Judicial Limitations on Interpretation of Criminal Statutes
(With Reference to Selected Reported Criminal Cases of Nepal)

A Thesis

Submitted to

Faculty of Law, Tribhuvan University, Kathmandu

For the Award of the Degree of Doctor of Philosophy

(PhD) in Law

Submitted By

Subash Acharya

Roll No. 02/2076(2020)

02 March, 2025

CERTIFICATION

It is to certify that Mr. Subash Acharya has submitted the PhD Thesis entitled "Judicial Limitations on Interpretation of Criminal Statutes (With Reference to Selected Reported Criminal Cases of Nepal)" under the supervision of Prof. Dr. Binod Bashyal. The Researcher has met all the requirements outlined in the Research Report Writing Guidelines 2080 (2023), Faculty of Law, Tribhuvan University. As a result, the thesis is now ready for the final examination. This certification essentially confirms that the thesis is complete and meets the necessary academic standards for evaluation. The Thesis is, therefore, submitted for final examination.

Prof. Dr. Binod Bashyal

Supervisor

Mr. Subash Acharya

PhD Scholar

Prof. Dr. Krishna Prasad Bashyal

Dean

Faculty of Law, Tribhuvan University, Nepal

Date: 02 March, 2025

DECLARATION

The doctoral Thesis entitled "Judicial Limitations on Interpretation of Criminal Statutes (With Reference to Selected Reported Criminal Cases of Nepal)" embodies the outcome of the research work pursued and undertaken under the supervision of Prof. Dr. Binod Bashyal, Tribhuvan University. It is declared that the work reported in the doctoral Thesis is original and it has not been submitted partially or wholly to any other universities or educational institutions for the award of any degree. The Researcher has followed Research Report Writing Guidelines 2080 (2023) and fulfilled all the requirements prescribed under the rules and regulations of Tribhuvan University. The Researcher has duly acknowledged the relevant contributions and publications of the different writers at the appropriate places and has extended due respect to them. The Researcher has submitted the Thesis for final evaluation in connection with the award of the degree of Doctor of Philosophy (PhD) in Law.

Date: 02 March, 2025

Sincerely

.....

Mr. Subash Acharya

PhD Scholar

Roll No. 02/2076(2020)

LETTER OF RECOMMENDATION

This is to certify that Mr. Subash Acharya has completed the doctoral Thesis entitled "Judicial Limitations on Interpretation of Criminal Statutes (With Reference to Selected Reported Criminal Cases of Nepal)" under my supervision. The Researcher has fulfilled all the requirements prescribed by the Research Committee, Faculty of Law, Tribhuvan University. The doctoral research work accomplished by the Researcher is a novel one. I, therefore, recommend this Thesis for the final evaluation for the award of the Degree of Doctor of Philosophy (PhD) in Law. I wish him grand success in his future endeavour.

Date: 02 March, 2025

……..

Supervisor

Prof. Dr. Binod Bashyal

Faculty of Law

Tribhuvan University, Nepal

PREFACE

It is an axiomatic fact that judges possess discretionary power to interpret the law. However, the scope of this discretion varies significantly depending on whether it pertains to constitutional or criminal law. In constitutional law, liberal interpretation is often employed, reflecting the view of the Constitution as a 'living organism' capable of adapting to societal changes up to the level as set in the Directive Principles of that Constitution. In contrast, criminal law demands strict construction to prevent criminalization through interpretation, because such criminalization adversely affects the rights of individuals having retrospective effect that ultimately results in violation of legality principle. Criminalization through interpretation also gives birth to an alarming question: if changing judges lead to changing laws, what, then, is the law? It also fosters a perception of judges as 'playing God,' contrary to the requirements that the right of individuals be subject only to laws enacted by the legislature.

Thus, judicial discretion must operate within established legal doctrines. In Nepal, the judiciary is characterized by a unique system without distinct civil or criminal courts, where judges address a wide range of legal issues, including general, criminal, and constitutional matters. This overlap of responsibilities complicates judicial interpretation. Unchecked variations in judicial interpretation can destabilize the legal system, leading to inconsistencies that erode justice. The domain of interpretation of criminal law need to be categorically distinguished because expanding the elements of a crime through construction risks retrospective criminalization, violating legal certainty and inviting criminalization by analogy, which contravene the fundamental principles of justice.

This thesis, titled "Judicial Limitations on Interpretation of Criminal Statutes (With Reference to Selected Reported Criminal Cases of Nepal)," examines the interpretational limitations of courts, with a particular focus on criminal law. It analyzes purposively selected decisions of the Supreme Court of Nepal, highlighting the challenges and inconsistencies in judicial practices. To provide a comparative perspective, the thesis integrates insights from international judicial decisions, including those of the ICC, I.C.J., and ECtHR, as well as some rulings from common law jurisdictions such as the UK, USA,

and India. This comparative analysis situates Nepalese judicial practices within a broader global framework.

The thesis underscores the importance of adhering to foundational principles of criminal law, such as legality, non-retroactivity, and strict construction of penal statutes. It explores doctrines like *casus omissus* and fair labeling, which serve as critical safeguards against arbitrary interpretations that could infringe upon individual rights or disrupt the balance between legislative intent and judicial function. Additionally, the thesis examines relevant international and national legal provisions; analyzing interpretational limitations in criminal cases from three key perspectives: principles, provisions, and practices. This comprehensive approach illustrates the dynamics of judicial limitations on the interpretation of criminal statutes within Nepal's judicial system.

In this way, the thesis represents a modest effort to contribute to the understanding of judicial interpretation in criminal law. It identifies gaps and proposes measures to enhance consistency, fairness, and adherence to established principles of justice in Nepal's criminal justice system. By providing concrete suggestions for addressing existing challenges, it aspires to advance judicial practices in Nepal and serve as a reference for broader discussions on judicial interpretation of penal statutes worldwide. Finally, the thesis establishes the limitation principle, a theory formed.

Mr. Subash Acharya

PhD Scholar

Roll No. 02/2076(2020)

ACKNOWLEDGEMENTS

The completion of my PhD thesis, titled "Judicial Limitations on Interpretation of Criminal Statutes (With Reference to Selected Reported Criminal Cases of Nepal)," marks the culmination of years of dedication, perseverance, and intellectual exploration. This accomplishment would not have been possible without the invaluable support, guidance, and encouragement of numerous individuals and institutions who generously contributed to my academic journey. I am deeply indebted to all those who played a pivotal role in shaping this thesis, offering their expertise, time, and resources to ensure its successful completion. Their collective contributions have not only enriched my research but have also inspired me to pursue academic excellence.

I owe particular gratitude to my esteemed supervisor, Prof. Dr. Binod Bashyal, whose unwavering support, mentorship, and profound insights were instrumental throughout my research. His commitment to academic rigor and expert guidance steered this study in the right direction. His generosity with time, recommendations for essential reference materials, proper step by step guide, and valuable experience enriched every facet of my work. Beyond his academic advice, his constant encouragement instilled in me the determination to complete this thesis on time. Thank you, sir, for your steadfast support.

I am immensely grateful to Prof. Dr. Krishna Prasad Bashyal, the Dean of the Faculty of Law at Tribhuvan University, who helped me by suggesting very crucial reference books and providing feedbacks throughout the process in this thesis. Grateful thanks also go to Prof. Dr. DN Parajuli, former Campus Chief who always alerted me to tally the title, research questions and objectives, and finally to present the suggestions in clear cut way.

I am equally thankful towards the resource persons and teachers including Prof. Dr. Krishna Belbase, Prof. Dr. Nutan Chandra Subedee, Prof. Dr. Bijay Singh Sijapati, Prof. Dr. Tara Prasad Sapkota, Prof. Dr. Shambhu Prasad Khanal, Prof. Dr. Rajit Bhakta Pradhananga, Prof. Dr. Sushmita Singh Karki, Prof. Dr. Shashi Kumari Adhikary Raut, Prof. Dr. Gyaneshwor Parajuli, Prof. Dr. Suresh Kumar Dhungana, Associate Prof. Sanad Devkota, Associate Prof. Dr. Mrigendra Bahadur Karki, Dr. Tika Ram Gautam and Dr. Rishikesh

Wagle whose teachings enriched my understanding and provided the academic rigor necessary for this thesis. I would like to deliver special thanks to Associate Prof. Dr. Balaram Prasad Raut for his suggestions to review the Penal Code and for the overall guidance in need. My sincere thanks also go to Dr. Newal Chaudhary and Dr. Vijay Prasad Jayshwal for their insightful supports.

Similarly, special thanks are due to Prof. Dr. Laxmi Prasad Mainali, whose PhD thesis provided a persuasive reference for form and structure, and to Dr. Manoj Kumar K.C., DIG of Nepal Police, whose book offered valuable technical analysis. Their works provided a significant insights and served as key resources in my own research.

I extend my heartfelt appreciation to my beloved family members: my loving and caring wife, Mrs. Bina Dahal, who also serves as Deputy Attorney General; my son, Mr. Bibhav Acharya; and my daughter, Ms. Surabhi Acharya. I also wish to acknowledge the unwavering support of Mr. Bipin Subedi, Mr. Bidhan Acharya, Ms. Bidhi Acharya, and Ms. Devashree Subedi. Their encouragement, belief in my abilities, and constant support have been a source of strength and motivation throughout this challenging journey.

I also wish to express sincere gratitude to Ms. Shayala Rai for her meticulous proofreading, insightful feedback, and format checking of the whole thesis which greatly enhanced the clarity and precision of my work. My heartfelt thanks also go to Ms. Ajita Bhandari, who provided valuable assistance during the data collection phase, Mr. Gadesh Ghimire who helped collecting data on oriental philosophy, Ms. Samikshya Khatri who helped me in form and pattern, date conversion and bibliography enlistments in order, and Er. Sangam Bhandari for his support during the statistical data analysis. Their dedication and expertise were crucial in ensuring the accuracy and rigor of my research.

Furthermore, I am deeply thankful to my esteemed colleagues at the office, especially Mr. Kabir Khatiwada, Mrs. Srijana Pokhrel, and Mrs. Januka Ghimire whose support and understanding allowed me to balance my professional and academic responsibilities. Their encouragement made it possible for me to dedicate the necessary time and energy to this research.

I extend my profound appreciation to the dedicated staff of the Faculty of Law at Tribhuvan University, whose unwavering support and provision of academic resources were integral to my scholarly journey. Their commitment to creating a conducive learning environment and fostering scholarly dialogues greatly enriched my research and contributed significantly to the completion of this thesis. I am also grateful to my friends and PhD colleagues for their unwavering support and insightful discussions. Their camaraderie and intellectual exchange offered new perspectives and encouragement, making a profound impact on this research. Though informal, their contributions were invaluable in shaping this thesis.

Date: 02 March, 2025

Mr. Subash Acharya

PhD Scholar

Roll No. 02/2076(2020)

LIST OF ACRONYMS

Acronym	Full Form
AG	Attorney General
AU	African Union, 1981
AIR	All India Reporter
CeLRRd	Center for Legal Research and Resource Development
DSP	Deputy Superintendent of Police
IPC	Indian Penal Code, 1860
MCC	Muluki Criminal Code, 2074 (2017)
MCPC	Muluki Criminal Procedural Code, 2074 (2017)
SP	Superintendent of Police
UNSC	United Nations Security Council, 1945
UDHR	Universal Declaration of Human Rights, 1948
UKHL	United Kingdom House of Lords

LIST OF ABBREVIATIONS

Abbreviation	Full Form
§	Section
¶	paragraph(s)
&	and
Adv.	Advocate
AC	Appeal Cases
ACHR	American Convention on Human Rights, 1978
ACHPR	African Charter on Human and People's Rights, 1981
Amer.	American
Amer. Crim. Law. Q	American Criminal Law Quarterly
App.	Appeal
App. No.	Application Number
ArCHR	Arab Charter on Human Rights, 2004
Art.	Article
Arts.	Articles
Aug.	August
B.S.	Brikram Sambat
Cal	Calcutta High Court
C.B	Constitutional Bench
CFREU	Charter of Fundamental Rights of the European Union, 2000
CIAA	Commission for the Investigation of Abuse of Authority
CJ	Chief Justice
CJS	Criminal Justice System
Col. L. Rev.	Colorado Law Review
Const.	Constitution
Const. of Nepal	Constitution of Nepal, 2072 (2015)

CR.	Criminology
CRC	U.N. Convention on the Rights of the Child, 1989
CRILJ	Criminal Law Journal
Crim.	Criminal
Dec.	December
DN.	Decision number
DPP	Director of Public Prosecutions
E.C.R.	Reports of Cases before the Court of Justice of the European Communities
ECtHR / Eur. Ct. H.R.	European Court of Human Rights
e.g.	exempli gratia, meaning 'for example'
ed.	edition
ed., / eds.	editor, editors
ECHR	European Convention on Human Rights, 1950 / European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950
EHRR	European Human Rights Reports
et al.	et alia, meaning 'and others'
etc.	et cetera, meaning 'and other similar things'
EWCA Crim.	Court of Appeal (Criminal Division) of England and Wales
EWHC	England and Wales High Court
G.A. Res.	General Assembly Resolution
GoN	Government of Nepal
Harv. J. of L. & Pub. Pol'y	Harvard Journal of Law and Public Policy
H.K.	Hong Kong
HKC	Hong Kong Cases
HKLRD	Hong Kong Law Reports and Digest
HL	House of Lords

HMG	His Majesty Government
IACHR	Inter-American Commission on Human Rights, 1959
ICC	International Criminal Court, 2002
ICCPR	International Covenant on Civil and Political Rights, 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights, 1966
I.C.J.	International Court of Justice
i.e.	that is
Id.	Idem, meaning 'the same'
Int'l Crim. Trib.	International Criminal Tribunal
IT	International Tribunal
ITR	Income Tax Reports
J.	Journal
Jan.	January
Jul.	July
Jun.	June
Mar.	March
Mon. Uni. L. Rev.	Monash University Law Review
MP	Madhya Pradesh High Court
NKP	Nepal Kanoon Patrika, meaning 'Nepal Law Report'
Nep.	Nepal
Nep. B. Co. L. J.	Nepal Bar Council Law Journal
NLC	Nepal Law Campus
No. / no.	Number
Nov.	November
OAS	Organization of American States, 1948
OAU	Organization of African Unity, 1963
Oct.	October
OPMCM	Office of the Prime Minister and Council of Ministers

P.C.I.J.	Permanent Court of Justice
PhD	Doctor of Philosophy
Pol.	Political
Pol. Econ.	Political Economics
Prosec. J.	Prosecutor’s Journal
Pub.	Public
Pvt. Ltd.	Private Limited
Q.	Quarterly
QB	Queen’s Bench
QBD	Queen's Bench Division
R	Regina
reprt.	reprint
rev.,	revisor
Rev.	Review
SA	South African Law Review
SC	Supreme Court
SCC	Supreme Court Cases
SCN	Supreme Court of Nepal
SCR	Supreme Court Reports
SGHC	Singapore High Court
SLR	Singapore Law Reports
SLR(R)	Singapore Law Reports (Revised Edition)
SD	Standard Deviation
Sec.	Section
Sept.	September
ser.	series
Sing.	Singapore
So. 2d	Southern Reporter, Second Series
Sr.	Senior

supra	Above
TU	Tribhuvan University
UK	United Kingdom
U.N. Doc.	United Nations Document
U.N.T.S.	United Nations Treaty Series
Uni. of Chica. L. Rev.	University of Chicago Law Review
U.S.	United States Reports
USA	United States of America
v.	versus
VCLT	Vienna Convention on the Law of Treaties, 1969
Vic. Univ. Wellingt. Law Rev.	University of Wellington Legal Research Papers
Vol.	Volume, meaning ‘Issue number’
WLR	Weekly Law Reports

LIST OF SYMBOLS

FOLDER

Name	Definitions
BLACK	It symbolizes to the name of folder of the data referring to the decisions of Supreme Court of Nepal, particularly to 'Total Reported Criminal Cases'.
Black	It symbolizes to the purposively selected 'Criminal Cases Relating to Interpretation of Statutes' from the population of total reported criminal cases.
BLUE	It symbolizes to the name of folder of the data referring to the decisions of Supreme Court of Nepal, particularly to 'General Cases Relating to the Interpretation of Statutes'.
Blue	It symbolizes to the purposively selected 'General Cases Relating to Interpretation of Statutes' from the population of total general cases relating to the interpretation of statutes.
RED	It symbolizes to the name of folder of the data referring to the decisions of Supreme Court of Nepal, particularly to 'Writs Relating to Criminal Law'.
Red	It symbolizes to the purposively selected 'Writs Relating Interpretation of Statutes' from the population of total writs relating to criminal law.

THEME

Name	Definitions
Theme A	It symbolizes to the study themes of the cases referring to 'Cases Interpreting Limitations of Court'.
Theme B	It symbolizes to the study themes of the cases referring to 'Cases Assimilating Limitations of Court'.

Theme C	It symbolizes to the study themes of the cases referring to 'Cases Violating Limitations of Court'.
Theme D	It symbolizes to the study themes of the cases referring to 'Cases Relating to General Interpretation of Statutes'.

VARIABLES

Name of Variable	**Definitions**
Variable x_0	Data of Provisions Relating to Compliance of the Principles of Criminal Justice
Variable y_0	Data of Provisions Relating to Judicial Limitations in General
Variable z_0	Data of Provision Relating to Express Mention of Interpretational Limitations
Variable x	Data of International Judicial Decisions representing limitation by jurisdiction/burden of proof
Variable y	Data of International Judicial Decisions representing limitation within the language of law
Variable z	Data of International Judicial Decisions representing express mention of interpretational limitation by the court.
Variable X	Data of SCN Decisions representing a simple articulation regarding judicial limitations on the interpretation of criminal statutes. (In this category, the type of cases upholding Court's limitations within the claims of the charge-sheet/burden of proof are kept)
Variable Y	Data of SCN Decisions representing a moderate level of articulation regarding judicial limitations on the interpretation of criminal statutes. (In this category, the cases upholding Court's limitations within the language of the law/ no forceful interpretation are kept)
Variable Z	Data of SCN Decisions representing a strong articulation regarding judicial limitations on the interpretation of criminal statutes. (In this

	category, the cases clearly articulating Court cannot criminalize by interpretation/no criminalization by judicial legislation are kept)
Variable X_1	Data of SCN Decisions representing cases simply assimilating judicial limitations on the interpretation of criminal statutes. (In this category, the type of cases upholding Court's limitations within the burden of proof/presumption innocence have been kept)
Variable Y_1	Data of SCN Decisions representing cases moderately assimilating judicial limitations on the interpretation of criminal statutes. (In this category, the cases upholding Court's limitations within the language of the law/no more than law/due process have been kept)
Variable Z_1	Data of SCN Decisions representing cases strongly assimilating judicial limitations on the interpretation of criminal statutes. (In this category, the cases assimilating of the articulation of Court's limitation in express way are kept)
Variable U	Data of SCN Decisions representing cases simply violating judicial limitations on the interpretation of criminal statutes. (In this category, the type of cases simply violating Court's limitations by adding the claim on the charge-sheet/burden of proof are kept)
Variable V	Data of SCN Decisions representing cases moderately violating judicial limitations on the interpretation of criminal statutes. (In this category, the cases moderately violating Court's limitations by liberal interpretation of the law/ forceful interpretation are kept)
Variable W	Data of SCN Decisions representing cases strongly violating judicial limitations on the interpretation of criminal statutes. (In this category, the cases loudly violating Court cannot by expanding the scope of *actus reus* are kept)

WORKING DEFINITIONS

Term	Definitions
Assimilating Limitations	In this thesis, the word 'assimilating limitations' has been used referring to the decisions of the Supreme Court of Nepal which are simply following to the standard of cases interpreting limitations.
Interpreting Limitations	In this thesis, the word 'interpreting limitations' has been used referring to the decisions of the Supreme Court of Nepal which are in line to the standard of principles and provisions interpreting limitations.
Judicial Limitations	The title of the thesis, 'Judicial Limitations on Interpretation of Criminal Statutes' semantically refers to 'Interpretational Limitations of Court in Criminal Cases', not other limitations such as the interpretation of constitutional law.
Sanskrit Words	Sanskrit Words are written in romanised form and also in its native script for the clarity of slogans.
Violating Limitations	In this thesis, the word 'violating limitations' has been used referring to the decisions of the Supreme Court of Nepal which are in deviation to the standard of cases interpreting limitations.

LIST OF TABLES

Table	Title of Table	Page No.
Table 5.1	International Court's Decisions	200
Table 6.1	Population	253-55
Table 6.2	Sample Selected	256-59
Table 6.3	Thematic Data	259-60
Table 7.1	Total number of principles studied; relating to interpretational limitations of court	315-16
Table 7.2	Principles categorized in thematic groups	316
Table 7.3	Total number of laws studied relating to interpretational limitations of court	320-22
Table 7.4	Distribution of Provisions into x_0, y_0, z_0 Thematic Variables	325
Table 7.5	The Crux of the Limitations Explained in the Decisions Synopsized	334-38
Table 7.6	Limitations Explained in the Decisions Categorized into x, y, z Thematic Variables	340
Table 7.7	Population	341
Table 7.8	Sample Selected	342
Table 7.9	Sample Distributed According to Themes	342-43
Table 7.10	Cases Interpreting Limitations of Court into X, Y, Z Thematic Variables	346
Table 7.11	Cases Assimilating Limitations of Court into X_1, Y_1, Z_1 Thematic Variables	350
Table 7.12	Cases Violating Limitations of Court into U, V, W Thematic Variables	354
Table 8.1	x_0, y_0, z_0 Thematic Variables Count in Percentage	364
Table 8.2	Inferential Statistics of variables x_0, y_0, z_0	365
Table 8.3	x, y, z Thematic Variables Count in Percentage	366
Table 8.4	Inferential Statistics of x, y, z	367
Table 8.5	X, Y, Z Thematic Variables Count in Percentage	369

Table 8.6	Inferential Statistics of X, Y, Z	370
Table 8.7	X_1, Y_1, Z_1 Thematic Variables Count in Percentage	372
Table 8.8	Inferential Statistics of X_1, Y_1, Z_1	372
Table 8.9	U, V, W Thematic Variables Count in Percentage	374
Table 8.10	Inferential Statistics of U, V, W	375

LIST OF FIGURES

Figure	Title of Figure	Page No.
Figure 8.1	Mean, Median, and Standard Deviation of x_0, $y_{0,}$ z_0	365
Figure 8.2	Mean, Median, and Standard Deviation of x, y, z	367
Figure 8.3	Mean, Median and Standard Deviation of X, Y, Z	370
Figure 8.4	Mean, Median and Standard Deviation of X_1, Y_1, Z_1	373
Figure 8.5	Mean, Median, and Standard Deviation of U, V, W	375
Figure 9.4	Frequency of Highest Violated and Interpreted Cases	390

LIST OF CASES

Nepalese Cases	Page No.
Aarati Shrestha v. GoN, OPMCM (2009) (NKP 2066, Vol. 9, DN. 8215).	272-73
Adv. Bishnu Prasad Ghimire v. Federal Parliament, Kathmandu (2022) (NKP (C.B) 2079, Vol. 1, DN. 0027).	2
Adv. Achyut Prasad Kharel v. Ministry of Law, Justice and Parliamentary Affairs, Kathmandu (2009) (NKP 2066, Vol. 5, DN. 8138).	272
Adv. Anil Kumar Sinha v. OPMCM (2009) (NKP 2066, Vol. 3, DN. 8092).	310
Adv. Jyoti Poudel v. GoN, OPMCM (2009) (NKP 2066, Vol. 11, DN. 8282).	273
Adv. Kamal Prasad Bhusal on behalf of Mahesh Thapa v. Rupandehi District Court (2021) (NKP 2078, Vol. 10, DN. 10752).	292
Adv. Om Prakash Aryal v. GoN, OPMCM (2008) (NKP 2065, Vol. 9, DN. 8009).	271
Adv. Prakash Mani Sharma v. OPMCM (2010) (NKP 2067, Vol. 6, DN. 8386).	313
Adv. Raju Prasad Chapagain v. GoN, OPMCM (2016) (NKP 2073, Vol. 2, DN. 9547).	292
Adv. Ratna Bahadur Bagchand v. HMG, OPMCM (2005) (NKP 2062, Vol. 2, DN. 7491).	2, 271
Adv. Surya Bahadur Pandey v. GoN, OPMCM (2014) (NKP 2071, Vol. 11, DN. 9276)	273
Adv. Tikaram Bhattarai, Rapporteur: Supreme Court, Cases and Writs Division (2020) (NKP 2077, Vol. 2, DN. 10429).	274
Amit Kumal v. GoN (2021) (NKP 2078, Vol. 11, DN. 10774).	269
Arjun Raya on behalf of Jageshwor Raya Yadav v. Dinesh Singh Bhumihar (2009) (NKP 2066, Vol. 10, DN. 8236).	312
Arjun Thapa v. Kathmandu District Court (2010) (NKP 2067, Vol. 12, DN. 8516).	291
Arun Shrestha v. Kathmandu District Court (2020) (NKP 2077, Vol. 3, DN. 10465).	292

Badri Khatri v. GoN (2014) (NKP 2071, Vol. 6, DN. 9186). 298
Bajrang Chaitanya Bramhachari v. HMG, District Police Office, Dhanusha (2021) (NKP 2078, Vol. 2,3,4 DN. 4258). 290
Bal Krishna K.C. v. District Police Office, Dailekh (2010) (NKP 2067, Vol. 9, DN. 8459). 153
Bhairav Khanal v. HMG, Special Police Department (1977) (NKP 2034, Vol. 1, DN. 1057). 309
Bhawani Rajbanshi v. GoN (2021) (NKP 2078, Vol. 12, DN. 10797). 287
Bhim Bahadur Pokhrel v. HMG (2006) (NKP 2063, Vol. 4, DN. 7682). 297
Birman Lungelli (Magar) v. GoN (2012) (NKP 2069, Vol. 6, DN. 8853). 137
Bishnu Adhikari v. GoN (2006) (NKP 2063, Vol. 2, DN. 7652). 2, 5, 297
Bom Bahadur Khatri v. GoN (2018) (NKP 2075, Vol. 5, DN. 10019). 307
Brish Bahadur Rai v. GoN, Ministry of Education (2010) (NKP 2067, Vol. 10, DN. 8481). 303
Chiranjibi Lal Marwadi v. SP Tek Bahadur Rayamajhi (1958) (NKP 2015, Vol. 2, DN. 9). 288
Choti Chauwain on behalf of Trijugi Narayan Mishra v. Zonal Office (1969) (NKP 2026, Vol. 1, DN. 513). 270
Durga Bahadur Basnet v. GoN (2012) (NKP 2069, Vol. 6, DN. 8839). 306
Gagan Singh Pun v. HMG (1998) (NKP 2055, Vol. 2, DN. 6514). 282
Gajendra Raj Devkota v. SP Tek Bahadur Rayamajhi (1960) (NKP 2017, Vol. 7, DN. 112). 288
GoN v. Anjan K.C. (2020) (NKP 2077, Vol. 6, DN. 10523). 268
GoN v. Ashok Shrestha (2019) (NKP 2076, Vol. 1, DN. 10165). 300
GoN v. Bashu Chaudhary (2021) (NKP 2078, Vol. 9, DN. 10736). 269
GoN v. Bel Bahadur Thapa Magar (2010) (NKP 2068, Vol. 6, DN. 8629). 305
GoN v. Bishnu Kumar Yakhkha Rai (2019) (NKP 2076, Vol. 4, DN. 10246). 267
GoN v. Chatra Bahadur Bhandari (2017) (NKP 2074, Vol. 5, DN. 9810). 266
GoN v. Dipak Gurung (2020) (NKP 2077, Vol. 2, DN. 10443). 300
GoN v. Durga Karki (2015) (NKP 2072, Vol. 8, DN. 9452). 264

GoN v. Ganesh Bahadur Karki (2016) (NKP 2073, Vol. 3, DN. 9552). 298
GoN v. Gita Bahadur Thapa (2007) (NKP 2064, Vol. 8, DN. 7868). 304
GoN v. Gulab Miya (alias Munna Miya Ansari) (2019) (NKP 2076, Vol. 9, DN. 10361). 307
GoN v. Indra Bahadur Nepali (2012) (NKP 2069, Vol. 5, DN. 8826). 263
GoN v. Indra Raj Humagain (2016) (NKP 2073, Vol. 7, DN. 9645). 284
GoN v. Ishor Prasad Pokharel (2009) (NKP 2066, Vol. 8, DN. 8200). 121
GoN v. Keshav Giri (2020) (NKP 2077, Vol. 8, DN. 10565). 268
GoN v. Kumar Thapaliya (2007) (NKP 2064, Vol. 9, DN. 7884). 305
GoN v. Lok Bahadur Bishwa (alias Bikash) (2013) (NKP 2070, Vol. 11, DN. 9075). 283-84
GoN v. Mahendra Gautam (2017) (NKP 2074, Vol. 1, DN. 9751). 266
GoN v. Muna Magar Meche (2020) (NKP 2077, Vol. 10, DN. 10596). 269
GoN v. Narayan Poudel Khatri (alias Ravin) (2011) (NKP 2068, Vol. 2, DN. 8564). 283
GoN v. Prashu Ram Pokhrel (2017) (NKP 2074, Vol. 1, DN. 9750). 265
GoN v. Prakash Ojha (2016) (NKP 2073, Vol. 6, DN. 9621). 299
GoN v. Prem Bahadur Kunwar (2016) (NKP 2073, Vol. 7, DN. 9632). 284
GoN v. Pushpa Tamang (2016) (NKP 2073, Vol. 7, DN. 9643). 265
GoN v. Raj Kumar Murau (2020) (NKP 2077, Vol. 9, DN. 10566). 308
GoN v. Rajesh Tamang (2021) (NKP 2078, Vol. 11, DN. 10770). 269
GoN v. Raju Lal Rajbhandari (2020) (NKP 2077, Vol. 5, DN. 10490). 268
GoN v. Raju Lama (2014) (NKP 2071, Vol. 5, DN. 9164). 264
GoN v. Raju Thapa (2016) (NKP 2073, Vol. 11, DN. 9707). 285
GoN v. Ravi Krishna Joshi (2010) (NKP 2067, Vol. 8, DN. 8428). 305
GoN v. Rubi Joshi (2016) (NKP 2073, Vol. 5, DN. 9608). 284
GoN v. Shankar Bishwokarma (2012) (NKP 2069, Vol. 6, DN. 8844). 306
GoN v. Shova Badi (2019) (NKP 2076, Vol. 5, DN. 10274). 286
GoN v. Sidhartha International Trade Concern (2010) (NKP 2067, Vol. 9, DN. 8465). 118
GoN v. Soharat Kha Pathan (2018) (NKP 2075, Vol. 7, DN. 10049). 300

GoN v. Sunny Maharjan (2018) (NKP 2075, Vol. 7, DN. 10043). 286
GoN v. Tara Prasad Devkota (2009) (NKP 2066, Vol. 10, DN. 8254). 263
GoN v. Tarun Kumar Gupta (2017) (NKP 2074, Vol. 10, DN. 9884). 306
GoN v. Tasi B.K. (2016) (NKP 2073, Vol. 1, DN. 9519). 2, 298
GoN v. Tek Bahadur Chhetri (2009) (NKP 2066, Vol. 5, DN. 8142). 2, 298
GoN v. Thag Bahadur Sunar (2018) (NKP 2075, Vol. 9, DN. 10090). 267
GoN v. Trilok Kumar Yadav (2018) (NKP 2075, Vol. 7, DN. 10060). 267
GoN v. Upendra Mukhiya Bin (2021) (NKP 2078, Vol. 7, DN. 10701). 287
GoN v. Yadav Dawadi (2009) (NKP 2066, Vol. 6, DN. 8178). 262-63
GoN v. Yagya Bahadur Thapa (2012) (NKP 2069, Vol. 2, DN. 8764). 263
GoN, Finance Ministry v. Surya Tobacco Company Limited (2009) (NKP 2066, Vol. 9, DN. 8214). 312
Harendra Narayan Dev v. GoN (2019) (NKP 2076, Vol. 6, DN. 10279). 286
Hari Prasad Kharel v. Bhadra Prasad Kharel (2005) (NKP 2062, Vol. 1, DN. 7480). 277
Hira Pasi v. HMG (1971) (NKP 2028, Vol. 1, DN. 612). 279
HMG v. Chandra Vijay Shah (1988) (NKP 2045, Vol. 10, DN. 3603). 295
HMG v. Dinu Ram Wali Magarni (1987) (NKP 2044, Vol. 9, DN. 3205). 295
HMG v. Gopal Prasad Upadhayay (1962) (NKP 2019, Vol. 10, DN. 163). 279
HMG v. Hem Bahadur Malla Thakuri (1993) (NKP 2050, Vol. 7, DN. 4767). 260
HMG v. Kailash Mahato (2000) (NKP 2057, Vol. 4, DN. 6883). 282
HMG v. Kedar Chandra Khanal (2006) (NKP 2063, Vol. 6, DN. 7712). 262
HMG v. Kirti Bahadur Chand (alias Dambar Bahadur) (2002) (NKP 2059, Vol. 3/4, DN. 7070) 261
HMG v. Krishna Bahadur Magar (1978) (NKP 2035, Vol. 1, DN. 1158). 280
HMG v. Krishna Gopal Mali (1989) (NKP 2046, Vol. 2, DN. 3734). 281
HMG v. Lok Man Singh Karki (1999) (NKP 2056, Vol. 8, DN. 6764). 261
HMG v. Rajesh Lama (alias Raghu) (2005) (NKP 2062, Vol. 4, DN. 7525). 282
HMG v. Reshami Malahini (1978) (NKP 2035, Vol. 1, DN. 1211). 280

HMG v. Shree Lal Adhikari Danuwar (1997) (NKP 2054, Vol. 2, DN. 6321). 281
HMG v. Tika Giri (alias Suntale) (2005) (NKP 2062, Vol. 11, DN. 7623). 304
Indra Bahadur Gurung v. Revenue Tribunal, Kathmandu (1993) (NKP 2050(a), Vol. 2, DN. 4697). 275-76
Ishwori Rishi Dev v. GoN (2017) (NKP 2074, Vol. 6, DN. 9826). 300
Jay Prasad v. Tek Bahadur (1958) (NKP 2015, Vol. 2, DN. 5). 278
Jit Kumari Pangeni (Neupane) v. OPMCM (2008) (NKP 2065, Vol. 6, DN. 7973). 290-91
Kali Bahadur Adhikari v. HMG (1992) (NKP 2049, Vol. 3, DN. 4489). 281
Kamala Hamal v. Land Reform Office, Bardiya (2007) (NKP 2064, Vol. 10, DN. 7890). 293
Kamala Rani Yadav v. Janakpur Cigarette Factory Limited (2009) (NKP 2066, Vol. 3, DN. 8106). 312
Kamaleshwor Upadhyay v. Ambika Devi Brahamani (1984) (NKP 2041, Vol. 11, DN. 2194). 281
Kameshwor Jha Maithali Brahman v. Akshyalal Raut (1959) (NKP 2016, Vol. 4, DN. 18). 278
Kanchha Prajapati v. Nutchhe Kumar Prajapati (1991) (NKP 2048, Vol. 9/10, DN. 4350). 275
Kaushal Gyawali v. Nepal Industrial Development Corporation (2004) (NKP 2061, Vol. 5, DN. 7378). 311-12
Kenneth Joseph Coombs v. GoN (2021) (NKP 2078, Vol. 11, DN. 10772). 287
Keshar Bahadur Mahat Chhetri v. Minor Shyam Kumar Putwar on the behalf of Man Kumari (1961) (NKP 2018, Vol. 6, DN. 148). 311
Keshav Chandra Gautam v. HMG (1965) (NKP 2022, Vol. 1, DN. 279). 279
Kul Bahadur Karki v. GoN (2019) (NKP 2076, Vol. 4, DN. 10244). 267
Lakpa Sherpa v. GoN (2016) (NKP 2073, Vol. 9, DN. 9684). 285
Lal Bahadur Karki v. HMG, Ministry of Land Reform (1990) (NKP 2047, Vol. 2, DN. 4069). 150-51

Lekhnath Prasad Yadav (alias Chulwa) v. District Police Office Siraha (2017) (NKP 2074, Vol. 12, DN. 9905). 274

Lila Raj Gautam v. GoN (2012) (NKP 2069, Vol. 2, DN. 8770). 283

Lok Bhakta Shamsher Ja. Ba. Ra. v. Rama Devi Rajbhandari (1998) (NKP 2055, Vol. 11, DN. 6625). 276

Megh Bahadur Pakha Rai v. HMG (1961) (NKP 2018, Vol. 7, DN. 156). 278

Molhuysen Hendrik Otto v. GoN (2012) (NKP 2069, Vol. 7, DN. 8860). 5, 264

Mrigendra Bahadur Pradhananga on behalf of Adv. Gajendra Bahadur Pradhananga v. Kathmandu Magistrate Balram Pyakurel (1965) (NKP 2022, Vol. 1, DN. 295). 308-09

Mukti Sharma v. SP Tek Bahadur Rayamajhi, Special Police Department (1960) (NKP 2017, Vol. 6, DN. 108). 301

Nanda Devi Joshi v. GoN (2012) (NKP 2069, Vol. 1, DN. 8760). 283

Niyamul Banjara Musalman v. GoN (2007) (NKP 2064, Vol. 11, DN. 7893). 5, 297

Omkar Prasad Shrestha v. Jailer, Central Jail Office, Kathmandu (1971) (NKP 2028, Vol. 1, DN. 606). 289

Padam Sundar v. HMG (1958) (NKP 2015, Vol. 2, DN. 10). 278

Parshuram Banjade v. Durga Das Shrestha, Bagmati Special Court, Kathmandu (1970) (NKP 2027, Vol. 1, DN. 547). 309

Pashupati Giri v. Central Regional Court (1975) (NKP 2032, Vol. 1, DN. 916). 289

Pradip Pratap Bom Malla v. OPMCM (2006) (NKP 2063, Vol. 8, DN. 7744). 312

Pramila Rai (Shrestha) v. GoN (2011) (NKP 2068, Vol. 10, DN. 8697). 1, 305

Prem Bahadur Pandey v. Bhaktapur District Court (2021) (NKP 2078, Vol. 10, DN. 10767) 292-93

Purna Kumar Ji Shrestha v. HMG (1981) (NKP 2038, Vol. 4, DN. 1461) 294-95

Rabindra Shrestha v. GoN, Ministry of Health and Population (2016) (NKP 2073, Vol. 2, DN. 9538). 277

Rajaram Basnet (alias Lok Bahadur) v. District Court Saptari (1990) (NKP 2047, Vol. 2, DN. 4075). 290

Rajendra Maharjan v. GoN (2006) (NKP 2063, Vol. 11, DN. 7788). 262

Raju Basnet v. GoN (2006) (NKP 2063, Vol. 3, DN. 7666). 262

Ram Bahadur Khadka v. DSP Office, Kathmandu (1970) (NKP 2027, Vol. 1, DN. 545). 309

Ram Prasad Sitaula v. Timber Cooperation of Nepal, Babarmahal (2007) (NKP 2064, Vol. 2, DN. 7816). 309-10

