throughout the country. 46.2% of respondents stated that they felt the

Guidelines were being observed. 38.5% did not know. None of the respondents from Jumla reported knowledge of the Guidelines' use (Table 11.111). This is probably as orientations on the Guidelines have not yet been conducted in this area. Of the respondents who knew of the Guidelines' application, the majority (86.4%) felt they had been effective in the execution of their work (Table 11.112). 52.6% stating the Guidelines had helped them to understand procedural matters. (Table 11.113)

Table 11.111: Observation of the Criminal Procedural Guidelines

District	Don't know	%	No	%	Yes	%	Total
Kathmandu	4	50.0	2	25.0	2	25.0	8
[redacted]	1	25.0	1	25.0	2	50.0	4
Bhaktapur		0.0	3	60.0	2	40.0	5
Kapilbastu	3	60.0		0.0	2	40.0	5
Chitwan	1	20.0	1	20.0	3	60.0	5
Gulmi	1	33.3		0.0	2	66.7	3
Jumla	7	100		0.0		0.0	7
Kanchanpur	3	50.0		0.0	3	50.0	6
Taplejung		0.0	1	20.0	4	80.0	5
Morang		0.0		0.0	4	100	4
Total	20	38.5	8	15.4	24	46.2	52

Source: Baseline Survey 2002

Table 11.112: Effectiveness of the Guidelines in Execution of the Work

District	Effective	%	Maximum effective	%	Total
Kathmandu	5	100		0.0	5
Lalitpur	2	100		0.0	2
Bhaktapur	1	100		0.0	1
Kapilbastu	1	100		0.0	1
Chitwan	3	75.0	1	25.0	4
Gulmi	1	100		0.0	1
Kanchanpur	1	33.3	2	66.7	3
Taplejung	3	100		0.0	3
Morang	2	100		0.0	2
Total	19	86.4	3	13.6	22

Source: Baseline Survey 2002

Table 11.113: Matter Involved in the Guidelines assisted the most

District	To know about the principles	%	To understand matters regarding procedures	%	To understand the code of conduct	%	Total
Kathmandu	2	25.0	5	62.5	1	12.5	8
Lalitpur		0.0	1	50.0	1	50.0	2
Bhaktapur	1	33.3	1	33.3	1	33.3	3
Kapilbastu	1	33.3	1	33.3	1	33.3	3
Chitwan	3	37.5	3	37.5	2	25.0	8
Gulmi	1	33.3	1	33.3	1	33.3	3
Kanchanpur		0.0	3	75.0	1	25.0	4
Taplejung	1	33.3	2	66.7		0.0	3
Morang		0.0	3	75.0	1	25.0	4
Total	9	23.7	20	52.6	9	23.7	38

Source: Baseline Survey 2002

After the designation of responsibility in an investigation, 43.1% of police respondents felt one area for priority should be the protection of the crime scene. 40% gave importance to the arrest of offenders. A relatively low number of respondents stated that one area of priority was the preservation of evidence, In four districts this was not ranked of prime importance at all. (Table 11.114)

Table 11.114: Priority on Act after Prescribing a Responsibility

District	Arresting of the criminal	%	Preservation of evidence	%	Protection of the crime scene	%	Total
Kathmandu	3	50.0	1	16.7	2	33.3	6
Lalitpur	1	25.0		0.0	3	75.0	4
Bhaktapur	3	50.0		0.0	3	50.0	6
Kapilbastu	1	25.0		0.0	3	75.0	4
Chitwan	4	50.0	1	12.5	3	37.5	8
Gulmi	2	40.0	2	40.0	1	20.0	5
Jumla	6	37.5	4	25.0	6	37.5	16
Kanchanpur	3	42.9	2	28.6	2	28.6	7
Taplejung	1	25.0	1	25.0	2	50.0	4
Morang	2	40.0		0.0	3	60.0	5
Total	26	40.0	11	16.9	28	43.1	65

Source: Baseline Survey 2002

The majority of respondents stated that, upon receiving information about the crime, the investigation was begun before the preliminary report was sent to the government attorney. After the preliminary report is sent, most respondents said they received directions as to the investigation (68.6%). However, a large proportion stated that they did not receive any such guidance (31.4%). (Table 11.115)

Table 11.115: Direction of the Government Attorney regarding the investigation after sending FIR

District	No	%	Yes	%	Total
Kathmandu	2	28.6	5	71.4	7
Lalitpur	1	25.0	3	75.0	4
Bhaktapur		0.0	5	100	5
Kapilbastu	4	80.0	1	20.0	5
Chitwan	2	40.0	3	60.0	5
Gulmi	1	33.3	2	66.7	3
Jumla	2	28.6	5	71.4	7
Kanchanpur	2	33.3	4	66.7	6
Taplejung	1	20.0	4	80.0	5
Morang	1	25.0	3	75.0	4
Total	16	31.4	35	68.6	51

Source: Baseline Survey 2002

Police respondents were questioned as to the emphasis they laid on confession in the investigation. A commonly observed trend within the criminal justice system has been the reliance of all actors on the confession as proof of alleged crime. The majority of police respondents stated that they laid emphasis on confession (61.5%). For all respondents from Lalitpur, this was the consideration of greatest importance in the investigation. (Table 11.116).

Table 11.116: Status of Emphasis on Confession

District	Maximum	%	Minimum	%	Total
Kathmandu	5	62.5	3	37.5	8
Lalitpur	4	100		0.0	4
Bhaktapur	3	60.0	2	40.0	5
Kapilbastu	3	60.0	2	40.0	5
Chitwan	2	40.0	3	60.0	5
Gulmi	2	66.7	1	33.3	3
Jumla	6	85.7	1	14.3	7
Kanchanpur	4	66.7	2	33.3	6
Taplejung	2	40.0	3	60.0	5
Morang	1	25.0	3	75.0	4
Total	32	61.5	20	38.5	52

Source: Baseline Survey 2002

According to the experience of respondents, most commonly, only 10% of suspects confessed their crime (44.2%) of respondents. A very small proportion were reported not admitting to their crime of which they were suspected. (Table 11.117). The majority of confessions obtained were stated to be made of the suspect's own free will. However, in Jumla, it was reported that *all* confessions were obtained against the free will of suspects. (Table 11.118)

Table 11.117: Number of Confessed Suspects about their Crimes

District	10%	%	20%	%	50%	%	More than that	%	None	%	Total
Kathmandu	1	12.5	2	25.0	3	37.5	1	12.5	1	12.5	8
Lalitpur	2	50.0	1	25.0		0.0	1	25.0		0.0	4
Bhaktapur		0.0	1	20.0	2	40.0	2	40.0		0.0	5
Kapilbastu	4	80.0	1	20.0		0.0		0.0		0.0	5
Chitwan	2	40.0	1	20.0	2	40.0		0.0		0.0	5
Gulmi	2	66.7		0.0		0.0	1	33.3		0.0	3
Jumla	4	57.1	1	14.3	2	28.6		0.0		0.0	7
Kanchanpur	4	66.7	1	16.7		0.0	1	16.7		0.0	6
Taplejung	1	20.0	2	40.0	1	20.0	1	20.0		0.0	5
Morang	3	75.0	1	25.0		0.0		0.0		0.0	4
Total	23	44.2	11	21.2	10	19.2	7	13.5	1	1.9	52

Source: Baseline Survey 2002

Table 11.118: Confessions on their own Free Will

District	No	%	Yes	%	Total
Kathmandu		0.0	7	100	7
Lalitpur		0.0	4	100	4
Bhaktapur		0.0	5	100	5
Kapilbastu	2	40.0	3	60.0	5
Chitwan	2	40.0	3	60.0	5
Gulmi		0.0	3	100	3
Jumla	7	100		0.0	7
Kanchanpur		0.0	6	100	6
Taplejung	1	20.0	4	80.0	5
Morang		0.0	4	100	4
Total	12	23.5	39	76.5	51

Source: Baseline Survey 2002

The most commonly reported method for the extraction of confession was "interrogation by scolding". A high number of respondents stated that confession was extracted through ordinary questions and answers. However, there were also many who responded that it took place through "Interrogation by slapping". A significant number stated this had been extracted through torture. (Table 11.119)

Table 11.119: Ways of Extraction of the Confession

District	Confession extracted by torture	%	Interrogated by scolding	%	Interrogated by slapping	%	Ordinary question answer	%	Others	%	Total
Kathmandu	1	16.7	1	16.7	1	16.7	2	33.3	1	16.7	6
Lalitpur	1	50.0		0.0	1	50.0		0.0		0.0	2
Bhaktapur	1	33.3		0.0	1	33.3	1	33.3		0.0	3
Kapilbastu		0.0	2	50.0		0.0	2	50.0		0.0	4
Chitwan	1	14.3	2	28.6	3	42.9	1	14.3		0.0	7
Gulmi		0.0		0.0		0.0		0.0	1	100	1
Jumla	2	11.8	7	41.2	4	23.5	3	17.6	1	5.9	17
Kanchanpur		0.0		0.0	1	100		0.0		0.0	1
Taplejung		0.0	1	33.3		0.0	1	33.3	1	33.3	3
Total	6	13.6	13	29.5	11	25.0	10	22.7	4	9.1	44

Source: Baseline Survey 2002

For the scientific investigation of crime, respondents stated that the most common minimum level of equipment was equipment with which to lift finger prints and record evidence photographically. Police dogs were only reported to be available in three districts (Kathmandu, Chitwan and Morang). (Table 11.120). Respondents stated that where there was no proper equipment for the investigation of crime, evidence was most commonly collected by utilizing whatever resources were available. Equipments from the nearest district police office were also commonly applied. (Table 11.121)

Table 11.120: Availability of Minimum Scientific Equipments for Investigation

District	Equipment for lifting of finger prints	%	Others	%	Photograph	%	Police dogs	%	Total
Kathmandu	8	38.1		0.0	7	33.3	6	28.6	21
Lalitpur	4	50.0		0.0	4	50.0		0.0	8
Bhaktapur	5	50.0		0.0	5	50.0		0.0	10
Kapilbastu	5	50.0		0.0	5	50.0		0.0	10
Chitwan	5	45.5		0.0	5	45.5	1	9.1	11
Gulmi	3	100		0.0		0.0		0.0	3
Kanchanpur	6	50.0		0.0	6	50.0		0.0	12
Taplejung	2	28.6	2	28.6	3	42.9		0.0	7
Morang	4	44.4		0.0	4	44.4	1	11.1	9
Total	42	46.2	2	2.2	39	42.9	8	8.8	91

Source: Baseline Survey 2002

Table 11.121: Ways of Collection of Evidences

District	Equipments are sought from the nearest district police officer	%	It is not collected	%	Others	%	Utilizing whatever resources that is available	%	Total
Kathmandu	1	11.1		0.0	1	11.1	7	77.8	9
Lalitpur		0.0		0.0		0.0	4	100	4
Bhaktapur	3	50.0		0.0		0.0	3	50.0	6
Kapilbastu	3	60.0		0.0		0.0	2	40.0	5
Chitwan	1	20.0		0.0		0.0	4	80.0	5
Gulmi	2	66.7		0.0	1	33.3		0.0	3
Jumla		0.0	1	14.3		0.0	6	85.7	7
Kanchanpur	6	100		0.0		0.0		0.0	6
Taplejung		0.0		0.0	2	40.0	3	60.0	5
Morang	1	25.0		0.0		0.0	3	75.0	4
Total	17	31.5	1	1.9	4	7.4	32	59.3	54

Source: Baseline Survey 2002

The majority (92.3%) of respondents reported to have sought advice from the government attorney regarding the investigation. (Table 11.122). This is a positive trend - government attorneys have the duty to give legal advice to the police during the investigation of crime. These findings show that this responsibility is being met.

Table 11.122: Status of Legal Advise from the Government Attorney Regarding the Investigation

District	No	%	Yes	%	Total
Kathmandu	2	25.0	6	75.0	8
Lalitpur		0.0	4	100	4
Bhaktapur	1	20.0	4	80.0	5
Kapilbastu		0.0	5	100	5
Chitwan	1	20.0	4	80.0	5
Gulmi		0.0	3	100	3
Jumla		0.0	7	100	7
Kanchanpur		0.0	6	100	6
Taplejung		0.0	5	100	5
Morang		0.0	4	100	4
Total	4	7.7	48	92.3	52

Source: Baseline Survey 2002

Table 11.123: Bringing of the Suspect to the Investigation site during the Course of Investigation

District	No	%	Yes	%	Total
Kathmandu	1	12.5	7	87.5	8
Lalitpur	1	25.0	3	75.0	4
Bhaktapur	2	40.0	3	60.0	5
Kapilbastu	1	20.0	4	80.0	5
Chitwan	3	60.0	2	40.0	5
Gulmi		0.0	3	100	3
Jumla		0.0	7	100	7
Kanchanpur	1	16.7	5	83.3	6
Taplejung	1	20.0	4	80.0	5
Morang		0.0	4	100	4
Total	10	19.2	42	80.8	52

Source: Baseline Survey 2002

80.8% of police respondents stated that the suspect was taken to the investigation site during investigation. (Table 11.123). This appears to be a positive trend - indicating that suspects are involved in the process by which evidences are obtained, which is accordance with the guiding principles of criminal law. However, this data does not match the data obtained from suspects, which show that suspects are rarely taken to the scene of crime.

The majority of police respondents (84.6%) reported that persons in the custody pending investigation were released by the police. (Table 11.124). In such cases, suspects were most commonly released who were not on remand, upon verification of the evidences. However, a high proportion of those on remand were also released after the opinion of the government attorney had been acquired. (Table 11.125). The majority of respondents stated that the most frequently applied ground for release was that the suspect would return to the police office as needed, as guaranteed by a third party. (Table 11.126). The final decision taken to release such a person was reported to be reached by the police in most cases. A high number of releases were made after the opinion and advice of the government attorney had been acquired. (Table 11.127)

Table 11.124: Persons in the Custody Pending Investigation released by the Police

District	No	%	Yes	%	Total
Kathmandu		0.0	8	100	8
Lalitpur		0.0	4	100	4
Bhaktapur	1	20.0	4	80.0	5
Kapilbastu	1	20.0	4	80.0	5
Chitwan	1	20.0	4	80.0	5
Gulmi		0.0	3	100	3
Jumla		0.0	7	100	7
Kanchanpur		0.0	6	100	6
Taplejung	5	100		0.0	5
Morang		0.0	4	100	4
Total	8	15.4	44	84.6	52

Source: Baseline Survey 2002

Table 11.125: Circumstances of the Release

District	If he is not on remand, upon verifying the evidences	%	If he is on remand, upon acquiring the opinion of the government attorney	%	Total
Kathmandu	5	50.0	5	50.0	10
Lalitpur		0.0	3	100	3
Bhaktapur	2	40.0	3	60.0	5
Kapilbastu	4	100		0.0	4
Chitwan	3	42.9	4	57.1	7
Gulmi	2	66.7	1	33.3	3
Jumla	7	100		0.0	7
Kanchanpur	6	54.5	5	45.5	11
Morang	4	80.0	1	20.0	5
Total	33	60.0	22	40.0	55

Source: Baseline Survey 2002

Table 11.126: Grounds of the Persons released

District	Others	%	Presence secured by a thir party	%	To be present on due dates	%	Total
Kathmandu	2	22.2	5	55.6	2	22.2	9
Lalitpur		0.0	4	100		0.0	4
Bhaktapur		0.0	2	40.0	3	60.0	5
Kapilbastu		0.0	3	75.0	1	25.0	4
Chitwan		0.0	5	71.4	2	28.6	7
Gulmi		0.0	1	100		0.0	1
Jumla		0.0	7	87.5	1	12.5	8
Kanchanpur		0.0	6	75.0	2	25.0	8
Taplejung		0.0	1	100		0.0	1
Morang		0.0	4	100		0.0	4
Total	2	3.9	38	74.5	11	21.6	51

Source: Baseline Survey 2002

Table 11.127: The Decision to release such a Person

District	By the police	%	Others	%	Upon acquiring the opinion and advise of the government attorney	%	With the permission of the court	%	Total
Kathmandu	6	54.5		0.0	4	36.4	1	9.1	11
Lalitpur	1	20.0		0.0	4	80.0		0.0	5
Bhaktapur	2	40.0		0.0	3	60.0		0.0	5
Kapilbastu	3	75.0		0.0	1	25.0		0.0	4
Chitwan	3	50.0		0.0	3	50.0		0.0	6
Gulmi	2	66.7		0.0	1	33.3		0.0	3
Jumla	7	100		0.0		0.0		0.0	7
Kanchanpur	5	55.6	1	11.1	3	33.3		0.0	9
Taplejung		0.0		0.0	3	100		0.0	3
Morang	2	50.0		0.0	2	50.0		0.0	4
Total	31	54.4	1	1.8	24	42.1	1	1.8	57

Source: Baseline Survey 2002

Case Study No. 3

Sona Sunar, from Kanchanpur prison, was accused of trafficking her own daughter-in-law and another girl in Baishak 2057. She was arrested after an FIR was filed by her daughter-in-law. Although local people warned her she might be arrested, she did not abscond. She believed she was innocent. Male police came to her house and arrested her, taking her to the police station. She was neither beaten, nor handcuffed, however the ASI and head constable mentally tortured her with derogative words. The ASI (Dan Singh) frequently attempted to rape her. He said that the interrogation room was extremely hot, and his room had a fan where she should stay and sleep. She accepted this offer, after which Mr. Singh tried to assault her, especially at 12 and 1 o'clock. Mrs. Sunar told him that if she was raped she would complain to the court. She said she was not a simple female. Mr. Singh tried to persuade her to do as he wanted, saying she would be free if she allowed him to enjoy her, and offering her 3000 Rupees.

Although Mrs. Sonar was mentally tortured, she did not complain at any point

because she did not know the process by which to do so. Nobody asked as to her inconvenience during the investigation. The ASI who had attempted to rape her threatened her not to reveal anything, saying; 'Do not complain anywhere - if you do, your family will be harmed.'

Mrs. Sonar was told she would be presented before the government attorney to make her statement. However, she was not taken there. Her statement was prepared at the same police office in which she had been held, in Tribhuvanbasti. Mr. Singh wrote the statement and again said she could be free if she succumbed to his vested interests. However, she refused to do so. While the statement was being recorded, Mrs. Sonar was again beaten with a stick by male police.

Mrs. Sonar did not hire a lawyer due to a lack of information. However, one head constable managed a lawyer for the provision of legal advice when she was in the court.

She was kept in the Ilaka Police Office for 25 days and then brought to the DPO. On the same day she was presented in the court for remand. When her statement was recorded by the court assistant, she intended to complain about mental torture, however she could not do so due to the presence of Mr. Singh in the room.

Mrs. Sonar passed 35 days in custody. She reported several bitter experiences from this time. While in Tribhuvanbasti Ilaka Police Office she was forced to wash and press the clothes of all the police officers. She even had to bathe the ASI and head constable. Furthermore, she was made to massage the body of the ASI during the night, and wash his underwear. During the same period of police custody, she was brought to the village at 2 o'clock at night to identify the house of the Khanke, the co-offender. At that time her house was also searched, although only the marriage photo of her daughter in-law was seized. The search and seizure took place at night, when there were no locals present.

Mrs. Sonar has now been placed in prison, after the decision of Kanchanpur district court on Ashad 2057. She has appealed to the Appellate Court. As she has been unable to hire a lawyer, CeLRRd has provided her with free legal advice. Her witnesses have been examined by the Court. She still hopes she will be freed and able to involve in a vocation to pass the years that are to come.

She expressed satisfaction with the provisions of the prison, and appreciation for the jailer, who she said, was just like a father. She suggested there should be improvements in women's prison rooms.

Case Study No. 4

Nirmala Bishwokarma, from Kapilwastu, was accused of attempt to murder on Bhadra 2058. She and her husband were arrested. She claimed that she was innocent. One morning, when she was going to fetch water 3 to 4 hours walk from her house in the center of the forest, she was arrested and handcuffed by 5 to 7 male police. She was held by them and ordered to go to the District Police Office in Chanaute. When she was transferred to the DPO, she was mentally and physically tortured both morning and night. She was beaten with a stick, threatened with electrocution, her hair was pulled out by male police, and she was insulted with derogatory terms such as harlot and prostitute. She did not complain about this treatment as she did not know how to do so.

Prosecution

The State Cases Act of 1993 and the Regulations of 1998 are the fundamental law pertaining to prosecutorial procedures. They clearly dictate that criminal prosecutions begin when the concerned investigating police officer reports both the criminal actions of the suspect and the findings of the investigation to the appropriate government attorney.

Framing and Registration of Charge Sheet

A baseline survey questionnaire given to 75 respondents (10 were suspects and 65 detainees) indicates that an overwhelming majority (72.3%) of respondents were not approached by anyone intending to assist them while only an alarming minority (27.7%) of respondents were offered assistance (Table 11.128). Of the eighteen persons (18) comprising this 27.7%, the majority (47.6) reported that they were approached by police representatives, 14.3% reported that they were approached by a lawyer, 14.3% reported that they were approached by an agent, only 4.8% reported that they were approached by a government attorney, and only 4.8% report that they were approached by an officer of the local body (Table 11.129). Furthermore, 55.4% of these same respondents did not appoint a lawyer and pointed to fraud and cheating as reasons for their failure to do so (Table 11.130).

Table 11.128: Arrival of the Visitor in Police Custody to resolve the Cases

Crime Type	Yes	%	No	%	Total
Attempt to Murder	1	5.6	2	4.3	3
Dacoit	1	5.6	4	8.5	5
Fraud and Cheating	2	11.1	1	2.1	3
Murder	2	11.1	21	44.7	23
Narcotics	1	5.6	5	10.6	6
Others	1	5.6	4	8.5	5
Rape	3	16.7	4	8.5	7
Theft	3	16.7	3	6.4	6
Trafficking	4	22.2	3	6.4	7
Total	18	27.7	47	72.3	65

Note: 10 were suspects, thus the total number is 65. *Source: Baseline Survey 2002*

Table 11.129: Status of the Visitor

Crime Type	A person (agent) connected with the police	%	An employee from the government attorneys office	%	An officer of the local body	%	Government attorney	%	Lawyer	%	Person from the police office	%	Person or leader of a political party	%	Witness	%	Total
Attempt to Murder	1	33.3		0.0		0.0		0.0		0.0		0.0		0.0		0.0	1
Dacoit		0.0		0.0		0.0		0.0	1	33.3		0.0		0.0		0.0	1
Fraud and Cheating		0.0		0.0	1	100	1	100	1	33.3	1	10.0		0.0		0.0	4
Murder		0.0		0.0		0.0		0.0		0.0	2	20.0		0.0		0.0	2
Narcotics	1	33.3		0.0		0.0		0.0		0.0		0.0		0.0		0.0	1
Others		0.0		0.0		0.0		0.0		0.0	1	10.0		0.0		0.0	1
Rape		0.0		0.0		0.0		0.0		0.0	2	20.0		0.0	1	100	3
Theft		0.0	1	100		0.0		0.0		0.0	2	20.0		0.0		0.0	3
Trafficking	1	33.3		0.0		0.0		0.0	1	33.3	2	20.0	1	100		0.0	5
Total	3	14.3	1	4.8	1	4.8	1	4.8	3	14.3	10	47.6	1	4.8	1	4.8	21

Note: Out of 18 respondents the total number is calculated 21 due to multiple responses. *Source: Baseline Survey 2002*

Table 11.130: Appointment of Lawyer

Crime Type	No	%	Yes	%	Total
Attempt to Murder	1	2.8	2	6.9	3
Dacoit	2	5.6	3	10.3	5
Fraud and Cheating		0.0	3	10.3	3
Murder	15	41.7	8	27.6	23
Narcotics	5	13.9	1	3.4	6
Others	2	5.6	3	10.3	5
Rape	1	2.8	6	20.7	7
Theft	5	13.9	1	3.4	6
Trafficking	5	13.9	2	6.9	7
Total	36	55.4	29	44.6	65

Source: Baseline Survey 2002

Government attorneys are given the crucial responsibility of efficiently and promptly framing and registering charge sheets. While there is a positive trend that suggests that the majority of charge sheets are registered promptly, (36.9% at 11 o'clock, 20% at 12 o'clock, 18.5% at 10 o'clock), many remain unregistered until the later hours of the day (9.2% at 2 o'clock, 6.2% at 3 o'clock, 1.5% at 4 o'clock). (Table 11.131).