Ram Prasad Sitaula v. GoN (2007) (NKP 2064, Vol. 9, DN. 7878). 151-52

Ramashish Prasad Shah v. HMG, OPMCM (1984) (NKP 2041, Vol. 1, DN. 1885). 311

Ram Chandra Rauniyar v. HMG (1975) (NKP 2032, Vol. 1, DN. 949). 280

Rameshman Sthapit v. Tribhuwan University Security Guard Office Gaucharan (1992) (NKP 2049, Vol. 1, DN. 4450). 302

Rameshwor Neupane on behalf of Pradip Thapa v. District Administration Office, Kathmandu (2008) (NKP 2065, Vol. 9, DN. 8015). 291

Rameshwor Shrestha v. GoN (2017) (NKP 2074, Vol. 2, DN. 9765). 266

Ram Prasad Rai v. Milprasad Rai (1995) (NKP 2052, Vol. 3, DN. 5077). 260-61

Ratna Prasad Shakya v. HMG (1978) (NKP 2035, Vol. 1, DN. 1167). 280

Rishi Dangol v. Jailor, Central Jail Office, Kathmandu (1974) (NKP 2031, Vol. 1, DN. 838). 289

Rita Dahal on behalf of Sujan Mendij v. District Office Lalitpur (1983) (NKP 2040, Vol. 6, DN. 1678). 290

Rolash Thapa v. Kathmandu District Court (2013) (NKP 2070, Vol. 6, DN. 9019). 291

Sangaratna Tuladhar v. HMG, Special Police Department (1965) (NKP 2022, Vol. 1, DN. 300). 288-89

Sarita Basnet v. Shahi Nepal Airlines Cooperation, Kathmandu (2008) (NKP 2065, Vol. 2, DN. 7937). 310

Sharada Ghimire v. Bhagwati Phyual (2013) (NKP 2070, Vol. 3, DN. 8985). 293-94

Sharmila Parajuli v. HMG, OPMCM (2004) (NKP 2061, Vol. 10, DN. 7449). 270-71

Shashikanta Tiwari v. Armed Police Force Safety Base Camp (2017) (NKP 2074, Vol. 7, DN. 9834). 274
Shesh Abdul Hadi v. HMG (2005) (NKP 2062, Vol. 12, DN. 7630). 296
Sheshnath Prasad Kurmi v. Makbul Ahamad (1989) (NKP 2046, Vol. 2, DN. 3719). 303
Shivam Cement Limited v. Nepal Electricity Authority (2019) (NKP 2076, Vol. 4, DN. 10232). 294
Shree Krishna Shrestha v. Office of Zonal Officer Bagmati (1971) (NKP 2028, Vol. 1, DN. 599). 289
Shree Ram Tripathi v. GoN (2016) (NKP 2073, Vol. 6, DN. 9619). 299
Siddhanta Rajyalaxmi Shah on the behalf of Rishikesh Shah v. Bagmati Zonal Office, Kathmandu (1969) (NKP 2026, Vol. 1, DN. 526). 302
Sonu Halwai v. GoN (2018) (NKP 2075, Vol. 6, DN. 10028). 307
Subash Newang v. HMG (1979) (NKP 2036, Vol. 1, DN. 1312). 281
Suk Bahadur Kumal v. GoN (2008) (NKP 2065, Vol. 5, DN. 7968). 297
Suman Pahari v. GoN (2017) (NKP 2074, Vol. 4, DN. 9801). 300
Suman Shahi v. GoN (2017) (NKP 2074, Vol. 4, DN. 9792). 285
Sunita Kumari Gautam (Batala) on behalf of Govinda Bahadur Batala 'Jeebit' v. OPMCM (2011) (NKP 2068, Vol. 6, DN. 8638). 154
Suresh Lama v. HMG (2005) (NKP 2062, Vol. 7, DN. 7571). 304
Tara Bahadur Basnet v. GoN (2018) (NKP 2075, Vol. 6, DN. 10025). 307
Tara Raj Bhandari v. GoN (2008) (NKP 2065, Vol. 6, DN. 7974). 2
Tiger Tops Pvt. Ltd. v. HMG, Finance Ministry (2000) (NKP 2057, Vol. 5, DN. 6900). 282
Top Bahadur Khadka Chhetri v. HMG (1973) (NKP 2030, Vol. 1, DN. 776). 280
Umakanta Lal Kayasta on behalf of Charitra Jogi v. Saptari Goshawar Assistant Section Officer Bal Krishna Shrestha (1965) (NKP 2022, Vol. 1, DN. 281). 308
Uttam Lama v. HMG (2004) (NKP 2061, Vol. 9, DN. 7432). 261-62
Wangchen Lama v. HMG (1990) (NKP 2047, Vol. 7, DN. 4178). 296

Indian Cases

Harendra Nath v. Sailendra Krishan Saha, AIR 1967 Cal 185.	125
Laxmandas Pranchand v. Union of India, (1998) 234 ITR 261 (MP).	124
M. Narsinga Rao v. State of Andhra Pradesh, (2001) 1 SCC 691.	243-45
Maqbool Hussain v. State of Bombay, AIR 1953 SC 325.	149
Moti Singh v. State of Uttar Pradesh, AIR 1964 SC 900.	139
Motibhai Fulabhai Patel v. M/S. R. Prasad, (1969) 2 SCR 580.	239-40
Rewaram v. State of Madhya Pradesh, (1978) CRILJ 858, 32.	139-40
Roshan Lal v. State of Punjab, AIR 1965 SC 1413.	150
State of Rajisthan v. Vinod Kumar, (2012) 6 SCC 770.	245-47
Subash Parbat Sonvane v. State of Gujarat, (2002) 5 SCC 86.	241-43

UK Cases

Cooke v. Director of Public Prosecutor, (2008) EWHC 2703.	134
Knuller v. DPP, (1973) AC 435.	221-22
R v. Greaves, (2010) EWCA Crim. 709.	144
Regina v. Jones, (2007) 1 AC 136 (UKHL).	225-28
Regina v. Rimmington and Goldstein, (2006) 1 AC 459 (UKHL).	223-25
Shaw v. DPP, (1962) AC 220 (UKHL).	74
Smith v. Hughes, (1960) 1 WLR 830 (UKHL).	20
Thet v. DPP, (2006) EWHC 2701 (UKHL).	228-30
Tuck v. Priester, (1887) 19 QBD 629 (UKHL).	123, 125

USA Cases

Abuelhawa v. United States, 556 U.S. 816 (2009).	237-39
Connally v. General Construction Co, 269 U.S. 385 (1926).	230-32
State of Louisiana v. Freddie Daniels, 109 So. 2d 896 (1958).	235-37
USA v. Wiltberger, 18 U.S. 76 (1820).	232-35

Hongkong Cases

HKSAR v. Iu Wai Shun, (2008) 1 HKC 79. 143

HKSAR v. Kwok Shiu To, (2006) 2 HKLRD 272. 143

HKSAR v. Ngai Yiu Ching, (2011) 5 HKLRD 690. 143

Singapore Cases

Kanagasuntharam v. Public Prosecutor, (1991) 2 SLR(R) 874. 144

Maideen Pillai v. Public Prosecutor, (1995) 3 SLR(R) 706. 144

Mohamed Shouffee bin Adam v. Public Prosecutor, (2014) SGHC 34. 144-45

Public Prosecutor v. Law Aik Meng, (2007) 2 SLR(R) 814. 144

ICC and International Criminal Tribunal Cases

Prosecutor v. Milutinovic, Šainovic and Ojdanic, Desicion on Dragoljub Ojdanic's Motion Challenging Jurisdiction, IT-99-37-AR72 (Int'l Crim. Trib. for the Former Yugoslavia May 21, 2003). 161

Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06-2842, Judgment (Mar. 14, 2012) (ICC). 200-04

I.C.J. Cases

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, 2015 (I) I.C.J. Reports 45-46. 207

Case Concerning Certain Iranian Assets (Iran v. USA), Preliminary Objections, Judgment, 2019 I.C.J. Reports 44. 209

Case Concerning United States Diplomatic and Consular Staff in Tehran (USA v. Iran), Judgment, 1980 I.C.J. Reports. 208

Jadhav (India v. Pakistan), Judgments, 2019 I.C.J. Reports 418. 205-13

ECtHR Cases

Kokkinakis v. Greece, App. No.14307/88, (May 25, 1993). 216-21

Streletz, Kessler and Krenz v. Germany, App. No. 34044/96, 35532/97 and 44801/98 (Mar. 22, 2001). 213-16

Sunday Times v. UK, 2 Eur. Ct. H.R. 245 (1997). 130

TABLE OF CONTENTS

CERTIFICATION i

DECLARATION ii

LETTER OF RECOMMENDATION iii

PREFACE iv

ACKNOWLEDGEMENTS vi

LIST OF ACRONYMS ix

LIST OF ABBREVIATIONS x

LIST OF SYMBOLS xv

FOLDER xv

THEME xv

VARIABLES xvi

WORKING DEFINITIONS xviii

LIST OF TABLES xix

LIST OF FIGURES xxi

LIST OF CASES xxii

Nepalese Cases xxii

Indian Cases xxx

UK Cases xxx

USA Cases xxx

Hongkong Cases xxxi

Singapore Cases xxxi

ICC and International Criminal Tribunal Cases xxxi

I.C.J. Cases xxxi

ECtHR Cases xxxii

CHAPTER I: INTRODUCTION 1

1.1 INTRODUCTION OF THE STUDY 1

1.2 STATEMENT OF PROBLEM 4

1.3 RESEARCH QUESTIONS 6
1.4 OBJECTIVES OF THE STUDY 7
1.5 HYPOTHESIS 8
1.6 SIGNIFICANCE OF THE STUDY 8
1.7 SCOPE OF THE STUDY 9
1.8 METHODOLOGY OF THE STUDY 9
1.8.1 Research Design 9
1.8.2 Nature and Sources of Data 12
1.8.3 Universe, Population and Sampling 13
1.8.4 Tools and Techniques of Data Collection 13
1.8.5 Data Analysis and Presentation 15
1.8.6 Hypothesis Testing 16
1.8.7 Time Schedule 16
1.8.8 Style Guidelines 16
1.9 REVIEW OF LITERATURE 17
1.9.1 Books Relating to Criminal Law 18
1.9.2 Books Relating to Interpretation of Statutes 28
1.9.3 Books Relating to Judges and Court 31
1.9.4 Peer-Reviewed Articles and Testimony by International Authors 34
1.9.5 Peer-Reviewed Articles by National Authors 45
1.9.6 International Research Reports 52
1.9.7 National Research Reports 53
1.10 LIMITATIONS OF STUDY 57
1.11 ORGANIZATION OF THE STUDY 58
CHAPTER II: HISTORICAL DEVELOPMENT AND THEORETICAL BACKUP OF LIMITATION PRINCIPLE 61
2.1 HISTORICAL DEVELOPMENT 61
2.1.1 Origin 61
2.1.2 Setbacks during Totalitarianism 62
2.1.3 Universal Acceptance after 1945 63
2.2 THEORETICAL BACKUP OF LIMITATION PRINCIPLE 64
2.2.1 Guarantee of Individual Liberties against State Arbitrariness 65
2.2.3 Democracy and Separation of Powers 68
2.2.4 Purposes of Criminal Law 71

2.3 DELAMINATING PROBLEM 72
2.3.1 Conflict between Non-Retroactivity Principle and the Common Law 73
2.4 EASTERN JURISPRUDENCE ON JUSTICE ADMINISTRATION 76
2.4.1 Introduction: Oriental and Hindu Law 76
2.4.2 Smriti 80
2.4.3 Niti 92
2.4.4 Dhamma Verse 108
2.4.5 Assessment 111
CHAPTER III: PRINCIPLES THAT LIMIT THE COURT TO CRIMINALIZE 114
3.1 PRINCIPLE OF LEGALITY 116
3.1.1 Overview 116
3.1.2 Basic Substances 116
3.1.3 Final Remarks 119
3.2 NON-RETROACTIVITY PRINCIPLE 119
3.2.1 Overview 119
3.2.2 Basis Substances 120
3.2.3 Final Remarks 122
3.3 STRICT RULE OF CONSTRUCTION 122
3.3.1 Overview 122
3.3.2 Basis Substances 123
3.3.3 Final Remarks 124
3.4 CASUS OMISSUS 124
3.4.1 Overview 124
3.4.2 Basic Substances 124
3.4.3 Final Remarks 126
3.5 PRESUMPTION OF INNOCENCE 126
3.5.1 Overview 126
3.5.2 Basic Substances 127
3.5.3 Final Remarks 128
3.6 THE PRINCIPLE OF CERTAINTY (NULLUM CRIMEN SINE LEGE CERTA) 129
3.6.1 Overview 129
3.6.2 Basis Substances 129
3.6.3 Final Remarks 131

3.7 THE INTERDICTION OF ANALOGY (*nullum crimen sine lege stricta*) 131
3.7.1 Overview 131
3.7.2 Basic Substances 132
3.7.3 Final Remarks 132
3.8 PRINCIPLE OF INDIVIDUAL AUTONOMY 133
3.8.1 Overview 133
3.8.2 Basic Substances 133
3.8.3 Final Remarks 135
3.9 THE PRINCIPLE OF FAIR LABELLING 135
3.9.1 Overview 135
3.9.2 Basic Substances 135
3.9.3 Final Remarks 136
3.10 THE CAUSATION PRINCIPLE 137
3.10.1 Overview 137
3.10.2 Basic Substances 137
3.10.3 Final Remarks 140
3.11 THE TRANSACTION PRINCIPLE 141
3.11.1 Overview 141
3.11.2 Basic Substances 141
3.11.3 Final Remarks 142
3.12 ONE TRANSACTION RULE 143
3.12.1 Overview 143
3.12.2 Basic Substances 143
3.12.3 Final Remarks 145
3.13 PRINCIPLE OF DOUBLE JEOPARDY 145
3.13.1 Overview 145
3.13.2 Basic Substances 146
3.13.3 Concluding Remarks 155
CHAPTER IV: PROVISIONS THAT LIMIT THE COURT IN CRIMINAL CASES ... 156
4.1 INTERNATIONAL LAWS 157
4.1.1 UDHR, ICCPR and ECHR 157
4.1.2 Charter of Fundamental Rights of the European Union (CFREU), 2000 162
4.1.3 The Rome Statute, 2002 163
4.1.4 African Charter on Human and Peoples' Rights (ACHPR), 1981 165

4.1.5 Arab Charter on Human Rights (ArCHR), 2004 166
4.1.6 Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention) 168
4.1.7 Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) 169
4.1.8 American Convention on Human Rights (ACHR), 1978 171
4.1.9 Convention on the Rights of the Child (CRC) 172
4.2 NEPALESE LEGAL PROVISIONS 173
4.2.1 Muluki Criminal Code, 2074 (2017) 173
4.2.2 Constitution of Nepal 178
4.3 TREATY OBLIGATION: VIENNA CONVENTION ON THE LAW OF TREATIES AND NEPAL TREATY ACT 186
4.3.1 Vienna Convention on the Law of Treaties, 1969 186
4.3.2 Nepal Treaty Act, 2047 (1990) 189
4.4 MODEL CRIMINAL CODE, 2007 192
4.4.1 Background Introduction 192
4.4.2 Model Criminal Code Structural Info 194
4.4.3 Model Criminal Code 194
CHAPTER V: INTERNATIONAL JUDICIAL DECISIONS 199
5.1 INTRODUCING DATA 199
5.2 DECISIONS OF INTERNATIONAL COURTS 200
5.2.1. Decision of International Criminal Court (ICC) 200
5.2.2 Decisions of International Court of Justice (I.C.J.) 205
5.2.3 Decisions of European Court of Human Rights (ECtHR) 213
5.3 FOREIGN SUPREME COURTS' DECISIONS 221
5.3.1 United Kingdom 221
5.3.2 United States of America 230
5.3.3 India 239
5.4 CONCLUDING OBERVATIONS 247
CHAPTER VI: SUPREME COURT CASES RELATING TO INTERPRETATIONAL LIMITATIONS 251
6.1 INTRODUCING DATA: UNIVERSE, POPULATION AND SAMPLING 251
6.2 DATA: POPULATION AND SAMPLE 252
6.2.1 Population Collected and Clustered 252

6.2.2 Sample Selected and Studied 255
6.3 CASES INTERPRETING LIMITATIONS OF THE COURT 260
6.3.1 Criminal Cases Interpreting Limitations of the Court 260
6.3.2 Writs Interpreting Limitations of the Court in Criminal Cases 270
6.3.3 General Cases Interpreting Limitations of the Court in Criminal Cases 275
6.4 CASES ASSIMILATING LIMITATIONS OF COURT 277
6.4.1 Criminal Cases Assimilating Limitations of the Court 277
6.4.2 Writs Assimilating Limitations of the Court in Criminal Cases 288
6.4.3 General Cases Assimilating Limitations of the Court in Criminal Cases 293
6.5 CASES VIOLATING LIMITATIONS OF COURT 294
6.5.1 Criminal Cases Violating Limitations of the Court 294
6.5.2 Writs Violating Limitations of the Court in Criminal Cases 301
6.5.3 General Cases Violating Limitations of the Court in Criminal Cases 303
6.6 CASES RELATING TO GENERAL INTERPRETATION OF STATUTES 304
6.6.1 Criminal Cases Relating to General Interpretation of Statutes 304
6.6.2 Writs Relating to General Interpretation of Statutes 308
6.6.3 General Cases Relating to Interpretation of Statutes 310
CHAPTER VII: DATA ANALYSIS 314
7.1 THE PRINCIPLES AND PROVISIONS 314
7.1.1 Analysis of the Principles Studied 314
7.1.2 Analysis of the Provisions Studied 319
7.2 INTERNATIONAL JUDICIAL DECISIONS 333
7.2.1 The Crux of the Limitations Explained in the Decisions 333
7.2.2 The Limitations Explained in the Decisions Analysed 338
7.3 DECISIONS OF SUPREME COURT OF NEPAL 341
7.3.1 Population Demographics Analysis 341
7.3.2 Sample Selection Analysis 341
7.4 COMPARATIVE ANALYSIS 345
7.4.1 Comparative Analysis of the Decisions of Supreme Court of Nepal 345
7.4.2 Comparing the Decisions of Supreme Court of Nepal with the Principles, Provisions and International Practices 359
CHAPTER VIII: INFERENTIAL STATISTICS AND HYPOTHESIS TESTING 363
8.1 INFERENTIAL STATISTICS 363
8.1.1 Quantitative Analysis of x_0, y_0, and z_0 Thematic Variables 363

8.1.2 Quantitative Analysis of x, y, and z Thematic Variables 366
8.1.3 Quantitative Analysis of X, Y, and Z Thematic Variables.....368
8.1.4 Quantitative Analysis of X_1, Y_1, Z_1 Thematic Variables.....371
8.1.5 Quantitative Analysis of U, V, W Thematic Variables 373
8.2 CORRELATION ANALYSIS BETWEEN VARIABLES 376
8.2.1 Correlation of Variable (x_0, y_0, z_0) and Variable (x, y, z).....376
8.2.2 Correlation of Variable (x_0, y_0, z_0) and Variable (X, Y, Z) 376
8.2.3 Correlation of Variable (X, Y, Z) and Variable (X_1, Y_1, Z_1).....376
8.2.4 Correlation of Variable (X, Y, Z) and Variable (U, V, W) 377
8.2.5 Correlation of Variable Z and Variable W: 377
8.3 HYPOTHESIS TESTING.....378
8.3.1 Chi-Square Tests between Variable (x_0, y_0, z_0) and Variable (x, y, z) 379
8.3.2 Chi-Square Tests between Variable (x_0, y_0, z_0) and Variable (X, Y, Z).....380
8.3.3 Chi-Square Tests between Variable (X, Y, Z) and Variable (X_1, Y_1, Z1).....381
8.3.4 Chi-Square Tests between Variable (X, Y, Z) and Variable (U, V, W).....382
8.3.5 Chi-Square Tests between Variable Z and Variable W.....383
8.4 RESULT.....384
8.4.1 Correlation Existed: 384
8.4.2 Hypothesis Accepted: 384
CHAPTER IX: FINDINGS, CONCLUSIONS AND SUGGESTIONS 385
9.1 FINDINGS: 385
1) Judicial Adherence to Principles Limiting Interpretational Flexibility in Criminal Law.....385
2) Judicial Limitations on the Interpretation of Criminal Statutes in Nepal and International Legal Obligations.....387
3) Variability in Practice to Interpretational Limitations in Nepalese Supreme Court Cases.....388
4) Variations in Judicial Interpretation in Terms of Case Basis.....389
5) Findings from the Analysis of Relationships Through Chi-Square Tests.....390
9.2 CONCLUSIONS:.....391
1) Presence of Judicial Constraints in the Interpretation of Criminal Statutes.....395
2) Variations in Judicial Practices of the Supreme Court of Nepal.....395
3) Case Basis Patterns and Case Categories.....396
4) Need for Consistency in Judicial Interpretation.....396
5) Correlation Patterns and Hypothesis Validation 397

9.3 SUGGESTIONS:.....397
1) Immediate Actions to Reform the Problems Identified 398
2) Set Controlling Mechanism.....400
3) Specialized Courts and Capacity Enhancement.....405
4) Review System.....407
5) Suggestions for Further Studies 409
BIBLIOGRAPHY.....411
APPENDICES 424
Appendix-1: Criminal Cases Relating to Interpretation of Statutes (Black).....424
I.I Cases Interpreting Limitations of Court (31) 424
I.II Cases Assimilating Limitations of Court (37) 426
I.III Cases Violating Limitations of Court (21) 428
I.IV Cases Relating to General Interpretation of Statutes (15).....429
Appendix-2: Writs Relating Interpretation of Statutes (Red).....431
II.I Cases Interpreting Limitations of Court (11).....431
II.II Cases Assimilating Limitations of Court (18).....432
II.III Cases Violating Limitations of Court (4).....433
II.IV Cases Relating to General Interpretation of Statutes (8).....433
Appendix-3: General Cases Relating to Interpretation of Statutes (Blue) 435
III.I Cases Interpreting Limitations of Court (5).....435
III.II Cases Assimilating Limitations of Court (3).....435
III.III Cases Violating Limitations of Court (1).....436
III.IV Cases Relating to General Interpretation of Statutes (30) 436
Appendix-4: Procedure of Calculating the Mean, Median and Standard Deviation.....439
Appendix-5: Method of Correlation Coefficient Analysis.....441
Appendix-6: Process of Chi-Square Test Performed 443

CHAPTER I

INTRODUCTION

1.1 INTRODUCTION OF THE STUDY

The thesis 'Judicial Limitations on Interpretation of Criminal Statutes (With Reference to Selected Reported Criminal Cases of Nepal)' relays to the exploration of interpretational limitations of the court in criminal cases. It examines the principles, provisions and practices that define the judicial limitations in criminal cases, with a focus on the decisions of the Supreme Court of Nepal.

In the Nepalese judicial system, the absence of distinct civil and criminal courts at all levels means that judges are responsible for handling a broad spectrum of legal issues, including general, criminal, and constitutional matters. This overlapping of responsibilities in all genre of laws has led to challenges in legal interpretation, as judges need to apply different interpretive approaches: liberal constructions for constitutional laws and strict constructions for criminal statutes.[1] This interplay often results in issues such as over-criminalization and inconsistent interpretations of criminal laws, since the same judge interprets general laws, criminal laws, and constitutional laws. The other reason might be the school of thought regarding the judge's discretion in interpretations of statutes.

Reviewing some facts about the decisions of the Supreme Court of Nepal alerts some problems. For instance, the Supreme Court of Nepal quashed the charge sheet in *Shiva Narayan Chaurasiya* (2012)[2] merely after three months when the Full Bench of the Supreme Court had convicted the defendant in *Pramila Rai Shrestha* (2011).[3] The fact of both cases were the same, submission of duplicate certificate being in position of public service. Furthermore, the issue in both cases was the same- 'time limit' for registering the charge sheet, and both benches had one common judge, i.e., Justice Tarka Raj Bhatt. In another

[1] G P SINGH, J., PRINCIPLES OF STATUTORY INTERPRETATION 932 (A K Patnaik, J., rev., 14th ed. 2016).
[2] GoN v. Shiva Narayan Chaurasiya (2012) (Crim. App. No. 067-CR-0512) (03 Magh 2068 B.S.) (17 January 2012).
[3] Pramila Rai (Shrestha) v. GoN (2011) (Crim. App. No. 067-CF-0029) (08 Kartik 2068 B.S.) (25 October 2011).

case named *Tara Raj Bhandari* (2008),[4] Supreme Court of Nepal delivered a decision without giving effect to the legislative intention construed as 'with the purpose' in the law under the Prevention of Corruption Act, 2059 (2002).[5] These instances raise the critical issue of the extent to which the court can criminalize or whether it is solely the role of the law.

Similarly, the Supreme Court in *Bishnu Adhikari* (2006)[6] *Tek Bahadur Chhetri* (2009)[7] and *Tasi B.K.* (2016)[8] has expanded the constituent element of crime in order to criminalize the defendant; and which solely contradicts with the ratio set by the Supreme Court in *Adv. Ratna Bahadur Bagchand* (2005)[9] and *Adv. Bishnu Prasad Ghimire* (2021)[10] in which the Supreme Court has clearly ruled that court cannot expand the constituent element of crime and cannot criminalize thereby doing so. This fact of variability again seeks the responsible answer how far the court can criminalize or it does have some limitations.

As per the doctrine of separation of power, it is axiomatic that the act of criminalizing human behaviour is within the legislative domain by making the law. In other words, the parliament makes laws that can only prohibit and punish human activities prospectively, and even not retrospectively.[11] The three organs of the state—legislature, executive, and judiciary—exist in separation of powers and function in checks and balances.[12] This is what the Constitution of Nepal also guarantees. It allocates the power to pass bills to the legislature,[13] and empowers the Supreme Court with the right to final interpretation of statutes[14] but 'in line with recognized principles of justice.'[15]

[4] Tara Raj Bhandari v. GoN (2012) (NKP 2065, Vol. 6, DN. 7974).
[5] Prevention of Corruption Act, 2059 (2002), § 16 (Nep.).
[6] Bishnu Adhikari v. GoN (2006) (NKP 2063, Vol. 2, DN. 7652).
[7] GoN v. Tek Bahadur Chhetri (2009) (NKP 2066, Vol. 5, DN. 8142).
[8] GoN v. Tasi B.K. (2016) (NKP 2073, Vol. 1, DN. 9519).
[9] Adv. Ratna Bahadur Bagchand v. HMG, OPMCM (2005) (NKP 2062, Vol. 2, DN. 7491).
[10] Adv. Bishnu Prasad Ghimire v. Federal Parliament, Kathmandu (2021) (NKP (C.B) 2079, Vol. 1, DN. 0027).
[11] MICHAEL T. MOLAN, CRIMINAL LAW 2 (3d ed. 2001).
[12] 4 P. RAMANATHA AIYAR, ADVANCED LAW LEXICON 5121 (6th ed. 2019).
[13] CONST. OF NEPAL, 2072 (2015), art. 111.
[14] *Id.* at art. 128.
[15] *Id.* at art. 126.

Among the recognized principles, one of the basics in criminal law is the principle of legality-*nullum crimen sine lege, nulla poena sine lege*.[16] The connotations of the principle of legality are so wide-ranging that it includes at least three distinct principles- the principle of non-retroactivity, the principle of maximum certainty, and the principle of strict construction of penal statutes.[17] The other principles such as the doctrine of *casus omissus*, the interdiction of analogy, and principle of fair labeling also limits the judge's free-play of legal construction while applying against an individual to curtail his/her rights.

In this scenario of principles in one side and court practice at another side as mentioned above in the instances of the decisions of Supreme Court of Nepal underscore the necessity for a thorough examination into the judicial limitations on the interpretation of criminal statutes in the light of standard principles, international legal provisions and established practices across the globe under various jurisdictions, thereby contributing to the establishment of a solid foundation for the interpretation of criminal law with the goal to avoid retrospective criminalization by interpretation and to foster uniformity in the decisions rendered by the Supreme Court of Nepal.

To achieve this-

a) The Researcher has conducted a comprehensive review of all reported cases spanning from 2015 B.S. to 2078 B.S. (1958 A.D. to 2021 A.D.), available on the Supreme Court website. These cases are categorized into three primary groups: (i) Reported Criminal Cases, (ii) Writs Relating to Criminal Law, and (iii) General Cases Relating to the Interpretation of Statutes. Subsequently, the Researcher has enquired into the decisions within these groups, focusing on the following key themes: (i) Cases Interpreting Limitations of Court, (ii) Cases Assimilating Limitations of Court, and (iii) Cases Violating Limitations of Court. Additionally, an exploration of cases related to the general interpretation of statutes has been undertaken to comprehend the overall strength of the Supreme Court's interpretation.

[16] The principle of legality is expressly legislated in Muluki Criminal Code, 2074 (2017) § 6, 7 (Nep.), and is constitutionally guaranteed in CONST. OF NEPAL, *supra* note 13, at art. 20(4).
[17] JEREMY HORDER, ASHWORTH'S PRINCIPLES OF CRIMINAL LAW 79 (9th ed. 2019).

b) The Researcher has reviewed a representative sample of international judicial decisions from the ICC, I.C.J. and ECtHR, along with a few judgmentally selected decisions from common law countries such as the UK, USA, and India.
c) In order to draw the formed idea about the interpretational limitations of the court in criminal cases, the Researcher has also reviewed the existing provisions in international laws as well as in the national jurisdiction and has examined various standard principles of criminal justice.

Finally, the Researcher has analysed the collected data within and comparatively, and has interpreted them in order to draw the findings.

In this way, the thesis 'Judicial Limitations on Interpretation of Criminal Statutes (With Reference to Selected Reported Criminal Cases of Nepal)' endeavours to explore the interpretational limitations while construing criminal laws. By examining Supreme Court decisions from 2015 B.S. to 2078 B.S. (1958 A.D. to 2021 A.D.), the thesis seeks to determine whether the criminalization arises from judicial interpretation or legislative provisions and to what extent the court can exercise its authority. This critical study addresses the prevailing yet underexplored issue of judicial limitations on interpretation of criminal statutes, aiming to delineate the boundaries of judicial authority in construing penal statutes.

The finding of this study would be immensely significant in several ways because it clarifies the position of the Supreme Court of Nepal regarding the interpretation of criminal laws, identifies specific problems, and offers insights to reform the deficiencies and advance the judicial practices. Ultimately, it contributes to the development of more consistent and just legal standards in Nepal, enhancing the fairness and effectiveness of the legal system.

1.2 STATEMENT OF PROBLEM

In some cases, the Supreme Court has expanded the constituent element of crime in order to criminalize the defendant:

a) In the case of *Bishnu Adhikari* (2006),[18] the Division Bench[19] of the Supreme Court held that "If it is held that there is no crime of rape until the penis enters the vagina, then the defendant may be exempted from the liability of sexual crime committed against a physically weak woman,"[20] an explanation which is contrary to the provision mentioned under No.1(c) of the Muluki Ain, Chapter on Rape which holds that 'even if there is partial penetration by a penis in the vagina, the offense under No.1 (c) is deemed to have been committed.'
b) In the case of *Niyamul Banjara Musalman* (2007),[21] the Division Bench[22] of the Supreme Court explained that "No.6 of Muluki Ain, Chapter on Theft states the elements of dacoit requires to be theft committed by a group of more than 4 persons with use of force or weapons. Considering the nature of the incident [in this case] and the number of accused present during the incident, where the incident of dacoit has been established, even less than 4 accused can be sentenced for the crime of dacoit."[23] By such decisions, the Court has openly reconstructed the elements of the dacoit.

On the other hand, the Supreme Court has clearly explained that the Court cannot expand the constituent element of crime in order to criminalize the defendant:

a) In the case of *Molhuysen Hendrik Otto* (2012),[24] the Division Bench[25] of the Supreme Court upheld that "If an act or omission is not criminalized by the prevailing criminal law, such act or omission cannot be deemed to be an offence by adopting a liberal interpretation [of the criminal law]."[26]
b) In *Adv. Ratna Bahadur Bagchand* (2005),[27] the Special Bench[28] of the Supreme Court explained the limitation of court in criminal law. In this case, the writ

[18] Bishnu Adhikari v. GoN (2006) (NKP 2063, Vol. 2, DN. 7652).
[19] Justice Anup Raj Sharma and Justice Sharada Prasad Pandit.
[20] (2006) NKP 2063, Vol. 2, DN. 7652, at ¶ 17.
[21] Niyamul Banjara Musalman v. GoN (2007) (NKP 2064, Vol. 11, DN. 7893).
[22] Justice Sharada Prasad Pandit and Justice Rajendra Prasad Koirala.
[23] (2007) NKP 2064, Vol. 11, DN. 7893, at ¶ 7.
[24] Molhuysen Hendrik Otto v. GoN (2012) (NKP 2069, Vol. 7, DN. 8860).
[25] Justice Kalyan Shrestha and Justice Gyanendra Bahadur Karki.
[26] (2012) NKP 2069, Vol. 7, DN. 8860, at ¶ 5.
[27] Adv. Ratna Bahadur Bagchand v. HMG, OPMCM (2005) (NKP 2062, Vol. 2, DN. 7491).
[28] Justice Min Bahadur Rayamajhi, Justice Khilraj Regmi and Justice Balram K.C.

petitioner claimed that the penalty for the offence of discriminatory behaviour on untouchability is inadequate thus, the petitioner claimed for an order of mandamus to increase such penalty. The Court affirmed that it is not the matter of the court to criminalize an act or define the penalty for such acts stating that "The acts of people to be criminalized and the amount of punishment for specific crime is subject to changes as per the time and circumstances of the society. It is not only contrary to legal jurisprudence but also a violation of the Constitutional separation of power and check and balance for the Court, by means of interpretation, to declare new offences and to decide whether the punishment provided by the legislature is adequate or not. Until the Parliament enacts a law relating to the abolition of untouchability, the court cannot issue an order relating to the crime of untouchability and cannot direct the legislature to extend of the punishment"[29]

This fact of variability as practiced in the judiciary of Nepal not only create confusion regarding Article 128(4) of the Constitution but also require to explore with 'the blue pencil rule'[30] that how far the court can criminalize or it does have some limitations. Thus, there is a problem. And, this quandary on interpretational limitation of court in criminal cases is still prevailing because the 'interpretational limits of court in criminal cases' has not been studied yet.

1.3 RESEARCH QUESTIONS

Based on the scenario of above-mentioned statement of problem, the Researcher has accomplished the PhD thesis with a focus on addressing the following core research questions:

1) How have interpretational limitations in criminal law evolved historically, and what are their theoretical foundations and contributions from Eastern jurisprudence in justice administration?
2) What principles are established that limit the court in criminalizing the person by expanding the constituent element of crime through its interpretation?

[29] (2005) NKP 2062, Vol. 2, DN. 7491, at ¶ 17.
[30] J. BEASTON ET AL., ANSON'S LAW OF CONTRACT 435 (29th ed. 2010).

3) How do national and international legislative provisions constrain judicial discretion in the criminalization process through the interpretation of penal statutes, and what do these provisions reveal about interpretational limitations?
4) What practices can be observed in international courts and major common law jurisdictions, such as the UK, USA, and India, concerning interpretational limitations in criminal cases, and how do they acknowledge interpretational limitations of court in criminal cases?
5) What trends are evident in the Supreme Court of Nepal's decisions regarding judicial limitations on the interpretation of criminal statutes, and how have these decisions either clarified, assimilated, or deviated from established interpretational limitations?

1.4 OBJECTIVES OF THE STUDY

The prime objective of this study is to delineate the judicial constraints in the interpretation of criminal statutes. The objectives of the study are based on above-mentioned research questions. They are as follows:

1) To explore historical evolution of interpretational limitations along with the description of its theoretical backups and eastern jurisprudence on justice administration.
2) To describe the basic principles of criminal justice system that relate into the limitation of court in criminalizing the person by interpretational expansion of penal statutes.
3) To illustrate the provisions relating to interpretational limitations of court in criminal cases as found in international laws, and also in national laws.
4) To explore a sample instance of cases practiced in international courts and in major representative common law countries including UK, USA and India, and to present scenario if they acknowledge interpretational limitations in criminal cases.
5) To analyse the trends in the Supreme Court of Nepal's decisions regarding judicial limitations on the interpretation of criminal statutes and to examine the cases where

these limitations have been interpreted, assimilated, or deviated from established interpretational constraints.

1.5 HYPOTHESIS

Criminal law cannot be construed liberally to criminalize individuals through the expansion of constituent elements of a crime. The Supreme Court of Nepal has interpreted this judicial constraint in the interpretation of penal statutes and has adequately assimilated it. However, there are instances where the Supreme Court of Nepal has deviated from this limitation by expanding the constituent elements of a crime through its interpretations, thereby violating the established constraint and resulting into varying practices.

a) Criminal law requires to be interpreted strictly, avoiding any liberal construction that broadens the elements of a crime, which is largely upheld by the Supreme Court of Nepal.
b) Deviations from this constraint have occurred, with the Supreme Court occasionally expanding elements of crime through interpretation, leading to inconsistencies in judicial practices.

1.6 SIGNIFICANCE OF THE STUDY

This study seeks to shed light on the interpretational standards employed by the Supreme Court of Nepal in criminal cases. By examining the court's adherence to, incorporation of, or deviation from established rules of interpretation, the thesis uncovers the extent to which these standards have been maintained. It also identifies instances where judges have contravened these standards, detailing the cases and frequency of such violations. This inquiry is crucial for understanding the root causes of decision variability resulting from violation of interpretational limitations in penal statutes. Ultimately, this thesis holds significance for academics, researchers, legislators, legal practitioners, and aspiring law students interested in the subject of interpretation of criminal law, offering valuable insights into the workings of the Nepalese judicial system in criminal cases.

1.7 SCOPE OF THE STUDY

This study reconnoiters the fundamental principles that constrain the court's authority to criminalize. It includes a comprehensive analysis of relevant international legal provisions, such as those found in the UDHR, ICCPR, ECHR, Rome Statute, CFREU, ACHPR, ACHR, and CRC. National legal frameworks, including the Constitution of Nepal and the MCC, are also examined. Additionally, the study includes the review of at least one key decision from international courts such as the ICC, I.C.J., and ECtHR. Sample cases from common law jurisdictions, including the UK, USA, and India, are also included for comparative analysis.

In terms of the Supreme Court of Nepal, the study systematically reviews all reported criminal cases from 2015 B.S. to 2078 B.S. (1958 A.D. to 2021 A.D.), as available on the Supreme Court's website. These cases are categorized into three groups: (a) Cases Relating to Criminal Law, (b) Writs Relating to Criminal Law, and (c) General Cases Relating to the Interpretation of Statutes. Within these groups, the cases are further analyzed based on four thematic categories: (i) Cases Interpreting Limitations of the Court, (ii) Cases Assimilating Limitations of the Court, (iii) Cases Violating Limitations of the Court, and (iv) Cases Relating to the General Interpretation of Statutes. The inclusion of the fourth category, which focuses on general statutory interpretation, aims to enhance the robustness and significance of the findings.

The collected data undergoes thorough analysis, with the study presenting its findings alongside conclusions and suggestions aimed at addressing the core research questions and contributing to the understanding of judicial limitations in the interpretation of criminal statutes in Nepal.

1.8 METHODOLOGY OF THE STUDY

1.8.1 Research Design

Based on the scope of the study, it has encompassed a doctrinal research design. The census method has been applied to gather reported criminal cases from the Supreme Court of Nepal.

From the total reported criminal cases, relevant cases have been selected judiciously. Judgmental sampling has been employed to select foreign cases, while purposive sampling has been used for studying legal provisions and existing principles.

In terms of the nature of data, the study has involved qualitative data, which has been quantified for quantitative analysis using nominal and ratio scales. Regarding the source of data, primary authorities such as statutes and case laws have been utilized. Secondary data has also been employed to explore the principles. The method of data collection has been doctrinal, focusing on the review of statutes, principles, and case laws.

The study has been exploratory, descriptive and explanatory-analytical. It has explored data, described the scenario of cases, and analytically explained the judicial exercise in criminal cases. Comparative analysis has been conducted, comparing the scenario with selected foreign decisions in the following manner:

a) Descriptive study. Focusing on the basic concepts and rationality of judicial limitations in criminal cases.
b) Exploratory study. Exploring cases and materials related to the research questions.
c) Explanatory analytical study. Analyzing cases that interpret, assimilate, or violate judicial limitations in criminal cases in Nepal.
d) Comparative study. Analyzing selected foreign cases to draw the boundaries of interpretational limitations in criminal cases.

Finally, data has been analysed using inferential statistics and interpreted through interpretative statistics, and the findings are generalized. To sum up, the study has been carried out in the following manner:

Data Collection and Study Method

Step 1:

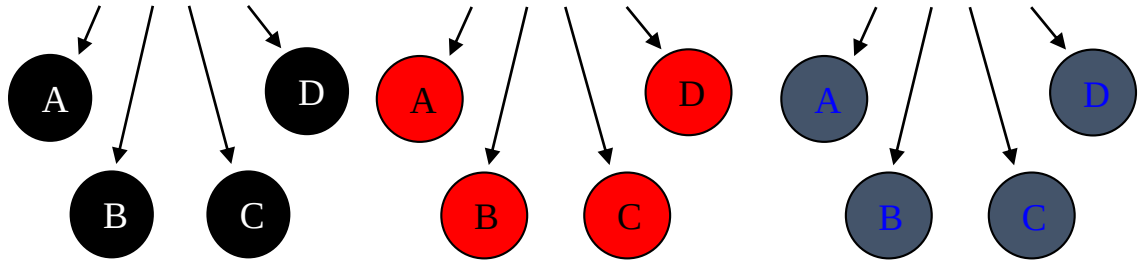
The total of Supreme Court's reported cases has been looked over and clustered under three titles:

1. Cases Relating to Criminal Law
2. Writs Relating to Criminal Law
3. General Cases Relating to Interpretation of Statutes

Step 2:

All the cases in the above three clusters have been studied under four thematic categories, as below:

1.	**2.**	**3.**
Total Reported Criminal Case (precisely denoted by a symbol BLACK)	Writs Relating to Criminal Law (precisely denoted by a symbol RED)	General Cases Relating to the Interpretation of Statutes (precisely denoted by a symbol BLUE)



Thematic Categories:	
Theme A	Cases Interpreting Limitations of Court
Theme B	Cases Assimilating Limitations of Court
Theme C	Cases Violating Limitations of Court
Theme D	Other Cases Relating to Interpretation of Statutes

Step 3:

Total Cases Interpreting Limitations of Court (Total A)	1A + 2A + 3A
Total Cases Assimilating Limitations of Court (Total B)	1B + 2B + 3B
Total Cases Violating Limitations of Court (Total C)	1C + 2C + 3C
Total Other Cases Relating to Interpretation of Statutes (Total D)	1D + 2D + 3D

Step 4:

Tabulation and Analysis and Inference drawn from Total A.
Tabulation, Analysis and Inference drawn from Total B.
Tabulation, Analysis and Inference drawn from Total C.
Tabulation and Analysis from Total D.

Step 5:

Findings

1.8.2 Nature and Sources of Data

Both primary and secondary sources of data have been utilized in this study.

a) Primary Sources of Authority

The primary sources of authority have included the Constitution, Supreme Court decisions, and statutes.

b) Secondary Sources of Authority

Secondary sources of authority and information include international laws, books, journals, reports, articles, theses, and other relevant materials.

1.8.3 Universe, Population and Sampling

In total, the data for this study have encompassed national and international legal provisions related to the subject, established principles, and a judiciously selected set of international cases. This data has been analysed and presented to establish the concept of limitations on the court in criminal cases. The focus has been on the decisions of the Supreme Court of Nepal to determine whether the Court has adhered to, assimilated, or violated these limitations while construing criminal laws. Specifically, the universe, population, and sample of the study relating to the decisions of the Supreme Court of Nepal are as follows:

a) Universe

The universe of this study includes the decisions of the Supreme Court of Nepal.

b) Population

The population of this study consists of the Supreme Court's reported cases from 2015 B.S. to 2078 B.S. (1958 A.D. to 2021 A.D.).

c) Sampling

The sample of this study includes reported cases relating to the limitation of the court in criminal cases.

These data have been introduced in detail in Chapter 6.1, under the title: Introducing Data: Universe, Population, and Sampling.

1.8.4 Tools and Techniques of Data Collection

Data have been gathered through case law studies and statutory content analysis.

a) Collection of Supreme Court Reported Cases

The Supreme Court's reported cases have been collected from the bound volumes of *Nepal Kanoon Patrika* (NKP) or the Supreme Court's website. For foreign court

decisions, a judgmental selection has been made from their bound volume publications or web publications.

b) Collection of Secondary Sources

Research reports, books, articles, testimonies, and other relevant materials have been collected from physical or online libraries.

c) Collection of Statutory Content

National laws and representative international conventions, treaties, and guidelines have been collected from the physical or online libraries of the relevant departments.

Thus, the technique of data collection has involved both the census method and non-probability sampling methods.

Sampling Method	Technique	Tools
Census method	The census method is applied to gather reported criminal cases from the Supreme Court of Nepal. From the total reported cases, the relevant ones are selected using judgmental sampling.	Case studies of Nepal Kanoon Patrika- bound volume in Supreme Court's Library and Supreme Court's website.
Non-probability sampling method	For foreign cases, judgmental sampling is used.	At least one case from the ICC, ECtHR, UK, USA and India- as found in American Embassy Library, British Library, National Library, Special Court's Library, or the websites of ICC, ECtHR, UK, USA and India.

	The purposive sampling method is applied for the study of legal provisions and existing principles.	For legal provisions- Constitution, Acts' bound volume or Nepal Law Commission's website for national laws. For international legal instruments, bound volume available in library or websites of particular international committee. For existing principles- books, articles, reports in library and web.

1.8.5 Data Analysis and Presentation

The collected data are analysed systematically in the following consecutive order:

Steps	Title	Tasks
Step 1	Data Processing	Main themes and sub-themes are noted, and responses are classified under these categories.
Step 2	Compilation	Classified responses are integrated into the text under specific strata.
Step 3	Editing	Unnecessary, excessive, or insufficient subject matter that deviates from reaching logical conclusions is removed.
Step 4	Coding	Recurrent patterns and themes are classified, codes are assigned accordingly, and qualitative data are quantified into numbers.
Step 5	Tabulation	Classified data are presented in tabular, bar, or pie-chart form—tabular form for content analysis, bar graphs to indicate trends, and pie-charts for ratios.
Step 6	Description, Comparison, and Inference	The data are described, compared, and inferences are drawn.
Step 7	Interpretation	The data are interpreted to determine the correlation coefficient.

Step 8	Presentation	The findings are presented in paragraphs, points, and also displayed via tables, bar graphs, or pie-charts—tables for content analysis, bar graphs for trends, and pie-charts for ratios.

1.8.6 Hypothesis Testing

The hypothesis is tested to explore inferential statistics, including the calculation of the Mean, Median, and Standard Deviation within the variables, as well as the correlation among the variables. These factors are assessed and analysed using the chi-squared test. Upon completion of the testing process, the hypothesis is either accepted or rejected.

1.8.7 Time Schedule

The thesis has been completed within the time frame specified by the Faculty of Law, Tribhuvan University. The timeline provided by the Faculty guided the research and writing process, ensuring that key milestones, including data collection, analysis, and drafting, were completed on schedule. Regular consultations with the supervisor helped ensure the progress aligned with the faculty's requirements, leading to the timely submission of the final thesis.

1.8.8 Style Guidelines

The report has been prepared in accordance with the Research Report Writing Guidelines 2080 provided by the Faculty of Law at Tribhuvan University. The guidelines have been implemented as follows:

a) The thesis topic is presented in bold font, sized at eighteen.
b) Chapter titles within the thesis are formatted in bold font, sized at sixteen.
c) Main section titles are bold with a font size of fourteen, while subtitles are bold and sized at twelve.
d) The body text is set in a font size of twelve. Footnotes are formatted in a font size of ten.
e) The text is formatted with 1.5-line spacing.

f) Margins for the thesis report are set as follows: Top 1", Left 1.5", Right 1", and Bottom 1".
g) Each page of the thesis is limited to a maximum of twenty-eight lines.
h) Times New Roman is used as the font type.
i) Page numbers are centered at the bottom of each page.

For citation style:

a) Footnotes follow- THE BLUEBOOK: A Uniform System of Citation (Twenty-First Edition). For example- SUBASH ACHARYA, CRIMINAL LAW: PRINCIPLES AND PRACTICES (2d ed. 2023).
b) The bibliography is formatted according to- PUBLICATION Manual of the American Psychological Association: The Official Guide to APA Style (Seventh Edition). For example- Acharya, S. (2023). *Criminal Law: Principles and Practices* (2nd ed.). Pairavi Prakashan.

1.9 REVIEW OF LITERATURE

The extent to which a court can criminalize a suspect in criminal cases has remained ambiguous, leading to inquiries into the delineation of judicial boundaries in this context. Central questions include whether it is the court or the law itself that criminalizes and to what extent a court can exercise its authority in this matter. The limitations on judicial interpretation of criminal statutes have not been definitively established. A comprehensive review of sixty literary works has been undertaken, revealing that the ongoing issue persists due to the lack of a thorough exploration into the 'interpretational limits of the court in criminal cases.' The boundaries for courts in criminalizing an accused have yet to be fully examined.

The Researcher has meticulously adhered to the rules and regulations of Tribhuvan University while conducting this literature review. Various repositories, including the Library of Nepal Law Campus, Central Law Library, Central Library of Tribhuvan University, Library of the Supreme Court, Library of Nepal Bar Council, Library of the National Judicial Academy, Library of Nepal Bar Association, Library of the Supreme

Court Bar Association (SCBA), Library of the Central Child Welfare Board, Library of the Central Juvenile Justice Coordination Committee, Library of the National Police Training Academy, Library of Kathmandu School of Law, Library of the National Human Rights Commission, and other government and non-government organization libraries, have been extensively utilized. The Researcher has also drawn upon their personal library at Acharya and Associates.

A comprehensive collection of data and information has been gathered by reviewing various published materials, including theses, reports, and government publications. The literature review has encompassed a broad spectrum, including books, research reports, annual reports, and other relevant materials authored by eminent figures, prepared by prominent researchers, and published by diverse government, non-government, academic, and educational entities.

The primary sources for this study have comprised international instruments, the national legal framework, Supreme Court cases, national plans, policies, strategies, and dictionaries. Secondary sources, including additional books, research reports, annual reports, journals, and articles, have also been consulted to enrich the study's depth. The Researcher has meticulously reviewed a plethora of relevant literature throughout the course of the research.

The following sixty notable works have been reviewed to craft this thesis, collectively enriching its foundation and depth. These selected works provide valuable insights and diverse perspectives on the study:

1.9.1 Books Relating to Criminal Law

(1) Andrew Ashworth's *Principles of Criminal Law*:[31]

In this book, Ashworth deals about various principles including the principle of individual autonomy, principle of welfare, the harm principle and public wrongs, the minimalist approach, and remote harms- all alarming the risk of overcriminalization. Then he delves into the non-retroactivity principle, asserting that individuals should only face conviction or

[31] ANDREW ASHWORTH, PRINCIPLES OF CRIMINAL LAW (6th ed. 2009).

punishment if their actions align with an established legal standard governing the specific conduct. He emphasizes the importance of a democratically elected legislature in creating new offenses, underscoring that criminal law should not be expansively interpreted to the detriment of the accused, such as through analogy. Ashworth's stance is unequivocal regarding the legislative process for enacting new criminal offenses.

However, it is noteworthy that Ashworth does not extensively address the issue of interpretational limits within this context. The boundaries or constraints on how courts interpret and apply criminal statutes are not thoroughly explored in his work. This presents an avenue for further examination and discussion in understanding the nuanced aspects of the non-retroactivity principle in relation to the interpretational limits of courts.

(2) David Ormerod's *Smith and Hogan Criminal Law*:[32]

In this book, Professor Ormerod justifies the maxim *actus non facit reum nisi mens sit rea* and enumerates the concept of 'no *actus reus,* no crime'. Then he argues against reducing criminal law to its absolute minimum, contending that the level of coercion involved in criminalization is fundamentally different from the outcomes in civil law disputes. Particularly for those with liberal perspectives, criminalization should be viewed as a last resort due to the stigmatization and intrusive forms of state intervention it entails. Ormerod advocates for what Ashworth terms 'minimal criminalization,' not necessarily to minimize criminal law to its absolute minimum but to ensure that resorting to criminalization is justified only when needed to protect individual autonomy or the societal structures necessary for individuals to exercise their autonomy.

However, Ormerod's discussion does not explicitly address whether the court has the authority to shape the dynamics of elements within a particular offense and, if so, to what extent. On this specific issue, Ormerod remains silent, leaving room for further exploration and interpretation.

[32] DAVID ORMEROD, SMITH AND HOGAN: CRIMINAL LAW (12th ed. 2008).

(3) Glanville Williams's *Textbook of Criminal Law*:[33]

In his book, Glanville Williams delves into the constraints imposed on judges in criminal law. He contends that while courts generally do not fully exercise the extensive powers granted by Parliament, it is widely acknowledged that judges should not be entirely free from statutory constraints. He also argues that legal statements essentially predict what the law will become after a decision rather than representing a current rule. Although courts cannot create statutes like precedents, they possess the authority to interpret and modify them. While courts nominally adhere to the principle of 'strict construction' in favour of the defendant when there is doubt in a criminal statute, Williams suggests that this principle is seldom applied in practice, especially when social considerations lean towards conviction. Illustrating his point, Williams references the case of *Smith* (1960)[34], where the court deemed gestures by a prostitute at a window facing the street as soliciting 'in a street.' He acknowledges the perception that judges might seem to be creating law on the go but deems it an exaggeration, albeit with some truth. Quoting Francis Bacon, he reminds that judges should interpret law, not make or give it.

In this way, Williams finds himself caught between emphasizing the bold interpretation of the defendant's conduct and dismissing the notion that judges create criminal offenses. His pragmatic approach acknowledges the practical challenges while grappling with the theoretical parameters of legal principles. Thus, Williams remains undecided on whether practical considerations or adherence to principles should guide judges in interpreting criminal statutes.

(4) Jonathan Herring's *Criminal Law*:[35]

In his book, Jonathan Herring delves into the structural aspects of Criminal Law, offering a simplified perspective on its statutory nature. Notably, he emphasizes the temporal and jurisdictional variability in the characterization of conduct as criminal, stating, "It should be noted that conduct that is contrary to criminal law at one point in time may not be seen as

[33] GLANVILLE WILLIAMS, TEXTBOOK OF CRIMINAL LAW (2d ed. Indian reprt. 2012) (1983).
[34] Smith v. Hughes, (1960) 1 W.L.R. 830 (QB) (UKHL).
[35] JONATHAN HERRING, CRIMINAL LAW (4th ed. 2005).

criminal at another time or in another country."[36] Addressing the pivotal question of what constitutes criminal conduct, Herring presents a dual-pronged definition for most serious crimes. Firstly, he underscores the significance that the defendant's actions have caused a prohibited kind of harm. Secondly, he asserts that culpability, or being worthy of censure, is a crucial element for having caused that harm.

Herring's emphasis on the concept of 'prohibited harm' serves to avoid retroactivity and underscores the necessity for criminal law to be clearly defined by statute. However, he refrains from delving extensively into the argument about the court's principled authority in determining the scope of what can be criminalized or not. Instead, his focus lies on articulating the fundamental components that render conduct criminal, providing a nuanced understanding of the interplay between harm, culpability, and statutory definition in criminal law.

(5) Michael T. Molan's *Criminal Law*:[37]

In this book, Michael T. Molan posits that the foundation of criminal law as the statute. He precisely defines crime as an activity labeled as such by the state. To him, an action becomes a crime because the state deems it as such. As an illustration, if the state were to declare growing beards for men or appearing in public on Thursdays for women as offenses, these actions would be classified as crimes.[38] However, when evaluating the appropriateness of courts intervening through judicial law-making, Molan refers to Lord Lowry's suggestions in five points. These include the caution for judges to refrain from imposing their own remedies when the solution is uncertain, acting slowly when Parliament has explicitly declined to address an issue, avoiding the light overturning of fundamental legal doctrines, leaving issues of social policy for legislative determination, and imposing judicial solutions only when finality is likely.

While Molan acknowledges the courts' authority to partake in judicial law-making within criminal law, he noticeably refrains from explicitly delving into the matter of judicial

[36] *Id.* at 5.
[37] MOLAN, *supra* note 11.
[38] *Id.* at 2.

limitations on the interpretation of criminal statutes. This omission leaves the topic of retroactivity in criminal law susceptible to varying interpretations, suggesting a nuanced perspective regarding the extent of judicial involvement in the formation and interpretation of penal statute.

(6) Jeremy Horder's *Ashworth's Principles of Criminal Law*:[39]

In this book, Horder raises the question of extending existing offenses to new circumstances. He draws a distinction between the 'constituent elements of an offense,' which may not be altered, and the 'progressive development of those elements,' which may involve legitimate change. He refers to *S.W. and C.R.* (1995)[40], where the European Court stated that the constituent elements of an offense cannot be fundamentally changed to the detriment of the accused. Any progressive development through interpretation must be reasonably foreseeable to the accused, with the assistance of appropriate legal advice if necessary.

However, explaining the 'constituent elements of an offense' in terms of the 'progressive development of those elements' has a potential risk as it may lead to a room for criminalization based subjectivism. Horder does not address the idea of minimizing this risk, which could be achieved by focusing on ascertaining interpretational limitations, which he has not explored in his arguments.

(7) K I Vibhute's *P S A Pillai's Criminal Law*:[41]

In this book, K. I. Vibhute delves depth into the concept of the nature of crime, offering insights into his perspectives on criminality. He defines crime as a pattern of human behavior prohibited by criminal law within a specific societal context, emphasizing that its nature is contingent upon the unique features of the society in question. Vibhute asserts that the formulation of penal law is not only influenced by the patterns of human behavior but also by developments in science, particularly in biology and medicine, as well as shifts in

[39] HORDER, *supra* note 17.
[40] S.W. and C.R. v. UK, 21 Eur. Ct. H.R. 363 (1995).
[41] K I VIBHUTE, P S A PILLAI'S CRIMINAL LAW (11th ed. 2012).

prevailing moral and social philosophies. Essentially, any human conduct perceived as detrimental to social interests is categorized as a crime.

Nevertheless, it is important to highlight that within Vibhute's exploration of crime and its nature, he does not delve into the theoretical question of judicial limitations in the interpretation of criminal law. The absence of an investigation into this theoretical aspect leaves a notable gap in his analysis of the legal dimensions surrounding criminal behavior.

(8) CMV Clarkson, HM Keating & SR Cunningham's *Clarkson and Keating Criminal Law: Text and Materials*:[42]

In this book, Clarkson, Keating and Cunningham have tried to respond a core question 'Is it permissible to criminalize the conduct?' They argue that the power to criminalize rest on criminal law, and the criminal law which does not contravene with the European Convention on Human Rights: First, any new Bill proposing to criminalize conduct must be compatible with the Convention. Secondly, it is possible that existing criminal offences are structured in such a way as to offend the provisions of the ECHR.

In this way, they have opined that courts are mandated to interpret legislation, but they are not permitted to legislate. This argument purely disregards criminalization by means of interpretational endeavors. However, Clarkson, Keating, and Cunningham have refrained from delving into the specific interpretational limitations of the court in criminal cases.

(9) Michael J. Allen and Ian Edwards' *Criminal Law*:[43]

In this book, Allen and Edwards acknowledge a preference for common law offenses over statutory offenses. Despite the multitude of criminal offenses, predominantly of statutory origin and regulatory nature, the authors focus primarily on major offenses (e.g., murder, manslaughter, rape, assault, theft, robbery, burglary, criminal damage, deception) and the fundamental principles underpinning criminal liability. Although the majority of offenses today are statutorily created, the criminal law initially stemmed from judicial decisions.

[42] CMV CLARKSON ET.AL., CLARKSON AND KEATING CRIMINAL LAW: TEXT AND MATERIALS (6th ed. 2007).
[43] MICHAEL J. ALLEN & IAN EDWARDS, CRIMINAL LAW (15th ed. 2019).

Certain offenses, such as murder and manslaughter, still remain common law offenses without a statutory definition.

However, the acceptance of common law offenses is confined to the study of the historical evolution of offenses—examining how they originated and understanding their components. The precedents establishing the elements of these crimes have been codified over time. It's important to note that, in the contemporary legal landscape, the court does not actively criminalize acts. Consequently, Allen and Edwards trace the historical evolution of offenses to provide context but do not inquire into the judicial limitations on the interpretation of criminal statutes.

(10) Dr. Balram Raut and Dr. Newal Chaudhary's *Comparative Criminal Law: Cases and Materials*:[44]

In this book, Dr. Raut and Dr. Chaudhary discuss the legality principle, emphasizing that criminal laws must be clearly defined to enable people to live lawfully without fear of inadvertently breaking the law. This principle, essential for the, rule of law,' ensures laws are clear, feasible to obey, and accessible to the public. It plays a vital role in promoting justice by advocating for prospective and retrospective clarity in criminal offenses.

However, the authors do not delve into the realm of judges' interpretational constraints within criminal statutes. When judges expand the parameters of crime's constituent elements to criminalize an offender, this expansion can also lead to a violation of the legality principle. This aspect remains unexplored in the book.

(11) Edwin H. Sutherland's *White Collar Crime*:[45]

In his book, Sutherland introduced the concept of white-collar crime, reshaping the study of criminal behaviour by eliminating class-specific explanations for such actions. Over the years, various scholars had touched on the types of acts and individuals falling under this category, including Ross, Henderson, and Albert Morris, who highlighted the activities of

[44] DR. BALRAM RAUT & DR. NEWAL CHAUDHARY, COMPARATIVE CRIMINAL LAW: CASES AND MATERIALS (2023).
[45] EDWIN H. SUTHERLAND, WHITE COLLAR CRIME (1983).

'criminals of the upper-world.' Sutherland consolidated these perspectives, offering interpretative ideas on these behaviours, which continue to guide further research and writing. For example, his assertion that 'the practice of politics is more honest than the conduct of business' suggests collusion between politicians and businessmen in political graft, often resulting in limited prosecutions against politicians. While much of Sutherland's work remains foundational, ongoing research is only now beginning to delve into the intricacies of his postulations, with this progress being a significant contribution of his pioneering efforts.

Sutherland's ground-breaking work shifted the focus of criminal law towards upper-world criminals, yet it overlooked the issue of judicial interpretational limitations in applying criminal laws, regardless of an individual's social status. This aspect remains a critical area for exploration, as it addresses disparities in legal treatment based on societal position, a factor that Sutherland's analysis did not fully engage with.

(12) Ronald J. Berger's *White-Collar Crime: The Abuse of Corporate and Government Power*:[46]

In this book, the author delves into the history of white-collar crime, tracing its roots back to Edwin Sutherland's pioneering work. He defines the field, emphasizing its complexity as it extends beyond statutory definitions to include civil and regulatory violations, as well as socially harmful acts resembling illegal ones. The focus is on crimes driven by corporate profit motives and government objectives, often involving coordinated actions. The book provides insight into the corporate-government nexus, exploring the emergence of corporations and governmental efforts to regulate their influence. It discusses antitrust laws and regulatory reforms across the 20th century, including the deregulation movement of the 1980s. The author examines the intertwined relationships between corporate and political elites, highlighting the corrupting effect of corporate power on regulatory bodies, which hampers efforts to tackle white-collar crime.

[46] RONALD J. BERGER, WHITE-COLLAR CRIME: THE ABUSE OF CORPORATE AND GOVERNMENT POWER (Indian ed. 2020) (2011).

However, the book does not explore into the interplay between judicial subjectivity in interpreting motives and the jurimetrics parameters concerning compliance or non-compliance with penal statutes.

(13) Sandra Walklate's *The Basics: Criminology*:[47]

In this book, Walklate delves beyond criminology to explore crime, crime victims, crime prevention, and the future of crime control. The author delves into popular myths and the fear of crime, addressing topics such as crime in the workplace and questions of justice. Throughout, Walklate emphasizes the impact of crime on individuals and society, striving to cover a wide array of aspects within criminal law, from understanding why people commit crimes to fostering a criminological imagination.

However, the author's exploration does not extend to the subject of judicial limitations in interpreting criminal laws, leaving this aspect unaddressed.

(14) R K Naroola and Udayan Mukherji's *The Law of Prevention of Money Laundering: An Analytical Commentary on the Prevention of Money-Laundering Act, 2002*:[48]

In this book, Naroola and Mukherji undertake a critical analysis of India's money laundering laws, focusing on the practices of Special Courts responsible for trying such offenses. They reconnoiter into the roles and powers of the relevant authorities throughout the investigative and judicial process. The book sheds light on various challenges faced by these authorities, stemming from the disparity between advancements in crime methods and traditional investigative and prosecutorial techniques. This gap often leads to the inability to present compelling scientific evidence, resulting in the acquittal of accused individuals.

---

[47] SANDRA WALKLATE, THE BASICS: CRIMINOLOGY (Indian reprt. 2009) (2005).
[48] R K NAROOLA & UDAYAN MUKHERJI, THE LAW OF PREVENTION OF MONEY LAUNDERING: AN ANALYTICAL COMMENTARY ON THE PREVENTION OF MONEY-LAUNDERING ACT, 2002 (2020).

However, the authors do not explore the interpretational approaches adopted by Special Courts in their decisions. Consequently, the scope of judicial limitations in interpreting criminal statutes remains unexamined.

(15) Douglas Husak's *Overcriminalization*:[49]

In his book, Husak challenges the traditional classification of crimes as mala in se versus mala prohibita, proposing three distinct categories: overlapping offenses, crimes of risk prevention, and ancillary offenses.

a) Overlapping offenses highlight the issue of overcriminalization, where the same conduct is repeatedly criminalized across federal and state codes, leading to situations where a single act breaches multiple laws.
b) Offenses of risk prevention contribute to the expansion of criminal law by targeting actions that might lead to harm rather than waiting for harm to occur. These inchoate offenses prioritize preventing potential harm.
c) Ancillary offenses serve as proxy crimes, often created to prosecute defendants when proving a core offense is difficult or impossible. These offenses surround core crimes and are enacted when evidence for the primary offense is lacking or inadmissible.

Husak explores internal and external constraints on criminalization and alternative theories of criminalization but overlooks the interpretational limitations of courts in criminal cases.

(16) Dennis F. Baker's *The Right Not to be Criminalized*:[50]

In his book, Baker examines the concept of 'just criminalization' in contrast to the perceived crisis of 'unjust criminalization.' He contends that the right not to be criminalized goes beyond moral considerations and should be viewed as a constitutional right. Baker critiques unfair practices in criminalization, such as labelling innocuous behaviour as criminal, eliminating ex post culpability requirements without moral justification, and criminalizing

[49] DOUGLAS HUSAK, OVERCRIMINALIZATION: THE LIMITS OF THE CRIMINAL LAW (2008).
[50] DENNIS F. BAKER, THE RIGHT NOT TO BE CRIMINALIZED: DEMARCATING CRIMINAL LAW'S AUTHORITY (2011).

individuals for remote harms. He also highlights disproportionate punishments and violations of human rights and due process protections as forms of unjust criminalization. Baker advocates for a balanced approach to criminalization, urging lawmakers to carefully consider what warrants criminal status, establish appropriate punishments, and ensure criminal liability is reserved for deserving cases. He argues that these practices collectively violate the 'right not to be criminalized' and explores their ethical and legal dimensions.

However, the book does not delve into the interpretational limits of courts in criminal cases, as this may not fall within their jurisdiction, and expanding the elements of crime through interpretation may not be their primary concern.

1.9.2 Books Relating to Interpretation of Statutes

(17) Amita Dhanda's *N S Bindra's Interpretation of Statutes*:[51]

In this book, the author explores the overarching aspects of statutory interpretation, specifically focusing on penal statutes. Dhanda describes 'strict construction,' asserting that it necessitates, at the very least, that no case should fall within a penal statute unless it comprises all the elements, whether morally significant or not, explicitly stipulated by the statute to constitute the offense. Illustrating the rule of strict construction, it has been noted that while remedial laws may encompass new elements not in existence at the time of statute creation, penal laws may not. However, this level of strictness may be considered extreme.

By using the term 'extreme,' Dhanda introduces the notion of purposive interpretation and presents two juxtapositions- two contradictory developments that have influenced the interpretation of penal statutes.:

a) One development involves the scaling down of punishments, which has reduced the pressure on courts to strictly interpret statutes in favor of the accused.
b) The other development pertains to the crime control compulsions embedded in modern penal statutes. These developments highlight the evolving nature of

[51] AMITA DHANDA, N S BINDRA'S INTERPRETATION OF STATUTES (12th ed. 2017).

statutory interpretation, balancing between strictness and adaptability in response to societal changes.

Despite her thorough exploration of statutory interpretation, the author's analysis overlooks a crucial chapter on the fundamental issue of the interpretational limitations of courts in criminal cases.

(18) P. St. J. Langan's *Maxwell on the Interpretation of Statutes*:[52]

Langan views the interpretation of penal statutes as 'exceptional construction,' rejecting the notion of purposive interpretation. For example, he references Hale's mention of the statute 1 Edw. 6, c. 12 (The Treason Act, 1547), which made the stealing of horses (in the plural) a capital offense. This statute raised doubts about whether it included the theft of one horse only, leading to the necessity of clarification through subsequent parliamentary enactment. Similarly, nineteenth-century decisions highlighted the strictness of interpretation, where courts ruled that a colt was not necessarily considered a horse within the meaning of an Act against horse-stealing, and that an enactment which criminalized 'stabbing, cutting, or wounding' did not cover cases where a nose or finger was bitten off because the injury did not involve the use of an instrument.

The contrasting perspectives of 'purposive interpretation' advocated by Dhanda and the 'degree of strictness' emphasized by Langan prompt a review of the issue within the framework of 'constitutional interpretation.' However, neither Dhanda nor Langan attempt to address the problem of judicial limitations on the interpretation of criminal statutes, leaving this aspect unexplored.

(19) Craig R. Ducat's *Constitutional Interpretation*:[53]

In this book, Ducat addresses the question of how to ascertain the objective meaning of constitutional provisions. He posits two fundamental tools of constitutional interpretation: the 'plain meaning' rule and the 'intention of the Framers.' The 'plain meaning' rule asserts

[52] P. ST. J. LANGAN, MAXWELL ON THE INTERPRETATION OF STATUTES (12th ed. 2011).
[53] 1 CRAIG R. DUCAT, CONSTITUTIONAL INTERPRETATION (9th ed. 2009).

that the words of the Constitution should be understood at face value and accorded their 'ordinary' and 'accepted' meaning. On the other hand, the 'intention of the Framers' necessitates a commitment to understanding what the individuals who wrote or adopted the Constitution intended its provisions to convey.

While these tools aid in distinguishing constitutional interpretation from that of criminal statutes, the book does not delve into the intricacies of judicial limitations on such interpretations.

(20) P.M. Bakshi's *Interpretation of Statutes*:[54]

In this book, P.M. Bakshi, a former Member of the Law Commission of India, classifies Ducat's aforementioned tools into two theories: the mechanical and the organic theories. He elaborates:

a) The mechanical method advocates putting ourselves in the shoes of the founding fathers when interpreting a constitutional provision, aiming to 'read their minds and gather their intention.' This involves delving into the Constituent Assembly Debate and examining other contemporaneous material to discern the intent of the Constitution makers.
b) However, Bakshi notes that the organic method of interpretation is now universally accepted as preferable to the mechanical method. The organic approach requires considering present social conditions and interpreting the Constitution to address current challenges. Given that social conditions have evolved since the Constitution's creation, interpreting it solely from the perspective of the Constitution-makers may lead to an outdated and unrealistic view.

Bakshi doesn't explicitly address whether the court applies the organic method in criminal cases. Thus, the question remains unanswered regarding whether the same approach is employed in criminal cases.

[54] P.M. BAKSHI, INTERPRETATION OF STATUTES (2d ed. 2016).

(21) Justice G P Singh's *Principles of Statutory Interpretation*:[55]

In this book, Justice Singh writes in details about 'remedial and penal statutes' and distinguishes them from interpretational perspectives. A remedial statute receives a liberal construction, whereas a penal statute is strictly construed. As now understood, the distinction between liberal and strict construction has very much narrowed down and is only important in resolving a doubt which other canons of construction fail to solve when two or more constructions are equally open. In case of remedial statutes, the doubt is resolved in favour of the class of persons for whose benefit the statute is enacted; whereas in case of penal statutes the doubt is resolved in favour of the alleged offender.

He further says that the duty of the court is to give effect to the purpose as expressed in clear and unambiguous language and 'that obligation is not altered because the Act is penal in character. However, he notes a contradiction between this guiding principle and the practical application in the courts. Therefore, there is a need to examine the interpretational constraints of the court in criminal cases, an aspect that has not yet been thoroughly explored.

1.9.3 Books Relating to Judges and Court

(22) Richard A. Posner's *How Judges Think*:[56]

In this book, Posner writes about the internal limitations that judges grapple with when delivering judgments. He introduces two practical concepts of law, bridging the philosophies of Antonin Scalia and Ronald Dworkin. The first concept, termed legalism, posits that law is distinct from politics and policy, constituting the realm of rules, rights, and principles. The second concept, pragmatism, defines law, particularly in the study of judges, as encompassing whatever judges do in their official capacity, unless they overstep bounds that could lead to impeachment. Posner acknowledges that Dworkin's stance leans more towards pragmatism, as he rebrands his preferred policies as 'principles' and encourages judges to decide cases in line with these principles, disregarding other policies delegated to

[55] G P SINGH, J., PRINCIPLES OF STATUTORY INTERPRETATION (A K Patnaik, J., rev., 14th ed. 2016).
[56] RICHARD A. POSNER, HOW JUDGES THINK (2019).

the legislature. Posner also questions Scalia's commitment to legalism. Legalism, as outlined by Posner, involves techniques for evaluating evidence, interpreting legally operative texts, applying rules to case facts, choosing between broad and narrow rules (standards), and drawing analogies and distinctions between precedents and the current case. Despite these techniques, Posner argues that judges face internal constraints throughout the evaluation process, raising questions about the nature of these constraints and whether they are subject to scrutiny.

In this way, Posner, though, argues that in the whole process of this technique of evaluation, there are internal constrains in a judge. But, what are those constraints? And, are they subject one? He again leaves an unresolved question regarding the interpretational limitations of the court in criminal cases.

(23) Richard Glover's *Murphy on Evidence:*[57]

In his book, Glover also discusses the role of judges in determining the admissibility of evidence, particularly when obtained illegally or unfairly. He asserts that evidence obtained through torture is never admissible, but other unlawfully acquired evidence may not always be excluded. Glover explains that in criminal cases, the manner in which evidence was obtained is a factor to consider, with the exercise of discretion based on its impact on the fairness of the proceedings. This grants judges a significant discretion in deciding whether to include or exclude certain evidence and to assess whether prosecution evidence is prejudicial.

Thus, there is a huge space in judge's discretion whether to include or exclude certain evidence, and discretion to decide whether the prosecution evidences are of prejudicial nature or not. However, Glover does not address the lack of judicial discretion in constructing penal statutes, highlighting a gap in his analysis.

[57] RICHARD GLOVER, MURPHY ON EVIDENCE (15th ed. 2017).

(24) Fali S. Nariman's *God Save the Hon'ble Supreme Court*:[58]

In this book, under the title 'God Save the Hon'ble Supreme Court: Have the Best Times Disappeared?' the author, Nariman, highlights instances of a clash in judicial civilization within the Supreme Court of India. Ironically, he suggests amending the traditional chant in the U.S. into an impassioned prayer for the Indian citizens: 'God Save the Hon'ble Supreme Court,' particularly during desperate times when public confidence in the highest court is at an all-time low. Nariman emphasizes that the real source of power for judges lies in the respect of the people. However, he notes that this respect has faced challenges during what he refers to as the worst of times, marked by two significant events.

a) Firstly, in May 2017, a Bench of seven judges invoked its inherent jurisdiction under Article 129 to punish a sitting judge, Justice C.S. Karnan of the High Court of Madras, holding him guilty of contempt of court—a historic and unprecedented event.
b) Secondly, on January 12, 2018, four senior-most judges, including Justice Jasti Chelameswar, along with Justices Ranjan Gogoi, Madan B. Lokur, and Kurian Joseph, publicly aired their grievances against the Chief Justice of India, Justice Dipak Misra.

Nariman uses these instances to illustrate the academic diversion of combat within the courts, and argues that this combat has been reflected in the decisions of the Indian Supreme Court, lacking uniformity in precedent and resulting in what he terms as 'unfortunate precedent,' which crosses limitations. The effect of it resulting into subjectivism in interpretation of penal statute is even more dangerous because it may criminalize the person by an expansion constituent element of crime, which the author does not explore in this book.

[58] FALI S. NARIMAN, GOD SAVE THE HON'BLE SUPREME COURT (2018).

1.9.4 Peer-Reviewed Articles and Testimony by International Authors

(25) Kahryn Riley's *The Problem of Overcriminalization*:[59]

In this paper, the author focuses on the issue of overcriminalization in Michigan, drawing attention to the problem through a specific case, exemplified by Lisa Snyder's experience. Snyder faced legal jeopardy when the state charged her with operating an illegal daycare after voluntarily assisting her neighbor's children in boarding the school bus each morning without charge. While Snyder managed to secure legal representation and eventually led to a change in the law, the paper highlights the potential challenges faced by defendants lacking the resources for such outcomes.

The paper advocates for reforms in Michigan, proposing the repeal of outdated or redundant laws. Additionally, it recommends the implementation of a default criminal intent standard to safeguard individuals who unknowingly violate criminally enforceable statutes or regulations governing conduct not inherently deemed wrongful. The rationale behind these proposed reforms stems from two primary considerations.

a) Firstly, the paper argues that a state's criminal code should prioritize protecting individual liberty and private property rather than serving as a tool to regulate every facet of human behavior.
b) Secondly, it emphasizes the risks associated with an excessively broad criminal code, including the potential for significant variations in prosecutions across jurisdictions and the diversion of limited resources away from addressing serious violent and property crimes.