Table 11.131: Exact time for the charge sheet registered

Crime Type	01 o'clock	%	02 o'clock	%	03 o'clock	%	04 o'clock	%	10 o'clock	%	11 o'clock	%	12 o'clock	%	Total
Attempt to Murder		0.0		0.0		0.0		0.0		0.0	2	8.3	1	7.7	3
Dacoit	1	20.0	1	16.7	1	25.0		0.0	1	8.3	1	4.2		0.0	5
Fraud and Cheating		0.0		0.0		0.0		0.0		0.0	2	8.3	1	7.7	3
Murder		0.0	3	50.0	1	25.0	1	100	6	50.0	9	37.5	4	30.8	24
Narcotics	1	20.0	1	16.7		0.0		0.0	1	8.3	1	4.2	2	15.4	6
Others	1	20.0		0.0	1	25.0		0.0		0.0	1	4.2	2	15.4	5
Rape		0.0	1	16.7		0.0		0.0		0.0	6	25.0		0.0	7
Theft	1	20.0		0.0	1	25.0		0.0	3	25.0	1	4.2		0.0	6
Trafficking	1	20.0		0.0		0.0		0.0	1	8.3	1	4.2	3	23.1	6
Total	5	7.7	6	9.2	4	6.2	1	1.5	12	18.5	24	36.9	13	20.0	65

Source: Baseline Survey 2002

Such delays prevent court proceedings from being completed on the same day of registration and consequently, the respondents must spend additional time in police custody and endure conditions which are often inhumane.

Once a charge sheet is registered, the respondent's statement is supposed to be recorded in the presence of a judge yet only 78.5% reported that a judge was present during their statements. Without the presence of a judge it becomes increasingly likely that respondents rights will be violated.

Trafficking is one area where great strides have been made; all respondents related to trafficking reported that a judge was present during their statements (Table 11.132). Even when a judge is present, they do not regularly participate in the questioning as indicated by (56.9%) of 51 detainees questioned (Table 11.133).

Table 11.132: Presence of Judge while Recording the Statement

Crime Type	No, he was absent	%	Yes, he was present	%	Total
Attempt to Murder	1	7.1	2	3.9	3
Dacoit	3	21.4	2	3.9	5
Fraud and Cheating	1	7.1	2	3.9	3
Murder	3	21.4	21	41.2	24
Narcotics	1	7.1	4	7.8	5
Others	2	14.3	4	7.8	6
Rape	1	7.1	5	9.8	6
Theft	2	14.3	4	7.8	6
Trafficking		0.0	7	13.7	7
Total	14	21.5	51	78.5	65

Source: Baseline Survey 2002

Table 11.133: Asking the question by the Judges

Crime Type	No	%	Yes	%	Total
Attempt to Murder	2	6.9		0.0	2
Dacoit	1	3.4	1	4.5	2
Fraud and Cheating	1	3.4	1	4.5	2
Murder	11	37.9	10	45.5	21
Narcotics	4	13.8		0.0	4
Others	2	6.9	2	9.1	4
Rape	3	10.3	2	9.1	5
Theft	1	3.4	3	13.6	4
Trafficking	4	13.8	3	13.6	7
Total	29	56.9	22	43.1	51

Source: Baseline Survey 2002

The field study team questioned the respondents about the content of interrogations at different locations such as police offices, offices of the government attorney, and the court. The majority (83.1%) of respondents reported that the content of interrogations at these locations was very different (Table 11.134) indicating often that their statements were not taken (25.2%), their statements were coerced against their free will (19.7%), their statements included more than what was originally recorded(13.4%), or that they were

Table 11.134: Nature of the Statement Recorded at Police Office, Government Attorney and the Court

Crime Type	Dissimilar	%	Similar	%	Total
Attempt to Murder	1	1.9	2	18.2	3
Dacoit	4	7.4	1	9.1	5
Fraud and Cheating	1	1.9	2	18.2	3
Murder	19	35.2	4	36.4	23
Narcotics	5	9.3	1	9.1	6
Others	5	9.3		0.0	5
Rape	7	13.0		0.0	7
Theft	6	11.1		0.0	6
Trafficking	6	11.1	1	9.1	7
Total	54	83.1	11	16.9	65

Source: Baseline Survey 2002

made to sign either a blank (5.5%) or pre-prepared document (11.8%) (Table 11.135). While the full text of the record should be read to the respondents after his/her statement is recorded, only 64.6% reported that the record had been read back to them. (Table 11.136). When the record is not read back to the detainee, intentional and unauthorized additions, errors in the initial recording, and other inaccuracies can become part of the permanent criminal record and taint any proceedings that follow.

Table 11.135: Dissimilarities of the Statement

Crime Type	Less than what you had started was recorded	%	More than what you had stated was recorded	%	Others	%	Others statement was recorded as your own statement	%	Statement derived against ones free will	%	Was made to sign on a blank document	%	Was made to sign on a document prepared in advance	%	Was made to sition under undue influence	%	Your statement was not recorded	%	Total
Attempt to Murder		0.0	1	5.9		0.0		0.0	1	4.0		0.0	1	6.7		0.0	1	3.1	4
Dacoit	1	14.3	2	11.8	1	33.3	1	5.9	3	12.0		0.0	2	13.3		0.0	1	3.1	11
Fraud and Cheating		0.0	1	5.9		0.0		0.0		0.0		0.0		0.0		0.0		0.0	1
Murder	2	28.6	5	29.4		0.0	6	35.3	9	36.0	5	71.4	5	33.3	3	75.0	10	31.3	45
Narcotics		0.0	2	11.8	1	33.3	2	11.8	1	4.0		0.0		0.0		0.0	4	12.5	10
Others		0.0	2	11.8	1	33.3	2	11.8	2	8.0		0.0	1	6.7		0.0	2	6.3	10
Rape	2	28.6	1	5.9		0.0	1	5.9	5	20.0		0.0	3	20.0	1	25.0	4	12.5	17
Theft	1	14.3	1	5.9		0.0	2	11.8	2	8.0	1	14.3	1	6.7		0.0	4	12.5	12
Trafficking	1	14.3	2	11.8		0.0	3	17.6	2	8.0	1	14.3	2	13.3		0.0	6	18.8	17
Total	7	5.5	17	13.4	3	2.4	17	13.4	25	19.7	7	5.5	15	11.8	4	3.1	32	25.2	127

Source: Baseline Survey 2002

Table 11.136: Status of the Full Test of the Statement Readout

Crime Type	Yes	%	No	%	Total
Attempt to Murder	1	2.4	2	8.7	3
Dacoit	3	7.1	2	8.7	5
Fraud and Cheating	1	2.4	2	8.7	3
Murder	12	28.6	11	47.8	23
Narcotics	5	11.9	1	4.3	6
Others	3	7.1	2	8.7	5
Rape	5	11.9	2	8.7	7
Theft	6	14.3		0.0	6
Trafficking	6	14.3	1	4.3	7
Total	42	64.6	23	35.4	65

Source: Baseline Survey 2002

Views of the Government Attorney

While there may be various means of informing prosecutors about specific crimes, a baseline survey revealed that all responding prosecutors were informed of specific crimes from preliminary reports and not from verbal communication with the police or other potential means.

Upon receiving preliminary reports, most of the government attorneys (60%) provided directions for the police, while a smaller number reported doing so only when directions appeared necessary (33.3%). (Table 11.137). When the police are not given instructions or advice to assist them in their investigations, they must obtain it on their own. As is the case with the attorney in Chitwan (Rajendra Shrestha), this is not done on a regular basis. Increased cooperation between police and the government attorneys is necessary to improve the efficiency of the prosecutorial mechanisms.

Table 11.137: Direction for Investigation after receiving FIR

District	If found necessary	%	No	%	Yes	%	Total
Kathmandu	4	100		0.0		0.0	4
Lalitpur		0.0		0.0	2	100	2
Bhaktapur		0.0		0.0	1	100	1
Kapilbastu		0.0		0.0	1	100	1
Chitwan	1	100		0.0		0.0	1
Gulmi		0.0		0.0	1	100	1
Jumla		0.0		0.0	1	100	1
Kanchanpur		0.0		0.0	1	100	1
Taplejung		0.0	1	100		0.0	1
Morang		0.0		0.0	2	100	2
Total	5	33.3	1	6.7	9	60.0	15

Source: Baseline Survey 2002

According to a survey of government attorneys in 10 districts, the majority (93.3%) of people placed in custody give their statements in an office of the government attorney while very few do so in police offices (6.7%). (Table 11.138). The government attorneys further indicated that most respondents give their statement within three days following their arrest (60%), some within seven days (33.3%) and very few within 10 days (6.7%). Even though most respondents are held in custody for only several days before being allowed to give their statements, those who are detained longer must endure inhumane conditions and thus increasing the efficiency of the statement procedures is critical. (Table 11.139)

Table 11.138: Place of Preparing of the Statement

District	Government attorneys office	%	Police	%	Total
Kathmandu	4	100		0.0	4
Lalitpur	2	100		0.0	2
Bhaktapur		0.0	1	100	1
Kapilbastu	1	100		0.0	1
Chitwan	1	100		0.0	1
Gulmi	1	100		0.0	1
Jumla	1	100		0.0	1
Kanchanpur	1	100		0.0	1
Taplejung	1	100		0.0	1
Morang	2	100		0.0	2
Total	14	93.3	1	6.7	15

Source: Baseline Survey 2002

Table 11.139: Duration of Production of the Statement

District	Within 10 days	%	Within 3 days	%	Within 7 days	%	Total
Kathmandu		0.0	4	100		0.0	4
Lalitpur		0.0	2	100		0.0	2
Bhaktapur		0.0	1	100		0.0	1
Kapilbastu		0.0		0.0	1	100	1
Chitwan		0.0		0.0	1	100	1
Gulmi		0.0		0.0	1	100	1
Jumla	1	100		0.0		0.0	1
Kanchanpur		0.0		0.0	1	100	1
Taplejung		0.0	1	100		0.0	1
Morang		0.0	1	50.0	1	50.0	2
Total	1	6.7	9	60.0	5	33.3	15

Source: Baseline Survey 2002

The main responsibility of prosecutors at district level is to prepare charge sheets and it is critical that they are given enough time to do so carefully. An overwhelming majority of prosecutors (86.7%) from 15 districts indicated that they are not given ample time to prepare charge sheets while only two prosecutors (from Chitwan and Taplejung) said that their time was sufficient. (Table 11.140)

Table 11.140: Ample time for the Preparation of Chart Sheet

District	No	%	Yes	%	Total
Kathmandu	4	100		0.0	4
Lalitpur	2	100		0.0	2
Bhaktapur	1	100		0.0	1
Kapilbastu	1	100		0.0	1
Chitwan		0.0	1	100	1
Gulmi	1	100		0.0	1
Jumla	1	100		0.0	1
Kanchanpur	1	100		0.0	1
Taplejung		0.0	1	100	1
Morang	2	100		0.0	2
Total	13	86.7	2	13.3	15

Source: Baseline Survey 2002

It is not uncommon that cases submitted by the police are not prosecuted. 40% of the respondents reported that this was the case, 33.3% reported that most of the cases were prosecuted, and 26.7% reported that all of the cases were prosecuted. (Table 11.141). Prosecutors cite weak evidence (56.3%) and improper or bad investigations (37.5%) as reasons for failing to prosecute submitted cases.

The prosecutor from Kapilvastu specifically pointed to a lack of performance as a reason for inefficiencies in the prosecutorial system. When a case is not prosecuted because of a bad investigation all of the respondents indicated that they made efforts to provide additional directions to assist the police in any further investigation. (Table 11.142)

Table 11.141: Attitude of Government Attorney for the Prosecution of Cases submitted by the Police

District	Almost Done	%	No	%	Yes	%	Total
Kathmandu	4	100		0.0		0.0	4
Lalitpur		0.0	1	50.0	1	50.0	2
Bhaktapur		0.0	1	100		0.0	1
Kapilbastu	1	100		0.0		0.0	1
Chitwan		0.0		0.0	1	100	1
Gulmi		0.0	1	100		0.0	1
Jumla		0.0		0.0	1	100	1
Kanchanpur		0.0	1	100		0.0	1
Taplejung		0.0	1	100		0.0	1
Morang		0.0	1	50.0	1	50.0	2
Total	5	33.3	6	40.0	4	26.7	15

Source: Baseline Survey 2002

Table 11.142: Reason for not Prosecution

District	Bad investigation	%	Others	%	Weak evidence	%	Total
Kathmandu	1	25.0		0.0	3	75.0	4
Lalitpur	1	50.0		0.0	1	50.0	2
Bhaktapur	1	50.0		0.0	1	50.0	2
Kapilbastu		0.0	1	100		0.0	1
Gulmi	1	50.0		0.0	1	50.0	2
Kanchanpur	1	50.0		0.0	1	50.0	2
Taplejung	1	50.0		0.0	1	50.0	2
Morang		0.0		0.0	1	100	1
Total	6	37.5	1	6.3	9	56.3	16

Source: Baseline Survey 2002

Among the evidences collected by the police during the course of investigation, the majority (36.7%) reported relying on confessions and witnesses and not physical evidence collected from the crime scene and examined by forensic experts. (Table 11.143)

Table 11.143: Status of Abundance of Evidence Collected by the Police

District	Confession of the accused	%	Evidence examined by the experts	%	Physical evidence collected at the crime scene	%	Witnesses	%	Total
Kathmandu	2	33.3	1	16.7	1	16.7	2	33.3	6
Lalitpur	2	28.6	1	14.3	2	28.6	2	28.6	7
Bhaktapur	1	33.3		0.0		0.0	2	66.7	3
Kapilbastu		0.0		0.0		0.0	1	100	1
Chitwan		0.0		0.0		0.0	1	100	1
Gulmi	1	50.0		0.0	1	50.0		0.0	2
Jumla	1	50.0		0.0		0.0	1	50.0	2
Kanchanpur	1	33.3		0.0	1	33.3	1	33.3	3
Taplejung	1	33.3		0.0	1	33.3	1	33.3	3
Morang	2	100		0.0		0.0		0.0	2
Total	11	36.7	2	6.7	6	20.0	11	36.7	30

Source: Baseline Survey 2002

While preparing the charge sheet, the majority (86.7%) of prosecutors gave special weight to the opinions of the investigating officer. (Table 11.144). Even if these opinions were not based on hard evidence, the majority of the prosecutors (60%) still relied on them. (Table 11.145). Other prosecutors reported that they relied on physical and material evidence provided by the police (66.7%), the police report only (27.8%), and various other evidence (5.6%). (Table 11.146)

Table 11.144: Preference of the Opinion provided by the Investigation Officer for Preparing the Charge Sheet

District	Give importance only if the opinion is based on the evidence	%	Others	%	Prepare charge sheet on the opinion	%	Total
Kathmandu	3	75.0	1	25.0		0.0	4
Lalitpur	2	100		0.0		0.0	2
Bhaktapur	1	100		0.0		0.0	1
Kapilbastu	1	100		0.0		0.0	1
Chitwan		0.0		0.0	1	100	1
Gulmi	1	100		0.0		0.0	1
Jumla	1	100		0.0		0.0	1
Kanchanpur	1	100		0.0		0.0	1
Taplejung	1	100		0.0		0.0	1
Morang	2	100		0.0		0.0	2
Total	13	86.7	1	6.7	1	6.7	15

Table 11.145: Fairness of the Opinions of the Police based on the Investigation

District	No	%	Yes	%	Total
Kathmandu	1	25.0	3	75.0	4
Lalitpur		0.0	2	100	2
Bhaktapur	1	100		0.0	1
Kapilbastu	1	100		0.0	1
Chitwan		0.0	1	100	1
Gulmi		0.0	1	100	1
Jumla	1	100		0.0	1
Kanchanpur	1	100		0.0	1
Taplejung		0.0	1	100	1
Morang	1	50.0	1	50.0	2
Total	6	40.0	9	60.0	15

Source: Baseline Survey 2002

Table 11.146: Status of the other documents provided by the Police

District	Only the police report	%	Others	%	Physical and material evidences	%	Total
Kathmandu	1	20.0		0.0	4	80.0	5
Lalitpur	1	33.3		0.0	2	66.7	3
Bhaktapur		0.0		0.0	1	100	1
Kapilbastu		0.0	1	100		0.0	1
Chitwan	1	100		0.0		0.0	1
Gulmi	1	50.0		0.0	1	50.0	2
Jumla	1	100		0.0		0.0	1
Kanchanpur		0.0		0.0	1	100	1
Taplejung		0.0		0.0	1	100	1
Morang		0.0		0.0	2	100	2
Total	5	27.8	1	5.6	12	66.7	18

Source: Baseline Survey 2002

In some instances, prosecutors are pressured to drop cases. While the majority of prosecutors (73.3%) reported that they were never pressured, an alarming number (26.7%) indicated that they had been pressured in subtle or minor ways. (Table 11.147)

Table 11.147: Pressurization not to Prosecute a Case

District	No	%	Yes	%	Total
Kathmandu	4	100		0.0	4
Lalitpur	2	100		0.0	2
Bhaktapur	1	100		0.0	1
Kapilbastu		0.0	1	100	1
Chitwan	1	100		0.0	1
Gulmi		0.0	1	100	1
Jumla	1	100		0.0	1
Kanchanpur		0.0	1	100	1
Taplejung		0.0	1	100	1
Morang	2	100		0.0	2
Total	11	73.3	4	26.7	15

Source: Baseline Survey 2002

Most of the respondents from FGDs reported they were brought before the government attorney from 5 to 10 days after arrest. A few did not know whether or not they had been brought to the office of the district government attorney. Most of the participants reported that the government attorney approved of the report submitted by the police. It was stated that they do not prosecute fairly. A few respondents even reported that government attorneys beat suspects during their interrogation and statement.

Most community members interviewed (village, urban and women leaders) did not know the real responsibilities of the government attorney.

Case Study No. 5

Govt. Attorney's behavior

Som Bahadur Tamang from Chitwan jail, accused of dacoity, also reported being tortured in police custody. His statement was prepared in the police office, where the government attorney was also present (Poush 2057). However, the government attorney did not ask about the condition of the accused, but threatened him by saying that 'your skin should be cut' (Tero Chhala Kadnu Pradachha).

Adjudication

Preliminary Hearing

After the charge sheet has been registered, the court forwards the case for adjudication. The adjudication process begins with the preliminary hearing. During the preliminary hearing, 73.8% of the 65 individuals polled reported that pleadings occurred. In narcotics cases, by contrast, *all* respondents reported that pleadings occurred (Table 11.148).

Table 11.148: Pleading during the preliminary hearing

Crime Type	Yes	%	No	%	Total
Attempt to murder	3	6.3		0.0	3
Dacoit	4	8.3	1	5.9	5
Fraud and Cheating	2	4.2	1	5.9	3
Murder	16	33.3	7	41.2	23
Narcotics	6	12.5		0.0	6
Others	3	6.3	2	11.8	5
Rape	6	12.5	1	5.9	7
Theft	3	6.3	3	17.6	6
Trafficking	5	10.4	2	11.8	7
Total	48	73.8	17	26.2	65

Source: Baseline Survey 2002

After pleadings, 95.4% of the respondents were remanded to judicial custody and 4.6% were released on bail (Table 11.149). Of those remanded to custody, 72.3% did not file an application challenging the order. In cheating and fraud cases, *none* of the respondents challenged the custody order (Table 11.150). Individuals under judicial custody, however, have a legal right to challenge such a custody order according to No. 17 of the Civil Code. Yet, even those who did challenge the order met with little success. 94.4% of the judicial custody orders were upheld (Table 11.151).

Table 11.149: Order of the Judge

Crime Type	To be released on bail	%	To be sent to judicial custody	%	Total
Attempt to murder		0.0	3	4.8	3
Dacoit		0.0	5	8.1	5
Fraud and Cheating		0.0	3	4.8	3
Murder		0.0	23	37.1	23
Narcotics	2	66.7	4	6.5	6
Others	1	33.3	4	6.5	5
Rape		0.0	7	11.3	7
Theft		0.0	6	9.7	6
Trafficking		0.0	7	11.3	7
Total	3	4.6	62	95.4	65

Source: Baseline Survey 2002

Table 11.150: Filing an application against the order of Judicial Custody

Crime Type	No	%	Yes	%	Total
Attempt to murder	3	6.4		0.0	3
Dacoit	5	10.6		0.0	5
Fraud and Cheating		0.0	3	16.7	3
Murder	16	34.0	7	38.9	23
Narcotics	5	10.6	1	5.6	6
Others	4	8.5	1	5.6	5
Rape	3	6.4	4	22.2	7
Theft	5	10.6	1	5.6	6
Trafficking	6	12.8	1	5.6	7
Total	47	72.3	18	27.7	65

Source: Baseline Survey 2002

Table 11.151: Result of the Appellate Court

Crime Type	Quashed	%	Upheld	%	Total
Fraud and Cheating		0.0	3	17.6	3
Murder		0.0	7	41.2	7
Narcotics		0.0	1	5.9	1
Others		0.0	1	5.9	1
Rape		0.0	4	23.5	4
Theft		0.0	1	5.9	1
Trafficking	1	100		0.0	1
Total	1	5.6	17	94.4	18

Source: Baseline Survey 2002

Legal representation is essential in the pleadings stages. Many of the respondents failed to assert their legal rights because they were not provided counsel. 55.4% of the respondents were not appointed legal counsel upon their arrest. In cheating and fraud cases, *none* of the respondents were appointed counsel (Table 11.152). Of those respondents who were appointed counsel, the majority (58.6%) reported that counsel adequately instructed them about the content of the order and how the case would most likely proceed (Table 11.153). The respondents had various thoughts about the role and value of counsel. 26.8% reported that counsel was "helpful;" 43.9% categorized counsel as "ordinary;" and 17.1% felt counsel was "formal" (Table 11.154). Despite these mixed reviews of counsel's performance, it is nonetheless clear that the presence of counsel both informed defendants of their rights and aided them in asserting those rights.

Table 11.152: Appointment of a Lawyer

Crime Type	No	%	Yes	%	Total
Attempt to murder	1	2.8	2	6.9	3
Dacoit	2	5.6	3	10.3	5
Fraud and Cheating		0.0	3	10.3	3
Murder	15	41.7	8	27.6	23
Narcotics	5	13.9	1	3.4	6
Others	2	5.6	3	10.3	5
Rape	1	2.8	6	20.7	7
Theft	5	13.9	1	3.4	6
Trafficking	5	13.9	2	6.9	7
Total	36	55.4	29	44.6	65

Source: Baseline Survey 2002

Table11.153: Explanation of the Lawyer as to the content of the order and future proceeding

Crime Type	No	%	Yes	%	Total
Attempt to Murder	2	16.7		0.0	2
Dacoit		0.0	1	5.9	1
Fraud and Cheating	2	16.7	1	5.9	3
Murder	2	16.7	4	23.5	6
Narcotics		0.0	4	23.5	4
Others	2	16.7	1	5.9	3
Rape	2	16.7	3	17.6	5
Theft	1	8.3	1	5.9	2
Trafficking	1	8.3	2	11.8	3
Total	12	41.4	17	58.6	29

Source: Baseline Survey 2002

Table 11.154: Type of dealing of the Lawyer

Crime Type	Formal	%	Helpful	%	Ordinary	%	Others	%	Unconc-erned	%	Total
Attempt to Murder		0.0		0.0	1	5.6	1	25.0		0.0	2
Dacoit	1	14.3		0.0	1	5.6	1	25.0		0.0	3
Fraud and Cheating		0.0	1	9.1	2	11.1		0.0		0.0	3
Murder	3	42.9	1	9.1	7	38.9		0.0		0.0	11
Narcotics	1	14.3	2	18.2	1	5.6		0.0	1	100	5
Others		0.0	2	18.2		0.0	2	50.0		0.0	4
Rape	1	14.3	3	27.3	2	11.1		0.0		0.0	6
Theft		0.0		0.0	1	5.6		0.0		0.0	1
Trafficking	1	14.3	2	18.2	3	16.7		0.0		0.0	6
Total	7	17.1	11	26.8	18	43.9	4	9.8	1	2.4	41

Note: Due to the multiple responses, the total number is 41. *Source: Baseline Survey 2002*

Hearing

The survey shows that 44 respondents were granted a hearing. Of those respondents, only 73.9% had counsel present at the hearing. In theft, attempt to commit murder and fraud and cheating cases, 100% of respondents had counsel (Table 11.155). Of the 12 respondents who could not afford counsel, the overwhelming majority (91.7%) did not receive court-appointed counsel. Of the 6 respondents accused of murder, only one was provided with

counsel by the court (Table 11.156). 83.3% of respondents did not receive free legal aid from any NGO or public interest organization. CeLRRd provided free legal counsel for two individuals (16.7% of respondents) (Table 11.157).

Table 11.155: Hiring the Lawyer at Present

Crime Type	No	%	Yes	%	Total
Attempt to Murder		0.0	2	5.9	2
Dacoit	2	16.7	2	5.9	4
Fraud and Cheating		0.0	3	8.8	3
Murder	6	50.0	10	29.4	16
Narcotics	1	8.3	3	8.8	4
Others	1	8.3	3	8.8	4
Rape	1	8.3	6	17.6	7
Theft		0.0	3	8.8	3
Trafficking	1	8.3	2	5.9	3
Total	12	26.1	34	73.9	46

Note: Out of 75 respondents, 10 are suspects, 19 are accused and here the total number is 46.