In this way, the paper seriously confines its scope to addressing concerns related to overcriminalization in Michigan, however, it does not deal with the issue of judicial limitations on the interpretation of criminal statutes.

[59] *The Problem of Overcriminalization*, Michigan Law Review Commission Meeting (18 May 2017) (legislative testimony of Kathryn Riley, Policy Analyst, Mackinac Center for Public Policy), https://www.mackinac.org/archives/2017/2017TestimonialTemplate-Riley.pdf. (last visited Apr. 21, 2024).

(26) Sanford H. Kadish's *The Crisis of Overcriminalization*:[60]

This article underscores the persistent concern of overcriminalization in the United States since the 1970s. The author contends that American criminal law has broadened the scope of criminal sanctions beyond fundamental offenses to include behaviors with less serious harms, intangible harms lacking consensus, or even actions causing no harm. These overcriminalization issues pose significant challenges to the effective administration of criminal law. The author highlights examples from the revision of California's criminal law, revealing convictions for seemingly minor infractions. The article also discusses the problematic use of criminal sanctions by state police forces to address non-criminal issues such as automobile-related deaths, potentially hindering more viable remedial alternatives. The focus remains on legislative aspects, without explicit exploration of the potential expansion of constituent elements of crimes as a form of overcriminalization.

While the paper thoroughly addresses the crisis of overcriminalization, it remains silent on the issue of judicial criminalization. Specifically, it does not explore whether an expansion of constituent elements of a crime is considered a part of overcriminalization. This aspect is not covered in the paper.

(27) Paul J. Larkin's *Public Choice Theory and Overcriminalization*:[61]

This article also discusses the problem of overcriminalization in the United States, attributing it to the influence of public choice theory on legislation. Larkin emphasizes core defects in the criminal justice system, such as prosecutorial misconduct, inadequate funding for forensic examinations, and convictions of innocent defendants. He points out that overcriminalization is acknowledged by various stakeholders, and legislatures are identified as major contributors due to their rapid creation of statutes without fair labelling. Larkin states that overcriminalization is less a problem with the substantive criminal law than it is with the law making process. He accuses legislatures are the biggest offenders. Over the last fifty years, legislatures have become 'offense factories' that churn out new statutes each week. His concern circles around the fact that the passing numerous legislation every week

[60] Sanford H. Kadish, *The Crisis of Overcriminalization*, 17 AMER. CRIM. LAW Q. 69, 70 (1968).
[61] Paul J. Larkin, *Public Choice Theory and Overcriminalization*, 36 HARV. J. OF L. & PUB. POL'Y 1, 13 (2013).

lacks fair labelling and fair warning resulting in the overcriminalization of an individual. To avoid such problem of overcriminalization, he expects form judges to dust off the principles of criminal law.

The realization of dusting off the principles of criminal law in order to avoid the problem of overcriminalization is somehow a point responded, but it has not been able to enlists the boundaries of judicial limitations on interpretation of criminal statutes.

(28) Stephen F. Smith's *Overcoming Overcriminalization*:[62]

In this article, Smith examines overcriminalization as a quantitative issue in America, attributing it to an excess of broadly scoped criminal statutes. He highlights the rapid growth of federal criminal laws, emphasizing that 40% were enacted after 1970. Despite a decline in crime rates, Congress introduced an average of fifty-seven new crimes annually between 2000 and 2007, resulting in about 4,500 federal laws with criminal penalties today. Addressing the qualitative aspect, Smith discusses the rule of lenity, expressing concern that legislative overreach leads courts to neglect this principle, resulting in what he terms 'judicial crime creation.' He argues that adherence to the rule of lenity could counteract overcriminalization by narrowing the scope of ambiguous laws. However, federal courts often treat the rule with suspicion or hostility, using ambiguous statutes to create new crimes and expand existing ones, resulting in a broader and more punitive federal criminal law.

The article focuses on two quantitative problems: legislative overcriminalization and judicial crime creation, framing them as an 'assault on the rule of lenity.' While the article underscores legislative and judicial aspects as quantitative problems, it does not explore the specific boundaries or limitations in the judicial interpretation of criminal statutes.

(29) Gary S. Becker's *Crime and Punishment: An Economic Approach*:[63]

In this article, the author utilizes economic analysis to propose optimal public and private strategies for addressing illegal behavior. They consider factors such as expenditures on law

[62] Stephen F. Smith, *Overcoming Overcriminalization*, 102 J. OF CRIM. L. & CR. 85, 100 (2012).
[63] Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 (2) J. OF POL. ECON. 169 (1968).

enforcement, the probability of detecting offenses, the severity and type of punishment, and societal costs. 'Optimal' decisions aim to minimize the societal loss from illegal activities. The article explores various implications of these optimal conditions through examples, providing insights into effective policy-making against illegal behavior.

However, in the article the parameter of policy-making does not include the issue of judicial limitations on the interpretation of penal statutes.

(30) George J. Stigler's *The Optimum Enforcement of Laws*:[64]

In this article, the author discusses into the reasons behind the failure to adopt rational criteria for law enforcement. He attributes this failure to a lack of understanding regarding the necessity and nature of rational enforcement. To address this issue, the author advocates for clarifying the logic of rational enforcement and demonstrating its potential benefits to improve public understanding. Additionally, the author identifies another factor influencing law enforcement: the public's preference regarding which laws to enforce. Appropriations to enforcement agencies and jury verdicts serve as tools for societal review of public policy. For instance, if certain offenses are perceived as less serious, the community may allocate fewer resources for their enforcement, prompting agencies to focus on more significant offenses.

However, the article overlooks the potential consequences of subjective interpretations and public choices, particularly regarding the retroactive effects and overcriminalization. These factors pose risks that are not explored in the article, highlighting a gap in its analysis.

(31) Richard A Posner's *An Economic Theory of Criminal Law*:[65]

In this article, the author conducts an economic analysis of criminal law, asserting that subjective doctrines within it can be understood through an economic perspective. They propose that in a capitalist society, criminal law primarily aims to deter individuals from bypassing voluntary exchanges, especially where market allocation is more efficient than

[64] George J. Stigler, *The Optimum Enforcement of Laws*, 78 (3) J. OF POL. ECON. 526 (1970).
[65] Richard A. Posner, *An Economic Theory of Criminal Law*, 85 (6) COL. L. REV. 1193 (1985).

forced exchange. They argue that tort law often fails to effectively deter such behavior due to impracticality in calculating optimal damages, leading to the need for public enforcement and non-monetary sanctions like imprisonment. The author suggests that distinctive criminal law doctrines can be justified as promoting economic efficiency.

However, while exploring crime from new angles, they overlook the dynamics of interpretational limitations and retroactive criminalization, areas that deserve attention in understanding the full scope of criminal law.

(32) James M. Anderson, Jeffrey R. Kling and Kate Stith's *Measuring Interjudge Sentencing Disparity: Before and After the Federal Sentencing Guidelines*:[66]

In this article, the author assesses the impact of the Federal Sentencing Guidelines on inter-judge sentencing disparity, referring to differences in average nominal prison sentence lengths for similar caseloads assigned to different judges. This disparity is quantified using the dispersion of a random effect in a zero-inflated negative binomial model. The findings reveal that prior to the Guidelines, the expected difference in average sentence length between two typical judges was around 17 percent (or 4.9 months) in 1986-87, which decreased to approximately 11 percent (or 3.9 months) in 1988-93 during the initial years of the Guidelines' implementation.

The study does not account for the effect of parole in the pre-Guidelines period, other sources of disparity such as prosecutorial discretion, or the comparison of punishment proportionality under the Guidelines versus the pre-Guidelines' era.

In the same way, there is a requirement of the assessment of judge's interpretational scope and threat of new criminalization by interpretation, which is not explored in this article too.

[66] James M. Anderson, Jeffrey R. Kling and Kate Stith, *Measuring Interjudge Sentencing Disparity: Before and After the Federal Sentencing Guidelines*, XLII (1, Part 2) J. OF L. & ECON. 271 (1999).

(33) Gary S. Becker, Kelvin M. Murphy and Michael Grossman's *The Market for Illegal Goods: The Case of Drugs*:[67]

In this article, the author examines the costs associated with reducing the consumption of a good by making its production illegal and penalizing illegal producers, using illegal drugs as a primary example. They argue that the degree of inelasticity in either the demand for or supply of a good correlate with the magnitude of social costs incurred from further reducing its production through increased enforcement efforts. The optimal allocation of public expenditures on apprehending and convicting illegal suppliers depends not only on the disparity between the social and private values of consumption but also on these elasticities. In cases where demand and supply are not highly elastic, it may not be economically viable to enforce prohibition unless the social value is negative. Additionally, the article suggests that implementing a monetary tax could lead to a greater reduction in output and increase in price compared to optimal enforcement against the same good if it were illegal, despite potential underground activity to avoid taxation. Ultimately, the study concludes that when enforcement is costly, excise taxes and quantity restrictions are not interchangeable measures.

Thus, the issue of enforcement is always vital in anything including the enforcement of law in court room by the interpretation of the judges, which requires objective factual circumstance than subjectivism while construing penal statutes, which is not dealt in this article too.

(34) Jeffrey A. Miron and Jeffrey Zwiebel's *The Economic Case Against Drug Prohibition*:[68]

In this article, the author contends that while the existing evidence on drug policy is incomplete, the conclusion drawn is that a free market approach to drugs is likely to be more effective than current policies of drug prohibition. Despite the possibility of increased drug usage and consumption under a free market system, the author argues that such a policy

[67] Gary S. Becker, Kelvin M. Murphy and Michael Grossman, *The Market for Illegal Goods: The Case of Drugs*, 114 (1) J. OF POL. ECON. 38 (February 2006).
[68] Jeffrey A. Miron and Jeffrey Zwiebel, *The Economic Case Against Drug Prohibition*, 9 (4) J. OF ECON. PRESP. 175 (1995).

would lead to significant reductions in the negative effects of drug use on society, including reduced violence, property crime, and other related issues. Ultimately, the author suggests that based on the available evidence, the social costs associated with drug prohibition far outweigh any potential benefits.

However, the author does not particularize to make it executable is by the legislation, rather than by the interpretation of whatever penal statute is. This issue is not discussed in this article too.

(35) Daniel Kessler and Steven D. Levitt's *Using Sentence Enhancements to Distinguish Between Deterrence and Incapacitation*:[69]

In this article, the author proposes a theory showing that adding enhancements to prison sentences can help differentiate between two effects: deterrence and incapacitation. Enhancements are extra penalties added to sentences that would have been served anyway. Because enhancements don't immediately prevent someone from committing a crime (incapacitation effect), any immediate drop in crime after their introduction is likely due to deterrence - people being discouraged from committing crimes because of the added penalty. However, over time, both deterrence and incapacitation effects come into play, gradually reducing crime rates.

Thus, this article also does not deal about effect of the interpretational limitation of the court in criminal cases.

(36) Steven D. Levitt's *The Effect of Prison Population Size on Crime Rates: Evidence From Prison Overcrowding Litigation*:[70]

In this article, the author examines the impact of increased incarceration on reducing crime by using prison overcrowding litigation as a measure. He finds that the effect of incarceration on crime reduction is larger than previously thought, estimating that

[69] Daniel Kessler and Steven D. Levitt, *Using Sentence Enhancements to Distinguish Between Deterrence and Incapacitation*, XLII (1, Part 2) J. OF L. & ECON. 343 (1999).
[70] Steven D. Levitt, *The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation*, CXI (2) Q. J. OF ECON. 319 (1996).

incarcerating one additional prisoner can reduce crime by about fifteen incidents per year. While acknowledging some uncertainties in cost-benefit analyses, the author suggests that the benefits of crime reduction from incarceration may outweigh the costs. However, they also emphasize the importance of addressing the underlying causes of criminal behaviour and advocate for prevention and rehabilitation measures.

The article highlights various interventions as strategy for reducing crime, but does not focus on the issue of overcriminalization by the expansion of constituent element of crime by the interpretation of the court.

(37) Franklin M. Fisher and Daniel Nagin's *On the Feasibility of Identifying the Crime Function in a Simultaneous Model of Crime Rates and Sanction Levels*:[71]

In this article, the authors criticize researchers who have used simultaneous estimation techniques to study the deterrent effect of sanctions on crime, arguing that they often overlook the importance of identification.

The paper explores different methods for identifying crime functions in systems where crime rates and sanction levels are connected. While the paper doesn't entirely rule out the feasibility of identification, it advises caution. The paper suggests that analyses relying solely on aggregate cross-sectional data may struggle to consistently estimate the deterrent effect of punishment. Instead, the authors recommend incorporating a time-series component into the data and using procedures that address potential serial correlation in the stochastic components of the specification to improve the relevance of policy-related insights.

In the same way, another issue relating pinpoint is at the policy level of the interpretational scope of penal statutes, which is not considered in this article too.

[71] Franklin M. Fisher and Daniel Nagin, *On the Feasibility of Identifying the Crime Function in a Simultaneous Model of Crime Rates and Sanction Levels*, in DETERRENCE AND INCAPACITATION: ESTIMATING THE EFFECTS OF CRIMINAL SANCTIONS ON CRIME RATES 361 (Alfred Blumstein, Jacqueline Cohen and Daniel Nagin eds., 1978).

(38) Frank H. Easterbrook's *Criminal Procedures as a Market System*:[72]

In this article, the author explores how pervasive discretion within criminal procedure resembles a marketplace, coordinating actions through a price system rather than leading to chaos. The features of criminal procedure are analysed as facilitating a market-based assessment and imposition of the 'price' of crime, aiming for deterrence with minimal inefficiency. While acknowledging that not all legal doctrines may have been designed with this goal in mind, the author suggests that they generally work to maximize deterrence within resource constraints. However, the author also recognizes persisting issues of information and incentives in legislative decisions. The conclusion prompts a re-evaluation of beliefs regarding the efficiency and purpose of criminal law, indicating the article's broader normative implications.

In this sector of normative implications, there may exist various attributes; one of which is obviously about the existence of judicial constrains in interpretations of penal statues, not dealt here.

(39) William M. Landes and Richard A. Posner's *The Private Enforcement of Law*:[73]

In this article, the author discusses the growing interest among economists in studying the enforcement of law, alongside legal rules themselves. A key inquiry is the appropriate division of responsibilities between public and private enforcers. Under their proposal, private individuals and firms would handle investigations, apprehend violators (including criminals), and conduct legal proceedings to address violations, including criminal prosecutions. Successful private enforcers would retain the entirety of the proceeds from the suit, such as fines paid by convicted offenders, while unsuccessful enforcers would be obligated to reimburse the defendant's legal expenses.

---

[72] Frank H. Easterbrook, *Criminal Procedures as a Market System*, XII (2) J. OF LEGAL STUDIES 289 (1983).
[73] William M. Landes and Richard A. Posner, *The Private Enforcement of Law*, 4 (1) J. OF LEGAL STUDIES 1 (1975).

In this way, this article opens new discourse in the enforcement of law. Among such new discourse one is the debate about judicial constraints on the limitations of criminal laws which is not explored even in this article too.

(40) Steven Shavell's *Criminal Law and Optimal Use of Nonmonetary Sanctions as a Deterrent*:[74]

The article examines the role of deterrence in criminal law, challenging the notion that it solely hinges on the concept of optimal deterrence. While acknowledging the influence of deterrence on shaping criminal law, the author highlights the presence of inconsistencies across different countries and additional goals such as incapacitation. Despite recognizing that courts consider factors beyond deterrence, the author underscores deterrence as a significant explanatory factor in understanding criminal law.

Additionally, the article emphasizes the importance of considering practical interpretational parameters that courts employ daily. However, it notes a lack of exploration on this front within the article itself. Understanding how courts interpret the law in practice is crucial to grasping the overall structure of criminal law, an aspect the article acknowledges but does not delve into extensively.

(41) Dan M. Kahan's *What Do Alternative Sanction Mean?*:[75]

The author delves into the political resistance against traditional alternatives to imprisonment and advocates for the expressive theory of punishment. They argue that incarceration is often favoured because it effectively communicates society's moral censure of wrongdoing, a sentiment particularly reinforced by the cultural value placed on individual liberty. In contrast, methods such as fines and community service are perceived as less potent in expressing condemnation, leading to their perceived inadequacy as replacements for imprisonment.

---

[74] Steven Shavell, *Criminal Law and Optimal Use of Nonmonetary Sanctions as a Deterrent*, 85 (6) Col. L. Rev. 1232 (1985).
[75] Dan M. Kahan, *What Do Alternative Sanction Mean?*, 63 UNI. OF CHICA. L. REV. 591 (1996).

To mitigate the reliance on imprisonment, the author suggests identifying alternative sanctions, like shaming penalties, that can aptly convey societal disapproval. By integrating these sanctions with fines and community service, the article posits that the expressive ambiguity of alternative punishments can be addressed, potentially rendering them more politically acceptable. However, the article does not explore the extent to which courts have constraints or freedom in interpreting penal statutes, leaving this aspect unexplored.

(42) A. Mitchell Polinsky and Steven Shavell's *The Optimal Tradeoff Between the Probability and Magnitude of Fines*:[76]

In this article, the authors explore the utilization of fines as a regulatory tool to address activities with external costs such as pollution and tax evasion. Ideally, fines would be set to equal the external costs incurred. This approach would encourage individuals to weigh their private benefits against the associated external costs. However, in reality, challenges in enforcement often result in fines that do not precisely align with these external costs.

While it is argued that fines should be set to maximize deterrence while also considering individuals' ability to pay, achieving this balance proves to be complex, particularly for activities with relatively small external costs. Consequently, there exists a noticeable disparity between theoretical ideals and the practical considerations involved in setting fines.

Nevertheless, the article does not look into the extent to which courts possess constraints or discretion in interpreting penal statutes, leaving this aspect unexplored. This oversight underscores the need for further examination of the legal framework and the role of judicial interpretation in shaping the implementation of fines as a regulatory mechanism.

[76] A. Mitchell Polinsky and Steven Shavell, *The Optimal Tradeoff between the Probability and Magnitude of Fines*, 69 (5) AMER. ECON. REV. 880 (1979).

(43) Ian Ayres and John J. Donohue III's *Nondiscretionary Concealed Weapons Laws: A Case Study of Statistics Standards of Proof, and Public Policy*:[77]

In this article, the author discusses John Lott's influential work on the impact of laws allowing citizens to carry concealed handguns on crime rates, highlighting the methodological challenges inherent in assessing such effects and the standards of evidence required before policy recommendations can be justified. While acknowledging Lott's significant contribution to the discourse, the author suggests that he has blurred the lines between academic research and policy advocacy, potentially leading to a lack of attention to evidence contradicting his conclusions.

The article suggests that when empirical findings diverge from intuition or raise statistical anomalies, advocating for further research rather than immediate policy changes may be the wiser course of action. Taking this fact into consideration to the varying decisions of courts in criminal cases, it needs to assessed their interpretational limitations which is not studied even in it.

1.9.5 Peer-Reviewed Articles by National Authors

(44) Tek Narayan Kunwar's *The Offence of Money Laundering: International Initiatives and Nepal's Efforts*:[78]

This article provides an in-depth examination of the money laundering offense, international initiatives, and Nepal's position therein. It scrutinizes the relationship between money laundering and terrorist financing, with a focus on Nepal's adherence to FATF's 40+9 recommendations and its action plan to comply with them. Penned by the current President of Nepal's Special Court, responsible for adjudicating money laundering cases, the article carries significant institutional weight, emphasizing the imperative for enhanced human resources and institutional capacity within the court. Additionally, the author identifies key challenges and proposes solutions for more effective outcomes. These include advocating

[77] Ian Ayres and John J. Donohue III, *Nondiscretionary Concealed Weapons Laws: A Case Study of Statistics Standards of Proof, and Public Policy*, 1 (1 and 2) AMER. L. & ECON. REV. 436 (1999).
[78] Tek Narayan Kunwar, *The Offense of Money Laundering: Initiatives and Nepal's Efforts*, SOUVENIR CIAA 48 (2023).

for precise definitions of money laundering offenses, fostering functional mutual assistance among relevant agencies, and integrating informal financial practices like *Hundi* and *Dhukuti* into the legal framework. The article also calls for rigorous due diligence measures and proactive measures to combat money laundering activities.

However, the issue of interpretational limitations of the court in defining the constitutional elements of crime and practical hindermost have not been dealt in this article too.

(45) Dr. Khushee Prasad Tharu's *Organized Crime: Corruption and Money Laundering*:[79]

In this article, the author provides a genuine definition of organized crime while examining the offenses of corruption and money laundering. He outlines the elements of organized crime and examines into various aspects of corruption, including legal errors, malafideness, abuse of function, and collusion, as well as different forms of corrupt practices. Drawing from his experience as a member of the judiciary in the Special Court, the author illustrates cases with international standards.

Furthermore, the article explores the practice of money laundering offenses in Nepal and international efforts to combat this crime. It discusses the UN Palermo Convention and legal standards in countries like the UK, USA, and India, along with their respective legal provisions. By doing so, the article offers insights into the overall landscape of organized crime, corruption, and money laundering, comparing practices across common law jurisdictions.

However, the other part of it, which requires judicial authority to interpret these laws, raises questions about the extent of their freedom to explain legislative construction. Are these problems inherent to interpretational issues, and fundamentally, do the courts consider that they have interpretational constraints or none at all? This part is yet to be answered.

[79] Dr. Khushee Prasad Tharu, *Organized Crime: Corruption and Money Laundering*, JUSTICE NEGEO. SC. 952 (2080 B.S.) (2023).

(46) Prof. Dr. Laxmi Prasad Mainali and Bishnu Prasad Soti's *Role of UN Police to Combat Organized Crime in Fragile State*:[80]

In their article, Prof. Mainali and Soti examine the role of UN Police in combating organized crime, particularly in fragile states and conflict-affected countries. They highlight the shift towards an integrated managerial approach within peace operations, aimed at addressing a wide spectrum of violent actors involved in illicit commercial activities. The authors also delve into the challenges posed by organized crime in terms of security and governance risks. By doing so, they aim to explore the impact of organized crime on international peace and security, as well as the nature of criminal networks.

While exploring such new dynamics and international connection of crime, the authors ignore the crucial part of it related with the definition and judicial restraints in definition of constituent elements of crime.

(47) Dr. Binod Bashyal's *Understanding the Extradition and Nepalese Legal Framework*:[81]

In this article, the author explores the fundamentals of extradition, focusing on political offenses, international criminal offenses, and mutual legal assistance, while also discussing conditions for refusing extradition as per Nepalese law and practices. Extradition, as described, involves a process where a criminal who commits a crime in one state and flees to another is demanded back by the state where the crime was committed. The author emphasizes that through extradition, criminals cannot evade responsibility for their actions as they remain subject to the jurisdiction where the crime occurred. The extradition process involves one sovereign jurisdiction making a formal request to another, regulated by treaties and laws. However, individuals are not subject to extradition if their offense involves political motives. The article elucidates on extradition concepts, mutual legal assistance, and principles developed by courts, alongside discussing political and international criminal offenses. Additionally, it outlines conditions for extradition and non-extradition practiced

[80] Prof. Dr. Laxmi Prasad Mainali and Bishnu Prasad Soti, *Role of UN Police to Combat Organized Crime in Fragile State*, NEP. B. CO. L.J. 54 (2020).
[81] Dr. Binod Bashyal, *Understanding the Extradition and Nepalese Legal Framework*, NEP. B. CO. L.J. 26 (2021).

by different states, detailing legal provisions and extradition processes as provided in the Extradition Act, 2014 (2070), and the Mutual Legal Assistance Act, 2014 (2070).

Nevertheless, the author does not go into the issue of judicial limitations when interpreting such laws concerning the criminalization of the accused. This oversight underscores the need to address judicial constraints in interpreting extradition laws to ensure fairness and adherence to legal principles in criminal proceedings.

(48) Dr. Balram Prasad Raut's *Implementation of Torture Law in Nepal: Case Studies*:[82]

The article discusses the declining trend of torture cases from conflict to post-conflict periods in Nepal, despite significant rates still persisting. It attributes this decrease to the enactment of the MCC, which criminalizes torture. However, it critiques the law's implementation for falling short in impartially investigating torture acts and providing victims with adequate reparations. The pervasive use of torture by state agencies in Nepal is highlighted, with recent incidents in police custody resulting in fatalities among accused individuals.

The article presents into the nature of torture issues in Nepal, examining the legal framework's development and the prevailing perceptions during the period under scrutiny. It critically analyzes the implementation challenges of torture laws and the jurisprudence of the Supreme Court of Nepal, proposing measures to ensure proper enforcement and protect victims' human rights.

While addressing challenges in implementing torture laws and safeguarding victims' rights, the article overlooks the plight of accused individuals facing judicial reluctance in interpreting penal statutes. This omission underscores the complexities of torture issues in Nepal, urging a comprehensive approach to protect both victims' rights and ensure fair treatment within the legal system.

[82] Dr. Balram Prasad Raut, *Implementation of Torture Law in Nepal: Case studies*, 5 PROSEC. J. 139 (2022).

(49) Diwakar Bhatta's *Private Prosecution: A Context of Supplementary Action to an Inherently Government Power and Private Enforcement of Criminal Law under the Penal Code, 2074* (2017):[83]

In this article, Bhatta explores the concept of private prosecution, analyzing its framework and implementation in Nepal's criminal justice system. They assert that Nepal recognizes the significance of victims in criminal proceedings, citing their role in reporting crimes, providing statements to investigators, and testifying in court as pivotal in reaching case resolutions. However, Bhatta notes that the private enforcement of laws remains weak in Nepal, lacking provisions for replacing District Attorneys in cases of abuse of discretionary power or negligence. While government attorneys' decisions are overseen by higher authorities, including the Attorney General, and subject to judicial scrutiny for misconduct, Bhatta advocates for the development of private enforcement plans to enhance public participation in criminal proceedings and strengthen overall justice delivery.

Despite exploring into new aspects of the criminal law trial system, Bhatta's analysis overlooks interpretational issues, particularly regarding the court's authority to criminalize certain actions. This gap highlights the need for further examination to ensure a comprehensive understanding and effective implementation of criminal justice in Nepal.

(50) Bishwo Raj Koirala's *Features and Challenges of the New Criminal Codes in Nepal*:[84]

In this article, the author examines the strengths and weaknesses of the new MCC. He praises its scientific and comprehensive nature while acknowledging the challenges it poses. Emphasizing the pivotal role of law enforcement, the author highlights changes in court procedures and emerging trends such as the expanded powers of Investigating Officers and the use of extra-territorial jurisdiction. Furthermore, the author stresses the importance of clear pre-trial procedures and the obligation of the Police to conduct fair and prompt

[83] Diwakar Bhatta, *Private Prosecution: A Context of Supplementary Action to an Inherently Government Power and Private Enforcement of Criminal Law under the Penal Code, 2074 (2017)*, 4 PROSEC. J. 193 (2018).
[84] Bishwo Raj Koirala, *Features and Challenges of the New Criminal Codes in Nepal*, PROSEC. J. 111, 111-128 (2018).

investigations. He advocates for comprehensive training programs to equip law enforcement agencies and address conflicting provisions within the Code.

In this way, while exploring about the feature and challenge of the criminal law, the author does go further towards the issue of jurisdictional constraints in interpretational limitations of courts in criminal cases.

(51) Ramesh Parajuli's *Forensic Science and Its Historical Development in Nepali Justice Administration*:[85]

In this article, the author highlights the historical significance and invaluable role of forensic science in ensuring the quality of justice. He argues that relying on forensic evidence greatly improves justice delivery compared to dependence on confessions and witness testimonies, which may be coerced or unreliable. Emphasizing the impartiality of scientific evidence, the author asserts that forensic evidence plays a crucial role in enhancing the quality of investigation, prosecution, and adjudication processes. He explains that forensic science draws upon various scientific disciplines such as physics, chemistry, and biology to recognize, identify, individualize, and evaluate physical evidence, with forensic scientists presenting their findings as expert witnesses in court.

However, the quality of justice is not related with only the aspect of forensic science. It is obviously important aspect, but at the same time the quality of justice also rest in proper interpretation and application of criminal law, this part is not revealed in this article too.

(52) Kunshang Lama's *An Overview of Inchoate Offence under Muluki Criminal Code, 2074 (2017)*:[86]

In this article, the author explores the concept of inchoate offense, tracing its evolution in both common law and civil law jurisdictions while comparing it to the context of Nepal. He advocates for the revision of Nepalese criminal codes to align with modern criminal

[85] Ramesh Parajuli, PhD, *Forensic Science and Its Historical Development in Nepali Justice Administration*, 4 PROSEC. J. 259 (2018).
[86] Kunshang Lama, *An Overview of Inchoate Offence under Muluki Criminal Code, 2074 (2017)*, 4 PROSEC. J. 283 (2018).

jurisprudence, offering recommendations on what elements should be included or excluded in the construction of inchoate offenses.

However, the author overlooks a critical aspect of the issue: the lack of uniformity in judicial interpretation regarding the constituent elements of inchoate offenses. This omission underscores the need for addressing interpretational limitations of the courts in inchoate offenses and criminal cases more broadly, to ensure consistency and fairness in legal proceedings.

(53) Laxmi Bakhadyo's *Female Criminality in Nepal: Prevalence and Causes*:[87]

In this article, Bakhadyo extensively examines the intricate issue of female criminality, offering an overview of various criminological theories and delving into data analysis from 2072 to 2076. The study, centered on Nepal, meticulously explores the causes of female criminality, challenging societal perceptions that often depict women primarily as victims rather than perpetrators of crime. Despite lower numbers of female crime victims, Bakhado argues that prevailing views cast women in roles of suffering, especially in cases like infanticide or crimes against a spouse, where mitigated punishment may be considered justifiable. Supported by data on female prisoners in Nepalese prisons, the author confronts established gender roles and societal expectations, highlighting the reluctance to acknowledge women as active participants in criminal activities. Furthermore, Bakhado concludes that women, despite being statistically more likely to be victims of sexual offenses, demonstrate increased involvement in modern, organized crimes compared to traditional offenses. This data-driven revelation prompts a compelling call for a reassessment of crime policies, challenging entrenched perceptions within the criminal justice system.

The author advocates for an interpretational construction to effectively respond to changing dynamics, urging stakeholders to reconsider their perspectives. However, the conclusion also raises questions about the potential scope of the situation, whether arising from

[87] Laxmi Bakhadyo, *Female Criminality in Nepal: Prevalence and Causes,* XVIII NEP. B. CO. L. J. 324 (2019).

violations or interpretational limitations in penal statutes, and the need for further exploration into these aspects remains unaddressed.

(54) Rabindra Bhattarai and Bimal Prasad Lamichhane's *Insufficiency of Punishment for Crimes of Corruption in Nepal*:[88]

In this article, the author discusses the concept of corruption, highlighting the severity of criminality and the leniency of corresponding punishments in Nepal. He argues that the current anti-corruption laws in Nepal are insufficient given the gravity of the crime and call for harmonization of definitions and penalties in line with international standards, particularly under the UN Convention against Corruption (UNCAT). He urges that Nepal has not adequately increased punishments for corruption offenses despite escalating penalties for other crimes. The author also advises that while stricter penalties alone may not eradicate corruption, they can significantly deter corrupt practices. Therefore, he impulses the Nepalese government to redefine corruption offenses and impose appropriate punishments.

In this way, while the author advises to GoN to redefine corruption crimes and set appropriate punishment alarm grievous threat to the individual's autonomy by restricting liberty by governments acts violating limitation principles. This aspect is not analysed in this article too.

1.9.6 International Research Reports

(55) Arts and Humanities Research Council's *The Boundaries of the Criminal Law*:[89]

The Arts and Humanities Research Council, a British research council, financed a four-year project centered on the examination of criminalization. The project published *The Boundaries of Criminal Law* in 2010. The project was begun with an apparently simple question: what should be criminalized? They expressed that the inquiry into the appropriate

[88] Rabindra Bhattarai and Bimal Prasad Lamichhane, *Insufficiency of Punishment for Crimes of Corruption in Nepal*, NEP. B. CO. L.J. 275 (2021).
[89] ARTS AND HUMANITIES RESEARCH COUNCIL, INTRODUCTION: THE BOUNDARIES OF THE CRIMINAL LAW (2010).

scope of criminalization is prompted by two contemporary phenomena. On the one hand, there is a frequent argument asserting a crisis of over-criminalization: a situation where an excessive amount is criminalized that shouldn't be; our criminal law has surpassed its rightful boundaries. On the other hand, there is a recurring argument (often readily embraced by governments) suggesting that the criminal law should be expanded to offer an effective response to new or recently disturbing threats of various kinds.

The volume comprises ten articles that center, as the title suggests, on the boundaries of criminal law. However, it essentially addresses what could be deemed a central question of the project- the inquiry into the normative limits that should govern the creation of criminal offenses. As observed, the exploration of the limits of criminal law has predominantly revolved around the harm principle. Thus, this report also does not dig into the another side of the overcriminalization by the liberal interpretation of penal statutes resulting ultimately into retrospective criminalization.

1.9.7 National Research Reports

(56) Supreme Court Bar Association's *The Study Committee's Report, 2064 (2008)*:[90]

The Supreme Court Bar Association of Nepal established a four-member study committee, led by Shreehari Aryal, to investigate issues and complaints from stakeholders regarding the judiciary's activities in Nepal, aiming to propose findings that would bolster public trust in the judiciary; subsequently, the committee submitted a detailed report, published by the Supreme Court Bar's publication committee. The report under the title 'Pitfalls in the Laws,' meticulously examines weaknesses in judicial practices and inherent flaws within the legal framework. One significant concern highlighted in the report is the deviation from established principles in the hearing system, identified as a substantial challenge in current judicial practices. The report enumerates five key reasons, based on stakeholder feedback, contributing to the decline in public faith in the judiciary.

The first reason involves the perceived excessive discretionary power in law, accounting for 28.89% of stakeholder concerns. Second is the issue of interpreting laws to invoke self-bias,

[90] SUPREME COURT BAR ASSOCIATION, THE STUDY COMMITTEE'S REPORT, 2064 (2008).

constituting 24.87% of the reasons behind the diminishing public trust. Third, stakeholders' express worries about ambiguous and plural meaning-generating legislation, representing 21.60% of concerns. The fourth reason, at 12.81%, involves the failure to apply a scientific drafting system, leading to inconsistencies in the legal framework. Lastly, the report notes that 11.80% of stakeholders believe there is a failure to implement existing laws, raising questions about the overall effectiveness of the judicial system.

Of these, the use of 'excessive discretion' and problem in 'interpretation of laws' promoting self-bias reflect the need of following restrictive construction of the court including in criminal cases, which is not studied yet.

(57) Office of Attorney General & Center for Legal Research and Resource Development (CeLRRd)*'s Baseline Survey on Criminal Justice System of Nepal, 2069 (2013)*:[91]

This baseline survey was conducted in 15 selected districts and was generalized to overall criminal justice system of Nepal. The districts were chosen to ensure geographical representation, from Terai, Hilly and Terai-Hilly overlap. The survey collected the registered criminal cases of two fiscal years from 2067/068 to 2068/069 in district prosecutor office, district police office, district court, and generalized the overall scenario of functioning of the system components of criminal justice system and their weaknesses. The report has presented the physical condition of courts, prisons and jails and the prosecution office, and the condition of persons in custody and jail. However, it has not analysed the judicial decisions, nor the issue of interpretational limitations complied or not while delivering the decisions. The report seriously concludes that personnel in criminal law agencies lack sensibility towards the principles of a fair and impartial justice system. It also notes a general unawareness of weaknesses and mistakes in their duty performance. Additionally, there is a significant tendency within the system to view criminal justice as an administrative departmental phenomenon.

[91] 1 OFFICE OF ATTORNEY GENERAL & CENTER FOR LEGAL RESEARCH AND RESOURCE DEVELOPMENT (CeLRRd), BASELINE SURVEY ON CRIMINAL JUSTICE SYSTEM OF NEPAL, 2069 (2013).

In essence, while the baseline survey identified general problems in the criminal justice system, it did not specifically survey into the sufferings by overcriminalization by violating interpretational limitations while construing criminal cases.

(58) Ministry of Law, Justice and Parliamentary Affairs' *Baseline Survey on Crime Report, 2072 (2015)*:[92]

It was the first baseline survey on crime performed by the GoN. It revealed a significant insight into the country's legal landscape. The comprehensive report highlighted that a total of 84 Acts confer authority upon Extra-Judicial Authorities to adjudicate specific criminal cases. Analysing the effectiveness of the court's functioning, the data disclosed that merely 10.8 percent of participants acknowledged its effectiveness, with 40.4 percent deeming it moderate and 13.1 percent expressing dissatisfaction. In contrast, Extra-judicial Authorities received an 8.5 percent approval rating for effectiveness, with 16.5 percent dissenting and 37.6 percent considering it moderate.

Furthermore, the report revealed the overall effectiveness and impartiality of the criminal justice system. A mere 6.7 percent of participants expressed full confidence, while 20.2 percent declared scepticism regarding the effectiveness and impartiality of the system in Nepal. This discontentment with judicial efficacy raises concerns about the discretionary power of judges and its unexplored limitations.

The report serves as an illuminating revelation on the state of the criminal justice system in Nepal. Conversely, the absence of specialized criminal courts across judiciary tiers, except for the Special Court, suggests a potential for inconsistencies in the interpretation of penal statutes, warranting further investigation.

[92] MINISTRY OF LAW, JUSTICE AND PARLIAMENTARY AFFAIRS, BASELINE SURVEY ON CRIME REPORT, 2072 (2015).

(59) Supreme Court Bar Association's *Decision Review Committee's Report, 2077 (2020)*:[93]

This report describes the history of Court in Nepal, explains the concept of precedent, and presents the essence of precedent as mandatory obligation for Courts in cases of similar facts. In this context, the report analyses the differences in ratio of the decisions, particularly in Corruption Cases, as decided by Supreme Court of Nepal from 2065 to 2075. It presents around 270 pages' data of cases having variability in the ratio of their decisions, under various themes of corruption including bribery, illegal property, forged report, duplicate certificate etc. The report concludes with very alarming remarks that Supreme Court's decisions have unnatural variability. Supreme Court is the source of judicial guidelines. It is the creator of judicial culture. However, the fact that the decisions are not in uniformity indicates that the Supreme Court is derailing from judicial values and principles. The unnatural variability in its decisions indicates the arbitraries and loses faith of the people. And, it is very serious problem.

The report has raised questions on the judicial discipline and accountability, basically resulting out of violation of the principle of precedent. However, the report again does not focus on studying the violation of interpretational limitations in penal statutes.

(60) United States Institute of Peace (USIP)'s *Model Codes For Post-Conflict Criminal Justice (2007)*:[94]

The Model Codes for Post-Conflict Criminal Justice is the outcome of a collaborative effort over six years involving various organizations and experts globally. It provides comprehensive legal frameworks tailored to countries emerging from conflict, offering guidance on criminal law reform. Divided into three volumes, the codes cover general principles of criminal law and specific offenses commonly found in post-conflict environments. Each volume includes expert commentary to explain provisions and highlight

[93] SUPREME COURT BAR ASSOCIATION, SUPREME COURT BAR ASSOCIATION'S DECISION REVIEW COMMITTEE'S REPORT, 2077 (2020).
[94] 1 UNITED STATES INSTITUTE OF PEACE, MODEL CODES FOR POST-CONFLICT CRIMINAL JUSTICE (Vivienne O'Connor & Colette Rausch with Hans-Goerg Albrecht & Goran Klemencic eds., 2007).

reform opportunities. Overall, the Model Codes serve as an essential resource for rebuilding the rule of law in societies recovering from violent conflict.

Having the Model Codes, a criminal law reform tool, it is validly expected that the scope of this code may encompass the interpretational scope of court in criminal cases which is not studied even in this model code.

1.10 LIMITATIONS OF STUDY

The thesis has been confined to the study of relevant national and international legal provisions, judgmentally selected international judicial decisions, and examining the Supreme Court's reported cases from 2015 B.S. to 2078 B.S. (1958 A.D. to 2021 A.D.), focusing on interpretational limitations of the court in penal statutes. The study has centred on the following two areas:

a) Studying Relevant Cases

The relevant cases are categorized into two types:

(i) Reported criminal cases decided by the Supreme Court of Nepal from 2015 B.S. to 2078 B.S. (1958 A.D. to 2021 A.D.), related to Themes A, B, C, and D as specified in the Research Design.
(ii) Judgmentally selected sample cases from international courts such as the ICC, I.C.J., ECtHR, and from jurisdictions in the UK, USA, and India.

b) Studying Relevant Provisions

The relevant provisions are categorized into two types:

(i) Provisions under major international laws, including the UDHR, ICCPR, ECHR, Rome Statute, and CRC.
(ii) Provisions under national laws, including the Constitution and the MCC.

Additionally, the thesis has examined certain principles to establish the theoretical foundation of the research area. However, it has not delved deeply into all principles of criminal law, nor explored comprehensive rules of statutory interpretation, conducted an exhaustive examination of foreign cases, or reviewed the court's capacity to promote judicial activism in upholding fundamental rights.

1.11 ORGANIZATION OF THE STUDY

The thesis has been structured into the following nine chapters, each designed to systematically explore and analyze various dimensions of judicial limitations on the interpretation of criminal statutes. This organization ensures a logical progression from foundational concepts and literature review to in-depth analysis, comparative perspectives, and ultimately, conclusions and suggestions.

a) **Chapter One: Introduction of the Study**

This chapter provides the general background of the study, including the introduction, statement of the problem, research questions, objectives, hypothesis, significance, scope, methodology, review of literature, limitations, and organization of the study.

b) **Chapter Two: Historical Development and Theoretical Backup of Limitation Principle**

This chapter explores the historical development of the limitation principle, starting with occidental society and theoretical foundations in the West, such as the example of the UK. It concludes with the examination of rooted oriental jurisprudence on justice administration in '*dharmasastra*,' including '*sutras*' and '*smritis*'.

c) **Chapter Three: Principles that Limit the Court to Criminalize**

This chapter discusses thirteen representative principles of criminal law, including the principle of legality, non-retroactivity, strict rule of construction, casus omissus, presumption of innocence, certainty (*nullum crimen sine lege certa*), interdiction of

analogy, individual autonomy, fair labelling, causation principle, transaction principle, one transaction rule, and double jeopardy.

d) Chapter Four: Provisions that Limit the Court in Criminal Cases

This chapter presents provisions from both major international and national laws relating to the subject of research. It reviews international laws such as the UDHR, ICCPR, ECHR, CFREU, Rome Statute, ACHPR, ArCHR, Geneva Conventions (Third and Fourth), ACHR and CRC. It also covers national laws, including the Constitution and the MCC.

e) Chapter Five: International Judicial Decisions

This chapter studies judgmentally selected sample cases under two sub-headings: 'Decisions of International Court' and 'Foreign Supreme Court Decisions.' It presents one case each from the ICC, I.C.J., and ECtHR and covers four sample cases from each major common law country: the UK, USA, and India.

f) Chapter Six: Data Presentation: Supreme Court Cases Relating to Interpretational Limitations

This core chapter presents the data from reported cases of the Supreme Court of Nepal from 2015 B.S. to 2078 B.S. (1958 A.D. to 2021 A.D.). It introduces the data, specifies the sample from the population, and categorizes the cases into: Cases interpreting limitations of the court (Theme A), Cases assimilating limitations of the court (Theme B), Cases violating limitations of the court (Theme C), and Cases relating to general interpretation of statutes (Theme D).

g) Chapter Seven: Data Analysis: An Analysis of Judicial Limitations on Interpretation of Criminal Statutes

This chapter provides a quantitative analysis of data through tables and charts, examining principles, international judicial decisions, and cases, and tests the hypothesis.

h) Chapter Eight: Inferential Statistics and Hypothesis Testing

Based on the data and its analysis, this chapter draws inferences, tests the hypothesis, and concludes.

i) Chapter Nine: Findings, Conclusion and Suggestions

The final chapter assesses the findings, states the conclusions, and provides suggestions to the Court, Bar, Prosecutor's Office, and other stakeholders as necessary.

Finally, the thesis has included a comprehensive Bibliography along with Appendices 1 to 6.

CHAPTER II

HISTORICAL DEVELOPMENT AND THEORETICAL BACKUP OF LIMITATION PRINCIPLE

2.1 HISTORICAL DEVELOPMENT

2.1.1 Origin

The concept of restricting the unchecked authority of the executive branch first emerged prominently in the Charter of Liberties, 1100 followed by the Magna Carta Libertatum, 1215 which ensured that the rights of free individuals would not be infringed upon without a legal judgment from their peers or in accordance with the law of the land.[95] However, the Magna Carta did not exclude customary law as the basis of criminal provisions. As a result, the major common law felonies, such as murder, rape, and burglary came into existence through case law.

Feuerbach's formulation of the Latin maxim: *nullum crimen, nulla poena sine lege* in Bavarian Criminal Code in 1813, and legislation of the legality principle in various legal codes across Europe and the United States formed the systematic declaration of it.[96] The earliest references to the legality principle can be identified in the Virginia Declaration of Rights in 1776.[97] Additionally, the Constitution of Maryland, 1776[98] contained the initial explicit prohibition against ex post facto laws, a provision later incorporated into the Constitution of the United States of America, 1787.[99]

The breakthrough of the legality principle in Europe began with the Austrian Criminal Code of 1787.[100] Furthermore, the French Penal Code of 1810[101] getting the inspiration and

[95] Magna Carta Libertatum, 1215, art. 39.
[96] Bavarian Penal Code,1813, § 1.
[97] VIRGINIA DECLARATION OF RIGHTS, 1776, arts. 7, 8.
[98] CONST. OF MARYLAND, 1776, art. 15.
[99] CONST. OF THE USA, 1787, art. I (9)(3).
[100] Austrian Criminal Code, 1787, Part I, art. 1.
[101] French Penal Code, 1810, § 4.

impetus from the French Declaration of the Rights of Man and of the Citizen of 1789[102] further advanced the principle.

It wasn't until 1973 that the House of Lords abolished the doctrine of residual judicial discretion to create common law crimes, marking a significant development in legal history.[103]

2.1.2 Setbacks during Totalitarianism

The 20th century witnessed the emergence of several totalitarian regimes characterized by authoritarian control, suppression of dissent, and pervasive propaganda. These regimes profoundly influenced global events and left lasting impacts on history.[104] Notable examples include: (i) Nazi Germany (1933-1945), led by Adolf Hitler, who implemented extreme nationalism, anti-Semitism, and militarism, culminating in World War II and the Holocaust. (ii) The Soviet Union under Joseph Stalin (1924-1953), marked by collectivization, rapid industrialization, purges, and widespread repression. (iii) Fascist Italy (1922-1943), led by Benito Mussolini, emphasized authoritarianism, nationalism, and anti-communism, forming alliances with Nazi Germany and Japan during World War II. (iv) Imperial Japan (1926-1945), under Emperor Hirohito, pursued aggressive expansionism in Asia, exerting control over society and stifling dissent. (v) Spain under Francisco Franco (1939-1975), where a fascist dictatorship suppressed regional autonomy, censored media, and tightly controlled opposition.[105]

Totalitarian regimes in the 20th century impeded the development of the legality principle.[106] In Nazi Germany, the National Socialists amended the Penal Code in 1935 to allow punishment for acts not explicitly defined but deemed deserving of penalty according to popular sentiment and judges' discretion. This provision was annulled by the Allies in

[102] FRENCH DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN, 1789, arts. 7, 8.
[103] Knuller v. DPP, [1973] AC 435.
[104] WILLIAM MCKAY & CHARLES W. JOHNSON, PARLIAMENT & CONGRESS: REPRESENTATION & SECURITY IN THE TWENTY-FIRST CENTURY 131 (2010).
[105] *Id.* at 132-133.
[106] CHARLES VAN DOREN, A HISTORY OF KNOWLEDGE: PAST, PRESENT AND FUTURE 97 (1991).

1945 and abolished in 1946. The stringent application of the *nullum crimen* principle in present-day Germany may reflect lessons learned from Nazi atrocities.[107]

Similarly, in Russia, the legality principle was discarded during the Russian Revolution. Early Communist decrees mandated criminal courts to adjudicate based on a 'revolutionary legal spirit.' The Soviet Penal Codes of 1922 and 1926 permitted the criminalization of 'socially dangerous acts' through strained analogies. The *nullum crimen* principle was formally reintroduced in 1958,[108] but in practice, it remained ineffective for minor offenses tried by non-professional Comrades' Courts. Today, the Constitution of the Russian Federation of 1993 guarantees the principle of legality in Article 54.

2.1.3 Universal Acceptance after 1945

The eventual universal acceptance of the *nullum crimen* principle owes much to the international human rights movement that emerged after 1945. By 1948, the United Nations General Assembly recognized the principle in the UDHR:

> No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.[109]

Subsequent international and regional conventions also incorporated the principle, including in the 1949 Third Geneva Convention[110] and the Fourth Geneva Convention.[111] It was followed by the ECHR in 1950.[112]

---

[107] *Id.* at 98-99.
[108] Fundamental Principles of Criminal Legislation of the USSR and the Union Republics, 1958, art. 6.
[109] Universal Declaration of Human Rights, 1948, G.A. Res. 217A (III), art. 11(2), U.N. Doc. A/810.
[110] Geneva Convention Relative to the Treatment of Prisoners of War, 1949, art. 99, 6 U.S.T. 3316, 75 U.N.T.S. 135.
[111] Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949, arts. 65, 67, 6 U.S.T. 3516, 75 U.N.T.S. 287.
[112] European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, art. 7, 213 U.N.T.S. 221.

The retrospective criminalization by the construction of criminal law got much louder restriction in 1966 after the proclamation of the ICCPR:

> No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.[113]

Following the spirit of Article 11(2) of the UDHR and Article 15(1) of ICCPR, other conventions came in line to incorporate the *nullum crimen* principle in one or another way. In 1978, the ACHR[114] legislated it followed by the ACHPR in 1981.[115] Similarly, the CRC of 1990[116] and the ArCHR of 2004[117] incorporated the provision in Article 40(2)(a) and Article 15, respectively.

Within the European Union, the Court of Justice of the European Communities regards the *nullum crimen* principle as a fundamental principle of law,[118] confirmed by the CFREU in 2000 in its Article 49.

2.2 THEORETICAL BACKUP OF LIMITATION PRINCIPLE

The overriding concern of limitation principle is the principle of legality that the crime should be strictly construed, and should not be extended by analogy. It is the principle of prohibition applied against the judges that restricts them to legislate un-codified criminal provisions, known as *nullum crimen nulla poena sine lege scripta.* The underlying philosophical aspects behind the limitation principle are various, the four broad currents are discernible:

---

[113] International Covenant on Civil and Political Rights, 1966, art. 15(1), 999 U.N.T.S. 171.
[114] American Convention on Human Rights, 1969, art. 9, 1144 U.N.T.S. 123.
[115] African Charter on Human and Peoples' Rights, 1981, art. 7(2), 1520 U.N.T.S. 217.
[116] U.N. Convention on the Rights of the Child, 1989, art. 40(2)(a), 1577 U.N.T.S. 3.
[117] Arab Charter on Human Rights, 2004, art. 15, 12-1 A.L.I. 491.
[118] Neue Maxhütte Stahlwerke GmbH et al. v. Commission, 1999 E.C.R. II-17.

2.2.1 Guarantee of Individual Liberties against State Arbitrariness

The guarantee of individual liberties against state arbitrariness is a cornerstone of democratic societies and the rule of law. It is essential to protect individuals from unjust or arbitrary actions by the state and to ensure that government power is exercised within established legal bounds. Several mechanisms and principles contribute to this guarantee:[119]

a) Constitutional Protections

Many democratic countries have constitutions that outline and protect fundamental rights and freedoms. These rights typically include protections against arbitrary arrest and detention, freedom of speech, freedom of assembly, freedom of religion, and the right to a fair trial. Constitutional provisions serve as a legal framework for limiting the state's ability to infringe upon individual liberties.

b) Separation of Powers

The separation of powers doctrine divides governmental authority among three branches: the legislative, executive, and judicial branches. This division serves as a system of checks and balances, ensuring that no single branch becomes too powerful and that each branch can restrain the others from acting arbitrarily. For example, the judiciary can review the constitutionality of laws and government actions, preventing abuses of power.

c) Legal Protections

Legal safeguards, such as habeas corpus and the presumption of innocence, play a crucial role in protecting individual liberties against state arbitrariness. Habeas corpus guarantees the right to challenge the legality of one's detention, preventing indefinite imprisonment without trial. The presumption of innocence ensures that individuals are not treated as guilty until proven otherwise in a fair and impartial trial.

[119] CHRISTINA MURRAY, PROTECTING HUMAN RIGHTS IN CONSTITUTIONS 17 (2023).

d) Due Process of Law

Due process requires that legal procedures be fair, transparent, and consistent with established laws and principles. It ensures that individuals are provided with notice of the charges against them, an opportunity to present a defense, and a fair and impartial hearing before an independent tribunal. Due process protections safeguard against arbitrary or discriminatory actions by the state.

e) Judicial Review

Judicial review allows courts to review the constitutionality of laws, regulations, and government actions. Through judicial review, courts can strike down laws or actions that violate constitutional rights or exceed the government's lawful authority. This mechanism serves as a safeguard against state arbitrariness by holding the government accountable to the rule of law.

f) Civil Liberties Organizations

Civil liberties organizations and advocacy groups play a crucial role in monitoring government actions, raising awareness about threats to individual liberties, and challenging abuses of power through litigation and public advocacy. These organizations serve as watchdogs, promoting transparency, accountability, and respect for individual rights.

The principle of *nullum crimen* is fundamental in safeguarding individual liberties against state arbitrariness.[120] It establishes clear boundaries and predictable consequences for citizens' actions, thereby preventing unjust interference by the government. By upholding this principle, individuals can confidently exercise their rights, knowing they are protected from arbitrary state actions. This fosters a fair and just society where the rule of law prevails, enhancing trust and confidence in governmental institutions. The principle ensures that citizens understand the limits of acceptable behavior and the potential consequences for

[120] Consistency of Certain Danzig Legislative Decrees with the Constitution of the Free City, Advisory Opinion, Dec. 4, 1935 P.C.I.J. (ser. A/B) No. 65, at 56.

transgressions, promoting fairness and justice in the legal system. Overall, *nullum crimen* serves as a crucial safeguard against state arbitrariness, empowering individuals and upholding fundamental rights.

2.2.2 The Need for Fairness in Criminal Law

The need for fairness in criminal law is a fundamental aspect of any just and equitable society. Fairness ensures that individuals are treated impartially and with respect for their rights, regardless of their background, social status, or other personal characteristics.

There are several key reasons why fairness is essential in criminal law:[121]

a) Presumption of Innocence

Fairness dictates that individuals are presumed innocent until proven guilty beyond a reasonable doubt. This principle safeguards individuals from wrongful accusations and ensures that the burden of proof lies with the prosecution.

b) Equal Treatment

Fairness requires that all individuals be treated equally under the law. This means that justice should not be influenced by factors such as race, gender, ethnicity, religion, or socioeconomic status. Everyone should have equal access to legal representation, a fair trial, and protection from discrimination.

c) Due Process

Fairness necessitates adherence to due process rights, which include the right to a speedy and public trial, the right to confront witnesses, the right to remain silent, and the right to legal counsel. These protections safeguard individuals from arbitrary actions by the state and guarantee a fair and transparent legal process.

[121] P. ISHWARA BHAT, FUNDAMENTAL RIGHTS: A STUDY OF THEIR INTERRELATIONSHIP 92 (2004).

d) Proportionate Punishment

Fairness demands that punishments be proportionate to the severity of the offense committed. Sentencing guidelines and considerations should take into account mitigating factors, rehabilitation opportunities, and the potential for societal reintegration.

e) Restorative Justice

Fairness extends beyond punishment to encompass principles of restorative justice, which focus on repairing harm and addressing the needs of both victims and offenders. Restorative approaches prioritize accountability, reconciliation, and healing within communities affected by crime.

f) Access to Justice

Fairness requires that all individuals have access to justice, regardless of their financial means. Legal aid services and mechanisms for resolving disputes should be affordable, accessible, and inclusive to ensure that everyone can seek redress and have their rights upheld.

Thus, fairness in criminal law is indispensable for upholding the principles of justice, protecting individual rights, and maintaining public trust in the legal system. By ensuring fairness at every stage of the criminal justice process, societies can strive towards creating a more just, equitable, and cohesive community for all its members.

2.2.3 Democracy and Separation of Powers

Democracy and the separation of powers are two fundamental principles that form the basis of modern governance in many countries around the world. While they are distinct concepts, they often work in tandem to safeguard individual liberties, promote accountability, and prevent the concentration of power. Let's explore each of these principles:[122]

[122] NEIL PARPWORTH, CONSTITUTION & ADMINISTRATIVE LAW 18-20 (7th ed. 2012).

a) Democracy

Democracy is a system of government in which power is vested in the hands of the people, either directly or through elected representatives. Key features of democracy include free and fair elections, protection of individual rights and freedoms, rule of law, transparency, and accountability. In a democratic system, the government's authority is derived from the consent of the governed, and citizens have the right to participate in the political process, express their opinions, and hold their leaders accountable through elections and other democratic mechanisms.

b) Separation of Powers

The separation of powers is a principle that divides the functions of government among three separate branches: the legislative, executive, and judicial branches. Each branch has distinct responsibilities and powers, and no single branch has unchecked authority.

The idea behind the separation of powers is to prevent the accumulation of too much power in any one branch, thereby minimizing the risk of tyranny, abuse of power, or infringement of individual liberties. This division of powers is often attributed to the political philosopher Montesquieu, who advocated for its adoption as a safeguard against despotism.

The three branches of government typically have the following functions:[123]

a) Legislative Branch

This branch is responsible for making laws. It is typically composed of a parliament, congress, or similar legislative body that debates, proposes, and passes legislation. The legislative branch also has oversight functions, such as scrutinizing the actions of the executive branch and ensuring that laws are implemented effectively.

[123] PAUL JACKSON & PATRICIA LEOPOLD, O. HOOD PHILIPS & JACKSON: CONSTITUTIONAL AND ADMINISTRATIVE LAW 10-11 (8th ed. South Asian ed. 2015) (2001).

b) Executive Branch

This branch is responsible for implementing and enforcing laws. It is headed by the executive, such as a president, prime minister, or monarch, who is typically responsible for executing laws, managing government agencies, conducting foreign affairs, and serving as the commander-in-chief of the armed forces.

c) Judicial Branch

This branch is responsible for interpreting laws and resolving disputes. It is typically composed of courts and judges who adjudicate legal disputes, interpret the constitution and laws, and ensure that the actions of the other branches of government comply with legal norms and constitutional principles.

The separation of powers serves several important functions in a democracy:[124]

a) Checks and Balances

Each branch of government has the ability to check and balance the powers of the other branches. For example, the legislative branch can pass laws, but the executive branch can veto them. Similarly, the judicial branch can declare laws unconstitutional or strike down executive actions that violate the law.

b) Protection of Liberties

By dividing power among multiple branches of government, the separation of powers helps protect individual liberties and prevent abuses of power. It creates a system of accountability in which each branch acts as a check on the others, ensuring that government actions are lawful, transparent, and responsive to the needs of the people.

[124] *Id.* at 12.

c) Prevention of Tyranny

The separation of powers helps prevent the concentration of power in the hands of a single individual or group, thereby reducing the risk of tyranny or authoritarianism. By dispersing power among multiple branches of government, the system makes it more difficult for any one person or faction to dominate the political process and infringe upon the rights of others.

In this way, democracy and the separation of powers are closely intertwined principles that work together to promote good governance, protect individual liberties, and ensure accountability in government. By upholding these principles, democratic societies can strive to create a political system that is fair, transparent, and responsive to the needs and aspirations of the people. In a state of nature, citizens agree to accept limitations to their liberties only in so far as this is necessary to ensure peaceful coexistence with other members of society. The legislator is the direct representative of the parties to the social contract and therefore the legitimate institution to limit liberties and determine which conduct is punishable.

2.2.4 Purposes of Criminal Law

Under the rule of law, the dimensions of offences are defined substantively in. Only such illegal acts are punished. These illegal acts are obviously wrongful and immoral acts. However, wrongful and immoral acts which are out of the box of illegality are the phenomena subject to peoples' mind. Allowing judges to criminalize such phenomenon may give rise to abstractness and judicial arbitrariness.[125]

Thus, criminal law serves various vital purposes within society, contributing to the maintenance of order, justice, and the protection of individual rights. Firstly, it aims to deter individuals from committing crimes by establishing clear consequences for unlawful behavior. Punishment under criminal law serves the purposes of retribution, incapacitation,

[125] SUBASH ACHARYA, CRIMINAL LAW: PRINCIPLES AND PRACTICES 8 (2d ed. 2023).

and rehabilitation, thereby holding offenders accountable while facilitating their potential reintegration into society.[126]

Additionally, criminal law works to protect society as a whole by deterring criminal behavior and enforcing laws against acts that threaten public safety and order. It ensures justice and fairness by providing individuals with fair trials, presumption of innocence, and opportunities for defense, while also addressing the harm caused to victims and providing restitution.

Furthermore, criminal law prevents vigilantism by offering a formalized system for addressing wrongdoing and resolving disputes. It promotes morality and social order by reflecting societal values and norms, thereby reinforcing social cohesion and civility. Lastly, criminal law seeks to provide redress for victims by holding offenders accountable and offering compensation or restitution.

As a whole, criminal law plays a crucial role in deterring crime, punishing offenders, protecting public safety, promoting justice and fairness, preventing vigilantism, reinforcing social norms, and providing redress for victims.[127] Through these purposes, criminal law contributes significantly to maintaining order, upholding the rule of law, and safeguarding individual rights and liberties within society.

2.3 DELAMINATING PROBLEM

The issue of principle of legality is universal principle, however it has somehow different weight in common and civil law system in practice. In civil law systems law is fully codified leaving very little leeway for the discretion of the judges, whereas in common law systems, the judges do not always have a written text to adhere to and therefore may have to resort to unwritten law. Strict compliance of limitation principle, therefore, produces question of the validity of common law tradition. For instance, how the common law have been developed if the court cannot construct? The courts have developed and extended English

[126] Dr. Esther F.J.C. van Ginneken, *The Pain and Purpose of Punishment: A Subjective Perspective* (the Howard League for Penal Reform, Working Paper No. 22, 2016).
[127] Henry M. Hart, Jr., *The Aims of Criminal Law, in* Law and Contemporary Problems 401 (1958), https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2758&context=lcp. (last visited Apr. 24, 2024).

criminal law over the years, untrammelled by the non-retroactivity principle. It generates a conflict between limitation principle and the functioning of the criminal law as a means of social defence.

2.3.1 Conflict between Non-Retroactivity Principle and the Common Law

In criminal law, if the evidence does not amount the crime; court does not criminalize. If the evidences are obtained in other ways than instructed by the law, court does not criminalize. And, if the evidences are obtained legally but do not corroborate with the fact, court does not criminalize. Court's decisions rely on:

a) Whether the conduct is prohibited by law or not?
b) Whether the accused has done that particular prohibited act or not?[128]
c) Whether that conduct amounts to a crime or not?[129]
d) Whether the evidences produced to proof prohibited conduct are legally obtained or not?
e) Whether the evidences weigh the crime in law or not?

However, for instance, what about the cases in which the evidence does not amount the crime, but the public knows it is that culprit who did it? Or, there is no law criminalizing the particular conduct which is in fact hatred, abhorrence and disgust to the mass? Can't the court move a step ahead in criminalizing them? How the common law have been developed if the court cannot construct? The courts have developed and extended English criminal law over the years, untrammelled by the non-retroactivity principle.

The tension between the non-retroactivity principle and the evolving nature of criminal law as a tool for social defense is evident in cases where the evidence may not fit the traditional elements of a crime, but public sentiment or societal values demand action. In such instances, there may be a temptation for courts to "adapt" the law to address conduct deemed morally reprehensible but not expressly prohibited by existing statutes. This tension reached

[128] A person is liable only for what he himself has done; not for what other people do.
[129] All acts are not crime. *For example,* D laughs for after the murder of his neighbor V. He is not liable under Homicide, nor for incitement. There is no thought crime.

a significant point in the UK case of *Shaw* (1962),[130] where the House of Lords upheld an indictment for conspiracy to corrupt public morals, despite the absence of clear precedents, on the basis that such conduct is indictable at common law.

This decision sparked controversy among legal professionals and the public, highlighting the ongoing debate over the role of the judiciary in shaping criminal law. While courts have historically played a role in developing and extending the scope of criminal statutes, this process must be balanced with the principles of legal certainty and respect for individual rights. The tension between adapting the law to address evolving social norms and adhering to established legal principles remains a complex and ongoing challenge for the criminal justice system.[131]

a) Threats and Challenges

In the aftermath of the *Shaw*, several objections were raised regarding the court's decision to uphold the indictment for conspiracy to corrupt public morals. One significant objection revolves around the idea that *Shaw* fails to uphold citizens as rational and autonomous individuals. The concern here is that if courts are allowed to invent new crimes without warning, individuals cannot reliably avoid criminal sanctions, undermining their ability to plan their lives within the bounds of the law. In prioritizing their conception of social defense over citizens' liberty to navigate legal parameters, the majority of the House of Lords exhibited a departure from traditional notions of legal predictability and individual autonomy.

Another objection to the *Shaw* decision centers on the usurpation of legislative authority by the judiciary. Critics argue that the court overstepped its role by assuming the function of creating new offenses, which traditionally falls within the purview of democratically elected legislatures. This perspective highlights the importance of separation of powers and democratic principles in the lawmaking

[130] Shaw v. DPP, (1962) AC 220 (UKHL).
[131] ASHWORTH, *supra* note 31, at 58.

process, emphasizing the need for legislative bodies to enact new laws through proper procedures rather than relying on judicial interpretation.

Moreover, *Shaw* raises concerns about the potential for ambiguity and uncertainty in the legal system. The case presupposes the possibility that law enforcement agencies and prosecutors could pursue charges that are not explicitly defined in statutory law, with courts subsequently validating these charges under common law principles. This scenario introduces a level of unpredictability and discretion that may erode confidence in the fairness and consistency of the legal process.

Furthermore, retrospective application of newly created offenses, as implied in the *Shaw* decision, poses a fundamental challenge to the principle of legality. Citizens have a basic right to know the law in advance so they can conform their behavior accordingly. When offenses operate retrospectively, individuals are deprived of this opportunity, leading to potential injustices and undermining the rule of law. Therefore, the tension between adapting the law to address evolving societal norms and upholding principles of legal predictability and individual rights remains a complex and ongoing challenge in the criminal justice system.

b) Resolution

The principle that criminal law should be determined prospectively through accountable democratic processes, rather than through judicial pronouncement after the fact, has been underscored by legal authorities and jurisprudence.[132] This recognition became evident in the *Knuller* (1973)[133] case and was firmly expressed in subsequent rulings such as *Rimmington* (2006).[134] Since then, English courts have refrained from claiming the power to create new criminal offenses, acknowledging

[132] A.T.H. SMITH, JUDICIAL LAW MAKING IN THE CRIMINAL LAW 46 (1984), *reprinted in* 5 (8) VIC. UNIV. WELLINGT. LAW REV. (2015).
[133] *Knuller, supra* note 103 (UKHL).
[134] Regina v. Rimmington and Goldstein, (2006) 1 AC 459 (UKHL).

the importance of legislative authority in shaping the scope and extent of social censure embodied in criminal law.[135]

The prevailing view emphasizes that the legislature should be responsible for making laws prospectively, rather than relying on judicial decisions that operate retrospectively. Courts should refrain from "striking down" statutes, interpreting laws beyond legislative intent, or establishing offenses not explicitly provided for in statutes. As Professor Ashworth contends, this is not merely a debate about evidence and procedure but rather about the fundamental preconditions of criminal liability.[136]

Lord Bingham's assertion in *Jones* (2007)[137] encapsulates this principle, highlighting that the determination of what constitutes criminal conduct deserving of penalties is the prerogative of elected representatives in Parliament, not the executive or the judiciary.[138] This sentiment echoes a similar stance taken by the Special Bench of the Supreme Court of Nepal in the case of *Adv. Ratna Bdr Bagchand* (2005),[139] emphasizing the importance of legislative decision-making in defining the boundaries of acceptable behavior in society.[140]

2.4 EASTERN JURISPRUDENCE ON JUSTICE ADMINISTRATION

2.4.1 Introduction: Oriental and Hindu Law

Oriental philosophy is distinct from orientalism. Orientalism refers to the imitation and replication of Occidental art and literature, often considered a hegemonized term. In contrast, oriental philosophy pertains to the unique eastern philosophies tied to wisdom, lifestyle, religion, and ethics developed in India, China, and Nepal.

---

[135] ASHWORTH, *supra* note 31, at 59: However, the Scottish judiciary does still claim this power, as part of a dynamic system of common law which must be adapted to deal with changing social circumstances.
[136] Professor Ashworth, *Four Threats to the Presumption of Innocence* (2006), 241, *cited in* ORMEND, *supra* note 32, at 155.
[137] Regina v. Jones, (2007) 1 AC 136 (UKHL).
[138] *Id.*
[139] Adv. Ratna Bahadur Bagchand v. HMG, OPMCM (2005) (NKP 2062, Vol. 2, DN. 7491).
[140] *Id.* at ¶ 17.

Confucianism, Daoism and Buddhism were developed almost around nearer 5th century BC. Prior them, there exists Hinduism which can be traced to the Vedic period.

a) **Hinduism** is one of the world's oldest religions, originated over 6,000 years ago. It centres on concepts like *Dharma* (moral duties), *Karma* (cause and effect), *Samsara* (cycle of rebirth), and *Moksha* (liberation from this cycle). Key sacred texts of Hinduism include the *Vedas, Upanishads, Bhagavad Gita, Ramayana*, and *Mahabharata*. The religion features major deities such as Brahma (creator), Vishnu (preserver), Shiva (destroyer), and Devi (goddess in various forms). Worship practices involve *Puja* (ritual worship), Yoga, and festivals like Diwali, Holi, and Navaratri. Philosophical schools include Vedanta, Sankhya, and Yoga. Hinduism traditionally follows the *Varna* (four classes) and *Ashrama* (four life stages) systems, emphasizing a pluralistic approach that acknowledges many paths to the divine.
b) **Confucianism** is a philosophical and ethical system based on the teachings of Confucius, who lived from 551 to 479 BCE. It emphasizes core concepts such as Ren (humaneness), *Li* (ritual propriety), *Xiao* (filial piety), *Yi* (righteousness), and *Zhi* (wisdom). Key teachings include the Five Relationships (ruler-subject, father-son, husband-wife, elder brother-younger brother, and friend-friend)[141] and the ideal of the *Junzi* (gentleman), who embodies virtue and moral conduct. Important texts include The Analects and The Five Classics. Confucianism has greatly influenced Chinese culture and political theory, advocating for social harmony, proper conduct, and a meritocratic bureaucracy. It focuses on the 'relational self' as part of the social aspect of human existence, promoting virtuous behavior, ceremonies, ritual propriety, respect for parents, and cultivated universal wisdom.
c) **Daoism**, is an ancient Chinese philosophical tradition centred on living in harmony with the *Dao*, meaning 'the Way.' It emphasizes *Wu Wei*, or non-action, advocating for natural spontaneity in alignment with the Dao's principles. Key concepts include Yin and Yang, complementary forces that maintain balance in the universe. The primary texts include the *Tao Te Ching* and *Zhuangzi*, offering wisdom on spiritual

[141] ROSHAN KUMAR JHA, LEGAL PHILOSOPHY 215(2020).

cultivation and natural living. Daoist practices include meditation, inner alchemy for enlightenment, and physical exercises like *Tai Chi* for health and harmony. Ethically, Daoism promotes simplicity, humility, and a harmonious relationship with nature, influencing Chinese culture profoundly alongside Confucianism and Buddhism.

d) **Buddhism** is founded by Siddhartha Gautama in the 5th century BC which teaches the Four Noble Truths: (i) Life is full of suffering, (ii) Suffering is caused by desire, (iii) There is a way to end suffering, and (iv) The Eightfold Path leads to *Nirvana*, comprising right view, right livelihood, right speech, right resolve, right effort, right concentration, right conduct, and right mindfulness. The teachings of Gautama Buddha revolutionized the oriental philosophy of life and *dharma*.[142]

Hindu Law

Hindu law is deeply intertwined with Hindu philosophy and religion.[143] Hindus believe in the immortality of the soul and a cycle of birth and rebirth, which can be broken by attaining salvation (*Moksha*) through *Karma*, *Swadharma*, or *Aatmagyana*, as explained in the *Vedas* and *Upanishads*. The *Bhagavad Gita* mentions two other paths to salvation: *Gyana Marga* and *Bhakti Marga*. Lord Krishna advised Arjun to perform his duties without concern for the results. Thus, Hindu law encompasses civil, religious, and moral systems.

The Hindu philosophy of law is widely based on *Dharma.* The term *Dharma* under the Vedic scriptures widely refer to law. The word *Dharma* comes from the Sanskrit root *dhru* which means *to hold*.[144] It is the foundation upon which all life is based upon; it provides a comprehensive guidance to regulate human conduct in accordance with the given system of cosmic creation and fulfil the purpose of one's life.[145] According to M.Rama Jois in his *Legal and Constitutional History of India, dharma* means justice (*nyaya*), what is right in a given circumstance, moral, religious, pious or righteous conduct, being helpful to living beings and things, duty, law and usage or custom having the force of law and also a valid

[142] YUBARAJ SANGROULA, JURISPRUDENCE: THE PHILOSOPHY OF LAW 194 (1st ed. 2010).
[143] PARAS DIWAN, MODERN HINDU LAW 11(20th ed. 2011).
[144] B.M. GANDHI, HINDU LAW 4 (Sumeet Malik ed., 4th ed. 2016).
[145] SUNIL SONDHI, ASPECTS OF DHARMA: ETHICS LAW AND ACTION IN INDIAN TRADITION 5 (2023).

Rajashasana (royal edict).[146] Hindu Dharma has originated not from a single person, or from a single book, or at a single point of time.

Manusmriti lists the sources of *Dharma* as the *Vedas, Smritis*, the conduct of learned saints, customs of holy and learned persons, and self-satisfaction. Manu, a preeminent jurist of Hindu law, categorizes *Dharma* into *Achara* (daily behavior), *Vyavahara* (good conduct towards others), and *Prayaschita* (sin and justice), highlighting that Hinduism is a comprehensive way of life, not just a religion. Thus, there are two primary sources of Hindu law:

- ***Shrutis* or *Vedas***: Divinely revealed texts heard by inspired sages, including the *Rigveda, Yajurveda, Samaveda*, and *Atharvaveda*, as well as the *Upanishads*.
- ***Smritis* or *Dharmashastras****:* Human creations based on *Shrutis*, comprising the principles of Hindu law. *Smritis* are divided into *Sutras* and *Dharmashastras*.

There are two main schools of Hindu law:

- ***Mitakshara* School**: This school is followed throughout India, except in Assam and Bengal, guided by *Yajnavalkya Smriti*.[147] It holds that the right to family property is acquired by birth.
- ***Dayabhaga* School**: This school is followed in Bengal and Assam, and it focuses on partition and inheritance, and individuals cannot demand partition of property during their father's lifetime.[148] Unlike *Mitakshara,* where the family is a unit, *Dayabhaga* recognizes individual rights only upon partition. *Mitakshara* covers a broader aspect of life, whereas *Dayabhaga* is specific to partition and inheritance. The Mithila school, a prominent sub-school of *Mitakshara,* is believed to have formed Nepalese Hindu law.

Overall, the ancient eastern legal jurisprudence is embedded in these *Dharmasastras* in the form of *Smritis* and *Nitis* of the wise learned scholars. Many of the Sanskrit *Sloks*

[146] GANDHI, *supra* note 144, at 4.
[147] DIWAN, *supra* note 143, at 11.
[148] GANDHI, *supra* note 144, at 4.

propounded by scholars such as Manu, Narad, Vidur, Chanakya and Bharithari resonate with the modern legal and political systems. The following chapters focus on provisions relating to justice administration as propounded in the various *Smritis* and *Nitis*.

2.4.2 Smriti

1. *Sattyamartham cha sampashyedaatmanmtha sakshirnaha*

Desham rupaam cha kaale cha vyawahar vidhau sthith (8/45 *Manusmriti*)

सत्यमर्थं च संपश्येदात्मानमथ साक्षिणः ।

देशं रुपं च काले च व्यवहार विधौ स्थितः ॥ ८।४५मनु

Evidence is important for fair and appropriate justice. Even after the collection of sufficient evidences, the judge must clearly understand the truth/reality of the evidences, the financial state, the conscience (of the parties), the witnesses and the situation and environment of the country. Only then should the judge administer justice.[149]

2. *Sadbhirachritam yasyadarbhikaishcha dwaiijaatibhih*

Taddehesh kuljaatinamvirudham prakalpayet (8/46 *Manusmriti*)

सद्भिराचरितं यस्यादार्भिकैश्च द्विजातिभिः ।

तद्देश कुलजातीनामविरुद्धं प्रकल्पयेत । ८।४६ मनु

Justice should be administered in adherence to the particular conduct and behavior of the particular community in that particular State.[150]

3. *Jatijaanpadandharmanshrenidharmanshch dharmavita*

Samikshya kuldharmanshch swadharman pratipadyeta (8/41 *Manusmriti*)

जातिजानपदान्धर्माञ्श्रेणीधर्माश्च धर्मवित् ।

समीक्ष्य कुलधर्माश्च स्वधर्मं प्रतिपादयेत् । ८।४१ मनु

[149] DILLI RAM GAUTAM, PURVIYA SOCH RA SROT 101 (2009).
[150] *Id.* at 102.