Source: Baseline Survey 2002

Table 11.156: Provision of paid lawyer in the Court

Crime Type	No	%	Yes	%	Total
Dacoit	2	18.2		0.0	2
Murder	5	45.5	1	100	6
Narcotics	1	9.1		0.0	1
Others	1	9.1		0.0	1
Rape	1	9.1		0.0	1
Trafficking	1	9.1		0.0	1
Total	11	91.7	1	8.3	12

Source: Baseline Survey 2002

Table 11.157: Legal Aid provided by other Institution

Crime Type	No	%	Yes	%	Total
Dacoit	2	20.0		0.0	2
Murder	5	50.0	1	50.0	6
Narcotics		0.0	1	50.0	1
Others	1	10.0		0.0	1
Rape	1	10.0		0.0	1
Trafficking	1	10.0		0.0	1
Total	10	83.3	2	16.7	12

Source: Baseline Survey 2002

In criminal proceedings, even those dealing with misdemeanor and lesser offenses, it is essential that those who cannot afford counsel be appointed counsel by the court. Without counsel the defendant will likely be deprived of a fair trial. The presence of counsel is even more indispensable in cases involving more serious crimes, such as murder. Where one's life potentially hangs in the balance, justice demands and requires that a criminal defendant have a competent attorney to represent his interests and argue on his behalf.

Witness Testimonial

Out of 75 detainees and prisoners, 65 respondents reported that they were allowed witness testimonial. The length of time between when respondents were remanded to judicial

custody and when their witnesses were called to court varied greatly. Of the 65 respondents, 29.2% reported that after 2-5 years in judicial custody their witnesses were called to the court; 23.1% reported that their witnesses were called in less than 2 years; 15.4% of respondents had their witnesses in court in less than 1 month; and 9.2% had them in less than 12 months (Table 11.158). When their witnesses and those for the prosecution were eventually called, 82.8% of respondents were present in the courtroom (Table 11.159). 69.1% were present for the actual testimony of their witnesses; 21.8% were absent; and 9.1% of respondents had no witnesses to call. In rape and theft cases, all respondents were present during witness testimonial (Table 11.160).

Table 11.158: Duration of witness call to the Court while in Custody

Crime Type	1-less than 2 years	%	2-5 years	%	2 years and above	%	6-less than 12 month	%	Not yet	%	Others	%	Upto 1 month	%	Total
Attempt to Murder		0.0		0.0		0.0		0.0		0.0	1	14.3	2	20.0	3
Dacoit	1	6.7	1	5.3		0.0	1		1	14.3		0.0		0.0	4
Fraud and Cheating	1	6.7		0.0		0.0		0.0	1	14.3	1	14.3		0.0	3
Murder	5	33.3	9	47.4	1	100	2	37.5	1	14.3	1	14.3	4	40.0	23
Narcotics	2	13.3	1	5.3		0.0		0.0		0.0	3	42.9		0.0	6
Others	2	13.3	1	5.3		0.0		0.0	2	28.6		0.0	1	10.0	6
Rape	1	6.7	2	10.5		0.0		0.0	1	14.3		0.0	3	30.0	7
Theft		0.0	3	15.8		0.0	1	12.5	1	14.3	1	14.3		0.0	6
Trafficking	3	20.0	2	10.5		0.0	2	25.0		0.0		0.0		0.0	7
Total	15	23.12	19	29.2	1	1.5	6	9.2	7	10.8	7	10.8	10	15.4	65

Source: Baseline Survey 2002

Table 11.159: Presence of the Respondents during the examination of his/her witness and State witness

Crime Type	No	%	Yes	%	Total
Attempt to Murder	1	10	2	4.2	3
Dacoit		0.0	3	6.25	3
Fraud and Cheating	1	10	1	2.1	2
Murder	2	20	20	41.7	22
Narcotics	2	20	4	8.3	6
Others	2	20	2	4.2	4
Rape		0.0	6	12.5	6
Theft	1	10	4	8.3	5
Trafficking	1	10	5	12.5	7
Total	10	17.2	48	82.8	58

Source: Baseline Survey 2002

Table 11.160: Presence of the witness in the Court

Crime Type	No	%	No witness	%	Yes	%	Total
Attempt to murder	1	12.5	1	8.3	1	2.6	3
Dacoit	1	12.5			2	5.3	3
Fraud and Cheating	2	25.0					2
Murder	2	25.0	4	33.3	16	42.1	22
Narcotics			2	16.6	4	10.5	6
Others	1	12.5	2	16.6	1	2.6	4
Rape					6	15.8	6
Theft			1	8.3	4	10.5	5
Trafficking	1	12.5	2	16.6	4	10.5	7
Total	8	13.8	12	20.7	38	65.5	58

Source: Baseline Survey 2002

Since the judge is the sole decision-maker in the Nepalese legal system, his presence during witness examination is crucial. However, only 78% of respondents reported that the judge was present during the examination stage (Table 11.161). In order to render a fair and just decision, the fact-finder must weigh all evidence presented. If the judge is absent during testimony, and does not hear the testimony of a potentially relevant witness, a fair and just decision is impossible.

Table 11.161: Presence of the Judge in the Court at the time of examination of the witness

Crime Type	No	%	Yes	%	Total
Attempt to Murder		0.0	2	5.1	2
Dacoit	1	9.1	2	5.1	3
Fraud and Cheating		0.0	1	2.6	1
Murder	4	36.4	19	48.7	23
Narcotics	1	9.1	3	7.7	4
Others		0.0	3	7.7	3
Rape	2	18.2	4	10.3	6
Theft		0.0	3	7.7	3
Trafficking	3	27.3	2	5.1	5
Total	11	22.0	39	78.0	50

Source: Baseline Survey 2002

Decision

After all the evidence is presented and all the testimony taken, the judge must weigh the evidence and render his decision. That is, the judge must decide whether to convict or acquit the criminal defendant. The judicial decision, however, is not always handed down expeditiously. 22% of the cases analyzed were decided in 1 year; 12.2% of cases were decided in 2 years; 9.8% were decided in 1 year 6 months; and 9.8% were decided in less than 6 months (Table 11.162). This substantial amount of time between trial and verdict is inefficient and unfair to defendants. Judges are preoccupied with certain cases months after the trial has concluded and thus cannot focus their energies and thoughts on the cases currently before them. Also, the passage of time undoubtedly weakens the judge's recollection of the trial. The judge is thus left to render his decision on the basis of a cold hard record of the trial, and not the tone of voice, body language, and overall demeanor of the witnesses who testified before him. It is thus best for judges to decide cases expeditiously, so that the memory of trial is still fresh in mind and so that the defendant is not forced to stew in jail for months on end, pondering his fate.

Table 11.162: Duration of the Case to be decided

Crime Type	1 year 6 month	%	1 year	%	10 months	%	11 months	%	15 months	%	2 days	%	2 months	%	2 years	%	3 months	%	3 years 7 months	%	4 months	%	4 years	%	5 months	%	6 months	%	9 months	%	Total
Attempt to murder		0.0		0.0		0.0		0.0	1	33.3	1	50.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0	2
Dacoit		0.0	1	11.1		0.0	1	100		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0	2
Fraud and Cheating	1	25.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0	1
Murder	1	25.0	5	55.6		0.0		0.0	1	33.3	1	50.0		0.0	1	20.0	1	50.0		0.0		0.0	2	100	1	100	3	75.0		0.0	16
Narcotics		0.0		0.0		0.0		0.0	1	33.3		0.0	1	100		0.0		0.0	2	100		0.0		0.0		0.0		0.0		0.0	4
Others		0.0	1	11.1		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0	1	50.0		0.0		0.0		0.0		0.0	2
Rape	1	25.0		0.0	1	50.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0	1	50.0		0.0		0.0	1	25.0	1	100	5
Theft	1	25.0	2	22.2		0.0		0.0		0.0		0.0		0.0	1	20.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0	4
Trafficking		0.0		0.0	1	50.0		0.0		0.0		0.0		0.0	3	60.0	1	50.0		0.0		0.0		0.0		0.0		0.0		0.0	5
Total	4	9.8	9	22.0	2	4.9	1	2.4	3	7.3	2	4.9	1	2.4	5	12.2	2	4.9	2	4.9	2	4.9	2	4.9	1	2.4	4	9.8	1	2.4	41

Source: Baseline Survey 2002

Views of District Judges of Sampled Districts

During the survey, the opinions of judges on the criminal process were sought. 13 judges from the sampled districts were questioned.

One issue for consideration was the performance of police and government attorneys during criminal proceedings. Positively, 62% of judges reported that the police and prosecutors adhered to the presumption of innocence. (Table 11.163). However, their views on the overall capability and efficiency of government attorneys in the conduct of prosecution were of more concern. Only 15% of judges had full confidence in the performance of attorneys. The majority felt attorneys were capable to some extent (54%), however 31% asserted that attorneys were not capable at all. (Table 11.164) Of all the shortcoming stated, the majority of respondents felt attorneys' lack of seriousness and skill to be most serious (67%). Weaknesses in the investigation of cases was also cited (11%). (Table 11.165)

Table 11.163: Feeling of the Police and Government Attorney adhere to the Principle of 'Presumption of Innocence until Prove Guilty'.

Yes	8	62%
No	5	38%
Total	13	100%

Table 11.164: Capability of the Government Attorney for the competent persecution

Yes	2	15%
No	4	31%
To some extent	7	54%
Total	13	100%

Source: Baseline Survey 2002

Judges' were also questioned on their own activity. The majority of respondents (82% or 9 respondents) stated that they conducted examination of witnesses in some cases. Only one respondent reported that they conducted examination in all cases. (Table 11.166) For accused lacking legal representation, the majority of judges (77% or 10 persons) stated they would enquire whether or not he needed a lawyer, and if it was deemed necessary would ask for a paid lawyer or any other lawyer interested to represent the accused. Only 2 respondents (15%) stated they would inform those providing free legal aid in such instance. One respondent (8%) contended they would provide legal representation for the accused "suo-moto", i.e.: without prompting. (Table 11.167)

Table 11.165: Reasons for Incompetence

Lack of seriousness and skill	6	67%
weaknesses in the investigation of case	1	11%
Others	2	22%
Total	9	100%

Source: Baseline Survey 2002

Table 11.166: Conduction of the Examination of Witness

Conduct in all cases	1	9%
No	1	9%
Conduct in some cases	9	82%
Total	11	100%

Source: Baseline Survey 2002

Table 11.167: Manner of Judge having no lawyer of a respective accused

ask whether he wants or not, if Yes provide paid lawyer or refer to those who provide legal aid	10	77%
Suo-moto provide a lawyer	1	8%
Inform to those who provide legal aid	2	15%
Total	13	100%

Source: Baseline Survey 2002

23% of judges stated that they had never felt that an ordinary citizen could be a victim of misuse of

judicial proceedings. 38% felt this could be so in relation to crimes of human trafficking, and 15% stated this could occur regarding public offense and domestic violence. These findings should be contrasted with the views of detainees and prison inmates. As has been seen, a large percentage stated that they felt they had experienced discrimination while in detention, a significant percentage of which had been suspected of trafficking. (Table 11.168)

Table 11.168: Victimization of an ordinary citizen by misusing of Judicial Proceedings

Have no such feeling	3	23%
Crime of Prostitution	1	8%
Human trafficking	5	38%
Domestic Violence	2	15%
Terrorism	2	15%
Total	13	100%

Source: Baseline Survey 2002

Judges also gave their views on the "Criminal Procedural Guidelines". 85% of judges felt that these guidelines had been observed. (Table 11.169). 69.2% stated that Guidelines have assisted them in the execution of their work. The majority felt the Guidelines had enhanced understanding of matters relating to procedures. The role of the Guidelines in improving knowledge about new principles was also highlighted. These are positive findings, not only indicating the value of the Guidelines but also the importance of interagency cooperation to facilitate change. Furthermore, these responses show an encouraging receptivity of judges to the rigours of good practice. (Table 11.170)

Table 11.169: Observation of Criminal Procedural Guidelines

Yes	11	85%
Has not got chance for study	2	15%
Total	13	100%

Source: Baseline Survey 2002

Table 11.170: Assistance of the Guideline in Execution of the Work

Has assisted a lot	9	69.2%
Has assisted the maximum	2	15.4%
Has not got chance for study	2	15.4%
Total	13	100%

Source: Baseline Survey 2002

11.5. Attitude towards Juvenile Justice

In 1990, the Kingdom of Nepal ratified the "Convention on the Rights of the Child." Building on the groundwork laid by the Convention, Nepal then enacted the "Act Relating to Children" in 1992. The Act stated that children under the age of 10 could not be held criminally liable for their acts. Children older than 10 years of age, however, could bear some measure of criminal liability under the Act. The Act also restricted the sentencing of juvenile offenders. Children older than 14 and below 16 years of age could only be sentenced to half the punishment as would be handed down to an adult who had committed a comparable crime.

The Act also made some specific provisions applicable to deviant children. These provisions were rehabilitative and therapeutic in nature, not punitive. The Act prohibited the imprisonment, handcuffing, and chaining of deviant children (minor) under police custody. Instead, the police were to send these children to a Juvenile Correction Home. Unfortunately, however, the survey team found that many of the provisions of the Acts are not being enforced. As of today, only Bhaktapur has established a Juvenile Correction Home. In the remaining districts, juvenile offenders continue to be subjected to the harshness of police custody and imprisonment.

The survey team also examined the issue of whether children below 16 years of age are serving out sentences in Nepalese prisons. In the prisons of the sampled districts, 62

prison inmates were interviewed on the topic of juvenile justice. 62.9% of respondents reported that children below 16 years were not currently imprisoned in Nepal. 37.1% claimed the opposite (Table 11.171).

Table 11.171: Presence of Children below 16 in the Prison

District	No	%	Yes	%	Total
Kathmandu	5	50.0	5	50.0	10
Lalitpur	1	20.0	4	80.0	5
Bhaktapur	3	100		0.0	3
Kapilbastu	1	16.7	5	83.3	6
Chitwan	5	100		0.0	5
Gulmi	3	42.9	4	57.1	7
Jumla	5	71.4	2	28.6	7
Kanchanpur	7	87.5	1	12.5	8
Taplejung	5	100		0.0	5
Morang	4	66.7	2	33.3	6
Total	39	62.9	23	37.1	62

Source: Baseline Survey 2002

The survey team interviewed members of the police as well on the topic of juvenile justice. Of the 52 officers and officials questioned, 92.3% reported that a juvenile suspect is treated differently than an adult suspect. (Table 11.172). Those respondents who felt juveniles were treated differently were then asked to specify in what ways juveniles were treated differently. 52.6% of respondents reported that juveniles were treated differently during the interrogation process; 22.4% stated that they were treated differently in regards to feeding; 21.1% said that a juvenile's stay in custody was different in character than that of an adult; and 3.9% said there juveniles were treated differently in other ways. (Table 11.173). Another important difference is that juveniles are not, according to those respondents queried, handcuffed during the course of an investigation, whereas adults are. The overwhelming majority of respondents (92.3%) reported that juveniles were not handcuffed during investigation. Four police personnel from Kathmandu, Chitwan, Gulmi and Taplejung, however, stated that they each handcuffed juveniles during investigations. Their admission is, unfortunately, more reflective of the general practice in Nepal. Despite the results of the survey, with 92.3% of respondents claiming handcuffs are not used on juvenile offenders, it is undeniable that in reality juveniles are often handcuffed throughout the Kingdom. (Table 11.174)

Table 11.172: Treatment of a Minor as a Suspect

District	Different than an adult	%	Like an adult	%	Total
Kathmandu	7	87.5	1	12.5	8
Lalitpur	4	100		0.0	4
Bhaktapur	5	100		0.0	5
Kapilbastu	5	100		0.0	5
Chitwan	4	80.0	1	20.0	5
Gulmi	3	100		0.0	3
Jumla	7	100		0.0	7
Kanchanpur	5	83.3	1	16.7	6
Taplejung	4	80.0	1	20.0	5
Morang	4	100		0.0	4
Total	48	92.3	4	7.7	52

Source: Baseline Survey 2002

Table 11.173: Matters Differentiation on Minor

District	Feeding	%	Interrogation	%	Others	%	While keeping in custody	%	Total
Kathmandu	1	9.1	6	54.5		0.0	4	36.4	11
Lalitpur		0.0	4	100		0.0		0.0	4
Bhaktapur	2	25.0	4	50.0		0.0	2	25.0	8
Kapilbastu	2	22.2	3	33.3	2	22.2	2	22.2	9
Chitwan	1	20.0	4	80.0		0.0		0.0	5
Gulmi	1	25.0	1	25.0	1	25.0	1	25.0	4
Jumla	7	41.2	7	41.2		0.0	3	17.6	17
Kanchanpur	2	20.0	6	60.0		0.0	2	20.0	10
Taplejung	1	25.0	3	75.0		0.0		0.0	4
Morang		0.0	2	50.0		0.0	2	50.0	4
Total	17	22.4	40	52.6	3	3.9	16	21.1	76

Source: Baseline Survey 2002

Table 11.174: Record of Handcuffed Minor during the Course of Investigation

District	No	%	Yes	%	Total
Kathmandu	7	87.5	1	12.5	8
Lalitpur	4	100		0.0	4
Bhaktapur	5	100		0.0	5
Kapilbastu	5	100		0.0	5
Chitwan	4	80.0	1	20.0	5
Gulmi	2	66.7	1	33.3	3
Jumla	7	100		0.0	7
Kanchanpur	6	100		0.0	6
Taplejung	4	80.0	1	20.0	5
Morang	4	100		0.0	4
Total	48	92.3	4	7.7	52

Source: Baseline Survey 2002

Views of NGOs involved in the criminal justice study on Juvenile Justice

As shown by information from key informants of four NGO's involved in research into criminal justice, despite provisions in the Children's Act to protect child rights and a separate bench to hear juvenile cases in the district court, the state is not interested in the protection of children rights. All resource persons stated that in the case of juvenile justice, there is widespread lack of awareness among all actors of the CJS. Children are illegally detained after the falsification of their ages. This is a common practice, especially among the police. It is difficult to ascertain by the human rights organizations as to how many children have been so detained, since they are hidden during investigations . There is a lack of infrastructure, especially in the police, to ensure the separation of juveniles from adult offenders. In court, there is a severe lack of manpower and resources to provide for a separate bench for children.

11.6. Standard of Prisons in Sampled Districts

The survey team has collected information about prison facilities. For the most part, the prisons in Nepal provide inmates with little opportunity to educate or entertain themselves. Nepalese prisons generally fail to provide inmates with access to television, radio, a library, or other similar facilities. Nor do they have adequate sporting or exercise facilities.

22% of respondents reported that television was available in the prison; 21.7% reported that radio was available; 20.1% said that magazines were available; 17.7% said that the sporting facilities were insufficient; and 14.6% stated that the prison did not have a library. Among the 10 sampled districts, Jumla lacks both a single computer and a library, while Kapilvastu has neither a computer nor any magazines. Lalitpur is the sole district in possession of a computer (Table 11.175).

Table 11.175: Facilities available in the Sampled Prison

District	Computer	%	Library	%	Magazines	%	Others	%	Radio	%	Sports	%	Television	%	Total
Kathmandu		0.0	7	16.7	9	21.4	1	2.4	9	21.4	7	16.7	9	21.4	42
Lalitpur	1	3.1	6	18.8	6	18.8	1	3.1	6	18.8	6	18.8	6	18.8	32
Bhaktapur		0.0	3	18.8	3	18.8	1	6.3	3	18.8	3	18.8	3	18.8	16
Kapilbastu		0.0	2	22.2		0.0	3	33.3	1	11.1		0.0	3	33.3	9
Chitwan		0.0	6	23.1	6	23.1		0.0	6	23.1	2	7.7	6	23.1	26
Gulmi		0.0	1	4.3	4	17.4		0.0	5	21.7	6	26.1	7	30.4	23
Jumla		0.0		0.0	4	19.0	1	4.8	6	28.6	5	23.8	5	23.8	21
Kanchanpur		0.0	8	19.5	8	19.5	2	4.9	8	19.5	8	19.5	7	17.1	41
Taplejung		0.0		0.0	5	25.0		0.0	5	25.0	5	25.0	5	25.0	20
Morang		0.0	4	16.7	6	25.0		0.0	6	25.0	3	12.5	5	20.8	24
Total	1	0.4	37	14.6	51	20.1	9	3.5	55	21.7	45	17.7	56	22.0	254

Source: Baseline Survey 2002

The survey team also found that medical treatment of inmates has been limited. The survey asked whether this was the result of insufficient funds. 71.2% of respondents stated that this was not the reason; 22% said insufficient funds was responsible; and 6.8% did not know why treatment had been limited (Table 11.176). Those respondents who felt insufficient funds were responsible were then further questioned. They were asked what medical treatment they received, despite the apparent cut in funding. 33.6% replied that they received both checkup and treatment in the hospital; 31.9% received a free checkup on prison grounds; and one respondent received a paid checkup (Tables 11.177).

Table 11.176: Available of treatment facilities inside the Prison due to insufficiency of funds

District	Don't know	%	No	%	Yes	%	Total
Kathmandu		0.0	5	62.5	3	37.5	8
Lalitpur		0.0	3	60.0	2	40.0	5
Bhaktapur	1	33.3	2	66.7		0.0	3
Kapilbastu	2	33.3	2	33.3	2	33.3	6
Chitwan		0.0	5	83.3	1	16.7	6
Gulmi		0.0	6	100		0.0	6
Jumla	1	14.3	4	57.1	2	28.6	7
Kanchanpur		0.0	6	100		0.0	6
Taplejung		0.0	5	100		0.0	5
Morang		0.0	4	57.1	3	42.9	7
Total	4	6.8	42	71.2	13	22.0	59

Source: Baseline Survey 2002

Table 11.177: Type of Medical Check-up

District Id	Free check-up	%	Medical check-up	%	Paid check-up	%	Treatment in the ..	%	Total
Kathmandu	7	50.0	5	35.7		0.0	2	14.3	14
Lalitpur		0.0	3	50.0	1	16.7	2	33.3	6
Bhaktapur	2	33.3	2	33.3		0.0	2	33.3	6
Kapilbastu	2	22.2	2	22.2		0.0	5	55.6	9
Chitwan	4	30.8	5	38.5		0.0	4	30.8	13
Gulmi	3	23.1	6	46.2		0.0	4	30.8	13
Jumla	4	30.8	4	30.8		0.0	5	38.5	13
Kanchanpur	6	30.0	6	30.0		0.0	8	40.0	20
Taplejung	5	50.0	1	10.0		0.0	4	40.0	10
Morang	3	33.3	4	44.4		0.0	2	22.2	9
Total	36	31.9	38	33.6	1	0.9	38	33.6	113

Source: Baseline Survey 2002

In order to develop prisons as reformative homes, community respondents (members of interest groups, lecturers, DDC and VDC Chairmen) reported that each prison inmate should be given sufficient space in their rooms, vocational trainings should be held, games organized, library and news facilities provided and lectures on morality be given in prison from time to time.

Case Study No. 6

All the case studies from the sampled districts showed that jailers and security guards were not involved in the torture of prisoners. Various types of facilities, such as drinking water, toilets, sanitation, visits to relations, accommodation, dress and information were available. However, some prisons situated in the Terai, hence Kapilwastu, were very hot during the summer season. In Jumla, the prison was found to be very cold. In most jails, there was a lack of educational and vocational training to utilize time and gather resources. Thus, various types of vocational training such as "hojiyari", textiles, sewing and candle making should be introduced. The conditions of the prison should be improved and maintained.

Most subjects of the case studies stated that protection of human rights, a sound and extended prison, modern facilities such as games, computers, TVs, radios, and income generating schemes were necessary to change prisons into institutions for reform.

The participants of FGDs of sampled districts felt that the facilities available in prisons were more or less satisfactory. Most of the participants urged the organization of vocational training such as making of stick incense, carpets, candle making, radio repairing and sewing. It was felt that this would help pass the time and earn an income. Participants from Kanchanpur urged that existing toilets should be repaired and extended. The participants (female) of Morang said that the female prison in Morang is very old, and thus a new prison should be constructed as soon as possible. They were afraid of what would happen if an earthquake took place.

Case Study No. 7

Aita Man Thebe of Aamwengdin VDC-3 is 45 years old. Although he is married, his wife has run away. He has no children. Thus, he is alone in his family. He can hardly read and write. Before conviction, he was a farmer, however he could hardly subsist for 8 to 9 months in a year through this trade. From 2nd to 29th Aswin, 2055 he was detained in police custody. After that he was put in prison.

Mr. Thebe was convicted of rape. He claimed he had not been involved in the crime, and that the chairman of Aamwengudin, Laxmi Kuwar, with whom he had quarreled, had conspired to convict him.

Mr. Thebe was approached by Sarda Ghimire for a sum of money that he claimed he had already paid. She unnecessarily derogated him as to payment, then he slapped her on the cheek, also breaking her bangles in the incident.

Ms. Ghimire filed an FIR against Mr. Thebe, with the help of the VDC chairman.

On the same day, Mr. Thebe was arrested while feeding the cattle in his house. At first, he was not alarmed, as such type of events frequently occurred in the village. However, after his arrest, one villager kicked him, and the police took him in handcuffs to Tellock Police Station in Taplejung. While in Tellock, the sub-inspector (SI) scolded him, using derogatory and insulting terms. The SI mentally tortured him, through the threatened use of a stick and needle. While in police custody, Mr. Thebe was frequently tortured, although only in the night. He was handcuffed, and forced to remain naked, with his legs upright. His hair and ears were pulled frequently.

In spite of being tortured in custody, he did not complain at any stage, due to ignorance of the legal process.

After three days, Mr. Thebe was transferred to the district police office (DPO) where he was kept for 17/18 days. After that he was presented to the government attorney (prosecution office) where his statement was prepared as per the particulars submitted in the FIR. At that time, the government attorney, SI and head constable were present. Mr. Thebe was not asked any questions, nor was he taken to the scene of the crime. He was not beaten or tortured in the government attorney's office.

He was brought to the court for the remand motion after staying seven days in detention. He had an advocate when the statement was taken in the district court, however, before this he had not hired an advocate due to ignorance of legal rights and process. During the remand motion, the Court Clerk (Phantwala) enquired whether he had undergone any beating or torture. However, the judge only asked one question "Did you commit rape?".

For the presentation of evidence, Mr. Thebe explained the particulars of the events as mentioned above. However, the judge ignored him and approved the charge sheet as it had been prepared. During the preparation of the statement in court, the private lawyer, government attorney and registrar were present. Mr. Thebe's private lawyer and witnesses supported his innocence, but the police, government attorney and others did not offer any help.

The lawyer attempted to obtain Mr. Thebe's release on bail, but despite his efforts, the judge decided that Mr. Thebe should be imprisoned.

In total, Mr. Thebe spent 27 days in detention. The condition of the detention cell

was miserable. He was given plain food, and from time to time offered drinking water. There were facilities for urination, but these were not available at night. The police asked for money frequently. During his custody period, he did not have to share a cell with any women, children or lunatic suspects and could meet and talk with visitors and relatives. However, he endured torture during interrogation in the evening, being frequently beaten by the head constable, most often in the center of his backbone with a boot. The police were not concerned at all for human rights. There is an urgent need to conduct human rights related programs for the police.

Mr. Thebe's case was decided by the Taplejung District Court, and a sentence was passed for five years. This was approved by the Appellate Court. He did not make an appeal to the Supreme Court.

On 29th Aswin, he was in prison, as per the decision of District Court that had been approved by Appellate Court. Due to the approval of his sentence by the Appellate Court, he has not hired any lawyer for further advice.

After being brought to the jail, neither beating nor torture took place. In prison, Mr. Thebe was imprisoned in a room with a capacity of 12-13, but in which 17 persons were held. The facilities in the prison were as follows:

- *The total condition of the prison was satisfactory. It was suitable for winter as well as summer.*
- *Sanitation was satisfactory due to routine-wise activities conducted by prison inmates.*
- *Adequate water was available for drinking and washing.*
- *The toilet was satisfactory.*
- *Treatment facilities were provided.*
- *The food was also satisfactory.*
- *Material for clothes was given (3 meters for six months).*

Training was given only once i.e. for the making of instant stick noodles.

Sending letters and giving (censored) messages were permitted, and access to newspaper and radio given.

- *Meeting with visitors and relatives on certain days of the week (Friday and Tuesday) was allowed.*
- *The behavior of jailers and prison guards was satisfactory.*

He expressed appreciation for the environment of the prison as a whole. He stated that although there had previously been insufficient water in the prison, it was now enough. At first, the roof of the prison had leaked, but now it did not. Mr. Thebe suggested that some training packages for prison inmates would be useful to help prisoners gain more skills and make use of their leisure time.

In no stage of the criminal process, from arrest to custody, from custody to government attorney and court to prison did health examinations take place.

Mr. Thebe felt that the behavior of the police, from placement in police custody to prison confinement, was very cruel. Throughout the proceedings, he protested his innocence, however, did not receive any support. He found himself unnecessarily victimized in prison.

Mr. Thebe stated that after imprisonment he desired to be rehabilitated in his own community, and return to his prior occupation of farming. ●

View of Resource person (Criminal Procedure Guidelines)

From July 2001, with the support of DANIDA/HUGOU, a working group was established comprising representatives from the Judges' Society, Nepal Bar Association, Public Attorney's Office, Nepal Police and Ministry of Law and Justice. The working group formulated a set of comprehensive and common guidelines for criminal justice procedure, which have been disseminated throughout Nepal for use by the actors in the CJS. During the baseline survey, resource persons were asked about the effectiveness of the criminal procedural guidelines. All respondents reported them to be very helpful to the performance of their professional responsibilities, as they laid out national and international acts in simple language. One respondent, Ram Bahadur Khatri, further added that they are also helpful for the implication of Article 14 of the Nepalese Constitution and relevant provisions of other acts.

Respondents stated that the guidelines are useful to encourage co-ordination among the four sectors of the CJS, however some respondents, namely Agni Kharel and Ram Bhadur Khatri, reported that there should be provision for the participation of DAOs, officials of Ministries for Home and Law and Justice, the Prison management department and victimologists. Similarly, Rajendra Subedi from Kanchanpur, stated that although the Criminal Procedural Guidelines incorporates legal provisions that had been dispersed, it should also give the theoretical background to the Articles listed therein. The Appellate Court Judge, Keshari Raj Pandit as Resource Person added that most of the weaknesses of the CJS could be solved if the guidelines were implemented compulsorily.

11.7. Nature and Types of Torture and Inhumane Treatment and Their Remedies

Article 14(4) of the Constitution of the Kingdom of Nepal (1990) guarantees that "a person detained during investigation or for trial or for any other reason shall not be subjected to physical or mental torture or be given any cruel, inhuman or degrading treatment." In practice, this rule is not applied and blatantly is disregarded.

All community members interviewed (VDS Chairmen, Mayors, members of interest groups, DDC Chairmen) suggested that during investigation, police apply new technologies rather than various types of torture. FGD participants reported that various types of torture had taken place during investigation. However the nature of torture was found to be different from place to place. Different forms of torture reported by participants can be listed as follows.

Physical Torture

- Beating with sticks/bamboo on the phalanges and backbone.
- Slapping on the cheek.
- Beating with a boot or a kicking.
- Beating with a pipe on the phalanges.
- Beating by tying one's hands and feet.
- Forcing one to stand for a long period.

Krishna Bahadur Rokaha from Gulmi was beaten so severely that 5-6 sticks were broken. His eardrum was also damaged by the beating. Suk Bahadur Tamang from Morang, who had been accused of trafficking, was beaten very severely, and became very faint. Torture took place morning and night.

Mental torture

- Threatening
- Insults through the use of derogative words like "daka jasto", "Ama Chakari" etc.

Community members also reported such types of torture. However, they stated that after the

restoration of the multiparty system, torture has been reduced. They would prefer that police used methods of motivation to convince the suspect to give real information, and for the police to act with humanity. They said that torture is not the only way to obtain confession.

Case Study No. 8

Raj Kumar Budha from Jumla Prison was accused of rape. After the incident in Kartik 2056, the suspect was arrested at the scene of the crime, which was near to the police station. Mr. Budha had been the cook of the police. He was kept in handcuffs in the police sub post, Melkuna, Surkhet. While being interviewed by members of the research team, he frequently wept and claimed that he was fully innocent. He stated that he had been beaten by the head constable with a bamboo stick on the phalanges and backbone in the morning, afternoon and evening because he did not confess. Furthermore, when he was brought to the next police post in Chhentu of Surkhet district, he had hardly a chance to drink water, being frequently beaten on the phalanges and backbone with a bamboo stick and rubber pipe in the morning and evening, for up to three days. His fingers were pierced with pins and needles. He was beaten by the inspector, SI, ASI, head constable and constable in turn. When he was brought to the district police, he was forced to jump to touch a hanging bulb, and when he failed to touch it, he was beaten with a stick. He was also mentally tortured, enduring taunts about his mother.

Mr. Budha did not complain about this treatment at any stage, due to a lack of knowledge about the legal process. Ten days after his arrest, he was transferred to the DPO, then brought to the government attorney where his statement was recorded by the police. Here he was warned not to change his earlier statement. He was only able to meet a lawyer after the decision had been reached to put him in custody. Mr. Budha's lawyer was supportive at first, however, ceased his assistance when he did not receive payment.

Mr. Budha passed fifteen days in custody. He was then brought to the court by the police for remand. He was handcuffed by both hands even in the courtroom. The court assistant interrogated him, and his statement was recorded as it had been set out in the charge sheet. No one asked him whether he had suffered any torture.

Mr. Budha expressed very bitter feelings about the conditions of custody. He stated that it had been very dirty - infested with fleas, bed bugs and mosquitoes. There had been no toilet. The condition of custody had been miserable.

A decision on Mr. Budha's case was reached by Surkhet district court, and sentence passed for 6 years. Mr. Budha has now been transferred to Jumla prison. He was not aware of the possibility of appeal – being only advised of this by a friend once in Jumla.

The facilities available in Jumla prison were reported to be satisfactory, except in regard to the poor condition of the toilet.

Throughout his case, Mr. Budha protested his innocence. He did not wish to make a confession. However, he was tortured greatly, as the police intended him to obtain confession in any way that they could. Mr. Budha stated that the police were only concerned with beating and torture, the defense lawyers motivated by payment, and that the judge lacked rationality. He was not aware of the responsibility of the medical doctor. However, he gave a positive report of the jailer, praising his co-operative behavior. ●

NGO's view on Torture (CVICT)

The NGO working in the field of torture defines the torture as in Nepalese context in following manner.

Mental : Blindfolding, threatening family members, threatening suspects, sending false information to families, putting rats or toads in the undergarments of females etc.

Physical : Beating on the phalanges, urinating on heater, being forced to inhale the red chilli dust, pressing the muscles of the thigh, piercing, electrocuting sexual organs and beating with nettles etc.

During Arrest

The survey in this regard shows that, of the 75 detainees/prisoners interviewed for the survey, the majority (93.3%) were *not* beaten by local villagers—thereby indicating that they, in fact, were beaten by the police. The remaining 6.7%, however, was beaten by local villagers; their cases, though, were ones of murder, rape and trafficking. The 75 aforementioned persons furthermore reported that their respective arresting officers, by and large, treated them poorly. 19.2% reported that they were treated rudely and 16.7% insultingly, with the remainder being treated "generally." (Table 11.178 & 11.179)

Table 11.178: Record of the Detainee and Prison Inmate beaten by Villagers

Crime Type	No	%	Yes	%	Total
Attempt to Murder	3	4.3		0.0	3
Dacoit	6	8.6		0.0	6
Fraud and Cheating	4	5.7		0.0	4
Murder	23	32.9	3	60.0	26
Narcotics	7	10.0		0.0	7
Others	8	11.4		0.0	8
Rape	7	10.0	1	20.0	8
Theft	6	8.6		0.0	6
Trafficking	6	8.6	1	20.0	7
Total	70	93.3	5	6.7	75

Source: Baseline Survey 2002

Table 11.179: Behavior of the Police towards suspects at the time of the Arrest

Crime Type	Advisory	%	Civilized and cultures	%	Curt	%	General abusing	%	Insulted	%	Ordinary	%	Others	%	Rude	%	Total
Attempt to Murder		0.0		0.0		0.0		0.0		0.0	3	11.1		0.0		0.0	3
Dacoit		0.0		0.0		0.0	1	20.0	1	7.7	4	14.8	2	22.2	1	6.7	9
Fraud and Cheating		0.0		0.0		0.0		0.0	1	7.7	1	3.7		0.0	1	6.7	3
Murder		0.0	2	28.6		0.0	2	40.0	2	15.4	8	29.6	2	22.2	7	46.7	23
Narcotics	1	100		0.0		0.0	1	20.0	2	15.4	1	3.7	2	22.2	2	13.3	9
Others		0.0	3	42.9	1	100		0.0	2	15.4	2	7.4	1	11.1	1	6.7	10
Rape		0.0		0.0		0.0		0.0	1	7.7	4	14.8		0.0	1	6.7	6
Theft		0.0	1	14.3		0.0		0.0	2	15.4	2	7.4	1	11.1	1	6.7	7
Trafficking		0.0	1	14.3		0.0	1	20.0	2	15.4	2	7.4	1	11.1	1	6.7	8
Total	1	1.3	7	9.0	1	1.3	5	6.4	13	16.7	27	34.6	9	11.5	15	19.2	78

Source: Baseline Survey 2002

It also was found that most of the insults were inflicted by those persons in charge. For example, of the 13 detainees/prisoners who reported that they were insulted, 26.2% of the time, the assistant sub-inspector was the person issuing the insults. 23.8% of the time, it was the constable. And, 16.7% of the time, it was the inspector. (Table 11.180)

Table 11.180: Status of the Police Officer involving in the Insult and other rude behaviors:

Crime Type	Assistant sub-inspector	%	Constable	%	Head Constable	%	Inspector	%	Other	%	Sub-inspector	%	Total
Dacoit		0.0		0.0		0.0		0.0	1	25.0		0.0	1
Fraud and Cheating	1	9.1		0.0		0.0		0.0		0.0	1	33.3	2
Murder	3	27.3	2	28.6	3	30.0	3	42.9	1	25.0		0.0	12
Narcotics	1	9.1	2	28.6	1	10.0		0.0	1	25.0		0.0	5
Others	1	9.1	1	14.3	2	20.0	1	14.3		0.0	2	66.7	7
Rape	1	9.1		0.0	1	10.0	1	14.3	1	25.0		0.0	4
Theft	2	18.2	2	28.6	2	20.0	1	14.3		0.0		0.0	7
Trafficking	2	18.2		0.0	1	10.0	1	14.3		0.0		0.0	4
Total	11	26.2	7	16.7	10	23.8	7	16.7	4	9.5	3	7.1	42

Source: Baseline Survey 2002

Tables 11.181 and 11.182 show that, of the 75 interviewed detainees/prisoners, only 24 were tortured during arrest. The torture was inflicted by the constable (28%), the head constable (24%) and the assistant sub-inspector (18%).

Table 11.181: Condition of Torture during the time of Arrest

Crime Type	No	%	Yes	%	Total
Attempt to Murder	3	7.9		0.0	3
Dacoit	3	7.9	3	12.5	6
Fraud and Cheating	3	7.9	1	4.2	4
Murder	14	36.8	5	20.8	19
Narcotics	4	10.5	3	12.5	7
Others	3	7.9	4	16.7	7
Rape	2	5.3	3	12.5	5
Theft	1	2.6	3	12.5	4
Trafficking	5	13.2	2	8.3	7
Total	38	61.3	24	38.7	62

Note: Out of 72 respondents, 11 are self arrested (surrender), 2 and 60 are by the Villagers and Police respectively.

Source: Baseline Survey 2002

Table 11.182: Status of the Police Officer who inflicted the Torture

Crime Type	Assistant sub-inspector	%	Constable	%	Head Constable	%	Inspector	%	Other	%	Sub-inspector	%	Total
Dacoit	1	11.1	3	21.4	2	16.7		0.0		0.0		0.0	6
Fraud and Cheating	1	11.1	1	7.1	1	8.3		0.0		0.0		0.0	3
Murder	1	11.1	3	21.4	1	8.3		0.0	2	25.0		0.0	7
Narcotics	1	11.1	2	14.3	1	8.3		0.0	1	12.5		0.0	5
Others	1	11.1	3	21.4	2	16.7		0.0	3	37.5	2	50.0	11
Rape	1	11.1		0.0	2	16.7	1	33.3	1	12.5		0.0	5
Theft	3	33.3	2	14.3	2	16.7	2	66.7		0.0	2	50.0	11
Trafficking		0.0		0.0	1	8.3		0.0	1	12.5		0.0	2
Total	9	18.0	14	28.0	12	24.0	3	6.0	8	16.0	4	8.0	50

Source: Baseline Survey 2002

The tortured detainees/prisoners further were asked why they thought they were being tortured. 33.3% thought it was to extract a "confession." 23.3% thought it was because the police wanted to show their superiority. And 13.3% thought it was because the police wanted to extract information. (Table 11.183)

Table 11.183: Reason behind the giving Torture

Crime Type	Others	%	Police wanted to show their superiority	%	To collect evidence	%	To extract confession	%	To take information	%	Trying to abscond	%	Unwilling to go with the police	%	Total
Dacoit		0.0	2	28.6		0.0	1	10.0		0.0		0.0		0.0	3
Fraud and Cheating		0.0		0.0		0.0	1	10.0		0.0		0.0		0.0	1
Murder	1	25.0		0.0	1	33.3	2	20.0	2	50.0		0.0		0.0	6
Narcotics		0.0	1	14.3		0.0	1	10.0	1	25.0	1	100		0.0	4
Others	2	50.0		0.0		0.0	3	30.0	1	25.0		0.0		0.0	6
Rape		0.0	2	28.6		0.0	1	10.0		0.0		0.0	1	100	4
Theft	1	25.0	2	28.6	2	66.7	1	10.0		0.0		0.0		0.0	6
Total	4	13.3	7	23.3	3	10.0	10	33.3	4	13.3	1	3.3	1	3.3	30

Source: Baseline Survey 2002 (Multiple options)

Table 11.184 conveys that, of the 24 tortured respondents, the majority (44.8%) were tortured physically. 27.6% were tortured mentally, and 27.6% were tortured both ways. Similarly, of those who were tortured mentally, the majority (25.5%) were tortured by being insulted and scolded. 21.3% were spoken to in a vulgar manner. And 12.8% were humiliated verbally in front of other people. (Table 11.185). Of the 13 persons who were tortured physically, the majority (47.1%) were beaten with sticks or other physical instruments. 23.5% were beaten with the use of arms, while 8.8% were tortured by being pierced with pins and needles. (Table 11.186)

Table 11.184: Nature of Torture

Crime Type	Both	%	Mentally	%	Physically	%	Total
Dacoit	2	25.0	1	12.5		0.0	3
Fraud and Cheating		0.0	1	12.5	1	7.7	2
Murder	2	25.0	1	12.5	1	7.7	4
Narcotics	1	12.5	1	12.5	2	15.4	4
Others	1	12.5	1	12.5	3	23.1	5
Rape	1	12.5		0.0	2	15.4	3
Theft		0.0	3	37.5	3	23.1	6
Trafficking	1	12.5		0.0	1	7.7	2
Total	8	27.6	8	27.6	13	44.8	29

Source: Baseline Survey 2002

Table 11.185: Infliction of Mental Torture

Crime Type	and showing inhuman behavior in front of	%	Insulting you in front of the society	%	Others	%	abusing other members of	%	Scolding and insulting	%	Threatening	%	Using vulgar words	%	Total
Dacoit		0.0	1	16.7		0.0	2	66.7	3	25.0	1	8.3	1	10.0	8
Fraud & Cheating		0.0		0.0		0.0		0.0		0.0	1	8.3		0.0	1
Murder	1	50.0	1	16.7		0.0	1	33.3	4	33.3	2	16.7	3	30.0	12
Narcotics		0.0	1	16.7	1	50.0		0.0		0.0	2	16.7	1	10.0	5
Others	1	50.0	1	16.7		0.0		0.0	1	8.3	1	8.3	2	20.0	6
Rape		0.0		0.0		0.0		0.0		0.0	1	8.3	1	10.0	2
Theft		0.0	2	33.3	1	50.0		0.0	3	25.0	3	25.0	2	20.0	11
Trafficking		0.0		0.0		0.0		0.0	1	8.3	1	8.3		0.0	2
Total	2	4.3	6	12.8	2	4.3	3	6.4	12	25.5	12	25.5	10	21.3	47

Source: Baseline Survey 2002

Table 11.186: Inflection of Physical Torture

Crime Type	Beating with sticks or with other physical material	%	Beating without the use of arms	%	By piercing with pins and needles	%	By poking with a gun	%	By showing other people being beaten	%	Electrocution	%	Forcing one to stand for a long time	%	Tying one's hand and feet for a long time	%	Total
Dacoit	1	6.3		0.0	1	33.3		0.0		0.0		0.0		0.0	1	50.0	3
Fraud & Cheating	1	6.3		0.0		0.0		0.0		0.0		0.0		0.0		0.0	1
Murder	3	18.8	2	25.0		0.0		0.0		0.0		0.0	1	100		0.0	6
Narcotics	2	12.5	1	12.5		0.0		0.0		0.0		0.0		0.0		0.0	3
Others	2	12.5	2	25.0	1	33.3	1	50.0		0.0		0.0		0.0		0.0	6
Rape	2	12.5	1	12.5		0.0		0.0		0.0		0.0		0.0		0.0	3
Theft	3	18.8	2	25.0	1	33.3	1	50.0	1	100	1	100		0.0		0.0	9
Trafficking	2	12.5		0.0		0.0		0.0		0.0		0.0		0.0	1	50.0	3
Total	16	47.1	8	23.5	3	8.8	2	5.9	1	2.9	1	2.9	1	2.9	2	5.9	34

Source: Baseline Survey 2002

During Statement

Due to the multiple responses, the total number is 102. The majority (27.5%) stated that the behavior of the officers taking their respective statements was rude, followed by insulting (21.6%), ordinary (20.6%) and curt (13.7%). (Table 11.187) Under the Nepali Constitution (1990), it is the constitutional right of individuals not to have to be witnesses against themselves. Of the 75 detainees/prisoners, the majority (68%) were compelled to be witnesses against themselves. (Table 11.188). The majority of recording of the statement (69.3%) was conducted by standing. (Table 11.189)

Table 11.187: Behavior of Police Officer

Crime Type	Civilized & cultured	%	Curt	%	General scolding	%	Insulted	%	Ordinary	%	Others	%	Rude	%	Total
Attempt to commit murder		0.0	1	7.1		0.0	1	4.5	3	14.3		0.0	1	3.6	6
Dacoit	1	25.0	1	7.1		0.0	2	9.1	2	9.5	2	20.0	2	7.1	10
Fraud and Cheating	1	25.0		0.0		0.0		0.0	2	9.5		0.0	1	3.6	4
Murder	1	25.0	8	57.1		0.0	7	31.8	4	19.0	6	60.0	10	35.7	36
Narcotics		0.0	3	21.4	1	33.3	2	9.1	1	4.8		0.0	5	17.9	12
Others	1	25.0	1	7.1		0.0	1	4.5	2	9.5	1	10.0	4	14.3	10
Rape		0.0		0.0	1	33.3	3	13.6	2	9.5		0.0	2	7.1	8
Theft		0.0		0.0	1	33.3	4	18.2	1	4.8	1	10.0	2	7.1	9
Trafficking		0.0		0.0		0.0	2	9.1	4	19.0		0.0	1	3.6	7
Total	4	3.9	14	13.7	3	2.9	22	21.6	21	20.6	10	9.8	28	27.5	102

Source: Baseline Survey 2002

Table 11.188: Compel to be a witness against himself/herself

Crime Type	No	%	Yes	%	Total
Attempt to Murder	2	8.3	1	2.0	3
Dacoit	2	8.3	4	7.8	6
Fraud and Cheating	2	8.3	2	3.9	4
Murder	8	33.3	18	35.3	26
Narcotics	1	4.2	6	11.8	7
Others	4	16.7	4	7.8	8
Rape	2	8.3	6	11.8	8
Theft		0.0	6	11.8	6
Trafficking	3	12.5	4	7.8	7
Total	24	32.0	51	68.0	75

Source: Baseline Survey 2002

Table 11.189: Statement of Recording

Crime Type	By standing	%	Others	%	Sitting on a chair	%	Total
Attempt to commit murder	3	5.8		0.0		0.0	3
Dacoit	4	7.7		0.0	2	25.0	6
Fraud and Cheating	2	3.8		0.0	2	25.0	4
Murder	15	28.8	7	46.7	4	50.0	26
Narcotics	7	13.5		0.0		0.0	7
Others	6	11.5	2	13.3		0.0	8
Rape	5	9.6	3	20.0		0.0	8
Theft	4	7.7	2	13.3		0.0	6
Trafficking	6	11.5	1	6.7		0.0	7
Total	52	69.3	15	20.0	8	10.7	75

Source: Baseline Survey 2002

Case Study No. 9

A prisoner in Gulmi jail, Giri Prasad Pandey stated that he was arrested in the police office after going there to inquire into the investigation of the murder of his father's sister. Once there, he was charged as the key architect of the crime. After arrest, he was seized and the police snatched his golden chain, a belt and tobacco box. Later the police gave these things to his father. His father registered an appeal of Habeas Corpus in Butwal's appeal court, which was later dismissed. While in the DPO, Mr. Pandey was interrogated, and physically tortured by 7 police from 9 o'clock until late at night. Once, the police brought Mr. Pandey to the jungle at midnight, put him into a sack and threatened him with a pistol. However, he did not confess. He was tortured in many ways, through threats, being bound by his hands, and beaen by boot, feett and with a plastic pipe on his phalanges.