In justice administration, dharma should be administered in adherence to the customs, traditions and religion of the person rather than the provisions of the scriptures. Justice deliberated in accordance of such matters is more effective according to Manu. [151]

4. *Asatyatah satya sankaashah satyaashchasatyasanitbhah*

Drishyante vividha bhawastasmadhyukttam parikshanam (1/17 *Naradsmriti*)

असत्याः सत्य सङ्काशाः सत्याश्चासत्यसन्तिभाः।

दृश्यन्ते विविधा भावास्तस्माद्युक्तं परीक्षणम् ॥ १।७१ नारदस्मृति

The judicial process may not always be fair because evidences are important in the administration of justice. Sometimes people with ill intention can destroy true evidence of the victim and replace it with fabricated evidence. In such instances, the judge may fail to separate the truth from the fabricated and consider the false as the truth and vice versa. There lies the danger of charging an innocent with guilt and acquitting the guilty. Similarly, the judges sometimes might get caught in the material greed leading them to cause innocent parties to incriminate themselves. As a result, fair justice cannot be administered, and the society loses trust in the judicial process. The prevalence of personal greed destroys the justice system and renders a State directionless. Therefore, justice (judgement) should not be given unless a good lawyer thoroughly examines and studies the case. The judiciary is the most sensitive organ of the State, thus, the judge who impairs the justice process should be punished by the King (State).[152]

5. *Durdrishtevyawahare tu sabhyasatam dandamapnuyuha*

Nahi jatu bina danda kashichanmargo wastishthate (1/66 *Naradsmriti*)

दुरदृष्टेव्यवहारे तु सभ्यास्तं दण्डमाप्नुयुः ।

नहि जातु बिना दण्ड काश्चिन्मार्गोऽवस्तिष्ठते ॥ १।६६नारद

[151] *Id.*
[152] *Id*. at 106.

Sometimes, lawyers may be negligent and sometimes, due to their personal relations, they may be biased and provide wrong advice. The concerned law enforcement agencies should scrutinize such acts and punish such legal professionals appropriately. Only then will other legal professionals be deterred from committing such acts. If not, such deceitful persons will cause the people to lose trust in the justice system. Hence, the government should always be aware in this aspect.[153]

6. *Uunam wa pyadhikam wa pi likhedyo rajyashaasanamm*

Paardaarika chaur wa munchhato danda uttamah

ऊनं वाऽप्यधिकं वाऽपि लिखेद्यो राज्यशासनम् ।

पारदारिक चौरं वा मुञ्चतो दण्ड उत्तमः-व्य.अ.२९५ या.

Justice administrators can also be involved in protecting thieves, adulterers, etc. by changing or reducing the orders of the State. The State should punish such acts appropriately to ensure the judges are motivated to administer the right sentence.[154]

7. *Rajpratakshya drishtani suriddasambandhi baandhawaih*

Prapta dwigun dandani karyaani punaruddhretta (1/50 *Naradsmriti*)

राजप्रत्यक्ष दृष्टानि सुहृद्सम्बन्धि बान्धवैः।

प्राप्त द्विगुण दण्डानि कार्याणि पुनरुद्धरेत् ॥ १।५० नारद

Judicial process is a peculiar process. It is not an easy task to delve into the depths of the opinions and evidence of both the plaintiff and the defendant and give a final verdict. Although the final verdict may feel fair and just, it may not be the right decision. The victim can appeal to the higher court. The perpetrator can also register the case again without admitting defeat. The judge should make them aware that if the previous decision was right, then you will get twice the punishment than what you have been given now. If

[153] *Id.* at 107.
[154] *Id.*

he/she is the victim who did not get the right decision, then he/she registers the case again without fear, otherwise, if he/she is a deceitful victim, he/she does not register the case.[155]

8. *Arajake hee lokedrasminsarwato vidhrute bhayat*

Raksharthamsya sarwasya rajanmashrijat prabhu (7/3 Manusmriti)

अराजके हि लोकेद्रस्मिन्सर्वतो विद्रुते भयात् ।

रक्षार्थमस्य सर्वस्य राजानमसृजत प्रभु : ॥ ७३मनु

Anarchy has begun to spread in the society. The wicked and the miscreants have begun attacking the noble and the righteous. The King was thus created (by the Gods) and entrusted with the duty to rid the society of such wicked problems and take care of the citizens.[156]

9. *Tasmaddharma yamisteshu sa vyavasentaradhipha*

Anishtam chapyanishteshu tam dharmam vichalayet (7/13 *Manusmriti*)

तस्माद्धर्मं यमिष्टेषु स व्यवसेन्तराधिपः ।

अनिष्टं चाप्यनिष्टेषु तं धर्मं विचालयेत् ॥ ७१३ मनु

The head of the State should consider that it is the duty of the King to establish dutiful officials in *dharma* and wrongdoers in *adharma* to ensure the dutiful ones can fearlessly execute good deeds.[157]

10. *Tasyartha sarwabhutanam goptaram dharmamatmajam*

Bhrihamtejomayam dandamasrijatpurvamishworh (7/14 *Manusmriti*)

तस्यार्थे सर्वभूतानां गोप्तारं धर्ममात्मजम्

ब्रह्मतेजोमयं दण्डमसृजत्पूर्वमीश्वरः ॥ ७१४ मनु

[155] *Id*.
[156] *Id.* at 122.
[157] *Id.* at 123.

The purpose of punishment is to protect those who perform their duties within the bounds of the law and punish those who break the law in order to bring them in the right path.[158]

11. *Tasya sarwani bhutani sthawaraani charani cha*

Bhayadbhogaya kalpante swadharmanan chalanti cha (7/15 *Manusmriti*)

तस्य सर्वाणि भूतानि स्थावराणि चराणि च

भयाद्भोगाय कल्पन्ते स्वधर्मान्न चलन्ति च ॥ ७१५

Punishment inflicted with a proper understanding of the facts is powerful. Such powerful punishment should not be misused by anyone as effective punishment ensures every living being commits to their duties and does not act unlawfully. Furthermore, fear of punishment yields karmic enjoyment. Nobody would stray from the path of *dharma*.[159]

12. *Nashte dharma manyshyanin vyawaharah prawartate*

Drishta cha vyawaharanin raja dandadharrah smritah (1/2 *Naradsmriti*)

नष्टे धर्मे मनुष्याणां व्यवहारः प्रवर्तते ।

द्रष्टा च व्यवहाराणां राजा दण्डधरः स्मृतः १।२ नारद

The king who can effectively inflict punishment is a powerful king as the lawful punishment is what makes a king powerful. It is the king who delivers the punishment. *Naradsmriti* acknowledges the king as the one with the power to punish. A ruler should not ignore the any immoral or unlawful acts that happen in the State they rule. It is the duty of the ruler to divert the wrongdoers towards the lawful path. Proper and proportionate punishment should be delivered. That is why, the king is the one who delivers punishment.[160]

---

[158] *Id*.
[159] *Id.* at 124.
[160] *Id.*

13. *Dusyeyuh sarwawarnishacha bhidhyeransarwasetawah*

Sarwalok prakopashcha bhaweddhandashya vibhramaat (*Manusmriti*)

दुस्येयुः सर्ववर्णाश्च भिद्येरन्सर्वसेतवः

सर्वलोक प्रकोपश्च भवेद्दण्डष्य विभ्रमात् ॥ मनु

Failure to deploy the right punishment at the right time causes anarchy to spread in the society. The nexus of rules established by learned scholars to make an orderly society are torn apart, the *sutra* (formula) of *dharma* binding or holding the State is removed and duty becomes evil. War, conflict and rebellion spread everywhere.[161]

14. *Sa raja purusho dandah sa neta shasit cha sah*

Chaturwarnmashramanim cha dharmasya pratibhuha smritah (7/17 *Manusmriti*)

स राजा पुरुषो दण्डः स नेता शासित च सः ।

चतुर्वर्णमाश्रमाणां च धर्मस्य प्रतिभूःस्मृतः ७।१७ मनु

According to Manu, in a lawful State, there is no need for a ruler as punishment is self-inflicting. Hence, Manu considers adequate punishment as king. Men, politicians and ruler are all punishments. *Varnashram dharma* and the power to enforce the laws and rules of a society is also punishment.[162]

15. *Dandaha shasti prajah sarwah danda aewabhirshyati*

Dandaha supteshu jagarti dandam dharmam vidhurbudhaah (7/18 *Manusmriti*)

दण्डःशास्ति प्रजाः सर्वाः दण्ड एवाभिरक्षति ।

दण्डः सुप्तेषु जागर्ति दण्डं धर्मं विदुर्बूधाः ॥७।१८

[161] *Id.*
[162] *Id.* at 126.

The State governs its subjects via the fear of punishment. The important relics of the State and the dutiful subjects are protected due to punishment. Punishment keeps wake as the protector of all within a society.[163]

16. *Weno vinashto vinayananhushashchaiwa parthiwah*

Suda paijawanshchaiwa sumukho nimirewa cha (7/41 *Manusmriti*)

वेनो विनष्टोऽविनयन्नहुषश्चैव पार्थिव :।

सुदा पैजवनश्चैव सुमुखो निमिरेव च ॥ ७।४१ मनु

There are plenty of examples of people who were punished for abusing their power to punish, thinking they were above the law. Manu provides examples of kings such as Nahusha, Sudas, the son of Pigavana, Sumukha and Nemi, who perished for considering themselves above the law. Hence, even the king is bound by the rule of law.[164]

17. *Namitrakarandragya vipuladwa dhanaamat*

Utsrishtawyaha sahasikastyaktaatma manurabravit (*Parishishta* 39 *Naradsmriti*)

नमित्रकारणद्राज्ञा विपुलाद्वा धनागमत् ।

उत्सृष्टव्यः साहसिकस्त्यक्तात्मा मनुरब्रवीत् । परिशिष्ट ३९ नारदस्मृति ।

From time immemorial, the generally accepted consensus is that punishment should be delivered to those who abuse their position, power and status. The ones who bribe are also punishable. According to Narad, regardless of the status of the person (whether they are relatives of the king or highly influential persons), anyone who commits the act of bribery should not be left unpunished in any circumstance. The punishment given by taking bribe and having partiality will make one perish.[165]

[163] *Id.* at 127.
[164] *Id.* at 129.
[165] *Id.* at 130.

18. *Tasmaddharmasann praptya raja bigatmatsarah*

Samah syat sarwabhutesu vibhradrawiwaswatam vratam (1/34 *Naradsmriti*)

तस्माद्धर्मासनं प्राप्य राजा विगतमत्सरः।

समः स्यात् सर्वभूतेषु विभ्रद्वैवस्वतं व्रतम् ॥ नारद १।३४

Narad provides an important direction to the king and the judge. When the judge presides on the Bench or the king presides on the throne, they must keep in heart their *dharma* (duty). They must abandon all kinds of desire, want and envy. Every person before them should be treated equally. A king or judge must develop the skill to differentiate the right from the wrong without bias (just as how *Yamaraj* would judge) in order to become a wise king or judge.[166]

19. *Dharmashastra puraskritya praanvivakamate sthitah*

Samahitmatiah pashyed vyawaharananu kramat (1/35 *Naradsmriti*)

धर्मशास्त्रं पुरस्कृत्य प्राङ्विवाकमते स्थितः ।

समाहितमतिः पश्येद् व्यवहाराननुक्रमात् ॥ नारद १।३५

In the course of a case hearing, the judges must observe the following three things. First, the *dharmashastra* must be observed (in modern understanding, the laws made by the legislative body). Second, they must pay attention to the matters spoken by the government prosecutors regarding the aforementioned laws. Finally, judgment should be passed only after being clear on the reality of the facts spoken by the parties to the case. Justice can prevail only when the learned person of the law fairly differentiates the innocent and the guilty party.[167]

[166] *Id.* at 133.
[167] *Id.* at 134.

20. *Agamah prathaman kaaryo vyawaharpadam tatah*

Chikitsaa nirnayashchaiwa darshanam syaachchaturvidharm (1/36 *Naradsmriti*)

आगमः प्रथमं कार्यो व्यवहारपदं ततः ।

चिकित्सा निर्णयश्चैव दर्शनं स्याच्चतुर्विधम् ॥ नारद १।३६

In a court case, the following four process must be fulfilled:[168]

a. *Aagam*: It refers to the issue of the case (what is the case about) which is clarified by the first application.
b. *Vyawaharpad*: It refers to the claims or written reply, inclusive of the various evidences of the victim party.
c. *Chikitsa*: In the modern times, this refers to the arguments presented before the court. It includes the task of examination of evidences.
d. *Nirnayaghya*: It refers to the final decision or judgment by the court after the lawyers argue on the issues of the case.

21. *Dharmashastravirodhe tu yuktiyukto vidhiha smritiha*

Vyawaharo hi balwan dharmastenawahiyateh (1/40 *Naradsmriti*)

धर्मशास्त्रविरोधे तु युक्तियुक्तो विधिः स्मृतः ।

व्यवहारो हि बलवान् धर्मस्तेनावहीयते ॥ १।४० नारद

Yagyavalkya and Narad have the following opinion on this subject:

If there arises a clash in the *dharmashastras*, it is necessary to use logical interpretation. General public customs are more important than the words written in the scriptures, that is why customary truth is *dharma*. The decisions of learned people become ideal because there is a justification to such decisions. Propriety strengthens public customary rules. Therefore, there is an opinion that people who administer justice should be very learned, prudent and proficient in reasoning. Niti has this idea about scholars: - *Atmavat*

[168] *Id*.

sarvabhutheshu ya pashyati sa pandit: That is, according to earlier scriptures, scholars are those who see all beings as themselves. No one becomes a scholar just by reading. To be a scholar, you should be able to apply what you read in practice. [169]

22. *Dharmashastratha kushalah kulinah satyavadinah*

Sama shatrau cha mitre cha nripatoh suya sabhasadah (3/5 *Naradsmriti*)

धर्मशास्त्रार्थ कुशलाः कुलीनाः सत्यवादिनः

समा शत्रौ च मित्रे च नृपतोः स्युः सभासदः॥ ३।५ नारद

According to Narad, while appointing persons who administer justice, appointed persons should have the following qualities:

a. Proficiency in *dharmashastras*

b. Belonging to noble family (not to be interpreted as belonging to a rich family, rather of noble character)

c. Speaks no lies

d. Views friends and enemies from an equal perspective

Therefore, the people who administer justice must be very learned, rational and logical.[170]

23. *Sabhayam na praweshtavyam waktatvyam wa samchjasam*

Abruvan vibruvan wapi naro bhawati kilbashi (3/10 *Naradsmriti*)

सभायां न प्रवेष्टव्यं वक्तव्यं वा समञ्जसम् ।

अब्रुवन् विब्रुवन् वापि नरो भवति किल्बषी ॥ ३।१० नारद

Injustice in the judicial process can lead to the acquittal of the guilty and the conviction of the innocent. If the judge cannot execute a fair and just sentence without fear, it is better for such person to not enter the judicial bench. Upon entering the judicial bench, if such a judge cannot speak righteously, they

[169] *Id.* at 135.
[170] *Id.* at 136.

become a sinner. Hence, judicial personnel must speak of the right thing of their judicious conscience. This is their *dharma*.[171]

24. *Pado dharmasya kartaram padah sakshinamrichchati*

Padah sabhasadaha sawan pado rajanamrichchati (3/12 *Naradsmriti*)

पादोऽधर्मस्य कर्तारं पादः साक्षिणमृच्छति ।

पादः सभासदःसवान् पादो राजानमृच्छति ॥ ३/१२ नारद

If the person delivering justice can give the right decision, the wrongdoer gets the proper punishment. This makes the magistrate, the witness and the king praise worthy. However, if a misjudgment is delivered, then the magistrate, the witness and the king are all liable for punishment due to the judge's mistake. The sin gets distributed to all of these three according to *Shastra*. [172]

25. *Kriyapi dwividha proktata manushi daiviki tatha*

Manushi lekhya sakshibhyaam ghatadi daivika smritah (3/27 *Naradsmriti*)

क्रियापि द्विविधा प्रोक्ता मानुषी दैविकी तथा ।

मानुषी लेख्य साक्षीभ्यां घटादि दैविकी स्मृता : ॥ ३/२७ नारद

In relation to the importance of evidence in deciding a case, Narad states: To prove any claim, it is necessary to present the evidences that prove that claim. If the claim cannot be proved by evidence, decisions should not be made based on unverified assumptions. Decisions without evidences are dangerous. Every case has two paths- one requires physical evidences such as documents, witness testimony whereas the other requires circumstantial evidences (*divya praman*). Circumstantial evidences are only to be taken into consideration when there is a lack of physical evidences.[173]

[171] *Id.* at 137.
[172] *Id*.
[173] *Id.* at 138.

26. *Kin tu raja vishaishena swadharmamanurakshyata*

Manushya chittawaichitryat parishyam sadhwa sadhutaa (1/68 *Naradsmriti*)

किं तु राजा विशैषेण स्वधर्ममनुरक्षता ।

मनुष्य चित्तवैचित्र्यात् परीक्षँ साध्व साधुता ॥ १।६८ नारद

Narad states that the king should never exercise arbitrary power in inflicting punishment. It is the duty of the king to inflict punishment, however, prior to exercising such duty, the king must examine whether the person committed a crime with intention or by mistake.[174]

27. *Abhutamapyabhihitam praptakaal parishyet*

Yattu pramadananochyet tadbhutamapi hiyate (1/64 *Naradsmriti*)

अभूतमप्यभिहितं प्राप्तकाल परीक्षयेत् ।

यत्तु प्रमदान्नोच्येत तद्भूतमपि हीयते ॥ १। ६४

Narad provides specific direction on this topic. If the statement obtained seems falsified, the person should be asked further questions or other evidences must be collected to reach to the truth. It is pertinent to find the truth.[175]

28. *Na ta mithyabhiyunjit dosho mithyabhiyoginha*

Yastatra vinayaha prokttaha sokbhiyoktaarmavrajet (1/15 *Naradsmriti*)

न त मिथ्याभियुञ्जीत दोषो मिथ्याभियोगिन :

यस्तत्र विनयः प्रोक्तः सोकभियोक्तारमाव्रजेत् ॥ १।५७ नारद

It should be kept in mind that a person could be falsely accused of an act, thus, it is important to examine the evidence closely. The witnesses can also speak false statements. The evidences could be fabricated. Hence, the scripture states that the accuser must be clearly made to understand that if

[174] *Id.* at 142.
[175] *Id.*

they have falsely accused someone, the moment the truth is revealed, they will be punished as the accused would have been. [176]

2.4.3 Niti

a) Vidhur Niti

Vidur Niti consists of the dialogue between King Dhritrashtra and Vidur. It is contained in eight chapters of the Udyoga Parva of the epic the *Mahabharata*. In these dialogues, Mahatma Vidur explains to the blind King Dhritrashtra several issues relating to human welfare in this world and in the afterlife.

In these dialogues, he advises the King on Raja Dharma (duties of the King) and several other issues including politics, interactions, treatment of others, *dharma*, truthful behavior, different facets of justice, truth, human welfare, forgiveness, nonviolence and consequences of ingratitude. Vidura Niti is found in the *prajagara parva* – a subsection of the Udyoga Parva of the Mahabharata. His words were considered as been spoken and delivered with great intelligence and consideration.

First Chapter

1. *Ek papani kurute faal bhungttake mahajana*

Bhottaro vipramuchyante karta doshen lipyate. Verse 47

एकः पापानि कुरुते फलं भुङ्क्ते महाजनः ॥

भोक्तारो विप्रमुच्यन्ते कर्ता दोषेण लिप्यते ॥४७॥

While a person might commit sins and accumulate wealth as a result, there may be many other persons who enjoy or consume such wealth. Those who enjoy the fruits escape unaffected, while the one who commits the sin is liable to experience the results of karma alone.[177]

[176] *Id*.
[177] MADAN PRASAD ARYAL, NITI (VIDHUR, CHANAKYA AND BHRITHHARI) 54 (2005).

2. *Ek vishraso hanti shastrenaikashcha badhyate*

Sarastram saprajam hanti rajanam mantranam mantraviplawah. Verse 50

एकं विषरसो हन्ति शस्त्रेनैकश्च बध्यते ॥

सराष्ट्रं सप्रजं हन्ति राजानं मन्त्रनं मन्त्रविप्लवः ॥५०॥

The one who drinks the poison is the one who dies, and a weapon kills the one who is attacked with it. Disclosure of national level secrets, however, can destroy an entire State, along with the king and the subjects. [178]

3. *Saptadoshah sada ragya hatma vyasanodayaah*

Prayasho yairvinashyanti kritamula apishwarah. Verse 96

Striyoshya mrigaya paanam vyakyaparushyam cha panchamam

Mahachcha dandaparushyamarthadushanmewa cha. Verse 97

सप्तदोषाः सदा राज्ञा हातमा व्यसनोदयाः ॥

प्रायशो यैर्विनश्यन्ति कृतमूला अपीश्वराः ॥९६॥

स्त्रियोऽक्षा मृगया पानं वाक्यपारुष्यं च पञ्चमम् ॥

महच्च दण्डपारुष्यमर्थदूषणमेव च ॥९७॥

An executive/politician, should renounce the following seven faults that produce calamity, inasmuch as they are able to ruin even the most well-established elites: promiscuity, gambling, hunting, intoxication, harshness of speech, severity of punishment, and misuse of wealth.[179]

4. *Yo niddhatam kurute jatu vesham*

Na paurushenapi bikatthate nyaan

Na murchitah katukanyaaha kimchit

Priyam sada tam kurute jano hi. Verse 116

[178] *Id.* at 55.
[179] *Id.* at 64.

यो नोद्धतं कुरुते जातु वेषं

न पौरुषेणापि विकत्थतेऽन्यान् ॥

न मूर्च्छितः कटुकान्याह किंचित्

प्रियं सदा तं कुरुते जनो हि ॥११६ ॥

A person who never assumes an arrogant appearance, who never engages in self-praise in front of othersw, and never speaks harshly to others even when enraged, is admired by all.[180]

Second Chapter

1. *Mithyopetani karmaan siddheyuryani bharat*

Anupapaprayukttani ma sam tesh manah kritha. Verse 6

मिथ्योपेतानि कर्माण सिद्धेयुर्यानि भारत ॥

अनुपापप्रयुक्तानि मा स्म तेष मनः कृथा ॥६॥

The one who chooses injustice and deception as a means of success faces the harmful consequences. Deceitful act is condemned.[181]

2. *Tathaiva yogavihitam yukta karma na sidhyeti*

Upayayuktam medhavi na tatra glapayenmanah. Verse 7

तथैव योगविहितं यत्तु कर्म न सिध्यति ॥

उपाययुक्तं मेधावी न तत्र ग्लपयेन्मनः ॥७ ॥

An intelligent person should not grieve the failure of a project in spite of the application of fair and proper means.[182]

[180] *Id.* at 68, 69.
[181] *Id.* at 75.
[182] *Id.*

3. *Atha samtayajato dharmamdharma chanutishthatah*

Pratisamweshtate bhumiragnau charmahitam yatha. Verse 29

अथ संत्यजतो धर्ममधर्म चानुतिष्ठातः ॥

प्रतिसंवेष्टते भूमिरग्नौ चर्माहितं यथा ॥ २९ ॥

The kingdom of the king who walks the path of *adharma* shrinks like the skin put in the fire.[183]

4. *Na kulam vrithinasya praminmiti me matih*

Anteshwapi hi jatanam vritmewa vishishyate. Verse 41

न कुलं वृतहीनस्य प्रमाणमिति मे मतिः ॥

अन्तेष्वपि हि जातानां वृत्तमेव विशिष्यते ॥४१॥

An unscrupulous person is not respectable just because he/she was born in the higher clan. Similarly, a virtuous person is respectable even though he/she was born in a lower clan.[184]

5. *Aavrittirbhayamantyanam madhyanam maranad bhayam*

Uttamanam tu martyanamawamanat param bhayam. Verse 52

आवृत्तिर्भयमन्त्यानां मध्यानं मरणाद् भयम्

उत्तमानां तु मर्त्यानामवमानात् परं भयम् ॥५२॥

A lowly person worries about unemployment. A middle-class person fears death. The person with great character fear dishonor more than anything else.[185]

[183] *Id.* at 80.
[184] *Id.* at 82.
[185] *Id.* at 85.

Third Chapter

1. *Yam ratri madhivinna stri yam chaiwashya parajitah*

Yam cha bharatitapttaanggo durvivikttasma taam vaset. Verse 31

यां रात्रि मधिविन्ना स्त्री यां चैवाक्ष पराजितः ॥

यां च भाराभितप्त्ताङ्गो दुर्विवित्तास्म तां वसेत् ॥३१॥

A judge who gives perverse decision meets the fate of a woman whose husband visits another woman at night, a gambler who lost all bets, or the porter who is compelled to carry weight even after a tiring day.[186]

2. *Nagare pratiruddhah san bahirddhare vubhushitah*

Abhitran bhuyasah pashyed yah sashyamanritam vadet. Verse 32

नगरे प्रतिरुद्धः सन् बहिद्धरि वुभुक्षितः ॥

अभित्रान् भूयसः पश्वनृते हन्ति दश हन्ति गवानृते ॥

The situation of the judge who gives perverse decision is same of that of a king who is thrown out of and restricted from entering his own city and left to starve and face his enemies. [187]

3. *Pancha pashwanrite hanti dash hanta gawanrite*

Shatamashwante hanti sahashram purushanrite. Verse 33

अभित्रान् भूयसः पश्वनृते हन्ति दश हन्ति गवानृते ॥

शतमश्वान्ते हन्ति सहस्रं पुरुषानृते ॥३३ ॥

Lies lead the person and their future generations to hell to suffer. Five generations suffer for a lie told to retain animals. Ten generations suffer if the lie is related to a cow. A hundred generations suffer in hell for lies told

[186] *Id.* at 103.
[187] *Id.*

relating to horses. The punishment for a lie told relating to humans is for a thousand generations to rot in hell.[188]

4. *Hanta jatanajatamshcha hiranyarthe nritam vadna*

Sarwa bhumyanrite hanta ma sma bhumyanritam vadeh. Verse 34

हन्ति जातानजातांश्च हिरण्यार्थेऽनृतं वदन् ॥

सर्व भूम्यनृते हन्ति म स्म भूम्यनृतं वदेः ॥३४॥

The preceding as well as the succeeding generations suffers in hell for a lie told for the sake of gold. A person who lies for the sake of women or for land destroys himself.[189]

5. *Na deva dandamadaya rakshanti pashupalawat*

Yam tu rashitumichchanti buddhya samqibhajanti tam. Verse 40

न देवा दण्डमादाय रक्षन्ति पशुपालवत् ॥

यं तु रक्षितुमिच्छन्ति बुद्धया संविभजन्ति तम् ॥४० ॥

The gods do not stand guard with sticks like the cowherds. The gods bestow wisdom upon those they wish to take care of and protect.[190]

6. *Samudrikam vanijjam chorpurva shalakadhurtta cha chikitsakam cha*

Arim cha mitram kushalwam cha naitan sashyye twadhikurvit sapt. Verse 44

सामुद्रिकं वाणिज्जं चोरपूर्व शलाकधूर्त्त च चिकित्सकं च ॥

अरिं च मित्रं कुशीलवं च नैतान् साक्ष्ये त्वधिकुर्वीत सप्त ॥४४॥

[188] *Id.*
[189] *Id.*
[190] *Id.* at 105.

The following seven people should never be called upon as a witness as they may provide false statements – an astrologist, a trader of stolen goods, a gambler, a physician, an enemy, a friend and an actor.[191]

7. *Dhanenadharmalabdhen yachchidrampidhiyate*

Asamvritam tad bhawati tatonyadawadiryate. Verse 70

धनेनाधर्मलब्धेन यच्छिद्रमपिधीयते ॥

असंवृतं तद् भवति ततोऽन्यदवदीर्यते ॥७०॥

Efforts made to hide the deficiencies with the help of wealth earned by foul means (*adharma*) neither succeed nor remain confidential. Rather, as the time passes, more shortcomings are highlighted.[192]

Fifth Chapter

1. *Sankilashtakarmanamatipramaadam*

Nityanritam chadridhbhaktikam cha

Visrishtaragam patumaninam cha-

Pyetan ra sewet naradhaman shat. Verse 37

संकिलष्टकर्माणमतिप्रमादं

नित्यानृतं चादृढभक्तिकं च

विसृष्टरागं पटुमानिनं चा-

प्येतान् र सेवेत नराधमान् षट् ॥३७ ॥

One must not associate with the following 6 people – a person whose activities harms others; a reckless person; a liar; a person with fickle loyalty;

[191] *Id.* at 107.
[192] *Id.* at 113.

a person devoid of love; and, a person who over-estimates his/her intelligence.[193]

2. *Arthasiddhi paramichchan dharmamewaditshcharet*

Na hi dharmadapaityarthah swargalokadiwamritam. Verse 48

अर्थसिद्धि परामिच्छन् धर्ममेवादितश्चरेत्

न हि धर्मादपैत्यर्थः स्वर्गलोकादिवामृतम् ॥४८॥

Anyone who desires to achieve four-fold the result from their work should take the path of *dharma*. As *amrit* (heavenly nectar) cannot be separated from *swargalok*, *dharma* cannot be separated from *artha* (work).[194]

Seventh Chapter

1. *Adharmoparjitairshtheryah karotyaudharwahikam*

Na sa tasya falam pretya bhunankatterthasya duragamat. Verse 66

अधर्मोपार्जितैश्वर्यैः करोत्यौर्ध्वदेहिकम् ॥

न स तस्य फलं प्रेत्य भुञ्जकेऽर्थस्य दुरागमात् ॥६६ ॥

A person who, with the help of ill-gotten wealth, performs *yagya*, *dana* and other *dharma* rituals for betterment of his/her after-life, he/she does not succeed in his/her efforts. Tainted riches do not reap auspicious results.[195]

2. *Tapo balam taapasaanam braham brahamvidam balam*

Hinsa balmasadhunam shyama gunawatam balam. Verse 69

तपो बलं तापसानां ब्रह्म ब्रह्मविदां बलम् ॥

हिंसा बलमसाधुनां क्षमा गुणवतां बलम् ॥६९॥

---

[193] *Id.* at 148.
[194] *Id.* at 151.
[195] *Id.* at 187.

Tapasya is the strength of *yogis*. The *Vedas* provide the backbone of intelligence to the knowledgeable. The vicious depend on violence to advance their objectives and the virtuous depend on forgiveness (tolerance) for success.[196]

b) Kanika Niti

Kanika was a craft and cunning advisor to King Dritharashtra in the epic *Mahabharata*. His advice to the King comes under *koota niti*, a niti which is employed to destroy enemies. Kanika Niti consists the dialogues between King Dritharashta and the minister Kanika. King Dritharashta, anxious and miserable due to the news of Pandava's great prowess in the Kuru war, called upon his minister Kanika for advice on the ongoing war. Kanika, a ruthless tactician by character, counseled the King with what the King desired to hear rather than what is right.

1. *Mridurityawajaannit tikshan ityuddhijanti cha*

   Tikashankale bhawettishno mridukale mridurbhawet. Verse 65

   मृदुरित्यवजानन्ति तीक्ष्ण इत्युद्विजन्ति च ।

   तीक्ष्णकाले भवेत्तीष्णो मृदुकाले मृदुर्भवेत् ॥६५ ॥

   On one hand, people do not fear nor respect a timid King and on the other hand, a merciless King cause excessive fear and panic amongst the people. Hence, it is important for the King to balance and adapt their governing methods as per the need of the time.[197]

c) Chanakya Niti

Chanakya, also known as Kautaliya or Vishnugupta, was a professor (*acharya*) of political science and later the Prime Minister of the Emperor Chandragupta Maurya.

[196] *Id.* at 188.
[197] *Id.* at 244.

He was the man to envision the first Indian empire by the unification of numerous kingdoms in the Indian sub-continent to fight against the invasion by the Greek conqueror Alexander the Great. He authored *Arthashastra*, arguably the first systematic book on economics. Chanakya Niti is a collection of aphorisms that was intended to guide Chandragupta on a wide range of topics including leadership, governance, administration, diplomacy, warfare, economics, personal development and social conduct. In the present day, it is an excellent guide for both personal growth and State governance.

First Chapter

1. *Nakhinanchya nadinanchya shringadanan shastrapadinaam*

   Vishwaso naiwa kartavya strishu rajkuleshu cha. Verse 15

   नखीनाञ्च नदीनाञ्च शृङिगणां शास्त्रपाणिनाम् ॥

   विश्वासो नैव कर्तव्यः स्त्रीषु राजकुलेषु च ॥१५॥

   Do not trust the rivers, animals with claws or horns, men who carry weapons, women and members of the royal family. [198]

Third Chapter

1. *Atirupenn vai sita atigarvenn ravanna*

   Ati danad balirbaddho ati sarwatra varjayet. Verse 12

   अतिरुपेण वै सीता अतिगर्वेण रावणः ॥

   अति दानाद् बलिर्बद्धो अति सर्वत्र वर्जयेत ॥१२॥

   Sita was abducted because she was too beautiful, Ravan was killed because he was too arrogant, Baliraja was tied down because he was too generous. That is why *excessive* should be abandoned in every instance.[199]

[198] *Id.* at 341.
[199] *Id.* at 351.

Fourth Chapter

1. *Aayu karma cha vittam cha vidhya nidhanmewa cha*

   Paanchaitaani hi srijyante garbhasthasyaiwa dehinha. Verse 1

   आयुः कर्म च वित्तं च विद्या निधनमेव च ॥

   पाञ्चैतानि हि सृज्यन्ते गर्भस्थस्यैव देहिनः ॥१॥

   Five things- *life-span (longevity), type of work (karma), wealth, education and death*- are already decided (pre-destined) when the person is inside the womb. After taking birth, these five things cannot be changed no matter how hard one tries.[200]

Sixth Chapter

1. *Raja rastrakritam papam ragyah papam purohita*

   Bharta cha strikritam papam shisyapapam gurustatha. Verse 10

   राजा राष्ट्रकृतं पापं राज्ञः पापं पुरोहितं ॥

   भर्ता च स्त्रीकृतं पापं शिष्यपापं गुरुस्तथा ॥१०॥

   The king or the head of the government is obliged to accept the sins of his subjects; the purohit (priest) suffers for those of the king; a husband suffers for those of his wife; and the teacher (guru) suffers for those of his pupils. The person bestowed with the duty to protect cannot escape from their responsibility.[201]

2. *Rinkarta pita shatrurmata cha vyabhicharin*

   Bharya rupwati shatruh putrah shatrurandita. Verse 11

[200] *Id.* at 354.
[201] *Id.* at 370.

ऋणकर्ता पिता शत्रुर्माता च व्यभिचारिणी ॥

भार्या रुपवति शत्रुः पुत्रः शत्रुरण्डितः ॥११ ॥

A father who drowns the family in debt, an adulterous mother, a woman who only desires to look beautiful and a son who is stupid is the same as an enemy.[202]

3. *Santoshstrishu kartavyah swadare bhojane dhane*

Trishu chaiwa na kartavya dhyayane tapdaanyoh. Verse 4

सन्तोषस्त्रिषु कर्तव्यः स्वदारे भोजने धने ॥

त्रिषु चैव न कर्तव्योऽध्ययने तपदानयोः ॥४॥

One should be satisfied with his own wife, food and wealth. [203]

Thirteen Chapter

1. *Ragyi dhaarmini dharmishthah pape papah same samah*

Rajanmanubartante yatha raja tatha prajah. Verse 7

राज्ञि धार्मिणि धर्मिष्ठाः पापे पापाः समे समाः ॥

राजानमनुवर्तन्ते यथा राजा तथा प्रजाः ॥७॥

If the King is virtuous, then the subjects are also virtuous. If the King is sinful, then the subjects also become sinful. In short, the subjects reflect the conduct of the King.[204]

[202] *Id.* at 371.
[203] *Id.* at 377.
[204] *Id.* at 414.

2. *Jiwantm mritabanmanye dehinam dharmabarjitma*

Mrito dharmen samyukto dirghajivi na samsayah. Verse 8

जीवन्तं मृतबन्मन्ये देहीनं धर्मबर्जित्म ॥

मृतो धर्मेण संयुक्तो दीर्घजीवी न संसयः ॥८॥

A person who does not act religiously is as good as dead, even if they are living. A person who acts religiously lives long even after death.[205]

Fifteenth Chapter

1. *Anyayoparjitam dravyam dashkavarshani tisthati*

Prapte chaikadeshe varshe samulam cha vinashyati. Verse 6

अन्यायोपार्जितमं द्रव्यं दशकवर्षाणि तिष्ठती ॥

प्राप्ते चैकादशे वर्षे समुलं च विनश्यति ॥६॥

Wealth acquired by sin and wicked deeds may remain for ten years. But in the eleventh year, it disappears along with the original stock.[206]

Sixteenth Chapter

1. *Na nirmitah ken na drishtapurwo na shruyate hemamayah kurangh*

Tathapi trishna raghunandansya binashkale biparitbuddhiha. Verse 5

न निर्मितः केन न दृष्टपूर्वो न श्रुयते हेममयः कुरङ्गः ॥

तथापि तृष्णा रघुनन्दनस्य बिनाशकाले बिपरीतबुद्धिः ॥५ ॥

A living gold deer has neither been made by anyone nor seen by anyone nor been heard of, even so, Ramchandra craved for such a deer. In actuality, at the time of destruction, wisdom also becomes contradictory.[207]

---

[205] *Id.*
[206] *Id.* at 426.
[207] *Id.* at 434.

Seventeenth Chapter

1. *Lobhshchedgunen ki pishunta yadhyasti ki patakaih*

Satyam yattpasa cha ki shuchim mano yadhyasti tirthen kim

Saujanyam yadi ki gunaiha sumahimaa yadhyasti ki mandanaiha

Sadvidhya yadi ki dhanaipayasho yadhyasti ki mrityuna. Verse 4

लोभश्चेद्गुणेन किं पिशुनता यद्यस्ति किं पातकैः

सत्यं यत्तपसा च किं शुचिं मनो यद्यस्ति तीर्थेन किम् ॥

सौजन्यं यदि किं गुणैः सुमहिमा यद्यस्ति किं मण्डनैः

सदविद्या यदि किं धनैपयशो यद्यस्ति किं मृत्युना ॥४॥

What vice could be worse than covetousness? What is more sinful than slander? For one who's truthful, what need is there for austerity? For one who has a clean heart, what is the need for pilgrimage? If one has a good disposition, what other virtue is needed? If a man has fame, what is the value of other ornaments? What is there need for wealth for a man of practical knowledge? And if a man is dishonored, what could there be worse than death?[208]

d) Bhartrihari Niti

Bhartrihari is alleged to be of regal descent who resigned his royal titles and abdicated his throne to his brother to pursue life as an ascetic. He is reputed to have authored three *Satakas*, a work of Sanskrit poetry comprising three collections, namely *Sringara Sataka* (a purely amatory poem), *Niti Sataka* (on polity and ethics) and *Vairagya Sataka* (on religious austerity).[209]

[208] *Id.* at 440.
[209] THE SATAKAS OF BHARTRIHARI (B. Hale Wortham trans.) (1886).