When he was brought to the court for remand he did not approach the judge about this torture, as there were no longer any traces of it on his body. He did not complain about the torture he had suffered due to a lack of awareness. During remand, he could have complained to the judge but the judge ignored him. Mr. Pandey did not receive legal assistance before making a statement in the court. While in the court, none of the court assistants asked him about the torture. The court system should be regularized to prevent this taking place.

During Interrogation

With respect to the behavior exhibited by interrogating officers, 33.3% of the time, the detainees/prisoners reported that they were rude. 22.8% of the time, they were insulting. 15.8% of the time, they were curt. The rest of the time, they were "ordinary." (Table 11.190) Of the 75 respondents, the majority (64%), in fact, was beaten or tortured during interrogation. (Table 11.191)

Table 11.190: Behaviour of Interrogating Officer

Crime Type	Advisory	%	Civilized and cultured	%	Curt	%	General abusing	%	Insulted	%	Ordinary	%	Others	%	Rude	%	Total
Dacoit		0.0	1	33.3	1	5.6		0.0		0.0	1	5.9		0.0		0.0	3
Dacoit		0.0		0.0	3	16.7		0.0	2	7.7	1	5.9	1	16.7	5	13.2	12
Fraud and Cheating	1	100		0.0		0.0		0.0		0.0	2	11.8		0.0	1	2.6	4
Murder		0.0	1	33.3	9	50.0	2	40.0	12	46.2	5	29.4	1	16.7	12	31.6	42
Narcotics		0.0		0.0		0.0		0.0	2	7.7	2	11.8	1	16.7	5	13.2	10
Others		0.0	1	33.3	2	11.1		0.0	1	3.8	3	17.6		0.0	3	7.9	10
Rape		0.0		0.0	1	5.6		0.0	3	11.5	1	5.9	2	33.3	3	7.9	10
Theft		0.0		0.0	2	11.1	2	40.0	4	15.4		0.0	1	16.7	4	10.5	13
Trafficking		0.0		0.0		0.0	1	20.0	2	7.7	2	11.8		0.0	5	13.2	10
Total	1	0.9	3	2.6	18	15.8	5	4.4	26	22.8	17	14.9	6	5.3	38	33.3	114

Source: Baseline Survey 2002

Table 11.191: Torture during Interrogation

Crime Type	No	%	Yes	%	Total
Attempt to Murder	2	7.4	1	2.1	3
Dacoit	1	3.7	5	10.4	6
Fraud and Cheating	2	7.4	2	4.2	4
Murder	11	40.7	15	31.3	26
Narcotics		0.0	7	14.6	7
Others	3	11.1	5	10.4	8
Rape	3	11.1	5	10.4	8
Theft	2	7.4	4	8.3	6
Trafficking	3	11.1	4	8.3	7
Total	27	36.0	48	64.0	75

Source: Baseline Survey 2002

Of the 48 detainees/prisoners who were tortured, the majority (37.1%) was tortured physically. 29% were just tortured mentally. And 33.9% were both physically and mentally tortured (Table 11.192). Of those persons who were tortured mentally (18), the majority (31.6%) were threatening, while 23.5% stated that they were insulted or scolded. (Table 11.193)

Table 11.192: Types of Torture during Interrogation

Crime Type	Both	%	Mentally	%	Physically	%	Total
Attempt to Murder		0.0	1	5.6		0.0	1
Dacoit	3	14.3	1	5.6	2	8.7	6
Fraud and Cheating		0.0		0.0	2	8.7	2
Murder	10	47.6	4	22.2	5	21.7	19
Narcotics	2	9.5	4	22.2	3	13.0	9
Others		0.0	2	11.1	5	21.7	7
Rape	4	19.0	1	5.6		0.0	5
Theft		0.0	4	22.2	4	17.4	8
Trafficking	2	9.5	1	5.6	2	8.7	5
Total	21	33.9	18	29.0	23	37.1	62

Note: Multiple response.

Source: Baseline Survey 2002

Table 11.193: Methods of Mental Torture

Crime Type	Insulting and showing inhuman behavior in front of other people	%	Insulting in front of the society	%	Making one eat non-edible things	%	Others	%	Scolding and abusing other members of the family	%	Scolding and insulting	%	Threatening	%	Using vulgar words	%	Total
Attempt to commit murder		0.0		0.0		0.0		0.0		0.0	1	4.3		0.0		0.0	1
Dacoit	1	25.0		0.0		0.0	1	20.0		0.0	1	4.3	4	12.9		0.0	7
Fraud & Cheating		0.0		0.0		0.0		0.0		0.0		0.0	1	3.2		0.0	1
Murder	2	50.0	4	66.7	1	100	2	40.0	3	75.0	9	39.1	10	32.3	13	54.2	44
Narcotics		0.0		0.0		0.0	1	20.0		0.0	3	13.0	5	16.1	1	4.2	10
Others		0.0		0.0		0.0		0.0		0.0	2	8.7	1	3.2	2	8.3	5
Rape	1	25.0		0.0		0.0		0.0	1	25.0	2	8.7	4	12.9	2	8.3	10
Theft		0.0	2	33.3		0.0	1	20.0		0.0	3	13.0	4	12.9	4	16.7	14
Trafficking		0.0		0.0		0.0		0.0		0.0	2	8.7	2	6.5	2	8.3	6
Total	4	4.1	6	6.1	1	1.0	5	5.1	4	4.1	23	23.5	31	31.6	24	24.5	98

Source: Baseline Survey 2002

Of those respondents who were tortured physically (23), the highest proportion (38.7%) were beaten with sticks or other physical instruments, while 16.1% were beaten while their arms were tied. Other forms of torture suffered by the respondents included having their hands and feet tied for long periods of time (14%), being kept in cold places (8.6%) and so forth. (Table 11.194) As to the reason for such beating and torture, the highest proportion (23.9%) reported that it was to acquire information. 21.1% reported that it was to extract a "confession." And 15.5% reported that it was to take information. (Table 11.195). Out of 15 female, the majority (40% each) were interrogated seriously and 'others'. (Table 11.196)

Table 11.194: Methods of Physical Torture

Crime Type	Beating with sticks or with other physical material	%	Beating without the use of arms	%	Electrocuting	%	Forcing one to stand for a long time	%	Keeping in a cold place	%	Not providing drinking water	%	Others	%	Piercing with pins and needles	%	Poking with a gun	%	Showing other people being beaten	%	Tying one's hand and fet for a long time	%	Total
Dacoit	3	8.3	2	13.3		0.0		0.0		0.0		0.0	2	33.3		0.0	1	20.0		0.0	1	7.7	9
Fraud and Cheating	2	5.6		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0	2
Murder	13	36.1	5	33.3	2	66.7		0.0	5	62.5		0.0		0.0	1	50.0	1	20.0	1	33.3	6	46.2	34
Narcotics	4	11.1	2	13.3		0.0		0.0		0.0		0.0	1	16.7		0.0	1	20.0		0.0	1	7.7	9
Others	3	8.3	1	6.7		0.0	1	100		0.0		0.0	1	16.7		0.0	1	20.0		0.0		0.0	7
Rape	4	11.1	1	6.7		0.0		0.0	2	25.0	1	100	1	16.7		0.0		0.0		0.0	3	23.1	12
Theft	4	11.1	4	26.7	1	33.3		0.0	1	12.5		0.0	1	16.7	1	50.0	1	20.0	1	33.3		0.0	14
Trafficking	3	8.3		0.0		0.0		0.0		0.0		0.0		0.0		0.0		0.0	1	33.3	2	15.4	6
Total	36	38.7	15	16.1	3	3.2	1	1.1	8	8.6	1	1.1	6	6.5	2	2.2	5	5.4	3	3.2	13	14.0	93

Source: Baseline Survey 2002

Table 11.195: Reasons behind Torture during Interrogation

Crime Type	Others	%	Personal enmity	%	Political reason	To acquire information	%	To collect evidence	%	To compel to be witness against oneself	%	To extract confession	%	To inflict punishment	%	To take information	%	To take revenge	%	Undue influence	%	Total
Dacoit	1	33.3		0.0	1	100	2	11.8		0.0		0.0		0.0		0.0		0.0		0.0		0.0	4
Fraud & Cheating		0.0		0.0		0.0	1	5.9		0.0		0.0	1	6.7		0.0		0.0		0.0		0.0	2
Murder	1	33.3		0.0		0.0	5	29.4	2	66.7	3	33.3	7	46.7	2	50.0	4	36.4	2	66.7	1	33.3	27
Narcotics		0.0	1	50.0		0.0	4	23.5		0.0	2	22.2		0.0		0.0	2	18.2		0.0		0.0	9
Others		0.0		0.0		0.0		0.0		0.0	1	11.1	3	20.0		0.0	1	9.1		0.0		0.0	5
Rape		0.0	1	50.0		0.0	1	5.9	1	33.3	1	11.1	2	13.3	1	25.0		0.0		0.0		0.0	7
Theft	1	33.3		0.0		0.0	2	11.8		0.0	2	22.2	1	6.7	1	25.0	1	9.1	1	33.3	2	66.7	11
Trafficking		0.0		0.0		0.0	2	11.8		0.0		0.0	1	6.7		0.0	3	27.3		0.0		0.0	6
Total	3	4.2	2	2.8	1	1.4	17	23.9	3	4.2	9	12.7	15	21.1	4	5.6	11	15.5	3	4.2	3	4.2	71

Source: Baseline Survey 2002

Table 11.196: Method of Interrogation to Women

Crime Type	Light heartedly	%	Others	%	Seriously	%	Taunting	%	Total
Attempt to Murder		0.0	1	16.7		0.0		0.0	1
Fraud and Cheating		0.0	1	16.7	1	16.7		0.0	2
Murder	1	50.0	1	16.7	3	50.0	1	100	6
Narcotics	1	50.0	1	16.7		0.0		0.0	2
Theft		0.0	1	16.7		0.0		0.0	1
Trafficking		0.0	1	16.7	2	33.3		0.0	3
Total	2	13.3	6	40.0	6	40.0	1	6.7	15

Source: Baseline Survey 2002

While in Custody

CeLRRd's survey questionnaire indicates that, among the 75 detainees/prisoners, the highest proportion (50.7%) was tortured while in custody. The suspects who were accused of cheating and fraud were not tortured. (Table 11.197) Those persons who were tortured (38) reported that the majority of them (68.4%) were beaten cruelly. (Table 11.198) The detainees/prisoners mostly were held in another room (48.9%). (Table 11.199)

Table 11.197: Status of Torture in Custody

Crime Type	No	%	Yes	%	Total
Attempt to Murder	2	5.4	1	2.6	3
Dacoit	3	8.1	3	7.9	6
Fraud and Cheating	4	10.8		0.0	4
Murder	14	37.8	12	31.6	26
Narcotics	3	8.1	4	10.5	7
Others	3	8.1	5	13.2	8
Rape	1	2.7	7	18.4	8
Theft	3	8.1	3	7.9	6
Trafficking	4	10.8	3	7.9	7
Total	37	49.3	38	50.7	75

Source: Baseline Survey 2002

Table 11.198: Intensity of Torture during Custody

Crime Type	Excessively	%	Light slaps 1-2 times	%	Others	%	With cruelty	%	Total
Attempt to Murder		0.0		0.0		0.0	1	3.8	1
Dacoit	1	20.0		0.0		0.0	2	7.7	3
Murder	2	40.0	1	33.3		0.0	9	34.6	12
Narcotics	2	40.0	1	33.3		0.0	1	3.8	4
Others		0.0		0.0	3	75.0	2	7.7	5
Rape		0.0		0.0	1	25.0	5	19.2	6
Theft		0.0		0.0		0.0	3	11.5	3
Trafficking		0.0	1	33.3		0.0	3	11.5	4
Total	5	13.2	3	7.9	4	10.5	26	68.4	38

Source: Baseline Survey 2002

The respondents were asked about the time of day at which they were tortured. The majority (26.6%) were tortured in the evening, while the rest were tortured in the afternoon and night (25%). The remaining persons were tortured at dawn (3.1%). (Table 11.200) As to the reasons behind such torture, the highest proportion (34.3%) reported that it was to extract a "confession." 14.3% thought they were being tortured in order to be forced to testify against themselves. 10% thought it was in order to collect evidence, while the remaining 7.1% thought it just was because of personal enmity on the part of the police. (Table 11.201). The table 11.202 indicates the majority (53.8%) were physically tortured.

Table 11.199: Place of Torture during Custody

Crime Type	In custody	%	In other room	%	In the bathroom	%	Interrogation room	%	Others	%	Total
Attempt to Murder		0.0	1	4.5		0.0		0.0		0.0	1
Dacoit	1	5.9	2	9.1		0.0		0.0		0.0	3
Murder	5	29.4	7	31.8		0.0		0.0	1	25.0	13
Narcotics	2	11.8	3	13.6		0.0		0.0		0.0	5
Others	2	11.8	1	4.5		0.0		0.0	2	50.0	5
Rape	4	23.5	3	13.6	1	100	1	100		0.0	9
Theft	2	11.8	3	13.6		0.0		0.0		0.0	5
Trafficking	1	5.9	2	9.1		0.0		0.0	1	25.0	4
Total	17	37.8	22	48.9	1	2.2	1	2.2	4	8.9	45

Source: Baseline Survey 2002

Table 11.200: Time of Torture during Custody

Crime Type	Afternoon	%	Evening	%	Morning	%	Night	%	Others	%	Total
Attempt to Murder		0.0	1	5.9		0.0		0.0		0.0	1
Dacoit		0.0	2	11.8		0.0	2	12.5		0.0	4
Murder	6	37.5	4	23.5	7	53.8	4	25.0	1	50.0	22
Narcotics	2	12.5	1	5.9	1	7.7	3	18.8		0.0	7
Others	2	12.5	2	11.8		0.0	1	6.3		0.0	5
Rape	3	18.8	2	11.8	2	15.4	3	18.8	1	50.0	11
Theft	2	12.5	3	17.6	2	15.4	1	6.3		0.0	8
Trafficking	1	6.3	2	11.8	1	7.7	2	12.5		0.0	6
Total	16	25.0	17	26.6	13	20.3	16	25.0	2	3.1	64

Source: Baseline Survey 2002

Table 11.201: Probable Cause of Torture during Custody

Crime Type	Others	%	Personal enmity	%	Political	%	To collect evidence	%	To compel to be witness against oneself	%	To extract confession	%	To inflict punishment	%	To show their superiority	%	To take information	%	To take revenge	%	Undue influence	%	Total
Attempt to Murder		0.0		0.0		0.0		0.0	1	10.0	1	4.2		0.0		0.0		0.0		0.0		0.0	2
Dacoit		0.0	1	20.0		0.0	1	14.3		0.0	1	4.2		0.0		0.0	1	10.0		0.0	1	25.0	5
Murder		0.0	1	20.0		0.0	3	42.9	2	20.0	10	41.7	1	25.0		0.0	5	50.0	1	50.0		0.0	23
Narcotics	1	50.0		0.0		0.0	1	14.3	2	20.0	2	8.3		0.0		0.0	1	10.0		0.0		0.0	7
Others		0.0		0.0		0.0		0.0		0.0	4	16.7		0.0		0.0	1	10.0		0.0		0.0	5
Rape	1	50.0	1	20.0	1	100	1	14.3		0.0	4	16.7	1	25.0		0.0		0.0		0.0	1	25.0	10
Theft		0.0	1	20.0		0.0	1	14.3	2	20.0	1	4.2	1	25.0	1	100	2	20.0		0.0	2	50.0	11
Trafficking		0.0	1	20.0		0.0		0.0	3	30.0	1	4.2	1	25.0		0.0		0.0	1	50.0		0.0	7
Total	2	2.9	5	7.1	1	1.4	7	10.0	10	14.3	24	34.3	4	5.7	1	1.4	10		2		4		70

Source: Baseline Survey 2002

Table 11.202: Type of Torture during Custody

Crime Type	Mental	%	Physical	%	Total
Attempt to Murder	1	3.3	1	2.9	2
Dacoit	3	10.0	3	8.6	6
Murder	12	40.0	13	37.1	25
Narcotics	3	10.0	3	8.6	6
Others	3	10.0	5	14.3	8
Rape	3	10.0	4	11.4	7
Theft	3	10.0	3	8.6	6
Trafficking	2	6.7	3	8.6	5
Total	30	46.2	35	53.8	65

Source: Baseline Survey 2002 (Out of 38 respondents 27 were inflicted with both kinds of torture)

Among those persons who were tortured physically, the majority (52.9%) were beaten using sticks or other instruments. Another 20.6% had their hands and legs bound for extended periods of time. (Table 11.203) Of those persons who were tortured mentally, the highest proportion (31.8%) were physically threatened. 28.4% were spoken to in a vulgar manner, and 20.5% were insulted and/or scolded. (Table 11.204).

Table 11.203: Method of Physical Torture during Custody

Crime Type	Beating using with sticks or other things	%	Beating without using weapon	%	Piercing with pins	%	Poking with gun	%	Showing other being beaten	%	tied hand and legs for a longtime	%	Total
Attempt to murder	1	2.8		0.0		0.0		0.0		0.0		0.0	1
Dacoit	2	5.6	1	10.0	1	33.3	1	25.0		0.0	2	14.3	7
Murder	13	36.1	4	40.0	1	33.3	1	25.0	1	100	7	50.0	27
Narcotics	3	8.3	1	10.0		0.0	1	25.0		0.0	1	7.1	6
Others	5	13.9		0.0		0.0		0.0		0.0		0.0	5
Rape	5	13.9	1	10.0		0.0		0.0		0.0	2	14.3	8
Theft	3	8.3	3	30.0	1	33.3	1	25.0		0.0	1	7.1	9
Trafficking	4	11.1		0.0		0.0		0.0		0.0	1	7.1	5
Total	36	52.9	10	14.7	3	4.4	4	5.9	1	1.5	14	20.6	68

Source: Baseline Survey 2002

Table 11.204: Method of Mental Torture during Custody

Crime Type	Insulting and showing in human behaviour in front of other peoples	%	Insultin main front of the society	%	Others	%	Scolding and abusing other members of the family	%	Scolding and insulting	%	Threatening	%	Using vulgar words	%	Threatening and False Accusation	%	Total
Attempt to commit murder		0.0		0.0		0.0		0.0	1	5.6	1	3.6	1	4.0		0.0	3
Dacoit		0.0	1	25.0		0.0		0.0	1	5.6	2	7.1	2	8.0	1	16.7	7
Murder	2	66.7		0.0	1	33.3	1	100	9	50.0	10	35.7	10	40.0	3	50.0	36
Narcotics		0.0		0.0		0.0		0.0	1	5.6	3	10.7	2	8.0		0.0	6
Others		0.0		0.0		0.0		0.0	1	5.6	1	3.6	2	8.0		0.0	4
Rape	1	33.3	2	50.0	1	33.3		0.0	2	11.1	5	17.9	4	16.0		0.0	15
Theft		0.0	1	25.0	1	33.3		0.0	2	11.1	3	10.7	2	8.0	2	33.3	11
Trafficking		0.0		0.0		0.0		0.0	1	5.6	3	10.7	2	8.0		0.0	6
Total	3	3.4	4	4.5	3	3.4	1	1.1	18	20.5	28	31.8	25	28.4	6	6.8	88

Source: Baseline Survey 2002

Table 11.205: Status of Suspects taking out of the Custody during Night

Crime Type	No	%	Yes	%	Total
Attempt to murder	2	3.4	1	6.3	3
Dacoit	4	6.8	2	12.5	6
Fraud and Cheating	4	6.8		0.0	4
Murder	19	32.2	7	43.8	26
Narcotics	5	8.5	2	12.5	7
Others	8	13.6		0.0	8
Rape	5	8.5	3	18.8	8
Theft	5	8.5	1	6.3	6
Trafficking	7	11.9		0.0	7
Total	59	78.7	16	21.3	75

Source: Baseline Survey 2002

Of the total 75 informants, 21.3% were taken out of the custody during night. (Table 11.205). Among them, the majority (82.4%) were brought for beating (Table 11.206). The constable and head constable constituted the highest proportion of the police officer (23.8% each) who were responsible for taking the accused out of custody during night. (Table 11.207)

Table 11.206: Reason behind taking out of Custody during Night

Crime Type	For bribery	%	Others	%	To be beaten	%	Total
Attempt to Murder		0.0		0.0	1	7.1	1
Dacoit		0.0		0.0	2	14.3	2
Murder		0.0	1	50.0	6	42.9	7
Narcotics		0.0	1	50.0	1	7.1	2
Rape	1	100		0.0	3	21.4	4
Theft		0.0		0.0	1	7.1	1
Total	1	5.9	2	11.8	14	82.4	17

Source: Baseline Survey 2002

Table 11.207: Person taking out of Custody during Night

Crime Type	Assistant sub-inspector	%	Constable	%	Head constable	%	Others	%	Sub-inspector	%	Total
Attempt to murder		0.0		0.0		0.0	1	25.0		0.0	1
Dacoit		0.0	1	20.0	1	20.0		0.0		0.0	2
Murder	2	50.0	3	60.0	2	40.0	2	50.0	1	33.3	10
Narcotics		0.0		0.0	1	20.0		0.0		0.0	1
Rape	1	25.0	1	20.0	1	20.0	1	25.0	2	66.7	6
Theft	1	25.0		0.0		0.0		0.0		0.0	1
Total	4	19.0	5	23.8	5	23.8	4	19.0	3	14.3	21

Source: Baseline Survey 2002

Case Study No. 10

A case study from Morang regarding a male prisoner accused of robbery/ dacoit, shows that the accused (Man Bahadur Magar) was arrested while walking on the road in the afternoon on Jestha 2057. After arrest, he was kept in Letang Thana (Station). He was neither handcuffed nor beaten on the way. When he was in the room of the police personnel, he was asked if he had committed dacoit, and then beaten with a bamboo stick and plastic pipe on various parts of his body. Although unsure, he believed there to be four in number. At first he denied the charge made against him, but then upon severe beating he later confessed about the crime. After this, he was kept in custody, then transferred to the next police post in Belbari, reaching the said post by the evening. The next morning, from about four o'clock a.m., he was again physically tortured with a large bamboo stick, on his thigh and with a plastic pipe on his phalanges. Later, he was again beaten, being forced to lie on the floor and endure assault with a bamboo stick on his thigh and the phalanges. Even after being transferred to Morang District Police Office (DPO), the beating continued unabated which even extended into the night. . He was given very little food during custody. He did not pay anything for this. ●

Case Study No. 11

Raju Sarki, a prisoner in Kanchanpur jail who had been accused of murder, attested that he was arrested with handcuffs while coming back from a mourning ritual of his wife. He was handcuffed and taken s to Gaudda chauki in Kanchanpur, and immediately brought before the DPO. When before the DPO, he was not beaten. However, from the next day, he was beaten by the SI and the constable. During the investigation, he was mentally tortured through the use of derogative words. He was also physically tortured, being made to lie on a table and endure piercing. He was kicked and also beaten with a stick, boot and a pipe in his thorax. After this he felt severe pain and also had a boot mark on his body. He was in a state of extreme vulnerability – liable to be beaten at any time. ●

Case Study No. 12

Prachanda Rai, imprisoned in Lalitpur jail (Nakhkhu) was accused of the theft of archaeological images from Bhaktapur. The accused was arrested from his room by police wearing civil dress. He was taken in a taxi for general enquiries. He was not handcuffed along the way. He was not given an arrest slip. Even the local people had questioned as to why he had been arrested. He was brought to Hanumandhoka, where in he was kept in a very dark room. After being placed in custody, he was interrogated by an inspector and SI. His hands and feet were tied for a long time, and he was tortured through pressure implied on to his thigh. He was forced to urinate on a heater, standing only on one foot. Two inspectors threatened him by pointing a pistol at him. He was frequently insulted with derogative words. He was also told that he could buy his freedom by giving the officers money. He was beaten by everyone from DSP to constable, both day and night.

Mr. Rai felt bitterness at his entrapment in police custody. He claimed that conspiracy had taken place, as he was fully innocent. He requested that the study team release the story of this conspiracy to the press. The team's interviewer asked him, 'Why did you not complain?' Mr. Rai replied that the police tortured him, damaging only his internal parts. He observed that the police have had long experience in hiding their ill doing. He said there is a serious lack of human rights in police custody. He reported miserable conditions while being detained. Nobody was allowed to visit him. He was brought to the government attorney's office where the statement made in the police office was upheld. He was transferred to Bhaktapur, where the charge sheet was registered. He hired a lawyer to copy the file.

He was brought to the Bhaktapur court after one month of his arrest for a preliminary hearing. Before that, he was brought to court 3 to 4 times for remand. He was not able to talk to the judge. The court assistant recorded his statement. The police again tried to uphold the earlier statement, however, he was able to record a new one.

At the time of reporting, his case was sub judice. His lawyer had requested the judge to grant Mr. Rai a bail bond, however, the judge ordered that Mr. Rai be kept in prison from Marg 2058. Mr. Rai stated that accused persons should be informed about hearings for their cases one week in advance. In practice, this only occurs 2 or 3 days before the hearing is scheduled to take place. Such practice makes it very difficult for Mr. Rai to manage the necessary costs of travel between the prison and the court. He must take a taxi from Nakhkhu to Bhaktapur District Court, which is expensive and causes great inconvenience. He expects the district judge to l decide fairly. If not, he plans to appeal, as per the provisions of No. 17. Of the Court Management Section of the Muluki Ain. Mr. Rai has reported the conditions of Nakhkhu jail to be satisfactory. However, he said there is not sufficient space for sleeping in the rooms. Mr. Rai recommended that income generating schemes such as radio repair, sewing and textile work be organized from time to time. ●

During Remand

CeLRRd's survey also states that, of those persons whose cases were remanded, the highest proportion (87.5%) were not tortured. (Table 11.208) Of the 9 detainees/prisoners who were tortured, the majority (77.8%) said that they informed the government attorney about the torture and requested a medical check-up. (Table 11.209)

Table 11.208: Status of Torture while being produced for Remand (on the way)

Crime Type	No	%	Yes	%	Total
Attempt to Murder	3	4.8		0.0	3
Dacoit	5	7.9	1	11.1	6
Fraud and Cheating	4	6.3		0.0	4
Murder	23	36.5	2	22.2	25
Narcotics	7	11.1		0.0	7
Others	5	7.9	1	11.1	6
Rape	6	9.5	2	22.2	8
Theft	4	6.3	2	22.2	6
Trafficking	6	9.5	1	11.1	7
Total	63	87.5	9	12.5	72

Note: See on the sub-chapter of Remand *Source: Baseline Survey 2002*

Table 11.209: Record of Information Provided (by Suspect) to Government Attorney about the Torture & Requested for Medical Check Up

Crime Type	No	%	Yes	%	Total
Dacoit		0.0	1	50.0	1
Murder	2	28.6		0.0	2
Others	1	14.3		0.0	1
Rape	1	14.3	1	50.0	2
Theft	2	28.6		0.0	2
Trafficking	1	14.3		0.0	1
Total	7	77.8	2	22.2	9

Source: Baseline Survey 2002

Of those persons who informed the government attorney, they reported that he did not pay attention to their respective complaints. The detainee/prisoner, instead, was accused of dacoit and rape. (Table 11.210) Similarly, these particular suspects were not taken for a medical check-up, even after their respective requests. (Table 11.211)

Table 11.210: Response of Government Attorney on Torture while being produced for Remand

Crime Type	Did not care	%	Total
Dacoit	1	50.0	1
Rape	1	50.0	1
Total	2	100	2

Source: Baseline Survey 2002

Table 11.211: Status of Medical Check Up during Remand Process

Crime Type	No	%	Total
Dacoit	1	50.0	1
Rape	1	50.0	1
Total	2	100	2

Source: Baseline Survey 2002

The data collected through CeLRRd's baseline survey indicates that, of the 75 respondents, the highest proportion (90.3%) were not aware of the fact that they could file a petition against persons who inflicted the torture on them.

Those persons accused of cheating and fraud and theft also were not aware of the fact that they could file a petition against the persons at whose hands they were tortured. (Table

11.212) Of the 7 detainees/prisoners who fall in to this category, the highest proportion (57.1%) reported that they, in fact, did file a petition. (Table 11.213) Of those persons who suffered torture during the remand process, the majority (42.9%) of them were abused by the head constable. 28.6% suffered at the hands of the constable, and another 28.6% suffered at the hands of the assistant sub-inspector. (Table 11.214)

Table 11.212: Awareness about right to file petition against the Torture Inflicted

Crime Type	No	%	Yes	%	Total
Attempt to Murder	3	4.6		0.0	3
Dacoit	5	7.7	1	14.3	6
Fraud and Cheating	4	6.2		0.0	4
Murder	23	35.4	2	28.6	25
Narcotics	6	9.2	1	14.3	7
Others	5	7.7	1	14.3	6
Rape	7	10.8	1	14.3	8
Theft	6	9.2		0.0	6
Trafficking	6	9.2	1	14.3	7
Total	65	90.3	7	9.7	72

Source: Baseline Survey 2002

Table 11.213: Awareness on the filing of Petition

Crime Type	No	%	Yes	%	Total
Dacoit		0.0	1	25.0	1
Murder	1	33.3	1	25.0	2
Narcotics		0.0	1	25.0	1
Others	1	33.3		0.0	1
Rape	1	33.3		0.0	1
Trafficking		0.0	1	25.0	1
Total	3	42.9	4	57.1	7

Source: Baseline Survey 2002

Table 11.214: Person who were tortured while being produced for Remand

Crime Type	Assistant sub-inspector	%	Constable	%	Head constable	%	Total
Dacoit		0.0	1	25.0	1	16.7	2
Murder	1	25.0	1	25.0	1	16.7	3
Others		0.0	1	25.0	1	16.7	2
Rape	2	50.0	1	25.0	2	33.3	5
Trafficking	1	25.0		0.0	1	16.7	2
Total	4	28.6	4	28.6	6	42.9	14

Source: Baseline Survey 2002

Case Study No. 13

A prisoner in Chitwan jail accused of theft was tortured by being tied. Like other case study subjects he attempted to complain about this to the district court of Chitwan, as suggested by his defense lawyer. However, the medical doctor who prepared a so-called report stated that there were no injuries on his body. The accused again complained of torture after being brought to the court for remand. The court ordered a medical check, and the hospital reported a minor injury. The accused claimed one Lakh in compensation, however the court ordered three thousands rupees be given.

Raju Sarki from Kanchanpur jail was also badly tortured - so much so that he could not sleep at night due to the pain. He stated that he showed the government attorney and judge injuries resulting from torture, however they were ignored. The judge said that 'I will be afraid if I see his injury.'

During the Time of Registration of Charge Sheet

When the police complete their investigation, they forward the case to the government attorney, who thereafter registers the suspect's file. During the registration process, CeLRRd discovered that, sometimes, the suspect is beaten and tortured in the hope of obtaining a "confession" from him. The survey also showed that, of the 75 detainees/prisoners, the majority (84.6%) were not tortured on the way to the court at the time of registration of the charge sheet. Among them, those who were accused of possession of narcotics and trafficking and attempt to murder and other serious offenses - including public offense, poaching, etc. - were tortured. (Table 11.215)

Table 11.215: Record of Torture on the way to the Court at the time of Registration of the Charge Sheet

Crime Type	No	%	Yes	%	Total
Attempt to Murder	3	5.5		0.0	3
Dacoit	4	7.3	1	10.0	5
Fraud and Cheating	2	3.6	1	10.0	3
Murder	18	32.7	5	50.0	23
Narcotics	6	10.9		0.0	6
Others	5	9.1		0.0	5
Rape	5	9.1	2	20.0	7
Theft	5	9.1	1	10.0	6
Trafficking	7	12.7		0.0	7
Total	55	84.6	10	15.4	65

Source: Baseline Survey 2002

11.8. Motion and Time Study of Interrogation Practices

As has been discussed already in the other Chapters, the police is the sole authority of investigation of crimes under Schedule 1 of the State Cases Act and those crimes which are specified as to be investigated by police under specific Statutes. Under various Statutes, several other executive agencies have power to take cognizance of specified criminal offences, and conduct investigation, including interrogation. However, the police department, under State Cases Act, is designated as the mainstream investigating agency of crimes in Nepal.

Thus, the present study has made an attempt to conduct the research of internal procedures and practices of investigation, with special focus on interrogation system. Under the present circumstances , it was not an easy task to carry out the study in all the sampled districts . For study, the team had applied a tool of uncontrolled observation so that the study could be possible in natural setting.

To compile information, a team of two lawyers, in all sampled districts, with adequate knowledge of procedures and practice of investigation had been placed at the police offices, for a period of three days, beginning from 7.00 AM to 8.00 PM. In this course, the following approach had been adopted:

1. One member of the team observed the general affairs of the police office. In this part, affairs like the time of arrival of the chief of the office the time of arrival of the investigating officer, functions of SOCO's, the custody cell, and the visits of relatives with suspects, transportation of suspects to the government attorneys' office for

deposition, and court for extension of remand, and related affairs had been observed. The other member concentrated on observation of treatment of suspects during interrogation, the time of interrogation, the physical setting of the interrogation room, the police personnel involved in the interrogation, and so on.

2. The information or facts were collected in a pre-arranged form, and some important information not fitting in the pre-arranged form had been collected in the diary.

3. The permission for observation had been obtained from the Criminal Investigation Department, and the police consultant of the project team had personally called the district police office.

4. Since, there had been a risk of police hoaxing the observation by informing the suspects of observation purpose, the observation team, to avoid that risk, conducted interview twice with same suspects in the following days.

11.8.1. General Setting of Interrogation System:

Article 14 (3) of the Constitution of the Kingdom of Nepal guarantees to all a right to remain silent during any stage of criminal proceeding. The said provision of the Constitutions states that : " No one shall be coerced to become witness against himself/ herself". The Constitution therefore puts a serious limitation on police concerning its power to interrogate suspects. Obviously, the investigating officer can do nothing to extract confession, at least in principle.

In addition, Section 9(1) of the State Cases Act, 1993, stipulates that the investigating officer shall acquire deposition of the suspect before the government attorney. Thus, this provision of the State Cases Act raises a question as to the power of police to solely interrogate the suspects. To put the question in another form, whether the current practice of interrogation where the police investigator solely interrogates suspects is legally permissible or not? This is a matter of debate, as such the research has preferred to abstain in this issue at present.

Nevertheless, it can be argued that Section 9(1) of the State Cases Act apparently limits the right of suspect to remain silent. Section 9(2) of the Act is further controversial as it empowers the investigating officer to engage in interrogation of the suspect and any other person, if there is a reasonable ground to believe that, he/she is holding an important information concerning the crime. The Section further empowers the investigating officer to make arrangement of recording the information in the form of deposition instantly. Together, these provisions are vulnerable to violation of suspects' rights to remain silent.

Often the deposition of suspects is made before the government attorneys. However, in many instances, such depositions are simply authenticated by the government attorneys. It is revealed from the survey of the suspects that only very few government attorneys actively engage themselves in interviewing the suspects. In this regard, the following findings throw some very important trends:

1. Out of total 75 respondents, two had directly appeared before the court , thus the question of Government attorneys' presence during the process of recording deposition from the suspects was not relevant. Out of the rest of 73 respondents, 50.7% responded were interrogated in the absence of the government attorneys. The following table further clearly elicits the situation.

Table 11.216: Types of Crimes and Numbers of Cases Government Attorneys Absent During Interrogation:

Type of Crimes Suspects had been under trial	Number of Respondents Interview in Presence of Government Attorneys	Number of Respondents Interviewed in Absence of Government Attorneys	Number of Respondents Crime wise	Percent of Respondents Crime wise
Attempt to Murder	2	1	3	4.1%
Murder	10	14	24	32.9
Fraud/Cheating	1	3	4	5.5
Robbery	2	4	6	8.2
Narcotic Drugs	5	2	7	9.6
Rape	6	2	8	11
Theft	3	3	6	
Trafficking of Women	5	2	7	9.6
Others	2	6-	8	11
Total	36	37	73	
%	49.3	50.7	100	

On basis of the study, it can be concluded that Section 9(1) of the State Cases Act is subjected to gross violation. This situation obviously indicates to negative state of the right of suspect to remain silent.

2. It is a general practice to inform the suspect of the cause and ground of the arrest. Article 14(5) of the Constitution of the Kingdom of Nepal, specifically guarantees the right as a fundamental right. According to international practice, the suspect should also be informed of his rights before interrogation is initiated. Therefore, no interrogation system is legally valid without briefing the suspect of his rights that are guaranteed under Article 14 of the Constitution. The questionnaire survey of suspects and prison inmates, however, shows a bleak situation in this regard. The finding of the survey of 72 respondents (out of 73 interviewed, one could not remember due to mental illness), shows that only 6.9% of them had been informed of the rights under Article 14, specifically the right to have a lawyer. Nevertheless, the information was not given systematically, i.e. as necessary process of investigation.

Table 11.217: Situation of Information of Grounds and Causes of Arrest

Type of Crimes	Number of Respondents Not informed of Rights	Number of Respondents Informed of Rights	Number of Respondents	Percent
Attempt to Murder	1	2	3	4.1%
Murder	1	23	24	32.9
Fraud/Cheating	0	4	4	5.5
Robbery	0	6	6	8.2
Narcotic Drugs	0	7	7	9.6
Rape	1	7	8	11
Theft	1	4	5	
Trafficking of Women	0	7	7	9.6
Others	1	7	8	11
Total	36	37	72	
%	6.9	93.1	100	

These figures indicate extremely bleak situation of the right to remain silent. The investigating officers, contrary to the code of conduct, and the international human rights instruments relating to fair trial and Article 14 of the Constitution, conduct interrogation, which subjects the suspect to adverse situation of defense.

Obviously, the investigation system of Nepal, in relation to interrogation, is far below to satisfy the standards set forth by the Constitution and the international human rights, both in terms of legal norms and the practice.

11.8.2. Physical Infrastructure Setting of the Interrogation Room:

The interrogation is often carried out in congested space, where even minimum facilities are not available. Except Bhaktapur police office, none of the sampled districts have separate interrogation rooms. The poster developed by CeLRRd, Amnesty International and the Police Headquarters for educating the police personnel and suspects regarding the basic minimum norms of interrogation is displayed only in Lalitpur District Police office. Places where interrogation is carried out in all districts, except Bhaktapur, are narrow, congested and unhygienic. Only Chitwan, Lalitpur and Kapilvastu district police offices have visitors' rooms.

In Kapilvastu and Taplejung district police offices, weapons to be used for torture were displayed in the space used for interrogating the suspects. In Kapilvastu, the plastic pipe was displayed which was used to beat the detainees. During observation in Kapilvastu, on 18 Chaitra, 2058, an inspector used the plastic pipe to hit the suspects. Suspects had been taken to the lawn of the office and lined up, and beaten several times. Similarly, a wooden stick was displayed in the space used for interrogation.

None of the office, expect Lalitpur, had furniture for suspects to sit during interrogation.

The situation of logistic situation of interrogation space is therefore poor in all police offices. Elements like narrow space, lack of furniture and display of weapons or instruments of torture indicate to the poor state of human rights situation in the police offices. These elements manifestly derogate the situation of fair investigation of criminal offences.

11.8.3. Setting of Custody:

The condition of custody cell is extremely poor: they are not spacious, are narrow and congested. In most of the districts, the lock up cells provides only the hay mattress for inmates. Most of them are, unhygienic and infested with insects. Cells in Kapilvastu, Jumla, Chitwan, Kanchanpur and Gulmi were found to be terribly dirty and have no regular system of cleaning. The following will give the details of incarceration situation:

Table 11.218: Number of Inmate and Facilities Available in the Custody

Districts	Space to Accommodate Total Numbers of Inmates	Current Number of Inmates[62]	Facility Cell Available	Treatment of Police to Inmate in Cells
Tplejung	25	1	Electric Light Hay mate. *Kath of Falyak (Raw Ply)* No separate toilet for inmates	Verbal abuse is common.
Kathmandu	45	120	Electric Light Common Toilet for Use of Inmates. Drinking Water	Ill-treatment, verbal abuse is common.
Lalitpur	30	Information was not given	Electric Light Common Toilet for Use of Inmates. Drinking Water Separate Toilet for Inmates. Wood Planked.	Normal

Bhaktapur	25	Information was not given	Electric Light Common Toilet for Use of Inmates. Drinking Water Wood Planked	Normal
Morang	25	3	Electric Light Drinking Water Mates	Verbal Abuse Common
Kapilvastu	20	11	Inspection of Cell was not allowed	Not known
Chitwan	40	9	Electric Light Drinking Water Mates, Wood planked	Normal
Gulmi	10	x	Electric Light Drinking Water Mates, Wood planked	
Jumla	10	x	Mattresses Wood Planked	x
Kanchanpur	20	2	Electric Light Mattresses and Wood Planked.	Verbal abuse.

In some districts the team had been prohibited to observe the cells despite official letter from the Criminal Investigation Department. Kathmandu District police office, as it is obvious from the figure, is over crowded. The team in most of the sampled districts observed denigrated treatment, especially in the use of language while addressing. Police personnel in majority of the districts, the lower staff in particular, are especially abusive with inmates.

11.8.4. Deposition of Suspects Before The Government Attorney:

As stated already, the recording of suspects' deposition before the government attorney is largely a matter of ritual. It hardly has any significance in the process of investigation in order to secure fairness. The observation team had recorded the following facts while observing this process:

1. The police officers do not accompany the suspects while they are taken to the government attorneys' office for deposition. Generally, the constable or the head constable, who are the lowest ranks of police personnel, take the suspects to the Government Attorneys' offices.
2. The government attorneys' ask a few broad questions, like did you commit the crime? The suspects are never apprised of their basic rights by the Government Attorneys.
3. Police constable or head constable generally records the deposition.
4. The deposition is not recorded in front of the government attorneys.

The observation team also noticed a practice where the Government Attorney signed the deposition, but the suspect had not been brought to the government attorney's office. Similarly, in Taplejung and Chitwan only a few portion of the deposition was recorded at the Government Attorney's office, whereas the major part of it had been already prepared in the police office. In Morang the repeat-ed recording of statement (*Tatimba Bayan*) was recorded at District Police office.

Although, the situation of ill treatment is not so common in the Government Attorneys' office, however the general treatment was far less then the general standard. The suspect's status is largely accountable in these matters. For instance, in Taplejung the treatment given to the suspect observed was highly respectful. He had a chair to sit, and his lawyer was allowed to accompany. The situation of other common people is, however, different. For instance, in Kathmandu, in all the three cases observed, suspects had been kept standing

untill the completion of the deposition. Similarly in Chitwan, in two, out of three cases observed the suspects had been allowed to sit-down, whereas in one the suspect was kept standing. The situation was found terribly unusual in Kathmandu, as suspects had been handcuffed through out the process. In Morang and Taplejung, suspects had been released from handcuffing. But in Chitwan, two, out of three suspects, had been privileged to obtain release from handcuffing. Infact, there had been no consistent rule followed in such matters. These matters, as referred to earlier, largely depend not on necessity, but on status of the suspects. Uneducated and poor people are generally deprived of all kinds of privileges.

Observation of the practice of deposition recording at the Government Attorneys' office was not possible in Lalitpur, Gulmi, Kapilvastu, Kanchanpur and Jumla since none of the suspects from these districts were produced for recording the deposition during the observation period.

11.8.5. Setting of Kerkar (interrogation) at the Police Offices:

Generally, the interrogation precedes the deposition of suspects' in the government attorneys' office. As the observation team had noticed, except in Lalitpur, in all other sampled directs, no officers above the rank of sub-inspectors were found involved in the interrogation. The pattern of interrogation varied from district to district. In some districts, the involvement of constables and head constables in interrogation was found common. The following description based on observation of interrogation of 18 suspects, for instance, will reflect on some specific patterns noticed during observation:

1. In Kathmandu, police personnel waited with stick outside the door of the room while the interrogation was being conducted. During the interrogation, the suspects had been handcuffed, and were kept standing. The language used was not respectful; suspects had been addressed with word like *tero*. During interrogation, the sub-inspector had been assisted by the head constable .
2. In Lalitpur, although there was no one with stick at the door or inside the interrogation room, there had been a police personnel with arms very close to the place where interrogation was going on. An inspector conducted the interrogation with the assistance of a head constable. However, the standard of language, was not better than that of Kathmandu.
3. In Morang, sub-inspector and head constable conducted the interrogation. The standard of language used to suspects was found better than that of Katmandu.

Interrogation generally tried to force confession. The observation team in all districts noticed that the suspects' plea generally was not heard. Their evidence is generally disregarded. The record of the statement generally did not comprise what all suspects said. The information, which would be useful for incriminating the suspects, had been more eagerly collected. Some common trends noticed during interrogation were as follows:

1. None of the suspects had been informed of their rights to remain silent, and that they could have lawyers to consult.
2. None of the suspects had been allowed to see lawyers, and none of them had lawyers accompanying them during interrogation.
3. Handcuffing was compulsorily used for all suspects during interrogation.
4. None of the suspects had been allowed to sit down while interrogation was progressing.
5. In all districts, the interrogators had been in police uniforms while conducting interrogation.
6. Junior staff like constables or head constables made the notes.

Over the last few years, the Criminal Investigation Department of Police Headquarters had made substantial investment in capacity building of investigators, and one of them is the training and placement of scene of crime officers. The role of scene of crime officers would be vital and crucial in interrogation of suspects. However, except for Chitwan, the observation team found no involvement of SOCO's, in the process of interrogation.

11.9. Time Setting of Interrogation:

In all cases observed, the observation team noticed that the interrogation takes place at noon. The team had no opportunity to observe interrogation before 1.00 PM. However, interviews of the suspects revealed that interrogation took place in other time also. On average, the interrogation lasted not less than one hour, In Chitwan; however, the team had the opportunity to observe an interrogation, which lasted over 4 hours (from 1. PM to 5. 15 on). To consider this time frame in view of suspects' position of standing and handcuffing, the interrogation in itself is severe torture.

As the team observed, the investigating officers spent a major part of their time in other affairs like general administration and maintenance of law and order. Great fluctuation has been found in matters of arrival of the investigating officers at the office. The following table will give better illustration:

Table 219: Time Setting of Interrogation

District	1st Day			2nd Day			3rd Day			Average Hours Spent In Office
	Arrival AM	Departure PM	Hours Spent	Arrival AM	Departure PM	Hours Spent	Arrival AM	Departure PM	Hours Spent	
Kathmandu	9.00	5.30.	8.30	9.00	6.00	9.00	8.00	6.00	10	9.17
Lalitpur	7.00	5.15	10.15	7.00	5.10	10.10	8.05	5.15	9.10	9.51
Morang	10.00	5.00	7.00	9.30	5.30	8.30	10.10	5.30	7	7.30
Gulmi	9.30	5.00	8.00	9.00	4.00	7.00	9.00	4.30	7.30	7.30
Bhaktapur	10.00	4.00	6.00	1.00 PM	1.45	45 Minutes	8.30	5.00	8.30	5.05
Kanchanpur	10.00	5.00	7.00	10.00	5.00	7.00	10.00	5.00	7.00	7.00
Taplejung	9.30.	5.00	7.30	9.30	6.00	8.30	10.35	5.00	6.25	7.48
Jumla	7.00	6.00	11.00	7.00	6.00	11.00	7.00	6.00	11.00	11.00
Chitwan	9.50	4.55	7.15	10.30	5.00	6.30	10.30	5.00	6.30	6.43
Kapilvastu	10.00	5.00	7.00	10.00	5.00	7.00	10.00	5.00	7.00	7.00

The time spent by investigating officers in matters of investigation is comparatively smaller. He/she is more involved in matters of general law and order. Sub-inspectors, assistant sub-inspectors and head constables are more involved in investigation. Investigation is a specialized job, which requires use of creative and innovative skills. However, the investigation is taken more as an administrative job, and thus is delegated to junior staff. Provided, 50% of the total time of the investigating officers is given to their designated works, the quality of investigation will certainly go up.

11.9.1. General Condition of Suspects:

Due to unhygienic condition of lock-up cell, not-good food, and isolation, the general condition of all suspects seemed not good. They looked weak, frightened and intimidated. Generally, they are allowed to see their relatives, in any case, but such visits are undertaken only upon the completion of his/her deposition ; however the time limit is so short that they can hardly communicate any thing. The team observed that none of suspects had been allowed to see their relative or friends for more than 10 minutes. The longest period allowed for communication with their relatives which was recorded by the observation team was for 8 minutes.

In any case, the communication is not private. A police guard with a gun stands in between the suspect who is located inside and the visitors sitting outside the prison door. The distance between the suspect and visitors is generally over six feet , but in Bhaktapur it is 10 feet . Medical check up of the suspects are not found to be carried out in most of the districts, although the Torture Compensation Act obliges the jail authority to do so before placing the suspect into custody and before releasing him. The team also observed that suspects are directly taken to custody without interrogation.

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CHAPTER 12

Situation of the Implementation Of Scene of Crime Officers (SOCO) Project in Kathmandu Valley

12. 1. Literature Review of the SOCO Pilot Project

12.1.1. Introduction

As a part of the wider program aimed at ensuring fair trial situation in Nepal, Danida in 1999 offered support to the Central Police Science Laboratory (CPSL) in Kathmandu. The aim of the project (support) was to upgrade and strengthen the capacity of CPSL by supplying laboratory equipment and providing opportunities of training for staff, thereby improving the quality and strength of the investigation capacity of the Nepalese crime-investigating officers. The overall goal of the program was to promote fairness in the investigation system in order to protect the human rights of suspects.

For assessing the implementation situation of the project, the team, as outlined in the TOR, had selected Kathmandu, Lalitpur and Bhaktapur districts for study. The study comprised the following components:

a. Review of the project documents,
b. Interview with concerned police officers involved in the SOCO project
c. Observation of the SOCO officers in the field activities.