First Chapter

1. *Yesham na vidhya na tapo na danam gyanam na shilam na guno na dharmah*

Te martyalok bhuwi bharbhuta manushyarupen mrigacharanti. Verse 13

येषां न विद्या न तपो न दानं ज्ञानं न शीलं न गुणो न धर्मः ।

ते मर्त्यलोक भुवि भारभुता मनुष्यरुपेण मृगाचरन्ति ॥१३॥

A person who has not attained education, who has not done penance, who has not done charity works, who had not attained knowledge nor has done any religious and virtuous works, such a person is a burden on this earth. Such person was born as a human being but is equal to an animal.[210]

2. *Pranaghataannivritiha pardhanharane samyamah satyawakyam*

Kalo shawatya pradhanam yuwatijanak kathamukabhavha paresam

Trishna shroto vibhango, gurusu cha vinayah sarwabhutanuk kampa

Samanyah sarwashastreswanupahatavidhih shreyasaamesa panthah. Verse 26

प्राणाघातान्निवृत्तिः परधनहरणे संयमः सत्यवाक्यं,

कालो शवत्या प्रदानं युवतिजनककथामूकभावः परेषाम् ।

तृष्णास्रोतो विभङ्गो,गुरुषु च विनयः,सर्वभूतानुकम्पा,

सामान्यः सर्वशास्त्रेष्वनुपहतविधिः श्रेयसामेष पन्थाः ॥२६॥

Abstinence from destroying life, keeping one's hands off another's wealth, speaking the truth, reasonable liberality according to one's power, not conversing with the wives of other men, no greed, reverence towards spiritual fathers, compassion towards all creatures- this is the path of happiness, violating no ordinances, taught in all the sastras. [211]

[210] MADAN PRASAD ARYAL, NITI (VIDHUR, CHANAKYA AND BHRITHHARI) 457 (2005).
[211] *Id.* at 462.

3. *Daurmantryannripatirvinashyati yatih sangatsuto lalna*

Ddhipronadhyayanatkulam kutanayachchilam khalopasanat

Hwairmaddhyadana weshyanadapi krishih sneh prawasashraya

Nmaitri cha pranyatsamriddhiranayatpramadaddhanam. Verse 42

दौर्मन्त्र्यान्नृपतिर्विनश्यति, यतिः सङ्गात्सुतो लालना -

द्विप्रोऽनध्ययनात्कुलं कुतनायाच्छीलं खलोपासनात् ।

ह्वीर्मद्यादनवेक्षणादपि कृषिः, स्नेहः प्रवासाश्रया -

न्मैत्री चाऽप्रणयात्समृद्धिरनयात्प्रमादाद्धनम् ॥४२॥

A king is ruined if the Minister giving him advice is incompetent and has ill-intent. An ascetic is ruined by company(companionship), a child by spoiling, a priest by not studying the sacred scriptures, a family by the evil behavior of children, good manners by evil habits, modesty by wine, agriculture by loss of care, affection by absence from home, friendship by want of love, possessions by mismanagement, money by waste and prodigality.[212]

4. *Nindantu nitinipunaa yadi wa stuwantu*

Lakshmi samvishtu, guchatu wa yatheshtam

Awaidha wa maranamastu yugantare wa

Nyayyaatpathah pravichalanti padam na dhirah. Verse 84

निन्दन्तु नीतिनिपुणा यदि वा स्तुवन्तु,

लक्ष्मीः समाविशतु, गच्छतु वा यथेष्टम् ।

अद्यैव वा मरणमस्तु,युगान्तरे वा,

न्याय्यात्पथः प्रविचलन्ति पदं न धीराः ॥८४॥

[212] *Id.* at 468.

A wise man continues to move on the path of justice even if he may be blamed or be praised by great philosophers, or if fortune comes to him or leaves him, or if he might die today or in ten-thousand-year time. [213]

2.4.4 Dhamma Verse

The Dhammapada is a collection of ethical teachings of Gautama Buddha that provide a framework for understanding what are good and bad actions, and what the consequences of both will be.[214] It is the collection of 423 verses, organized into twenty-six chapters, each verse being central to the Buddhist teaching on ethics.[215]

Papavaggo (Chapter on Sin)	1.	One can pour poison on their hand if there are no wounds as a woundless body would not be affected by the poison. Similarly, those who do not commit any sin do not incur sin.[216]
	2.	The one who blames a pure person, i.e., a person free of sins (an innocent person), such a fool is the one who incurs sin. The sin returns back to the sinner, just as the fine dust thrown against the wind. As such, the one who blames an innocent person has to face the consequences of their sin.[217]
	3.	Neither in the infinite sky, nor in the depths of the ocean, nor in the mountain clefts, nowhere in this world is a place where the one who commits a sin can hide from the consequences of their sinful acts, i.e., avoid the karmic fruits of their acts.[218]

[213] *Id.* at 484.
[214] DHAMMA VERSES 4 (Anandajoti Bhikkhu ed., and trans, 1st ed. 2016).
[215] *Id.*
[216] BEDHNATH ACHARYA, DHAMMAPADA 76 (2012).
[217] *Id.* at 77.
[218] *Id.* at 78.

Dandavaggo (Chapter on Punishment)	4.	The person, who with the desire of happiness, inflicts suffering through punishment to the ones who wish for happiness, will not attain happiness even after death.[219]
	5.	The person who inflicts suffering by punishing those who should not be punished, or blames an innocent person, such person must immediately face one of the follow ten situations:[220] i. Severe pain ii. Great loss of wealth iii. Dismemberment of the body iv. Getting a serious illness v. Becoming insane vi. Danger of being punished by the King vii. Harsh condemnation viii. Destruction of family/ friends ix. Pleasure perishes x. The person's house is destroyed due to fire. Even after death, such demented person takes birth in hell.
Attavaggo (Chapter on the Self)	6.	The self is the friend of the self, for who another friend would be there? Only the ones who can subdue and train the self through self-realization, good wit and wisdom can attain the rare ownership of the self and find a friend that is hard to find.[221]
Lokavaggo (Chapter on the World)	7.	The one who clears their past sins by performing good acts enlightens the world by attaining the vision of the path, just

[219] *Id.* at 81.
[220] *Id.* at 84, 85.
[221] *Id.* at 96, 97.

		as the moon enlightens the world when the clouds disappear.[222]
Malavaggo (Chapter on Stains)	8.	It is easy to point out the mistakes/ faults of others, but it is far more difficult to realize the mistakes/ faults of oneself. In reality, such person who goes around pointing the mistakes and faults of others are the ones who try to hide and cover their own mistakes and faults, like a dishonest gambler trying to hide the dice.[223]
Pakkinakavaggo (Miscellaneous Chapter)	9.	If someone desires happiness while hoping to cause pain and suffering on someone else, such a person will never be free from such animosity. [224]
Nirayavaggo (Chapter on Hell)	10.	The one who speaks lies goes to hell, and the one who commits sins and then denies it- both of them are persons who have done bad deeds, and as such, both are treated as the same in the afterlife.[225]
	11.	It is better to take a hot iron bullet that is like a blazing flame of fire, rather than being self-indulgent (sinner/criminal) and consuming the grains of the nations (*pinda*).[226]
	12.	It is preferable to refrain from committing heinous sins (acts that should not be done). The person will repent for committing such sins. Hence, with realization of this truth, it is more desirable to perform good deeds due to which a person will never have to repent. [227]

[222] *Id.* at 104.
[223] *Id.* at 148.
[224] *Id.* at 171.
[225] *Id.* at 179.
[226] *Id.* at 180.
[227] *Id*. at 183.

	13.	Protect yourself just as the fortress is placed at the border towns to protect the nation from outside. Do not let sins close to the self, even for a moment. If you miss even a moment to protect yourself from sins, you will definitely have to repent.[228]
	14.	The one who finds sins in a place with no sins and is blind to the sins where they are present, such person with false vision are always misfortunate.[229]

2.4.5 Assessment

a) *Smritis*

In the context of the law in itself, these ancient texts of Manu and Narad reflect the principle of the rule of law – no one is above the law, not even the King. Manu even goes on to exemplify the destruction of kings who attempted to rise above the law by abusing their authority. As such, the origin of the principle of the rule of law can be attributed to the ancient Eastern jurisprudence as well.

In the context of justice administration, both *Manusmriti* and *Naradsmriti* provide the knowledge of its complexity and clear instructions to the administrators of justice (either judicial officails or the monarch) on how a fair trial should be ensured. In the process of justice administration, laws should be interpreted in consideration of the customs, traditions, religious practices and other social behaviors of the person to ensure an effective and efficient justice. In accordance, where there is a clash in the laws, *Naradsmriti* directs for the interpretation of laws from the prespective of the general customary principles over the words of the scriptures (legislative words).

On the subject of evidence, the *Smritis* consider evidences as a crucial part of fair justice administration process. Evidences should be studied and examined to reach

[228] *Id.* at 184.
[229] *Id*. at 185.

the reality of the facts before pronouncing any judgment. The *Smritis* also clearly instruct the judicial officers to scrutinize every evidence presented before them for evidences can be fabricated and biased. The cost of a wrong and unjust decision is paid by an entire society. According to the *Smritis*, it can be inferred that the focus is on fact-finding and then the examination of the truth of that matter. *Naradsmriti* also directs to punishing the accuser for accusing an innocent of a fabricated crime.

In the context of punishment, the *Smritis* clearly outline the role that punishment plays in the criminal justice system. Before the concept of deterrence came into the modern criminal justice theory, *Manusmriti* and *Naradsmriti* were clear on the use of punishment as a means of deterrence and reform. Furthermore, *Manusmriti* directs the justice administrator to give due consideration to the facts, to the deed and the person before inflicting the punishment to ensure public trust in the justice process. *Naradsmriti* warns against the use of arbitrariness when inflicting punishment on the wrongdoers. Instead, the *Smriti* commands the examination of *mens rea* of the person, whether they committed the crime intentionally or by mistake. Furthermore, the *Smritis* relate failure to deploy proper punishment at the right time to the spread of anarchy. The right to fair and speedy trial was thus propounded as a core of a stable and peaceful society.

The *Smritis* also provide on the qualifications and professional conducts of the legal professionals (judges, lawyers and other judicial officers). *Naradsmriti* lays out the qualities of a wise judge as someone who is learned about the law, has a noble and fair character, does not fear speaking the truth and internalizes the principle of equality before the law. A person who fears any backlash when administering justice should not enter the Bench as the *dharma* (duty) of a judge is to speak of the right matters. Furthermore, the *Smritis* also advocate that legal professionals who are negligent in the performance of their duties (as a lawyer, counseller or a judge) or impairs the justice process should also be punished accordingly.

b) N*itis*

The *Nitis* do not directly delve into the contexts of justice administration. However, they do provide a general guidance on State governance and how a just society is created and fostered. The *Nitis* served the purpose of teaching the ethical standards of a human being in order to live a prosperous life.

On State governance, Mahatma Vidur advises that the head of the State as well as their advisor should be a dutiful person. The State falls in chaos if the head of the State is of ill intention and the State falls towards destruction due to the ill advises of the advisors. Similarly, Chanakya advises that the State is a reflection of its citizens and vice versa. In the modern democratic system, where the election plays a vital role in the creation of the governing body, it is indeed important to heed the words of these scholars. Furthermore, Kanika advises the State government to be adaptable to the needs of time to ensure a stable governance.

The law relating to liability can be inferred from some of the verses of the *nitis*. For instance, *Vidurniti* states that where the proceeds of crime may be enjoyed by other people, the liability of the crime only falls on the one who committed the crime. On the other hand, *Chanakyaniti* speaks about the vicarious liability – the king, the priest, the husband and the teacher are liabile for the actions of the subjects, the king, the wife and the students.

c) *Dhamma Verse*

The *Dhammapada* serves as a spiritual guide towards an ethical life and an ethical governance. As *niti,* it does not delve into the law or the justice administration directly. However, some inferences can be drawn from the verses. For instance, it is considered a sin to blame a person for an act they did not commit as well as to punish an innocent person. Specific to justice, the *Dhammapada* speaks of impartial judgment based on the truth, considering such a decision maker a guardian of the law.

CHAPTER III

PRINCIPLES THAT LIMIT THE COURT TO CRIMINALIZE

BACKGROUND

'Principles' generally refer to fundamental truths, guidelines, or rules that govern behaviour, decision-making, or a particular field of study. These are foundational concepts that guide individuals, organizations, or systems in their actions and beliefs. They are often considered essential elements for creating a framework that promotes consistency, integrity, and coherence in various contexts, such as philosophy, science, ethics, and business. Principles help shape values and provide a basis for making informed choices and judgments.[230]

In the context of law, principles play a crucial role in shaping legal systems and guiding the development and interpretation of laws. Legal principles are fundamental doctrines or beliefs that underlie the legal framework of a jurisdiction. Here are a few ways in which principles are valued in law:[231]

a) Foundation of Legal Systems

Legal principles often serve as the foundation upon which legal systems are built. They embody fundamental concepts such as justice, fairness, and equality, which are essential for the rule of law.

b) Interpretation of Laws

Principles are used in the interpretation of laws and legal documents. When the language of a statute or regulation is unclear, legal principles help judges and legal professionals determine the intended meaning and purpose.

---

[230] RAY DALIO, PRINCIPLES (2017).
[231] Joseph Raz, *Legal Principles and Limits of Law*, 81 YALE L.J., 823 (1992).

c) Consistency and Predictability

Legal principles contribute to the consistency and predictability of legal decisions. They provide a framework for resolving legal disputes and making decisions that are in line with established norms and values.

d) Ethical and Moral Guidance

Principles in law often reflect ethical and moral values. They guide legal professionals in making ethical decisions and judgments, ensuring that the legal system aligns with societal values.

e) Development of Precedent

Legal principles contribute to the development of legal precedent. Courts often rely on established principles when deciding cases, and these decisions set a precedent for future similar cases.

f) Adaptability and Evolution

Legal principles can adapt to societal changes and evolving values. They provide a flexible foundation that allows legal systems to respond to new challenges and developments.

g) International Law

Principles are significant in international law, where they form the basis for treaties, conventions, and agreements between nations. Principles such as sovereignty, human rights, and the rule of law are foundational in international legal relations.

h) Legal Education

Principles are essential in legal education. Law students study foundational principles to understand the theoretical underpinnings of the legal system and to analyze and solve legal problems.

In criminal law, principles serve as fundamental guidelines and concepts that underpin the legal framework governing offenses and their prosecution. The thirteen basic principles that limit the court to criminalize or over-criminalize are presented as below:

3.1 PRINCIPLE OF LEGALITY

3.1.1 Overview

The principle of legality is based on Latin Maxim: *nullum crimen sine lege, nulla poena sine lege.* It covers both no crime without law (*nullum crimen sine lege*) and no punishment without law (*nulla poena sine lege*). Hence, an act can be punished only if, at the time of its commission, it was the object of a valid and sufficiently precise written criminal law to which a sufficiently certain sanction was attached. The implications of the principle of legality are extensive, encompassing at least three discernible principles: the principle of non-retroactivity, the principle of maximum certainty, and the principle of strict construction of penal statutes.[232]

3.1.2 Basic Substances

The principle of legality stands as a bedrock in legal systems worldwide, embodying essential tenets crucial for upholding the rule of law within societies, and encapsulates a set of principles aimed at ensuring that laws are clear, accessible, and predictable while delineating the boundaries of state authority, shielding individuals from arbitrary exercises of power by governmental bodies.[233] At its core, it demands clarity and accessibility in legal statutes. Laws must be drafted in a manner comprehensible to the general populace, devoid of vagueness or ambiguity. This ensures that individuals can easily comprehend the legal framework governing their conduct, thereby enabling them to conform their actions accordingly. The principle underscores the significance of legal provisions being understandable to all, thus preventing potential misunderstandings or abuses stemming from unclear legislation.

---

[232] HORDER, *supra* note 17, at 79.
[233] Erik Clark & Michal Krolikowski, *The Limits of Legality in Criminal Law*, *in* FACING THE LIMITS OF THE LAW 89, 89-90 (Erik Claes, Wouter Devroe & Bert Keirsbilck eds., 2008).

Another important aspect of the Principle of Legality is its prohibition of retroactive application of laws. This means that individuals cannot be punished for actions that were not deemed illegal at the time of their commission. By safeguarding against retrospective laws, this principle upholds the foundational notion that individuals should only be held accountable for transgressions against laws that were in effect when the actions occurred. This prohibition serves as a bulwark against arbitrary exercises of state power, ensuring fairness and predictability in the legal system.

Legal certainty and predictability are integral components of the Principle of Legality. It necessitates the consistent and predictable application of laws, free from arbitrary or discriminatory enforcement.[234] Legal certainty engenders trust in the legal system and fosters social stability by providing a framework for resolving disputes and addressing grievances. Predictability assures individuals that the law will be applied uniformly, instilling confidence in the legal system and facilitating compliance with legal obligations.

The principle of legality is expressly codified in MCC, under the following two sections:

> Sec. 6: Lawful act not to be an offence: No act required by law to be done or excused by law shall be considered to be an offence.
>
> Sec. 7: Not punishment except in accordance with law: No person shall be liable to punishment for doing an act not punished by law nor shall a person be subjected to a punishment which is heavier than the one prescribed by law in force when the offence was committed.

Principle of legality is constitutionally guaranteed in the Constitution of Nepal:

> No person shall be punished for an act which was not punishable by law when the act was committed, nor shall any person be subjected to a punishment greater than that prescribed by the law in force at the time of the commission of the offence.[235]

---

[234] *Id.*; *see also* Nicholas v. Australia, Com. No. 1080/2002, U.N. Doc. CCPR/C/80/D/1080/2002 (Mar. 19, 2004).
[235] CONST. OF NEPAL, *supra* note 13, at art. 20(4).

Supreme Court of Nepal has categorically explained about this principle recently in *Anjan K.C.* (2020).[236] In this case the Nepalese footballers were charged for the offence against the State for the act of match-fixing, which was not criminalized by the then law. Supreme Court acquitted the defendants, saying: "Unless the law has literally criminalized the act and it is proven that such criminalized act has been committed; the law made for some other purposes cannot be bring into the interpretation to criminalize (*nullum crimen sine lege*) and to penalize (*nulla poena sine lege*). Other notable cases of Supreme Court of Nepal relating to the legality principle includes *Ramprasad Rai* (1995),[237] *Kirti Bahadur Chand* (2002),[238] *Adv. Ratna Bahadur Bagchand* (2005),[239] *Sidhartha International Trade Concern* (2010)[240] and *Molhuysen Hendrik Otto* (2012).[241]

Besides, the pronouncement of *nullum crimen sine lege nulla poena sine lege* (no crime without law, no punishment without law) can be found in human rights treaties, as a basic right. The UDHR articulates the legality principle in the following words:

> No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.[242]

The ICCPR of 1966 also sets out legality principle as below:

> No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If,

[236] GoN v. Anjan K.C. (2020) (NKP 2077, Vol. 6, DN. 10523).
[237] Ram Prasad Rai v. Milprasad Rai (1995) (NKP 2052, Vol. 3, DN. 5077).
[238] GoN v. Kirti Bdr Chand (2002) (NKP 2059, Vol. ¾, DN. 7070).
[239] Adv. Ratna Bahadur Bagchand v. HMG, OPMCM (2005) (NKP 2062, Vol. 2, DN. 7491).
[240] GoN v. Sidhartha International Trade Concern (2010) (NKP 2067, Vol. 9, DN. 8465).
[241] Molhuysen Hendrik Otto v. GoN (2012) *(*NKP 2069, Vol. 7, DN. 8860).
[242] Universal Declaration of Human Rights, *supra* note 109, at art. 11(2).

subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.[243]

3.1.3 Final Remarks

To sum up, the Principle of Legality imposes limitations on the discretionary power of governmental authorities. This means that the exercise of such discretion must adhere to clear and objective criteria established by law. By constraining arbitrary exercises of state authority, this principle ensures that individuals are treated fairly and impartially under the law, bolstering confidence in the legal system and safeguarding against abuses of power. Furthermore, upholding the Principle of Legality is closely intertwined with the protection of human rights. By delineating clear boundaries for state action and ensuring consistent and predictable application of laws, this principle shields individuals' rights and freedoms from arbitrary infringement by the government. It serves as a potent safeguard against tyranny and oppression, underscoring the pivotal role of the rule of law in democratic societies.[244]

3.2 NON-RETROACTIVITY PRINCIPLE

3.2.1 Overview

The non-retroactivity principle simply means ‘a person should never be convicted or punished except in accordance with a previously declared offence governing the conduct in question’.[245] It is based on some fundamental facets that a person has an individual autonomy, a person must be informed of the law fairly, a person’s future actions must be open, and a person cannot be convicted by surprise. A criminal sanction can only be imposed if the conduct in question existed under the relevant law at the time when it occurred. It applies for both legislators and judges. Legislators cannot enact *ex post facto* criminal laws. It forbids a legislature to create a criminal offence which applies to behavior prior to its enactment, and judges can only apply criminal provisions that are in force at the

[243] International Covenant on Civil and Political Rights, *supra* note 113, at art. 15(1).
[244] Bruce Chen, *The Principle of Legality: Issues of Rationale and Application*, 41 (2) MON. UNI. L. REV. 329, 334 (2015).
[245] HORDER, *supra* note 17, at 79.

time when the conduct occurred. It forbids the retroactive creation of new crimes through the interpretation.[246]

3.2.2 Basis Substances

The principle of non-retroactive application of laws, is a foundational legal doctrine dictating that laws should not be applied retroactively. This means that legal provisions should not be enforced to govern conduct or events that occurred before the enactment of those laws. Essentially, the principle prohibits individuals from facing legal consequences for actions that were lawful at the time they were committed but subsequently became illegal due to changes in legislation.

It serves to uphold principles of fairness and justice within legal systems. Retroactive application of laws would unfairly subject individuals to punishment or legal ramifications for conduct that was permissible under the law when it occurred. This undermines the fundamental notion of fairness, as individuals should have reasonable notice of the legal consequences of their actions at the time they engage in them. Moreover, the principle of non-retroactivity contributes to legal certainty by preventing uncertainty about the legal consequences of past actions. Individuals rely on the stability of the law to govern their behavior and make informed decisions. Retroactive laws disrupt this stability by changing the rules retroactively, leading to confusion and unpredictability within the legal framework.

Preserving the vested rights of individuals is another key aspect of the principle of non-retroactivity. Once an action has been taken based on the law as it existed at the time, individuals acquire certain rights and expectations regarding the legal consequences of their actions. Retroactive laws would unfairly strip individuals of these rights and upset settled expectations, undermining the integrity of legal arrangements.

Sec. 7 of MCC has two sets. “No person shall be liable to punishment for doing an act not punished by law” is related with principle of legality and “nor shall a person be subjected

[246] Pessino v. France, App. No. 40403/02, ¶ 36 (Oct. 10 2006), https://hudoc.echr.coe.int/eng/?i=001-77359. (last visited May 24, 2024).

to a punishment which is heavier than the one prescribed by law in force when the offence was committed" is related with retrospective effect.

The Full Bench of the Supreme Court of Nepal has minutely explained about this principle in *Ishor Prasad Pokharel* (2009).[247] Writing the presiding judgment Justice Anup Raj Sharma writes that if an act which was not considered a crime before the law was made, is later considered a crime, if a small and less serious offence is later made a bigger and a more serious offence, if a law is made to impose a higher punishment on an offence that previously had a lower punishment, if the legal rules regarding evidence is amended whereby less evidence is enough to prove an offence, only laws made in such a manner are considered as Ex Post Facto Laws which can be invalidated by the court.[248]

In case where the previous law considered an act a crime and determined a higher punishment and the current law prescribes lesser punishment, it is not relevant to raise the question of Ex Post Facto law solely on the basis that the same action is named differently by the previous law and the current law.

Article 20(4) of Constitution of Nepal and Article 11(2) of the UDHR further guarantee that a heavier penalty cannot be imposed than the one that was applicable at the time the penal offence was committed. Nonetheless, should a law be enacted after the offense has been committed, stipulating a lighter penalty, the offender shall be entitled to benefit from it, in accordance with Article 15(1) of ICCPR.

The principle is also found in the ECHR, Article 7:

> No one shall be held guilty of any offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.

[247] GoN v. Ishor Prasad Pokharel (2009) (NKP 2066, Vol. 8, DN. 8200).
[248] *Id.* at ¶ 4-5.

3.2.3 Final Remarks

Upholding the principle of non-retroactivity is crucial for maintaining the rule of law within societies. The rule of law requires that laws be applied consistently and predictably, without arbitrary or discriminatory enforcement. Retroactive laws undermine this principle by allowing the government to change the rules retroactively, potentially for arbitrary or discriminatory purposes. While there may be limited exceptions to the principle of non-retroactivity in certain circumstances, such as cases involving the interpretation or clarification of existing laws, these exceptions are typically narrowly construed and subject to strict scrutiny. Such exceptions aim to ensure that they do not unduly infringe upon individuals' rights or undermine principles of fairness and justice.

However, prohibition of retroactivity does not exclude the progressive development of criminal justice by clarifying the rules of criminal liability through judicial interpretations in their decisions. And, this is limited to interpretation of law prospectively, not to criminalize retrospectively.

3.3 STRICT RULE OF CONSTRUCTION

3.3.1 Overview

Criminal law applies strict rule of construction in interpreting legislation. It is the principle in criminal law that limits or restricts judicial interpretation in order to criminalize or extend the criminal liability other than as prescribed by law.[249] This means that a criminal law may not be enlarged by implication or intent beyond the fair meaning of the language.

Criminal statutes, therefore, will not be held to encompass offenses and individuals other than those clearly described and provided for in their languages. The strict interpretation of criminal statutes aligns with the rule of lenity, which dictates that any ambiguity within a criminal statute should be resolved in favour of the defendant.

[249] G P SINGH, PRINCIPLES OF STATUTORY INTERPRETATION 658, 659 (Alok Aradhe, J. rev., 15th ed. 2022).

Defining notion of *in favorem vitae*, Lord Esher Mr wrote:

> We must be very careful in construing this section, because it imposes a penalty. When faced with an interpretation that could circumvent the penalty, we are obligated to embrace that interpretation. In instances where two interpretations are plausible, the one that is more favourable to the accused must be chosen. This principle constitutes the established guideline for interpreting penal provisions.[250]

3.3.2 Basis Substances

Strict construction stands in contrast to liberal construction, wherein a term is allowed to be reasonably and fairly assessed in order to fulfill the object and purpose of the document.[251] The principle of liberal construction is applied in interpretation of rights of an individual guaranteed by the constitution or under its delegation. Every constitution envisions a target to reach, enlisted in directive principles of the State. In order to reach there, Constitution is interpreted as 'living organism'.[252] Court performs judicial activism by interpreting constituent elements of fundamental rights in progressive development manner so as to invoke those rights in favour of the citizen.

But, this concept of 'liberal construction' in interpreting 'living organism' is only applied to invoke the rights, not to curtail the rights of an individual. As criminal law is a restrictive law, only the enactment can restrict. Restricting human behaviours by interpretation allows retrospective effect by violating the legality principle. Therefore, underlying rule of interpretation in criminal law and constitutional law are totally different; the former applying 'strict construction' and the later applying 'liberal construction'.

It is the principle that limits or restricts judicial interpretation in order to criminalize or extend the criminal liability other than as prescribed by law. Article 126 of the Constitution has ensured its applicability. The Court, without any reservation, must limit itself to the law

---

[250] Tuck v. Priester, (1887) 19 QBD 629, at 631 (UKHL).
[251] SINGH, *supra* note 249, at 640.
[252] INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE, WHAT IS A CONSTITUTION? PRINCIPLES AND CONCEPTS 3 (2012), https://constitutionnet.org/sites/default/files/what_is_a_constitution_0.pdf. (last visited June 13, 2024).

in proceedings and deciding the criminal cases. Even if the usual interpretation results in consequences so different that legislators could not possibly have intended them, any secondary 'unfavourable to the accused' could not be taken. Lord Esher has stated this in very crystal clear language that 'the Court has nothing to do with the question whether the legislature has committed an absurdity'.[253]

3.3.3 Final Remarks

In conclusion, the strict rule of construction serves as a crucial safeguard in the interpretation of criminal statutes, ensuring that individuals are not subjected to criminal liability for conduct that is not clearly prohibited by law. By emphasizing a literal or narrow reading of statutory language, this principle upholds the fundamental principles of fairness, legal certainty, and the protection of individual rights within the criminal justice system. Through its application, courts preserve the integrity of criminal laws, promote consistency in their enforcement, and foster public confidence in the rule of law. As a cornerstone of legal interpretation, the strict rule of construction plays a vital role in balancing the interests of society with the rights of individuals accused of crimes, ultimately contributing to a more just and equitable legal system.

3.4 CASUS OMISSUS

3.4.1 Overview

This principle refers to the condition that the particular conduct should have been legislated, but has not been! In such condition, the rule signifies that omissions in a statute cannot as a general rule be supplied by construction. In *Laxmandas Pranchand* (1998),[254] it is defined as ‘a matter which has left over by the Legislature cannot be supplied by the Courts.

3.4.2 Basic Substances

Casus omissus refers to a situation where the issue is not explicitly addressed or covered in existing laws. When a casus omissus arises, it presents a gap or lacuna in the law. For this,

[253] R v. City of London Court Judge, (1892) 1 QB 273, at 290.
[254] Laxmandas Pranchand v. UOI, (1998) 234 ITR 261 (India).

MN Rao & Amita Dhanda write: "The legislature is proverbial good writer in its own field, no matter that august body is subject to periodic criticism."[255] The Court is not authorized to operate under the assumption that the legislature is unaware of its own words or has made an error.[256] It may be presumed as a rule that exact and correct words are used in the statute.[257]

The courts are empowered solely to rectify the logical flaws in the words and phrases employed in the statute while adhering to the intention of the legislature. If, however, the intention of the legislature is defective, either being too wide, or too narrow, the Courts will have to accept them as they are, the Courts cannot either add or alter or amend or detract from it; because such a step on the part of the Court would amount to legislation rather than construction.[258]

Hence, Courts cannot 'strike down' statutes, cannot interpret the law beyond legislative will, and cannot establish offences in the manner which are not statutorily supposed. And, "if a provision is ambiguous it ought to be interpreted in the manner favourable to the accused."[259] This rule has been effectively explained in *S.P. Gupta* (1982)[260] and *Govind Singh* (2005).[261]

In the context of Nepal, Justice Gajendra Keshari Bastola and Justice Mohan Prasad Sharma have clearly explained this principle in *Indra Bahadur Gurung* (1993):[262]

> Judiciary does not legislate, does not amend, and does not repeal the law. The function of Court is also not to defunct the law; Court's function is to apply the law. There are a few principles of interpretation while applying the law. The first of them is the principle of *Literalogis*, which means to interpret the law naturally as it is. The

[255] MN RAO & AMIRA DHANDA, N S BINDRA'S INTERPRETATION OF STATUTES 212 (10th ed. 2007).
[256] Harendra Nath v. Sailendra Krishan Saha, AIR 1967 Cal 185, at 188 (India).
[257] Shobha Bhatnagar v. State, AIR 1959 MP 367, at 372 (India).
[258] H.N. TIWARI, LEGAL RESEARCH METHODOLOGY 96 (2016).
[259] Tuck v. Priester, (1887) 19 QBD 627 (UKHL).
[260] S.P. Gupta v. President of India, AIR 1982 SC 149 (India).
[261] State of Jharkhand v. Govind Singh, (2005) 10 SCC 437 (India).
[262] Indra Bahadur Gurung v. Revenue Tribunal, Kathmandu (1993) (NKP 2050(a), Vol. 2, DN. 4697).

gap assumed in the legislation- casus omissus- cannot be supplied by construction nor can it be remedied, which is not the function of judiciary.[263]

3.4.3 Final Remarks

In conclusion, the concept of 'casus omissus' underscores the gap in law, highlighting the need for careful consideration and interpretation when addressing such gaps in the law. Whether through examining legislative intent, analogizing to existing precedents, or considering broader public policy objectives, courts and lawmakers strive to ensure equitable outcomes and uphold principles of justice. While the presence of casus omissus may pose challenges, it also offers opportunities for legal evolution and adaptation to changing societal needs. By addressing these omissions thoughtfully and responsibly, the legal system can continue to uphold the rule of law and serve the interests of justice for all. However, the limitation is that something missing in law cannot be supplied against an individual to criminalize him.[264]

3.5 PRESUMPTION OF INNOCENCE

3.5.1 Overview

Presumption of innocence is a fundamental element of the right to a fair trial that every person should be presumed innocent unless proved guilty. This is why the responsibility falls on the state to prove guilt.[265] Due to the presumption of innocence, a person cannot be compelled to confess guilt or give evidence against himself, and suspect's silence is not used as evidence against him.

Defining its scope, Advanced Law Lexicon mentions that "Every accused is to be presumed innocent until proved guilty. The presumption of innocence which arises in favour of the

[263] *Id.* at ¶ 1-2.
[264] SINGH, *supra* note 249, at 672.
[265] Evidence Act, 2031 (1974), § 25 (Nep.).

accused on the trial of every criminal case is to be regarded by the jury as a matter of evidence in favour of the accused, introduced by the law in his behalf."[266]

3.5.2 Basic Substances

This principle serves as a cornerstone of the justice system, ensuring that individuals are not unfairly punished or stigmatized based solely on accusations or allegations.[267] The presumption of innocence places the burden of proof on the prosecution to demonstrate the defendant's guilt, rather than requiring the defendant to prove their innocence. It is enshrined in many legal systems around the world as a fundamental human right and is essential for protecting the rights and freedoms of individuals accused of crimes.[268] Upholding the presumption of innocence promotes fairness, integrity, and trust in the criminal justice system, ensuring that justice is served in a manner consistent with the principles of due process and the rule of law.[269]

The principle presumption of innocence is constitutionally guaranteed under Article 20(5) in Constitution of Nepal. The constitutional construction of this principle is expressly codified in MCC, in the same terms.

Sec. 12 of the MCC:

> Presumption of innocence until proven guilty: A person accused of an offence shall be presumed innocent until proved guilty of that offence.

This principle is also found in Article 11(1) of the UDHR, Article 14(2) of the ICCPR, and Art 6(2) of the ECHR.

Article 11(1) of the UDHR, 1948:

---

[266] AIYAR, *supra* note 12, at 4355.
[267] SARAH JOSEPH & MELISSA CASTAN, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS AND COMMENTARY 476 (3rd ed. 2013).
[268] CONSTITUTION MAKING ORGANIZATION, OPTION REPORTS: PRESUMPTION OF INNOCENCE 3-6 (2008).
[269] JOSEPH & CASTAN, *supra* note 267, at 476.

> Everyone charged with a 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.

Article 14(2) of the ICCPR, 1966:

> Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law.

Defining the right to presumption of innocence, in a land mark decision of *Sheldrake* (2005),[270] Lord Bingham wrote:

> The overriding concern is that a trial should be fair, and the presumption of innocence is a fundamental right directed to that end. It is open to states to define the constituent elements of a criminal offence, excluding the requirement of mens rea. But the substance and effect of any presumption adverse to a defendant must be examined, and must be reasonable. Relevant to any judgement on reasonableness or proportionality will be the opportunity given to the defendant to rebut the presumption, maintenance of the rights of the defense flexibility in application of the presumption, retention by the Court of a power to assess the evidence, the importance of what is at stake and the difficulty which a prosecutor may face in the absence of a presumption.[271]

3.5.3 Final Remarks

To sum up, the presumption of innocence stands as a fundamental pillar of justice within the legal systems worldwide. By placing the burden of proof squarely on the prosecution and emphasizing the principle that individuals are innocent until proven guilty, this cornerstone principle safeguards against wrongful convictions, protects individual rights, and upholds the integrity of the justice system. Upholding the presumption of innocence is essential for ensuring fairness, equity, and trust in legal proceedings, reaffirming society's

[270] Sheldrake v. DPP (2005) 1 AC 264.
[271] *Id.* at ¶ 21.

commitment to justice and the rule of law. As such, it remains a crucial safeguard for individuals accused of crimes, reflecting the fundamental principles of fairness and human dignity upon which modern legal systems are built.

3.6 THE PRINCIPLE OF CERTAINTY (NULLUM CRIMEN SINE LEGE CERTA)

3.6.1 Overview

It is a foundational element within legal systems, underscored by its emphasis on clarity, predictability, and consistency in the law. Legal clarity is paramount, demanding laws to be drafted in an understandable and unambiguous manner accessible to all. This clarity ensures individuals can comprehend their rights and obligations within society, reducing confusion and ambiguity. Moreover, certainty fosters predictability, allowing individuals to anticipate the consequences of their actions and make informed decisions.[272] By providing a clear understanding of legal expectations, individuals can align their behavior accordingly, avoiding unintentional violations of the law and subsequent repercussions.

Consistency in legal application is another crucial aspect of the principle of certainty. It mandates that similar cases be treated similarly, preventing arbitrary or discriminatory treatment and promoting fairness and equality before the law. Such consistent application bolsters public trust in the legal system, reinforcing societal order and governance. Moreover, legal stability is inherently linked to certainty, as it provides a dependable framework for resolving disputes and maintaining social cohesion. With a stable legal environment, individuals can have confidence in the system's ability to administer justice fairly and effectively.

3.6.2 Basis Substances

Principle of ‘maximum certainty’ specifies ‘maximum certainty in defining offences’, which embodies 'fair warning' and 'void for vagueness' principles. There is close relationship

[272] Jérémie Van Meerbeeck, *The Principle of Legal Certainty in the Case Law of the European Court of Justice: From Certainty to Trust,* 41 E. L. REV. 275, 288 (2016).

between the principle of maximum certainty and the non-retroactivity principle. A vague law may in practice operate retroactively; since no one is quite sure whether given conduct is within or outside the law. Hence, certainty is generally considered to be a natural component of the legality principle.

The case of *Sunday Times* (1997)[273] has stated the quality of law standard as below:

> Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able- if need be with appropriate advice- to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.[274]

However, it is true that the certainty principle embodies maximum certainty, not absolute certainty. US Supreme Court put it in *Connally* (1926):[275]

> A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.[276]

Certainty is generally considered to be a natural component of the legality principle, and is also considered to guide statutory interpretation through a rule of lenity or strict construction.[277] This rule should not be misunderstood to mean that, wherever there is room for interpretation, the solution favorable to the accused must be adopted. The consequence of strictly construing the provisions of a criminal statute is that when an ambiguous word or sentence creates a reasonable doubt about its meaning, and conventional methods of

[273] Sunday Times v. UK, 2 Eur. Ct. H.R. 245 (1997) (ECtHR).
[274] *Id.* at ¶ 49.
[275] Connally v. General Construction Co, 269 U.S. 385 (1926).
[276] *Id*.
[277] Rome Statute of the International Criminal Court, 1998, art. 22(2), 2187 U.N.T.S. 90.

interpretation prove insufficient to resolve it, the benefit of the doubt should favor the accused rather than the legislature, which has failed to clarify its intent.[278]

3.6.3 Final Remarks

To sum up, the principle of certainty stands as a cornerstone of legal systems worldwide, underpinning fairness, stability, and trust. Its insistence on clarity, predictability, and consistency ensures that laws are understandable, anticipatable, and uniformly applied. By providing a clear understanding of legal expectations, promoting fairness in treatment, and fostering confidence in the legal system, certainty not only safeguards individual rights and liberties but also contributes to economic development and societal cohesion. Upholding this principle is essential for maintaining the integrity of legal systems, reinforcing the rule of law, and facilitating a just and equitable society for all. Thus, the principle of certainty remains a vital aspect of governance, guiding the evolution of legal frameworks and shaping the course of legal progress.