12.1.2. Evaluation Missions' Reports:

While evaluating the implementation of the project (use of equipment & impacts of training program} a Review Mission from Danida in 2000 found that the impact of the program was limited as the rate of actual evidence materials reaching CPSL was comparatively low to the expectation.

A subsequent follow-up mission aimed to assess the functioning of the CPSL & the linkage between CPSL & SOC officers (Scene Of Crime Officers) responsible for the collection of evidence material were assigned to Mr. K. Fryer from NTSSCI (National Training Center for Scientific Support to Crime Investigation) UK. In the meantime he had been assigned to produce a set of basic recommendations for the next phase of the DANIDA support to Nepal Police.

The report drew the attention to the following obstacles for successful implementation of project:

- SOCOs were seemingly not part of the wider structure of crime scene management, but rather were marginalized in day- to- day operations.
- There appeared to be no clear job descriptions outlining the roles and responsibilities of SOCOs.

The mission in its report highlighted the following technical obstacles associated in successful implementation of the project:

- Toolmarks are rarely if ever recovered. Damage to windows being cited as the usual reason.
- There is little evidence of any footwear marks being recovered or even recorded.
- None of the kits for evidence collection had adhesive footwear lifters and some had no plaster of paris for casting.
- All SOCOs interviewed claimed to recover items and to swab bloodstains, but there was a lack of consistency in the materials in their kits for swabbing purposes.
- Ballistics cases appear to be relatively low, although armed dacoits (robbers) are active in many areas and Maoist terrorist activities are also increasing.
- Document and fraud cases are relatively common in all offices visited.
- All SOCOs reported problems with replacing specialist materials. Some were purchasing these from the local market, which may raise issues as to the materials' quality.

- There is generally an inadequate storage system for recovered items.
- Packaging and labeling was good on the items seen.
- A review of contamination prevention procedures is needed at all levels from crime scene to laboratory.
- The use of drug screening kits was identified as a priority but most kits were several years old and had clearly passed their expiry date.
- There is a big problem of public disturbance of crime scenes prior to police arrival, which is due to lack of awareness.
- Cases of suicide by poisoning and hanging are a high proportion of registered crimes in all areas. There must be some concern that a number of these deaths could be murders covered up as suicides or accidents because the SOCOs do not always attend the scenes.

Development of a Pilot Project:

The review mission, for facilitating the criminal investigation management and in order to increase the rate of material evidence, drew a suggestion to develop a 12 month pilot-project to be implemented in the Kathmandu Valley with possible subsequent replication on a larger scale. The intention of this scheme was to assert the integration of SOCOs into the wider spectrum of Crime Scene management, and to strengthen the capacity of the various actors in crime investigation through training initiatives.

Plan of Action for Launch of the Pilot Project:

As a follow up of the review mission's recommendation, a group of four senior police officers received training at the NTCSSCI in UK. Upon their return, the officers shall conduct training programs for the following staff of the Nepal Police:

- 16 field officers (1 day training and crime scene management).
- 20 SOCOs and 18 investigation officers (1 week course on crime investigation).
- 20-30 junior commissioned officers (54 days initial SOCO training course based on the NTCSSCI training model).
- 22 key staff (12 SOCOs and 18 investigation officers given 1-week sensitization courses on crime scene management).
- Newly posted police personnel in each of the 3 districts were given 1-day training in crime scene protection every 3 months.

Besides offering training to police personnel, the project, in order to address the problem of integration of SOCOs in the wider spectrum of crime investigation, seeks to raise the general awareness within the police corps regarding crime scene management and collection of forensic evidence. Thus, it places SOCOs firmly within the structure of the police office.

In addition, the project is concerned with the need to raise public awareness of crime scene protection and improve the cooperation of the general public with the police at crimes scenes. In this respect, it has taken the following initiatives:

- Input on crime scene management has been integrated into weekly radio and bi-weekly television programs which is to be run by the Police Headquarters.
- 100,000 leaflets on crime investigation shall be produced and distributed to school children and the general public through Community Policing program.
- 4320 school children (secondary and high school level) shall be sensitized as to crime investigations etc.

From 1994 - 2000 the UK Department for International Development (DFID) provided a program to support Nepal Police, parts of which involved training and equipping SOCOs.

During this project period, a total of 129 police junior officers were offered an Initial Crime Scene Examiners Course, exactly in the line of UK police.

12 SOCOs will be placed in the 3 districts of Kathmandu Valley.

A set of Performance Indicators (PI) for SOCOs will be developed and maintained throughout the project period. The indicators will be comparable with the recorded crime statistics for each of the 3 districts. By comparison between PI and recorded crime statistics it will be possible to establish the proportion of recorded crimes at which SOCOs attend, the crime types and the outcome of the examination of crime scenes.

12.2. Baseline Study on SOCO Pilot Project:

12.2.1. Findings of Key Informants' Survey:

The present study made an attempt to evaluate impacts of the projects based on information collected from the experiences of the above- mentioned three districts. For this purpose, as one of the source of information, a key informant survey was conducted to gather the perception of community through community based respondents (VDC and DDC chairpersons, Mayors, members of the civil society and teachers) concerning SOCO project. The finding however was not encouraging as out of 47 respondents interviewed, only four (3 mayors and a university lecturer in the Kathmandu valley) had been aware of the SOCO project, and the activities of SOCOs. Rest of the respondents had no information of SOCO and the benefits attached with it. The finding obtained from interview with community based respondents indicates to the need of widespread dissemination of information concerning the roles, responsibilities and importance of SOCOs in crime investigation. Another category of the key informant respondents was chosen from police personnel themselves. Out of total 43 police respondents interviewed, 93% of them claimed positive impact of SOCO project for strengthening the crime investigation system, and thus to secure the fair and impartial criminal justice. According to them, the SOCO project has positively helped in the collection of the objective and material evidences thus relieving from dependence on confession oriented investigation. The responses of police respondents, however, differed in various districts. For instance, in Kathmandu district about 71% of respondents claimed positive impact, whereas the rest although did not find it negative , found no significance of the project. In Lalitpur and Bhaktapur, however, all respondents were positive to the impact of the project. In Chitwan, the reaction of about 83 % was positive. On average, about 93% of respondents found the SOCO project's significance in strengthening the quality of crime investigation system.

Table 12.1: Police Personnel's Assessment of the SOCO Project

Districts	Total Respondents	Reacting Positively	%	Reacting Not Positively	%	Remarks
Kathmandu	7	5	71.4	2	28.6	
Lalitpur	5	5	100	-	-	
Bhaktapur	5	5	100	-	-	
Kapilvastu	5	5	100	-	-	
Chitwan	6	5	83.3	1	16.7	
Gulmi	3	3	100	-	-	
Kanchanpur	6	6	100	-	-	
Taplejung	4	4	100	-	-	
Morang	4	4	100	-	-	
Jumla	-	-	-	-	-	Has no SOCO Officer
Total	45	42	93	3	7	

As per them, who reacted positively, the skill of police officers concerning the collection of evidence from the scene of crime has been developed, and the kit box provided to the police offices has made it possible to obtain important evidence immediately after the occurrence of crime . Those who expressed dissatisfaction claimed that SOCOs are not properly used for the purpose they are trained, and the responsibility they are entrusted with. Use of SOCOs in other activities like regular patrolling and general law and order affairs is diminishing the significance of their roles in crime investigation.

Interview with DSP J.B. Nepali, Nepal Police Academy: Training Manager of the Pilot Project

DSP Mr. J.B. Nepali, the Training Manager of the Pilot Project. He gave an outline of the activities of the SOCO training as follows.

Activity Outline

Course duration: 54 days.

- **Training in preparation of Crime scene Document:** 1 week course. The course included:
  - Description of crime scene.
  - Description of physical evidence (body, weapons etc.).
  - Description of relation between victim and suspect.
  - Photos of the crime scene. Sketch (e.g.: room lay-out) of crime scene.
  - Search and Seizure Document:
  - Eyewitness-statement.
- **Photography:** 3 weeks course. This course included:
  - Training in photo-shoots of SOC-evidence.
  - Training in film-development/print.
- **Physical Evidence:** 3 weeks. This course included:
  - Forensic phase: what is forensic evidence/what can be extracted from blood samples etc.
  - Lessons to learn to locate, collect and protect forensic evidence.
- **Fingerprint:** 3 Weeks. This part included:
  - Handling of equipment for lifting fingerprint: powder and chemicals, tape lifters, photographs, soleprint from suspect, tools marks, footprints, tyre prints, blood, semen, hair, etc.(Evidence material to be processed by the CPSL.)

It is important to notice that all SOCO activities are carried out under direction and supervision of the responsible Investigation Officer. The Investigation Officer is responsible for preparing crime investigation documents. The Investigating Officer is responsible for collection and processing of the evidentiary materials as collected by SOCOs. SOCOs can be called to the court as witnesses at a later stage.

DSP Mahesh Bikram Shah, Kathmandu Valley Crime Branch, Hanuman Dhoka: Project Manager for the Pilot Project.

In the interview, DSP Mr. Mahesh Bikram Shah explained the activities of the project and crime investigation system as follows.

There were 20 police stations in Kathmandu (including police-posts): In Lalitpur and Bhaktapur there were 10 and 5 respectively. In three districts, a total number of 12 SOCOs are stationed.

The Valley Crime Branch is divided into 3 sections:

- Heinous Crime Section.
- Social Unit.
- Theft and Burglary Section.

Duty-officers receive reports (of crime) from any of the police stations.

The information then goes to SOCOs who are deployed within a maximum of 24 hours to the SOC. Generally, a crime scene is looked after by one DSP, a maximum of 6-7 Inspectors of Police and 2 SOCOs.

The collection of evidence material is carried out by SOCOs. The Investigation Officer is responsible for sending physical evidence material to be examined by the CPSL. The National Forensic Science Laboratory processes evidentiary materials (e.g.: as of drug cases).

The Investigation Officer designated for the particular crime performs an in-depth study of SOC-evidence and analyses. In the month of April 2002, a total of 15 scenes of crimes were attended. 20 evidentiary materials were collected for examination. Per year, averages of 150 heinous crimes are reported (including homicide and suicide).

DSP. Shah drew attention to the problem of the relative sub-ordination of the SOCOs. Senior Police Officers might tend to neglect the procedure of collection of evidence materials as per SOCO-instructions.

From the information obtained from police key informants, the following findings are drawn up:

1. The size of SOCO human resource in the Kathmandu Valley is not adequate in relation to the number of crimes taking place every year. The lack of adequate number SOCOs definitely obstructs crime scene investigation effectively and efficiently. In the context of the given number of crime incidents, it is not possible for SOCOs to cover all scenes of crimes.

2. There has been a lack of coordination between the investigation officers and SOCOs. Generally, the investigation documents are prepared by the investigation officers, who are often absent in the scene of crimes. Hence, the scenes of crimes are frequently not investigated as per the guidance of the investigation officers.

3. SOCOs are, in general, junior police officers, and work under the command of the senior police officers. The senior police officers often lack coordinating with SOCOs in the investigation of crimes. The technical expertise of SOCOs is not something, which is determining factor of relation between investigation officers and SOCOs, but it is the level of hierarchy of position, which often determines the relation between investigation officers and SOCOs. This factor is hindering in effectiveness of SOCOs.

4. Nepal has a long past of confession-oriented investigation system. Hence, there has been a tendency among investigating officers to give emphasis on confessions of suspects. The need of gathering objective and material evidences is therefore often ignored.

5. Due to lack of separate office facility, transportation , also due to long range to cover, it is often difficult for SOCOs to arrive at the scenes of crimes. The delay in arrival often causes damages of evidence.

12.2.2. Observation of SOCO Performance at Field:

The actual observation of the SOCOs' performance at scene of crime was one of the tools to be applied by the present study. It, however, proved to be one of the most difficult tasks to complete. The declaration of State of Emergency, in the meantime, also created severe problem for carrying out the observation smoothly. Some of the obstacles facing the observation were as follows:

1. In order to conduct the observation the team had to wait for the occurrence of criminal act .
2. Contact with SOCO was not always an easy job.
3. The travel was not easier when the scene of crime happened to be in distant place.
4. Not all SOCOs were equally friendly and cooperative towards the observation team.
5. Sometime the observation could not become possible due to insufficient information of the crime and inconvenience to travel to the destination.

Total Number of Observed Scene of Crimes and Features of Investigation:

The team obtained opportunity for observing total six cases.

Box 9 : Description of Observed Cases:

Districts	Type of Crimes Observed	Timeframe Taken at the Scene of Crime Investigation	General Features of Investigation
Kathmandu	• Murder	• 2 Hours and 20 Minutes	- Photography of dead body - Collection of Identification - Collection of Clothing - Toolmark found in the dead body
	• Suicide	• 1 Hour	- Photography of dead body - Collection of poison from the body.
	• Suicide	• 45 Minutes	- Photography of the dead body - Collection of poison allegedly used by the deceased - Preparation of document of the scene of crime
	• Suicide	• 1 Hour	- Photography of the dead body - Collection of sample of medicine (sleeping pills) - Preparation of scene of crime report.
Lalitpur	• Theft	• 2 Hours 45 Minutes	- Photography of Scene of Crime - Finger prints and foot prints collected - Collection of sample of wool thread, the stolen matter. - Tool marks from window broken
	• Drowning	• 2 Hours 30 Minutes	- Photography of dead body - Collection of sample water of pond in bottle.
Bhaktapur			No possibility of observing the crime scene.

The description given in the box above present some important trends as follows:

6. SOCOs spent, on average, over an hour in the scene of crime. The investigation of scene of crime generally begins with photography of the deceased or the scene of crime.
7. Crime investigating officers were not found accompanying SOCOs. Hence, the role of SOCOs was found limited to collection of evidence visible or obvious to them.
8. Blood stains, clothing, fingerprints or footprints and substance like poison are generally collected for investigation.
9. In majority of incidents, SOCOs themselves are found engaged in preparing documents concerning scene of crimes, but in some cases police personnel other than SOCOs were found engaged in such work.

Box 10 : Arrival of SOCOs in Scene of Crime:

Districts	Type of Crimes Observed	Time Taken for arrival by SOCO at Scene of Crime	General Features
Kathmandu	• Murder	• 10 hours after the incident	- The channel of information was found not efficient to inform about the incident promptly. - Generally 15 minutes after the information received at police office, were passed to the SOCO - The mode of information passing to SOCO was verbal
	• Suicide	• after 10 hours from deceased had taken toxic	,,
	• Suicide	• after 15 hours from deceased had taken toxic	,,
	• Suicide	• The next day when death of deceased had taken	,,
Lalitpur	• Theft	• 10 hours 15 minutes after crime had take place	- The information usually came to investigating officer. SOCO did not proceed to collect the evidence unless he orders for to collect. - Generally 20 minutes after the information received at police office, were passed to the SOCO - The mode of information passing to SOCO was verbal
	• Drowning	• One hour	,,
Bhaktapur			No opportunity was found for observation

The description given in the box above presents some important reflections on situation of the investigation of scenes of crimes by SOCOs.

Features of SOCO on their arrival and Information they Received: Generally SOCO tried to reach at the crime scene as soon as possible. Though they still require further orientation on how and what should be collected as physical evidences from the crime scene. As the observation reveals, the mode of information on crime to SOCOs is generally verbal which do not contain specific instructions from the investigating officers. The information is not directly passed to SOCOs, it rather come through investigating officers. SOCOs do not proceed to the scenes of crimes till the investigating officers do not specifically order them to do so .

It is observed that all first information of any crime or police case usually comes to nearest police post or beat office. After notifying such unit, if the case is found fit to be reported to the District Police Office (or the police office who has power to investigate the criminal cases.) than only the case is notified to the District Police Office. Most of the information about crime or police case comes through this mode of channel. This is one of the causes for delay of arrival of SOCOs in the scenes of crimes. None of the police office in the Kathmandu Valley has a reception or public relation desk for receiving information and passing it to the concerned police officers. Persons intending to pass the information have to do a great exercise to locate the officers, which usually is not an easy job.

The team had observed three cases of suicide by intoxication, one death by drowning, one case of theft and one of murder during its observation period. In the cases of suicide when family member of the victim, get information about the incident and if such person is alive than they first bring such person to the nearest hospital for treatment. If such person is already dead they then immediately inform the nearest police office. In one case a schoolboy died by drowning, was informed within half an hour of such incident. Similarly in another case of murder, notification was provided to the police after almost 10 hours of the occurrence of such incident. In another case of theft which had taken place during the night the police were informed only at 9 A.M. the next morning.

The observation revealed that generally the investigation of SOCOs lasted one-hour. The police personnel like constables and head constables, who are generally present at the scene of crimes before the arrival of the SOCOs , support SOCOs in the process of investigation. The observation team found none of the scenes of crimes protected systematically, like encircled by ribbons or ropes. The danger of damage to the scene of crime always exists in such situation due to invasion of public.

Physical Facility and availability of scientific equipment required for SOCO

Box 11 : Physical Facilities for SOCOs

District	Physical Facility	Status
Kathmandu	Separate Room	Not available
	Vehicle	Have but they have to use the vehicle along with investigation officials
	Separate Still Rack	Available
	Scientific Equipment	
	Camera	Available
	Scissors	Available
	Tape	Available
	Photo- copy equipment	Available
	Tool marks lifting equipment	Available
	Forensic Kit-box	Available
	Spray	Not-Available
	Light	Not-Available
	Water marking tape	Not-Available
	Finger print Ink	Not-Available
	Chemical for lifting of finger print	Not-Available
	Camera Reel	Not-Available
	Evidences Packing material	Not-Available
	Drug Detection Kit-box	Not-Available
	High Power lens (Eye-glass)	Not-Available
	Separate Room	Not available
Lalitpur	Vehicle	Do not have any vehicle to be used only for the investigation
	Separate Still Rack	Available
	Scientific Equipment	The availability and non availability of scientific equipment is similar to Kathmandu

None of the police office have separate office rooms for SOCOs. They also work in the same place where other police officials of the Investigation Department work. SOCOs have their own steel rack to keep their kit-boxes and other materials. SOCO do not have separate vehicle to carry their kit-box during the collection of evidences. In Kathmandu District Police Office, the SOCO also goes out in the vehicles of other police personnel . Other districts where the observation study was conducted also do not have vehicle for Crime Investigation, as such the SOCO also have travel on "motorcycle" along with their kit-box. The SOCOs were usually found carrying the kit by themselves.

SOCO officials usually checked their kit box by themselves. In Lalitpur District, the SOCOs are assisted in their jobs by two assistants but during the observation none of them were present while collecting evidences by SOCO.

SOCO usually carries camera, measuring tape, plastic bottle, envelope, scale and paper required for recording of evidences. When SOC officials are informed about incident, they usually check their baggage and put all necessary equipment and materials relating to the incident. According to them, the materials, which they carry, may vary according to nature of the crime.

The description given above present some important trends which are as follows:

1. SOCO have only simple equipment but not complex one. This shows lack of

seriousness among the supervising police officers about investing for SOC activities.

2. SOCO do not have separate logistic assistance for the collection of evidences. Neither do they have consistent support from their superiors. This demonstrates a failure to recognize the importance of SOCO activities within the institution.
3. Such trends must mount considerable barriers to the effective performance of SOCO activities, and thus diminish the standards of criminal investigation.

SOCO and Collection of Evidences

Box. 12: Protection of Crime Scene & Preliminary Examination

District	Types of Crime	Protection of crime Scene	Preliminary Examination of Evidences
Kathmandu	• Murder	• Guarded by one police person not allowing to touch the dead body	- Examination of crime scene - Inquire about the incident before collecting any evidences - Preliminary inquires on the identification of deceased.
	• Suicide	• The deceased body was lying in the mortuary under the custody of hospital authority so there was no police protection for crime scene	- Inquired about the circumstance on which the deceased had taken toxins - Inquired about mental condition and personality of the deceased.
	• Suicide	• The deceased body was lying in the mortuary under the custody of hospital authority so there was no police protection for crime scene	- Inquired about the circumstance on which the deceased had taken toxins - Inquired about mental condition and personality of the deceased.
	• Suicide	• The deceased body was lying in the mortuary under the custody of hospital authority so there was no police protection for crime scene	- Inquired about the circumstance on which the deceased had taken sleeping pills - Inquired about mental condition and personality of the deceased. - Inquired about family relation of the deceased
Lalitpur	• Drowning	• Guarded by one police person not allowing to go to the pond and to touch the dead body	- Inquired about the incident how such accident had happened. - Inquired about the incident before collecting any evidences - Inquired about relation of deceased with the friends - Examination of crime scene
	• Theft	• Foot prints, finger prints and tool marks	- Inquired about how the goods were stolen - Examined the crime scene. - Inquired about the probable thief.

It was observed that except in cases of suicide where the family of the victim had tried to save the life of such person, rests of the crime scenes were found to be protected by preventing persons from entering the scene of crime.

Before collecting any evidence from the scene of crime, the SOCO had first inquired about the incident . In the case of suicide they tried to inquire as to what deceased had consumed, how did the decease get them, what kind of a person was the deceased like, whether or not the deceased had any previous mental health problem, what could be the cause for committing suicide etc . In the case of drowning they inquired as to how did it happen, whether or not the deceased was pushed by someone and whether or not the deceased had any reason to commit suicide, etc. In the case of homicide SOCO preliminarily inquired about the identification of the deceased with the help of a refugee card and photograph, cloths, carry bag which were found at crime scene and presence of other person in the crime because it was far from roadside. (The crime scene was almost 55 minutes walking distance from roadside and 45 degree slope hill. And there was no signs of any fight or struggle in the area.)

Box. 13 : Packaging of Collected Evidences

District	Types of crime	Physical Evidence	Packaging Material
Kathmandu	• Murder	• Cloths of deceased • Photographs found in the baggage of deceased • Refugee card	- In the bag of SOCO - In the baggage SOCO - In packing envelope
	• Suicide	• Intoxicated piece of cloths	- In packing envelope
	• Suicide	• Intoxicated piece of cloths and vomit	- In packing envelope
	• Suicide	• Packet of sleeping pills	- In packing envelope
Lalitpur	• Drowning	• Sample water of pond	- Plastic Bottle
	• Theft	• Footprint ,Finger Print and Tool marks • Sample of wool	- In packing envelope - Photographed and picked up on plastic sheet

The SOCO had kept the collected evidences on simple plastic packet (plastic bottle in the case where water was collected as evidence) and put that inside an envelope and kept it in the kit-bag. SOCO had no especial baggage to carry the evidences.

Relation of SOCOs with other Police Officials and others

SOCOs have found good relation with other police officials. They were also found capable in maintaining good relation with ordinary people especially with the victim or with the family members. SOCOs were found utilizing there capacity to gather information about the incident from other people.

Communication During journey to Crime Scene

The SOCOs have general communication during the journey from police office to the Scene of Crime. They hardly discuss about the method they are to apply for the collection of evidences at the crime scene. There may be two causes for such conversation during the journey to crime scene. Firstly either the police officer might be indifferent with the incident or he might nor have any idea regarding the collection evidences. Secondly, the SOCO might be indifferent about the incident.

Deputation of Job and Available Human resource

Except for the SOCOs in Kathmandu, other SOCOs complained that they had to go for patrolling (maintenance of law and order) . Officially Kathmandu District police office have 60 police officials in Crime investigation department, but hardly 20 people work in the department. Outside Kathmandu, others also have 20 officials deputed in the department, but hardly half of them work in their department. Usually they are deputed in different police office and beat where their prime responsibility is to maintain law and order.

Coordination between Investigating Officials and SOCOs:

Officially, both types of officers maintain good relations and maintain communication regularly. However, the observation team found acute lack of coordination in work, especially analyzing the evidences. SOCOs produces very good photos of the scenes of crime, but they are hardly included in the case file. Generally, they are placed somewhere else unsystematically. One of the major reasons in this regard is the lack of adequate concern of investigating officer towards SOCO works or outputs.

Problems of SOCO

The Survey teams have found that to date, SOCOs have collected evidences in offences of the following nature:

(a) Theft	(b) Dacoit	(c) Murder
(d) Suicide by intoxication	(e) Murder by drowning	(f) Rape
(g) Arson	(h) Explosive	(i) Fraud and Cheating
(j) Gun-shot	(k) Narcotic Drugs	

Following informal discussion with the SOCOs, the survey team has noticed that a major lacuna in the performance of SOCOs is that they are not informed either by the Government Attorney or the Court if there is any inconsistency in the evidence collected. On the

whole, SOCOs are unaware of judgments made by the court. In most cases, they are not made aware about shortcomings in the investigation and collection of physical evidences. This has blocked the process of enhancing the performance of SOCOs - preventing the improvement of the quality and validity of physical evidences.

12.2.3. Other Observations of the Survey Team

a. Nature of Job

During discussion with SOCOs, they mentioned that they are primarily involved in the collection of evidences for the offences of homicide, theft and robbery, rape and vehicle accidents. They are particularly concerned in the collection of bloodstained clothes and equipment, semen (in the offence of rape), and tool marks.

b. Deputation on Duty

SOCOs are responsible for the collection and analysis of evidence at the police office. However, during the observation period SOCOs were also found to have the responsibility for the maintenance of law and order. One SOCO told the team that he had to go for patrolling until 2 a.m. in the morning in addition to his responsibilities in the crime investigation department from 8 A.M in the morning. The SOCO also informed the team about the shortage of materials required for the collection of evidences, especially in lifting finger and footprints of suspects.

c. Utilization of Photographs

During the FIR study conducted by the survey team, the most common form of evidence found to be collected by SOCOs was photograph. The team found no instance of the collection of finger or footprints in case files of the preceding three fiscal years. In fact, the team did not see any evidences collected by SOCO of these kinds at all. Many photographs related to the crime scene were found in a duplicate file at police that had not been submitted before the courts.

d. Lack of equipment and accessories

In the course of the FIR study, the team attempted to inquire as to why the SOCOs were not collecting fingerprints, foot prints or tool-marks from the crime scene. In response to this inquiry, they replied that they have chemicals, but these can only lift prints from smooth surface, e.g.: glass or metal. They are not effective on surfaces such as wood and cement.

e. Priority given to physical evidences

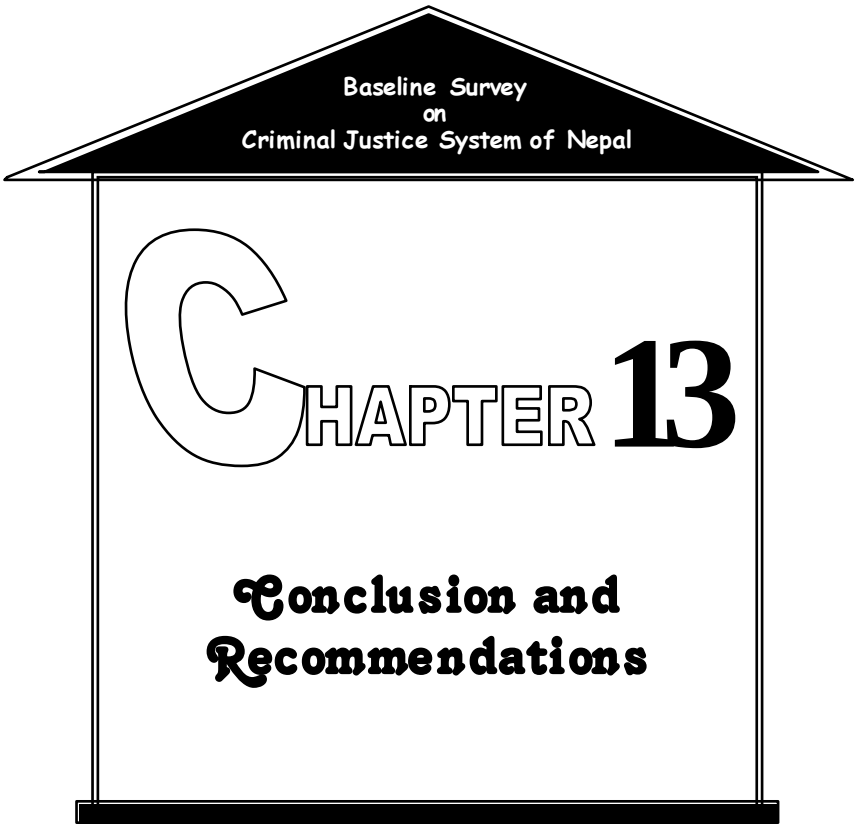
During informal discussion with the team, some SOCOs stated that the senior police officers rarely encouraged them to collect physical evidences from the crime scene. Senior officers gave priority to the confessional evidence as conclusive proof of the suspect's guilt. As such, the SOCOs whose prime responsibility was to conduct the investigation of the crimes were influenced by these officers and hence concentrated their efforts in obtaining the confessions of the suspects.

Observation of other police on the performance of SOCOs

Out of the 10 sampled districts, 8 police office have SOCOs . In the Kathmandu Valley, there are at least three SOCOs in each district police office. When asked as to whether or not they obtained assistance from SOCOs during the investigation of criminal cases, 93% of police responded positively. Out of these, 44% stated that they are receiving assistance in the collection of evidences, 56% viewed that they are receiving assistance in the identification of the criminal and the collection of evidences. The remaining two- percent of respondents (1 person) expressed different view.

Knowledge of SOCOs and the Criminal Justice System in the community

The survey has also tried to ascertain the knowledge of the investigation of criminal cases and SOCOs held by VDC Chairpersons, DDC presidents, Mayors of Municipality, University teachers of various faculties especially Sociology, Anthropology, Political Science and with the interest groups of the Sample District. Other than two teachers in Kathmandu and two VDC chairpersons, all other respondents were found to be ignorant about the procedure of the Criminal Justice System in the country. ●



CHAPTER 13

Conclusion and Recommendations

13.1. Conclusion

1. This study is mainly based on review of literature and field survey of the ten districts sampled for the study. Due to the larger sampled size of total FIRs filed, only 25% samples of the last three years have been selected for study by applying stratified and regular marking sampling method. In case of below 50 cases, census method has also been applied. Key informants' interview has been used as one of most important tool for obtaining qualitative data. Similarly, the tool of actual observation has been equally applied for extracting the qualitative information on the problems. As the text of report presents, the study has been comprehensive both in terms of components of the study and the methodologies applied.

2. Nepalese legal system is largely influenced by Hindu legal system. Despite the culturally diversified country, Nepal generally does not recognize separate religious laws. It, however, recognizes customary practices of people. The molding of Nepalese society and law according to Hindu tradition began in the fourth century A.D. during the rule of the Lichchhavi Kings. However, the first so-called code of laws- *Manab Naya Sastra* (Legal Rules for Human Justice) - was promulgated during the regime of Jayasthiti Malla in 14th Century. The so-called modern codification of the Nepalese laws took place in 1853, when Rana Prime Minister Junga Bahadur promulgated the *Muluki Ain* after his visit to the United Kingdom as well as some European countries. . Junga Bahadur Rana's *Muluki Ain* was an attempt to reinforce Hindu orthodox-based societal and administrative structure of Nepalese society. It therefore provided a legal basis for caste and gender-based value system. The *Muluki Ain*, similar in line to *Manab Nyay Sastra*, continued an archaic and feudalistic Criminal Justice system, which introduced a penal system not based on intensity and impact created by the criminal act but on the caste of the offenders. The old *Muluki Ain* was replaced by New *Muluki Ain* 1964, which made some attempt to introduce a religion and caste secular system. However, the criminal procedural laws it introduced was far below the minimum standards of fair and impartial justice. The promulgation of Apex Court Act, 1952 (Pradhan Nyaylaya Ain 2008), Civil Liberty Act, 1956 (Nagarik Adhikar Ain 2012), State Cases Act 1963 (Sarkari Mudha Sambandhi Ain 2017) and so on were the new developments after the fall of the Rana regime which helped significantly to modernize the criminal justice system of Nepal as well as to introduce adversarial judicial system. The promulgation of the Constitution of the Kingdom of Nepal, 1990, was a milestone in the development of the criminal justice system of Nepal, which, under Article 14, guaranteed all elements of fair and impartial justice in the forms of fundamental rights of the citizens. To say briefly, the existing Nepalese criminal justice is founded on the principles and notions of adversarial system. Obviously, the police, prosecutors and judges have independent roles and responsibility.

3. Following the restoration of democracy in 1990, Nepal has ratified at least 16 international human rights, which have direct bearings on the criminal justice system. As per the international human rights instruments like International Covenant on Civil and Political Rights, Convention Against Torture and so on, the Kingdom of Nepal is obliged to follow the minimum international standards of criminal justice. Section 9 of the Treaty Act, 1990, has given higher authority to international conventions and treaties if any Nepalese laws contradict with them. This provision has secured a way for domestication of international conventions and treaties. However, in this respect the development is far less than satisfactory. A series of New

Acts have been enacted, yet they contain several inconsistencies. For instance, the Legal Aid Act expressly denies recognizing the legal aid right in certain types of offences. As the present study has listed there are 53 Acts which vitiate the circumstance of fair trial as these Acts empower the same institution for conducting investigation, prosecution and adjudication. As revealed by the study, about 35% of criminal cases are still tried by institutions like DAO, Forest offices and so on where the principles of fair trial have no meaning at all. Departmentalization of criminal justice has been found to be one of the serious problems of the Nepalese Criminal Justice System.

4. Code of conduct for each actor of CJS is an important mechanism to ensure effective enforcement of the minimum international standards for fair and impartial trial. For the effective operation of CJS with co-operative attitudes of all actors, it is essential for all them to be guided by some concretely prescribed rules of professional behaviour. All four actors of CJS have worked out their professional code of conducts in detail. However, the practice of code of conduct is a problem. As the study reveals, there are number of custodial deaths recorded over the years, yet actions against perpetrators are meaningless. Similar is the situation of Bar Association. All actors find the publication of Criminal Procedural Guidelines, which includes international standards of code of conduct, useful for understanding their roles and responsibilities. Similarly, judge, government attorney, police and defense attorneys have responded positively to the impact of the collective orientation on Criminal Procedural Guidelines. For instance 69% of the judges respondents have indicated to the change in the behavior of the police following orientation on Criminal Procedural Guidelines.

5. The criminal procedural law of Nepal has been scattered in series of Statues, including *Muluki Ain*. The State Cases Act, 1993, is a mainstream law for procedures concerning investigation and prosecution of crimes specified in Annex 1 of the Act. Besides this Act, however, Narcotic Drug (Control) Act, Human Trafficking (Control) Act, etc. specifically provides for procedures. New *Muluki Ain* is another law, which provides procedures concerning investigation, prosecution and adjudication where there is no specific mention in the specific Statutes. These laws are not reviewed together. Therefore, there is not only possibility of confusion on applicability of the particular rule, but they also might be contradictory to each other. The publication of Criminal Procedural Guidelines is considered a significant achievement in collection of scattered procedures.

6. The trial procedure is longer and marred with inconvenient formalities. One of the major causes for delay is the heavy caseload in the courts. The heavy caseload is created by the lack of effective exercise of the filtering device. The rate of filtering of cases at the prosecution stage is less than 5% of the total number of cases investigated, whereas the rate of failure of the prosecution is above 50%. This state of prosecution indicates to the existence of random prosecution, which indicates to negative situation of human rights protection as the said proportion of failure of prosecution clearly indicates weaker state of fair trial.

7. The torture is still common in Nepal. Police often beat up suspects,. Occasionally, however, arrested persons are also beaten up by people. Access to torture compensation is very minimally exercised. As revealed by the present survey, none of the torture victims interviewed had complained against torture and filed cases for compensation. Nepal has enacted Torture Compensation Act, 2053(1996), but its enforcement is extremely weak. One of the major obstacles for the enforcement is that the Act does not define the act of tortures The Act obliges the Government for paying compensation,

however, the perpetrator go with impunity.

8. Nepal enacted the "Act Relating to Children" in 1992. The Act exempts the children below 14 years from criminal liability. This stipulates special trial for child delinquents, and specifically prohibits imprisonment with adult prisoners. However, the literature, cases in the Supreme Courts as well as survey study reveal that children below 16 years of age are indiscriminately imprisoned along with adult prisoners. Out of 65 respondents (prisoners), 37% claimed that the children below 16 years were imprisoned together with them. Of the 52 police officers, 92.3% reported that a juvenile suspect is treated differently than an adult suspect. However, 7.7% of the police informants reported handcuffed are used on juveniles too. Five resource persons of the criminal procedural guidelines stated that there is a widespread lack of awareness among all actors of the CJS. They added that there has been a practice of falsifying the age and detaining juveniles along with the adult prisoners.

9. Prisons in Nepal is dilapidated. The right to communication is effectively restricted. The existing Prison Act is inconsistent with the Constitution, especially in relation to the right to information. Prisons are under resourced. The punitive attitude to prisoners is still widespread among government officials and prison guards. The survey reveals that the large part (36%) of the prison population consists of persons aged between 25 to 32 years. Castewise, Chettris (32) constitute the major prison population followed by Brahmin. Of the total prison population, 34.7% are held for the crime of murder.

   The study finds lacking in effective prison management system in Nepal. Series of reports concerning prison reform have been lying without implementation. In lack of appropriate and adequate prison management concept and system , the punishment system is still archaic- there is no reformative outlook towards prisoners.

10. The motion study of the interrogation system reveals that the interrogation is often carried out in narrow and congested room. Except for a very few districts, there are no separate interrogation rooms. Suspects are commonly interviewed with handcuff on, and it is but not unusual to have interrogating officer in uniform and firearm. Similarly, the condition of custody cell is also extremely poor. 82 % of suspects interviewed reported to miserable condition of the custody. Generally, it is found that the lower rank police personnel (head constable, constable) takes the suspect to the office of the Government Attorney. Junior officers or low rank police personnel often take suspects to courts. Investigating officers generally do not turn up to the court with suspects. Interrogations last for a long time and generally the suspects are not allowed to sit down while being interrogated. Low rank personnel like the head constable generally prepare the depositions of the suspects.

11. Financial crisis of the judiciary is acute. The judiciary receives no financial resource except for salary, allowance and some other incidental expenditure. The possibility of fair trial in a condition of paucity of financial resource is a matter of distance. The judiciary receives less than only 0.50% of the national expenditure. The grant the Judiciary receives from the Finance Ministry is itemized and earmarked strictly, and available on installment basis. This practice is not only detrimental to the fair and impartial justice, but also injurious to the independence of court.

    The number of judges is far less to address the present volume of cases. The overload of petty civil cases is pushing the criminal cases back.

12. The prison population of Nepal consists predominately of males (80%). Murder is

the most common parlance crime in Nepal. In Jumla, the crime of murder constitutes 88.9%, followed by Kapilvastu as 66.7%. Most of the detainees and prison inmates were from the economically productive age group. A considerable number of the crimes of murder are found committed by people (50%) having less than Rs. 3000 monthly income.

13. The major stages of criminal proceeding are investigation, prosecution and adjudication. Investigation begins when the FIR is lodged in the nearest police station. In Nepal, investigation generally begins with the arrest of the suspect. As reveled by the study in 93.3% (out of 75 respondents) suspects were arrested without arrest slip or warrant. The police has different version. 79.8% police respondents replied that they issue arrest slip (*pakrau purjee*). 12% of the arrest and 18.5% of the search took place at night. 33% of informants who had to travel to police headquarters had been chained during arrest. 80% of detainee said there was not sufficient space for all in the custody. 58.3% did not receive a health check, and 17.3% were handcuffed in the custody.

14. Despite the awareness of the right of free and fair legal representation. 13.8% did not hire a lawyer and 6.9% were not permitted to meet with their lawyers. In 49.3% of cases, Government Attorneys were not present while depositions of suspects were recorded. 19.7% suspects complained that they were coerced to confess against their free will. 33.3% government attorney (out of 15 informants) reported that most of the cases were prosecuted. During preliminary hearing (Bailment), 73.8% of the 65 individuals polled reported that pleading occurred., but 55.4% of the respondents had no legal counsels upon the arrest and during the preliminary hearing at court.

15. A plan of action for strengthening the Scene of Crime investigation by trained SOCOs is developed. Except few districts, SOCOs have been deputed with Scene of Crime Investigation kit box, which is found quite useful by all police offices. The information on SOCOs at the community level is not very encouraging. Out of 47 community respondents interviewed, only four (3 mayors and a university lecturer in the Kathmandu valley) had been aware of the SOCO project, and the activities of SOCOs. However, the police respondents interviewed presented a very positive impact of the project. Out of total 43 police interviewed, 93% claimed positive impact of SOCO project for strengthening the crime investigation system, and thus to secure the fair and impartial criminal justice.

The responses of police respondents, however, differed in various districts. For instance, in Kathmandu district about 71% of respondents claimed positive impact, whereas rest even though did not deem it to be negative, found no significance of the project. In Lalitpur and Bhaktapur, however, all respondents were positive to the impact of the project. In Chitwan, the reaction of about 83 % was positive. The observation of performance of SOCOs presented the following scenario:

- SOCOs spent, on average, over an hour in the scene of crime. The investigation of scene of crime generally begins with photography of the deceased or the scene of crime.
- Crime investigating officers were not found accompanying SOCOs. Hence, the role of SOCOs was found limited to collection of evidence visible or obvious to them.
- Blood stains, clothing, fingerprints or footprints and substance like poison are generally collected for investigation.
- In majority of incidents, SOCOs themselves were found engaged in preparing

documents concerning scene of crimes, but in some cases police personnel other than SOCOs were found engaged in such work.

- SOCO have only simple equipment but not complex one. This shows lack of seriousness among the supervising police officers about investing for SOC activities.
- SOCO do not have separate logistic assistance for the collection of evidences. Neither do they have consistent support from their superiors. This demonstrates a failure to recognize the importance of SOCO activities within the institution.
- Such trends must mount considerable barriers to the effective performance of SOCO activities, and thus diminish the standards of criminal investigation.

13.2 Recommendations

On the basis of the findings, the following recommendations are suggested:

1. Legislative Level:

1.1. Adequate legislation is a precondition for strengthening the investigation, prosecution and adjudication system. Moreover, adequate legislation is essential for adequate protection of the rights of people to fair and impartial justice. No justice system can be institutionalized without fair laws. As the study has revealed, there are several laws, which exist in contradiction with basic principles of justice, international human rights instruments and the Constitution itself. For achieving the adequate legislation, an immediate attention is required to the following:

1.1.1. The system of justice established by the 53 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. 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. Hence, the Statutes listed in the text of the research need to be amended or repealed with effect of giving power of trial over criminal cases to the district courts.

1.1.2. Some of the Statutes as listed in the text of the report 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.

1.1.3. Law-making bodies must pay strict attention to Articles 84, 85 and 86 of the Constitution while legislating laws concerning investigation, prosecution and adjudication of offences. Therefore, the inconsistent laws must be amended appropriately to eliminate provisions that affect the norms and standards of a free and fair criminal justice system, and as such exist in contravention to the Constitution and the International Human Rights instruments.

1.1.4. 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 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.

1.1.5. 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.

- Introduction of the concept of victimology as part of the legal system.

1.1.6. The Torture 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 the 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 Act of should define the crime under the prevailing law.
- 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.

1.1.7. 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.

2. Judicial Level:

2.1. For the protection of independence of judiciary, and to insure the efficiency of performance of courts at different level, the Government must substantially increase the financial resource to the judiciary. The paucity of financial resource will necessarily results in the breakdown of the norms of justice, and the corrupt practices may flourish therein. To prevent this situation, the Government must 'positively take that investment made on justice is essentially an investment made

on social development. The current practice of allocating the financial resource in strictly itemized and earmarked forms, is prejudicial to the independence of the judiciary. Hence, the Finance Ministry's overhand in matters of judiciary's budget must be ended completely.

2.2. The workload of the courts in Himalayan and hill districts is minimal but they enjoy the same investment as courts with higher work burden. One approach might be to create a different system of judicial districts, merging the territorial jurisdictions of several courts. Such reform would help to reduce the unnecessary expenditure within the judiciary, and direct resources to areas where they are needed the most. A study must be conducted on a feasible management for the future.

2.3. The condition of the judiciary's human resource is poor. There is a trend for high intake of clerical human resources, 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 facility to enable them to carry out their jobs effectively and efficiently.

2.4. 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 judgement delivered.

2.5. As the study has shown, almost all-civil cases originating at district court level reach the Supreme Court level. The burden of stress on the court is basically created by civil caseload. The 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. Therefore, a concrete plan of action and strategy to manage the caseload at each level of court must be developed. While developing the strategy , the following matters must be kept in mind:

- Effective enforcement of the Local Autonomous Governance Act concerning judicial power of VDCs and Municipality.
- District courts must encourage parties to outer-court settlement of civil disputes.
- District court must exercise effective filtering devices so as to prevent petty civil cases reaching the courts.

3. Prosecution Level

3.1. The study has shown that there are a large number failures of prosecution. This indicates that there are a large number of unfounded cases reaching the judiciary as a result prosecutorial inefficiency. If the filtering device at the prosecution level is improved, it will help to relieve the courts from huge volume of caseload, and as such will help to create an environment conducive for protection of human rights. The Attorney General's Office must therefore review its working practices. It must develop a concrete strategy of actions for the improvement of the filtering mechanism and orient its staff on how this could be achieved.

4. Investigation Level:

4.1. The Constitution of the 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.

4.2. 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 the 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 are suggested.

4.1.1. 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.

4.1.2. 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.

4.1.3. The Constitution unequivocally obliges investigating agency to inform the detainee of the grounds for their detention as soon as possible. This information cannot be delayed more than 24 hours arrest under any pretext. However, this provision is often violated in practice. No such information is provided to detainees. The Courts must remain vigilant to such detention. Recalcitrant police personnel must be punished adequately, and for that a provision in the Torture Compensation Act must be inserted so that illegal detention can be tried in the trial court.

4.1.4. To bring about the change in the prevalent confession oriented investigation, the concept of scene of crime investigation objectively and scientifically should be strengthened. To enhance the present SOCO project, the following recommendations are suggested:

- Adequate modern equipment must be made available to SOCOs.
- Police headquarters must create a separate section on Scene of Crime Investigation. SOCOs should be essential part of the investigation, but they should be allowed to function independently.
- SOCOs should not be mobilized in the mission of general law and order.
- SOCOs must be recruited from persons with science educational background.

The distrust of one actor of CJS to other is a serious problem, which is being effectively addressed by series of orientations on Criminal Procedural Guidelines. The process should be continued with added motivation. Orientation programs must reach to the level of junior officers.

5. General

5.1. The focal point of this study is to establish rule of law in the country. Effort for ratifying international human right instruments following the restoration of democracy in 1990 is satisfactory. Furthermore, the governmental organization and NGO, INGO should develop a plan of actions to work together for addressing the existing weaknesses in many aspects of criminal justice system.

5.2. The survey has revealed that majority of the prison population are economically poor but productive i.e. 25 years to 32 years. Thus, through educational system

youth population should be made aware of the bad effect of criminal behaviours. In spite of all these efforts if they commit any wrong, they should not be left economically idle even inside the prison.

5.3. The main actors of CJS are the Police, the Government Attorney, Defence Lawyer and the Courts. It is found there is still a lack of co-ordination among them to dispense fair and impartial criminal justice. Thus, it is essential to develop a bridge between them.

5.4. Research is an ongoing activity should be continuously carried out to inform policy makers and planners for the development of intervention programs in respective fields.

5.5. The education system on law and justice should be strengthened.

5.6. The role of village level authorities is crucial in collection of evidence, and also to facilitate the investigation of the crime. Their role in the investigation of the scene of crime is pivotal. However, as they are not aware of their roles, there has been a big gap in matters of cooperation with investigating officers. Hence, the State has to play a vital role in conducting advocacy programs for village authorities for cooperating to strengthen the fairness of investigation. For this a concrete manual needs to be developed and implemented.

●●

Glossary

Reference

Annexe

Annex 1 Survey Questionnaire for Suspect/Accused/Convicted/Ex-Prisoner

Annex 2 Survey Questionnaire for Judge

Annex 3 Survey Questionnaire for Government Attorney

Annex 4 Survey Questionnaire for Defense Lawyer/Lecturer of Law etc.

Annex 5 Survey Questionnaire for Tribunals (CDO, DFO, Custom Officer, etc.)

Annex 6 Survey Questionnaire for Suspects/ Accused/ Prisoners/Ex-Prisoners

Annex 7 Survey Questionnaire for Family member of Suspect/ Prisoners.

Annex 8 Survey Questionnaire for Victim of Torture

Annex 9 Survey Questionnaire for Crime Victim

Annex 10 Survey Questionnaire for Jailer.

Annex 11 Survey Questionnaire for Human Rights Activist

Annex 12 Survey Questionnaire for Journalist

Annex 13 Survey Questionnaire for Medical Forensic Expert

Annex 14 Survey Questionnaire for Medical Doctor/ Medical Legal Experts

Annex 15 Survey Questionnaire for SOCO

Annex 16 Checklists for conducting Key-Informant Interview of Community Member

Annex 17 Checklists for conducting Key-Informant Interview of Resource Person Involved in Criminal Procedure Guideline

Annex 18 Checklists for conducting Key-Informant Interview of Criminologist/ Victimologist

Annex 19 Checklists for conducting Key-Informant Interview of the NGO Involved in Criminal Justice System

Annex 20 Checklist for conducting Focus Group Discussion of Detainee / Prison inmate

Annex 21 Checklist for Case Study of Detainee / Prison inmate

Annex 22 Checklist for Observation of Police, Attorney General, etc.

Annex 23 Checklist for Observation of SOCO

Annex 24 Checklist for Collection of Numerical Data related to Registration of FIR and its Processes.

Annex 25 Orientation / Training Schedule

- **a.** For Pre-Test
- **b.** For Field Survey

Annex 26 List of Key Informants Contacted