3.7 THE INTERDICTION OF ANALOGY (*nullum crimen sine lege stricta*)

3.7.1 Overview

The interdiction of analogy, often expressed in Latin as *'nullum crimen sine lege stricta*,' is a fundamental principle in criminal law that prohibits the application of analogy or extension of criminal laws beyond their strict and explicit terms.[279] This principle emphasizes the importance of legal certainty and the rule of law by requiring that individuals can only be punished for conduct that is clearly and specifically prohibited by law at the time the conduct occurred.[280]

[278] Prosecutor v. Delalić et al., Case No. IT-96-21, Judgement, ¶ 413 (Nov. 16 1998).
[279] Claus Kreß, *Nulla poena nullum crimen sine lege*, Max Planck Institute for Comparative Public Law and International Law, ¶ 28 (2010).
[280] Meerbeeck, *supra* note 272, at 288.

3.7.2 Basic Substances

The Interdiction of Analogy is a crucial safeguard in criminal law, essential for upholding legal certainty, protecting individual rights, limiting government power, and preserving fairness and justice within the legal system. By adhering to this principle, legal systems can maintain their integrity, promote public confidence, and ensure that justice is administered in a manner consistent with the rule of law. It prohibits to criminalize by an analogy, that's it.[281]

It is the prohibition against analogy in criminal law is directly linked to the prohibition against retroactivity and hence a generally accepted component of the *nullum crimen* principle.[282] This means that a judge must not fill a gap in the criminal law by applying a statute beyond its wording or by extending a precedent through the creation of a new unwritten crime.

The decision of European Court of Human Rights in *Kokkinakis* (1994)[283] is noteworthy:

> not confined to prohibiting the retrospective application of the criminal law to an accused's disadvantage. It also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege)* and the principle that the criminal law must not be extensively construed to an accused's determent, for instance by analogy: it follows from this that an offence must be clearly defined in law. This condition is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him liable.[284]

3.7.3 Final Remarks

In conclusion, the interdiction of analogy stands as a vital safeguard in criminal law. By strictly limiting criminal liability to conduct explicitly prohibited by law, this principle

[281] Kreshnik Myftari & Sevada Guço, *Prohibition of the application of criminal law by analogy within the principle of legal certainty*, 9 (5) QUEST J. OF RES. IN HUM. & SOC. SC., 20, 20 (2021).
[282] Kokkinakis v. Greece, App. No.14307/88, (May 25, 1993) (ECtHR).
[283] *Id.*
[284] *Id.* at ¶ 52.

upholds legal certainty, protects individual rights, and prevents abuse of governmental power. Upholding the principle ensures fairness and equality before the law and promotes public trust in the justice system.[285] As a fundamental tenet of the rule of law, the interdiction of analogy serves to maintain the integrity and legitimacy of legal systems worldwide, reaffirming the principle that individuals should only be punished for actions that were clearly and unequivocally prohibited at the time they were committed. Thus, adherence to this principle is essential for ensuring justice, equity, and respect for fundamental rights within society.

3.8 PRINCIPLE OF INDIVIDUAL AUTONOMY

3.8.1 Overview

The principle of individual autonomy is a foundational concept in legal and ethical frameworks, emphasizing the inherent right of individuals to make decisions about their own lives, bodies, and personal affairs.[286] This principle recognizes that individuals possess the capacity for self-governance and should be afforded the freedom to determine their own beliefs, values, and actions without undue interference from others or the state.

The concept of autonomy has its roots in ancient Greece, a time when city-states championed the notions of sovereignty and freedom from external influence. Consequently, autonomy was understood as encompassing self-rule, self-determination, and self-ownership. A direct translation of the word autonomy is self-rule, from *autonomia* (n.), and *autonomos*, (adj.), *autos* – self and *nomos* – rule. At root level, autonomy means having the capacity to self-govern, which is the ability to act independently and responsibly.[287]

3.8.2 Basic Substances

The principle of individual autonomy is central to notions of human dignity, personal freedom, and self-determination. It recognizes the inherent worth and agency of individuals

[285] Myftari & Guço, *supra* note 281, at 25.
[286] Gerben Meynen, *Autonomy, Criminal Responsibility and Competence*, 39 (2) THE J. OF THE AMER. ACAD. OF PSYCH. & THE L. 231, 231 (2011).
[287] *Id*. at 234.

and underscores the importance of respecting their choices, beliefs, and values in both legal and ethical contexts.[288] This principle encompasses various aspects of personal freedom and self-determination, including the right to provide informed consent for medical treatment, maintain privacy and confidentiality in personal affairs, express opinions and associate freely with others, and make end-of-life decisions in accordance with personal preferences. In legal contexts, the principle of individual autonomy serves as a guiding principle for respecting the rights and dignity of individuals, informing decisions related to consent, privacy, and personal liberties. The other side rest on the liability that a person can be liable only to the level he has capacity to do, and for the act he has done under his capacity; not for the act of other.[289]

Principle of individual autonomy entrenches upon 'access to and the extent of individual respect'; and, has two dimensions: the first related with law-makers and the other with judges.

a) At law makers, it administers for the parliament while making the laws that even the state cannot criminalize to the behaviors that affects fundamental human rights.[290] The issue came up with when the Alabama Appeal Court ruled[291] that the State of Alabama's ban on consensual gay sex is unconstitutional. In a unanimous ruling, judges said "A person's sexual orientation shouldn't matter. The law was aimed at banning gay sex, and aiming to ban consensual sex is flat out wrong."[292]
b) Court also concerns at the principle of individual autonomy that "an individual should not be held criminally liable unless he had the capacity and fair opportunity to do otherwise."[293] This is a concept under fair trial, which requires the trial be fair.

The purpose is to ensure the proper administration of justice. For instance, in *Cooke* (2008),[294] the Court emphasized that it would be unjust to impose an anti-social behaviour

[288] *Id*. at 232.
[289] Mouid Al Qudah, *The Moral Foundations of Criminal Liability*, 2 (3) INTEL. PROP. RTS. 116, 119 (2014).
[290] ANTONIN SCALIA, THE RULE OF LAW AS A LAW OF RULES 34 (1989).
[291] Alabama Appeal Court ruled it in *Dewayne Williams case.* The case involved an Alabama man convicted of sexual misconduct in 2010. However, Dewayne Williams said he'd had consensual anal sex.
[292] *Id*.
[293] HLA HART, PUNISHMENT AND RESPONSIBILITY 25 (2d ed. 2008).
[294] Cooke v. Director of Public Prosecutor (2008) EWHC 2703, 68 (UK).

order on an individual genuinely incapable of adhering to it. In this particular instance, the individual in question suffered from a personality disorder, post-traumatic stress disorder, and potentially Asperger's syndrome.

3.8.3 Final Remarks

To sum up, the principle of individual autonomy stands as a cornerstone of both legal frameworks and ethical considerations, emphasizing the inherent right of individuals to self-governance and decision-making. By recognizing and respecting individuals' capacity to make choices about their own lives, this principle upholds human dignity, personal freedom, and self-determination. Upholding individual autonomy is not only essential for protecting fundamental rights and liberties but also for fostering inclusive and equitable societies that honour the diverse perspectives and values of every individual. As such, it remains imperative for legal and ethical frameworks to prioritize and uphold the principle of individual autonomy in all aspects of decision-making and policy development.

3.9 THE PRINCIPLE OF FAIR LABELLING

3.9.1 Overview

It is the principle of criminal law that the law which restricts the human behaviours or which enlist certain act as offence needs to be clearly articulated by the legislature into the law. First, it should reflect what behaviours it restricts, because other than restricted behaviours are freeman's acts. Second, it should reflect what will happen if the law has been violated, because it needs to be fairly warned. And, third, it should reflect meaningful distinctions with other culpable wrongs, because people need to know significant differences in harmfulness and culpability.[295]

3.9.2 Basic Substances

This principle is primarily applicable to the legislature. Kinds of offences and degrees of wrongdoing are signalled by law; and that offences are subdivided and labelled so as to

[295] HILMI M. ZAWATI, FAIR LABELLING AND THE DILEMMA OF PROSECUTING GENDER-BASED CRIMES AT THE INTERNATIONAL CRIMINAL TRIBUNALS 27 (2014).

represent fairly the nature and magnitude of the law-breaking.[296] Labels are important chiefly to describe D's offending behaviour and to differentiate that behaviour form other behaviours in criminal justice system.

According to Prof. Ashworth, one good reason for respecting these distinctions is proportionality: one of the basic aims of the criminal law is to ensure a proportionate response to law-breaking, thereby assisting the law's educative or declaratory function in sustaining and reinforcing social standards.[297] Fairness necessitates that offenders be categorized and penalized commensurate with the gravity of their offense; the labelling is crucial both for public communication and within the criminal justice system, aiding in determining suitable penalties.

Another justification for the principle of fair labelling is that where two types of conduct are different, the law should try to reflect that difference. This argument was raised against the possibility of combining the crimes of theft and obtaining by deception into a single offence, but as they are distinct form of wrongdoings- stealing and swindling; the law must deal them separately.

Third justification is for balancing gravity of crime and quantum of punishment. For example, dividing homicide into murder, provocation and accidental may help for inflicting proper liability in terms of wrong and penalty. Fourthly, there may be a good social reason for creating a separate offence with a separate label in order to draw public attention to the wrongness of a particular course of action.

3.9.3 Final Remarks

To sum up, the principle of individual autonomy is a foundational pillar in both criminal capacity and criminal liability spheres, serving as a beacon for human dignity, personal freedom, and self-determination. It underscores the intrinsic value and agency of every individual, advocating for their right to make decisions about their own lives without undue

[296] ASHWORTH, *supra* note 31, at 78.
[297] *Id.*

interference, and liability only upto that level. It limits the authority making liable for individual which is not within his domain and capacity.

3.10 THE CAUSATION PRINCIPLE

3.10.1 Overview

The causation principle in criminal law establishes a vital link between the actions of the defendant and the resulting harm, determining the defendant's liability for the offense. It consists of two main components: factual causation and legal causation (proximate cause).[298] Factual causation requires demonstrating that the harm would not have occurred 'but for' the defendant's actions, while legal causation assesses whether the defendant's conduct was a sufficiently significant factor in bringing about the harm to warrant criminal liability.[299] By attributing responsibility to the defendant for the consequences of their actions, the causation principle ensures fairness, justice, and accountability in the legal system, while also serving as a deterrent to future criminal behaviour. Overall, it plays a crucial role in promoting the integrity and effectiveness of criminal law by establishing a clear connection between the defendant's conduct and the resulting harm.

3.10.2 Basic Substances

Causation refers to the factors, without which the result would not have occurred. So, causation means causal relationship of the act with the result. It can be directly by physical act or indirectly by some other endeavours, which may include from omission to criminal negligence. It can occur in both complete offences and inchoate offences- abetment, incitement and conspiracy.[300] Hence, direct or indirect relation of cause and effect is causation.

In *Birman Lungelli (Magar)* (2012),[301] the defendant Birman Lungeli (Magar) hit his wife Mana Maya Magar with the solid wood on her head in 2064-12-24, for not preparing food

[298] Paul K. Ryu, *Causation in Criminal Law*, 106 (6) UNI. OF PENN. L. REV. 773, (1958).
[299] UOLLB, *Legal Causation vs Factual Causation*, UOLLB FIRST CLASS LAW NOTES (Apr. 29, 2023), https://uollb.com/blog/law/legal-causation-vs-factual-causation. (last visited June 19, 2024).
[300] Jan Hellner, *Causality and Causation in Law*, STOCK. INST. FOR SCAN. L. 111, 112 (2009).
[301] Birman Lungelli (Magar) v. GoN (2012) (NKP 2069, Vol. 6, DN. 8853).

on time. She was taken to Siliguri Neuro Hospital, Indai for treatment. The hospital medicated her in ICU till 2065-05-02, but having no recovery, she was taken back to Nepal. She died in 2065-07-08. In this case, writing the leading judgement, Justice Praskash Wasti explained the doctrine of causation:

> In order to impose the criminal liability under the doctrine of causation, it is necessary to identify that whose act caused prohibited result. The person who caused the injury on victim, and during course of time, if that injury ultimately takes the life of her, he is guilty of it. The issue arises only when third party's action or some other thing else contributes in bringing the prohibited consequence. In this case, this is not the issue. The deceased was hit by the defendant on her head, she fell unconscious and was taken to hospital where she could not get recovered, and finally died because of the same injury. Thus, the decision of Appellate Court affirming the decision of District Court to convict him under intentional homicide is upheld.[302]

The chain of cause has to be continuous in bringing the result. When the chain breaks, the result might get occur by other reasons than the initial blow. D is liable only when he *caused* it, has causal relation with the result proven by evidence.

MCC has stated the causation principle in *Explanation* of Sc. 177(1) and in Sec. 192(3).

> Explanation of Sec. 177(1): where D intentionally causes serious bodily harm to another person which is likely to cause death, and dies not immediately but subsequently by the consequence of that harm, D shall be considered to have killed the person.
>
> Sec. 192 (3): Where an act of hurt results, though not immediately, subsequently in grievous harm by the consequence of that hurt, D shall be deemed to have caused grievous bodily harm.

[302] *Id*. at ¶ 6.

The following three cases help to understand the scope of causation. The case of *Moti Singh* describes the necessity of proving causal relation, the case of *Rewaram* describes the link of causal relation, and the case of *Masilela* clears the mischief of causal relation:

a) ***Moti Singh v. State of Uttar Pardesh*** **(1964).**[303] In this case, the deceased Gayacharan had received two gunshot wounds in the abdomen which were dangerous to life. The injury was received on 9 Feb 1960. There was no evidence when he was discharged from the hospital and whether he had fully recovered or not. On 1 March 1960, he died. His body was cremated without post mortem done. The Supreme Court held that the mere fact that the two gunshot injuries were dangerous to life were not sufficient for holding that Gayacharan's death, which took place about three weeks after the incident, was on account of the injuries received by him. The court observed that in order to prove the charge of Gayacharan's murder, it was necessary to establish that he had dies on account of the injuries received by him. Since there was no evidence to establish the cause of death, the accused could not be said to have caused the death of Gayacharan.

b) ***Rewaram v. State of Madhya Pradesh*** **(1978).**[304] In this case, the defendant inflicted numerous injuries on his wife, Gyanvatibai, using a knife. She was admitted into the hospital and an operation was performed on her. Subsequently, she developed hyperpyrexia, characterized by a high temperature, which ultimately led to her demise. This hyperpyrexia was a result of atmospheric temperature on weak, debilitated individuals, who already had some temperature. The doctor, who performed the post mortem, opined that the death was not as a result of multiple injuries, but because of hyperpyrexia.

The Madhya Pradesh High Court placed reliance on *explanation 2* of s 299 of the IPC. It observed that if the supervening cause are attributed to the injuries caused, then the person inflicting the injuries is liable for causing death, even if death was not the direct result of the injuries. In the instance case, there was medical evidence to show that the hyperpyrexia or the running of high temperature was a result of her

[303] Moti Singh v. State of Uttar Pradesh, AIR 1964 SC 900, 31 (India).
[304] Rewaram v. State of Madhya Pradesh, (1978) CRILJ 858, 32 (India).

debilitated condition. Gyanvatibai's deteriorated state resulted from the multiple injuries she sustained, the subsequent surgical operation, and the necessary post-operative fasting for her recuperation. Hence, her demise directly stemmed from the injuries inflicted upon her. Intervening or supervening cause of hyperpyrexia was a direct result of the multiple injuries and was not independent or unconnected with the serious injuries sustained by her. Hence, the accused had caused her death, and the conviction of murder was upheld.

c) ***S v. Masilela*** **(1968).**[305] The accused strangled the deceased with a tie, thinking him already dead, they left body on bed and set fire the house. A post-mortem examination revealed that deceased's neck broken, serious injuries on his head, and that he had been strangled. Nevertheless, the primary cause of death was carbon monoxide poisoning resulting from inhaling the fumes of the fire. It was argued on behalf defendant that in the first act of strangulation, there was *mens rea* too, but the deceased did not die because of so. In the second act of fumes of the fire, there was no *mens rea*. And, as the deceased had died by the carbon monoxide poisoning from the fumes of the fire, it cannot amount to murder.

   The Court held that D, intending to kill V, knocked him unconscious and, believing him to be dead, set fire to the house. However, v. died from the fumes. If he had not been unconscious, he would have been able to walk out. So, the injuries inflicted prior to the burning were a material and direct contributory cause of the deceased's dying from carbon monoxide poisoning. D was convicted for murder.

3.10.3 Final Remarks

Sometimes, the relation of cause and effect might be too remote or too minimal. In that conditions, causal relation cannot be established by any presumptions. The causation principle does not apply in the following two conditions:

a) If the relation of the act is too remote with the result, D did not cause the result. It happened by some misfortune or other endeavours.

[305] S v. Masilela, (2) SA 558 (A) (S. Afr.).

b) If the initial cause is too minimal to bring the result, D did not cause the result. It was caused by some other phenomenon later.

The difficulty of causation arises very often in cases of negligence. Two key points must be established: first, that the individual's actions were negligent, and secondly, that without the accused's negligent act, the accident would not have transpired.[306]

3.11 THE TRANSACTION PRINCIPLE

3.11.1 Overview

The transaction principle in criminal law refers to the concept that a single criminal act or series of acts committed as part of a continuous course of conduct constitutes a single transaction, rather than multiple separate offenses.[307] This principle is particularly relevant in cases where a defendant's actions result in multiple criminal charges stemming from the same underlying conduct. By applying the transaction principle, courts aim to ensure fairness, efficiency, and proportionality in criminal prosecutions. It helps prevent defendants from facing duplicative or excessive punishment for a single course of conduct, while also facilitating a more streamlined and coherent approach to adjudicating criminal cases.[308] Overall, the transaction principle serves to uphold the principles of justice and due process within the legal system by promoting clarity and consistency in the treatment of related criminal offenses.

3.11.2 Basic Substances

It is not necessary that an immediate act caused the death immediately. Where the *actus reus* of the crime charged is continuing act, it is sufficient that D has *mens rea* during its continuance.[309] It is to be regarded that has continuance along with.

[306] VIBHUTE, *supra* note 41, at 30.
[307] Frank Edward Horack Jr., *The Multiple Consequence of a Single Criminal Act*, Minn. L. Rev. 805 (1937).
[308] *Id.*
[309] *Id.*

For example, Ram is a young man aged 27. He has a revenge motive to a girl Geeta, aged 22. He falsely pretends his love to her, marries her, does physical violence against her, and finally kills her with poisonous food in two months.

The crux of this case in criminal law is- D planned to kill V, prepared for the same, and accomplished the result. He is liable to intentional homicide, murder. The successive events in-between are various transaction which, do not cut his *mens rea,* continues through every steps of transaction.

The sequence of events in 'Hamlet'[310] serves as a reference point for understanding the play. 'Hamlet' is classified as a revenge tragedy, characterized by a protagonist who spends much of the play contemplating revenge rather than carrying it out. Hamlet's struggle to avenge his father's murder propels the plot forward and ultimately results in the demise of several major characters, including Polonius, Laertes, Ophelia, Gertrude, and Rosencrantz and Guildenstern. And Hamlet himself is tortured by his indecision and his inability to kill his father's murderer, Claudius, throughout the play. When he finally does exact his revenge and kills Claudius, it is too late for him to derive any satisfaction from it; Laertes has struck him with a poisoned foil and Hamlet dies shortly after.

3.11.3 Final Remarks

To sum up, the transaction principle in criminal law serves as a crucial tool for ensuring fairness, efficiency, and proportionality in the prosecution of offenses stemming from a single course of conduct. By treating interconnected acts as part of a unified transaction, rather than separate offenses, this principle prevents defendants from facing duplicative or excessive punishment while promoting judicial efficiency and coherence in legal proceedings. Upholding the transaction principle is essential for preserving the integrity and effectiveness of the criminal justice system, fostering fairness and consistency in the treatment of related offenses, and safeguarding the rights of defendants.

[310] A tragedy written by William Shakespeare around 1600.

3.12 ONE TRANSACTION RULE

3.12.1 Overview

The 'one transaction rule' in criminal law is a principle that stipulates multiple criminal offenses arising from a single course of conduct should generally be treated as a single transaction for the purposes of prosecution and sentencing.[311] This principle aims to prevent defendants from being subjected to duplicative or excessive punishment for a singular act or series of closely related acts. Essentially, it consolidates related charges into a single legal proceeding to promote judicial efficiency, fairness, and proportionality.[312] By applying the one transaction rule, courts ensure that defendants are held accountable for their actions while avoiding unnecessary legal complexity and potential injustice.[313] This principle underscores the importance of coherence and consistency in the criminal justice system, emphasizing the need to balance the interests of justice with the rights of defendants.

3.12.2 Basic Substances

The one-transaction rule can be succinctly described as follows: when multiple offenses occur within a single transaction, sentences for these offenses should be served concurrently rather than consecutively. The following cases will help to understand it:

a) ***HKSAR v. Ngai Yiu Ching*** **(2011)**:[314] The focus should lie on reflecting the true culpability revealed by the offenses for which the accused has been convicted. This approach has been consistently adopted by this Court in recent cases, such as *Kwok Shiu To* (2006)[315] and *Iu Wai Shun* (2008).[316] It is likely to be a more effective method in capturing an offender's overall culpability compared to one overly preoccupied with the one-transaction rule. However, when dealing with multiple offenses, the court must be vigilant in avoiding double punishment for the same act. If the subsequent offense, occurring within the suggested single episode, heightens

[311] Mohamed Shouffee bin Adam v. Public Prosecutor, (2014) 2 SLR 998 (Sing.).
[312] *Id*.
[313] Thabo-Meli v. R, (1954) 1 WLR 228 (QB).
[314] HKSAR v. Ngai Yiu Ching, (2011) 5 HKLRD 690 (HK).
[315] HKSAR v. Kwok Shiu To, (2006) 2 HKLRD. 272 (HK).
[316] HKSAR v. Iu Wai Shun, (2008) 1 HKC 79 (HK).

the culpability of the initial offense, it is probable that the sentence for the subsequent offense will run wholly or partially consecutively to that for the first offense; the extent of this will depend on an evaluation of the totality appropriate for the conduct as a whole. Similar to most sentencing deliberations, this approach is an art, responsive to the individual circumstances of the case and the offender.[317]

b) ***R v. Greaves*** **(2011)**:[318] Where the offenders are one and the same, if the conduct involved in the Proceeds of Crime Act offence in reality adds nothing to the culpability of the conduct involved in the primary offence, there should be no additional penalty. A person should not be punished more than once for the same conduct.…[319]

c) ***Public Prosecutor v. Law Aik Meng*** **(2007)**:[320] The one-transaction rule stipulates that when multiple offenses occur within a single transaction, the sentences for those offenses should be concurrent rather than consecutive. This principle has been established in cases such as *Maideen Pillai* (1995)[321] and *Kanagasuntharam* (1991).[322] Professor Andrew Ashworth interpreted the rationale behind the "single transaction" principle in terms of both temporal and typological proximity of the offenses.[323] This interpretation was also endorsed by Dr. DA Thomas that "The concept of 'single transaction' may be understood to encompass a sequence of offenses involving a repetition of the same behavior towards the same victim ... provided the offenses are committed within a relatively short period."[324]

d) ***Mohamed Shouffee bin Adam v. Public Prosecutor*** **(2014)**:[325] Section 307(1) does not specify which sentences should run consecutively. Neither does the section nor the Criminal Procedure Code (CPC), for that matter, provide explicit guidance on this matter, although certain principles have emerged through case law. It should be noted that sentencing judges possess significant discretion, but this discretion must

[317] *Id*. at 23.
[318] R v. Greaves (2010) EWCA Crim. 709 (UK).
[319] *Id*. at 84.
[320] Public Prosecutor v. Law Aik Meng, (2007) 2 SLR(R) 814 (Sing.).
[321] Maideen Pillai v. Public Prosecutor, (1995) 3 SLR(R) 706 (Sing.).
[322] Kanagasuntharam v. Public Prosecutor, (1991) 2 SLR(R) 874 (Sing.).
[323] ANDREW ASHWORTH, SENTENCING AND CRIMINAL JUSTICE 245 (4th ed. 2005).
[324] DR. DA THOMAS, PRINCIPLES OF SENTENCING 54 (2d ed. 1979).
[325] Mohamed Shouffee bin Adam v. Public Prosecutor (2014) SGHC 34 (Sing.).

be exercised judiciously and with consideration for two key principles: the one-transaction rule and the totality principle, along with several ancillary principles. I will elaborate on these below. It is important to clarify that there is no presumption or rule dictating that the two most severe sentences should typically run consecutively. Nor is there a rule mandating that the most severe individual prison sentence must be chosen as one of the sentences to run consecutively, as long as the combined sentences selected exceed the longest individual sentence.[326]

3.12.3 Final Remarks

To sum up, the 'one transaction rule' in criminal law stands as a vital safeguard to ensure fairness, efficiency, and proportionality in legal proceedings. By consolidating multiple charges arising from a single course of conduct into a unified transaction, this principle prevents defendants from facing duplicative or excessive punishment while promoting judicial clarity and coherence. This principle serves as a cornerstone of justice, ensuring that defendants are held accountable for their actions in a manner that is both fair and consistent with the principles of due process and the rule of law.

3.13 PRINCIPLE OF DOUBLE JEOPARDY

3.13.1 Overview

The principle of double jeopardy or *ne bis in idem* prohibits a person for being tried twice for the same conduct, and stems from concerns of fairness to defendants and motivation for thorough investigations and prosecutions.[327] The fundamental concept underlying double jeopardy appears deceptively simple, as outlined in Article 20(6) of Constitution of Nepal athat 'no person shall be prosecuted or punished for the same offence in a court of law more than once.'

The rule against double jeopardy is rooted in the maxim *'nemo debet bis vexari pro uno et eadem causa*,' which translates to 'no person should be subjected to harassment twice for

[326] *Id*. at ¶ 25.
[327] Lawrence Newman, *Double Jeopardy and the Problem of Successive Prosecutions*, 34 S. CAL. R. 181, 190 (1960).

one and the same cause.' Hence, the term 'double jeopardy' expresses the idea of a person being put in peril of conviction more than once for the same offence[328]. 'Double jeopardy' simply refers to the danger of putting a person through a second trial of an offence for which he or she has already been prosecuted or convicted. The evil sought to be avoided by prohibiting double jeopardy is second prosecution for the same offence after acquittal or conviction or multiple punishments for same offence. This means that once a person has been prosecuted or convicted for a criminal act, they cannot be punished again for the same offense.

And if a person is indicated again for the same offence in the Court then he has the plea of double jeopardy as a valid defense. Five policy considerations underpin the double jeopardy doctrine:

a) Preventing the government to erroneously convict innocent persons;
b) Protecting individuals from the financial, emotional and social consequences of successive prosecutions;
c) Preserving the finality and integrity of criminal proceedings, which would be compromised were the state allowed to arbitrarily ignore unsatisfactory outcomes;
d) Restricting prosecutorial discretion over the charging process; and
e) Eliminating judicial discretion to impose cumulative punishments that the legislature has not authorized.

3.13.2 Basic Substances

Historical Background

The rule against double jeopardy traces its origins to the 12th-century dispute between Henry II and Archbishop Thomas Becket. During this time, two distinct courts existed: the royal court and the ecclesiastical court. Henry II sought to subject clergy members to punishment in the royal court even after they had been punished by the ecclesiastical court.

[328] Ian Dennis, *Rethinking Double Jeopardy: Justice and Finality in Criminal Process*, CRIM. L.R. 1595, 1607 (2000).

Becket argued that subjecting individuals to repeated punishment would violate the maxim 'nemo bis in idem.' Following the dispute, Becket was murdered by the king's knights in 1170, yet King Henry granted exemption to the accused in 1176. This concession by King Henry is considered responsible for the introduction of the double jeopardy principle in English common law. [329]

In the 12th century, the doctrine of *res judicata*[330] had been introduced in both English civil and criminal law due to the influence of Roman law teachings in England. In the 18th century, Blackstone articulated the principle, stating that "no man is to be brought into jeopardy of his life more than once for the same offense."[331] This led to the allowance that when an individual is acquitted once, they may plead such acquittal to bar any subsequent accusation for the same crime.

According to Dias, *res judicata* signifies that the final judgment of a competent court cannot be disputed by the parties or their successors in any subsequent legal proceeding.[332] This protection has gained international recognition through various international documents.[333] Presently, nearly all civilized nations incorporate protection against double jeopardy into their municipal laws, with some countries enshrining it in their constitutions and others including it in their statute law.[334]

Double Jeopardy: Protection under Nepalese Law

The protection against double jeopardy has been assured by the constitution under fundamental rights as below:

---

[329] Nyssa Taylor, *England and Australia Relax the Double Jeopardy Privilege for Those Convicted of Serious Crimes*, 19 TEMP. INT'L. & COMP. L.J. 195 (2005).
[330] *Res judicata* is the Latin term for 'a matter already judged'.
[331] 1 William Blackstone, *Of Property, in General*, *in* COMMENTARIES ON THE LAWS OF ENGLAND IN FOUR BOOKS, BOOK 2 189 (George Sharswood ed., 1893).
[332] RWM DIAS, JURISPRUDENCE 126 (1994).
[333] For instance, International Covenant on Civil and Political Rights, *supra* note 113, at art. 14(7); European Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 112, at Protocol 7, art. 4(1); Charter of Fundamental Rights of the European Union, 2000, art. 50, 2000 O.J. (C 364) 1.
[334] For instance, in countries such as Nepal, USA and India, it is accepted as a constitutional right. In particular, art. 20(6) of the Constitution of Nepal, Fifth Amendment to Constitution of USA and art. 20(2) of the Constitution of India. Conversely, in England and Canada, it is the part of Common Law and Statute Law.

Constitutions of Nepal	Provisions
GoN Act, 2004 (1948)	Art. 4 "…Equality before the laws, Cheap and Speedy Justice"
The Interim GoN Act, 2007 (1951)	Art. 18(2) "No person is prosecuted and punished for the same offence more than once."
Constitution of the Kingdom of Nepal, 2015 (1959)	Art. 20(6) "No person shall be prosecuted or punished for the same offence in a Court of law more than once."
The Constitution of Nepal, 2019 (1962)	Art. 11(4) "No person shall be prosecuted and punished more than once for the same offence in any Court of law."
Constitution of the Kingdom of Nepal, 2047 (1990)	Art. 14(2) "No person shall be prosecuted or punished for the same in a Court of law more than once."
The Interim Constitution of Nepal, 2063 (2007)	Art. 24(6) "No person shall be prosecuted or punished for the same offence in a Court of law more than once."
Constitution of Nepal, 2072 (2015)	Art. 20(6) "No person shall be prosecuted or punished for the same offence in a Court of law more than once "

The Constitution of Nepal, thus, has recognized *autrefois prosecution, autrefois convict* and *autrefois acquit.*[335] The constitutional protection provided under clause (6) of Article 20 is consistent with Article 20(2) of the Constitution of India, which states: "no person shall be prosecuted or punished for the same offence more than once." This provision prohibits subsequent prosecution for the same offense regardless of whether the accused was acquitted or convicted in the initial trial.

[335]*Autrefois prosecution, autrefois convict* and *autrefois acquit* mean 'a person once prosecuted, convicted or acquitted in an offence cannot be retried or punished second time in the same offence'.

It is further assured in Interpretation of Statutes Act, 2010 (1953):

> Sec. 25. Provision as to offences Punishable under two or more enactments: Where an act or omission constitutes an offence under two or more enactments then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be published twice for the same offence.

The principle of double jeopardy is re-assured in MCC under the chapter 'general principles of criminal justice'. Sec. 9 reads: "No further punishment for the same offence: No person shall be prosecuted or punished for the same offence in a Court of law more than once."[336]

Can the proceeding of administrative authorities be considered as judicial proceedings to attract Double Jeopardy?

This issue has been discussed and explained well in *Ram Prasad Sitaula* (2007)[337] In this case, the appellant faced disciplinary action for breaching the corporation's code of conduct. Afterwards, he was charged before the Court pursuant to Corruption Act, 2059 (2002). At trial, the appellant raised the plea of *autrefois convict*, since it violates his fundamental right guaranteed under the constitution, on the ground that he had already been punished by the Department. By rejecting his plea, the Court held that the proceedings of the departmental action cannot be considered as a judicial proceeding of a criminal nature. The Court also held that the proceedings conducted before the departmental authorities were not prosecution and the action was not the punishment inflicted by judicial tribunal. Thus, it cannot be argued that the appellant was prosecuted and punished for the same offense. For the double jeopardy principle to apply, the second prosecution and subsequent punishment must pertain to the identical offense, meaning an offense with identical elements.

In India, it has been settled well in *Maqbool Hussain* (1953).[338] In this case, the appellant, an Indian citizen, was arrested in the airport for the illegal possession of gold under s167(8) of the Sea Customs Act, 1878, and the gold was confiscated. Afterwards, he was charged

[336] Muluki Criminal Code, 2074 (2017), § 9 (Nep.).
[337] Ram Prasad Sitaula v. Timber Corporation Nepal (2007) (NKP 2064, Vol. 2, DN. 7816).
[338] Maqbool Hussain v. State of Bombay, AIR 1953 SC 325 (India).

before the Court pursuant to Section 8 of the Foreign Exchange Regulation Act, 1947. At trial, the appellant raised the plea of double jeopardy, however, Court rejected his plea on the ground that the Sea Customs Authorities cannot be considered as a judicial proceeding because it was not a Court or judicial tribunal. Similarly, in *Roshan Lal* (1965),[339] the accused had disappeared the evidence of two separate offences under section 330 & section 348 of the IPC. So, the court ruled that the accused could be convicted for two distinct sentences.

Therefore, the requirements for the protection against double jeopardy under Article 20(6) of the Constitution rest on:

a) Firstly, that there should be previous conviction or acquittal from the charge on criminal nature,
b) Secondly, the conviction or acquittal must be by the Court of competent jurisdiction, and
c) Thirdly, the subsequent proceeding must be for the same offence.

The term 'same offence' indicates that the offense for which the accused was initially tried and the offense for which they are being retried must be identical and rooted in the same set of circumstances.[340]

Response of the judiciary with respect to the protection of Double Jeopardy

Some of the landmark judgements delivered by the Supreme Court of Nepal are cited below to throw light on the response of the judiciary with respect to the protection of double jeopardy as enshrined in the Constitution:

a) *Lal Bahadur Karki v. HMG, Ministry of Land Reform* (1990)[341]

Fact

[339] Roshan Lal v. State of Punjab, AIR 1965 SC 1413 (India).
[340] State of Rajasthan v. Hat Singh, AIR 2003 SC 791 (India).
[341] Lal Bahadur Karki v. HMG, Ministry of Land Reform (1990) (NKP 2047, Vol. 2, DN. 4069).

Lal Bahadur Karki, now the petitioner, was charged against 'gaining undue benefit on his behalf and making undue loss of total Rs. 62,009.74 to Land Reform Office, Jhapa' pursuant to Sec. 16a. & Sec. 29 of the Corruption Control Act, 2017 in Bagmati Special Court. The Special Court, on ground of exceeding statute of limitation by the government to sue the case, quashed the charge-sheet on 2037-06-03; which was affirmed by Mid-Western Regional Court on 2038-10-15. After four years of the final disposal of the case, His Majesty's Government, Ministry of Land Reform again asked form the same questioned money as due through a decision dated 2042-09-16. Lal Bahadur Karki challenged the decision basically on ground of double jeopardy in the Supreme Court.

Judgement

In giving the leading judgment Chief Justice Dhanendra Bahadur Singh held: "No person can be prosecuted more than once in the same charge, which has already been prosecuted and disposed by the Court. Article 11(4) of The Constitution of Nepal, 2019 (1962) has guaranteed the right against double jeopardy by stating that no person shall be prosecuted and punished more than once for the same offence in any Court. The decision of HMG- of reviving the same issue which has already been resolved by the Court- violates fundamental right of the Petitioner, and therefore cannot sustain. The writ petition is allowed."[342]

b) *Ram Prasad Sitaula v. GoN* (2007)[343]

Fact

Aakash aka Milan Lama Gurung fraudulently married a girl named Anita Bhattarai-the victim. They stayed nearly three months together in Bhaktapur as husband and wife. Then he took her India from the route Dhangadi-Delhi-Bumbay-Puna in support of other defendants including Ram Prasad Sitaula. In Pune, the victim was sold in INR 50,000 to a middle aged Nepalese woman. Buying the victim, the

[342] *Id.* at ¶ 9.
[343] Ram Prasad Sitaula v. GoN (2007) (NKP 2064, Vol. 9, DN. 7878).

woman was taking her towards the brothel. On the way, the victim came to know that she was sold. She made a hue and cry, jumped out the rickshaw, and got sheltered in Women Reform Home. The Reform Home sent her to Maiti Nepal, Mubai from where she was rescued to Nepal.

The defendants were charged pursuant to Sec. 41, 8(1), 8(5) of Human Trafficking (Control) Act, 2043[344], on 2059-08-12. Whereas, they were already prosecuted in India under Sec. 363, 366-B, 373 and 34 of the IPC. Under the trial, the defendants were in judicial custody for 11 months, and were acquitted from District and Session Court, Pune on 2002-08-30 (2059-05-14). Hence, the defendants plead for double jeopardy.

Judgement

Justice Min Bahadur Rayemajhi pronounced the leading judgement that the Interim Constitution of Nepal, 2063, (2007) Article 24(4) itself prohibits anyone from being prosecuted twice for substantially the same crime under the principle of double jeopardy. A person, who has already been acquitted (Autrefois acquit) or convicted (Autrefois convict), cannot be prosecuted and punished again. However, the issue is different in this case. The accused were charged in India pursuant to Sec. 363, 366-B, 373 and Sec. 34 of the IPC. It shows that they were not prosecuted for the offence of 'selling human being'; and, therefore, the offence prosecuted in India and the offence under prosecution in Nepal are not the same. Hence, it does not attract double jeopardy.[345] On the other hand, the case prosecuted under Indian law does also not cover prosecution under Nepalese law as the IPC is not the law of Nepal.[346] For these two reasons, the decision of Appellate Court, Patan affirming the decision of Kathmandu District Court to convict the defendants is upheld.

[344] *Jiu Masne Bechne Karya (Niyentran) Ain, 2043* (Human Trafficking (Control) Act, 2043 (1986)) (Nep.).
[345] (2007) NKP 2064, Vol. 9, DN. 7878, at ¶ 11.
[346] *Id.* at ¶ 12.

c) *Bal Krishna K.C. v. District Police Office, Dailekh* (2010)[347]

Fact

Yubraj Pokharel- founder of a private school- signed a bond to sell his school to Pabitra Thapa & Jyotishara Khadka. Later, he cancelled it and gave 'power of attorney' to run the school to Bal Krishna K.C.- now the petitioner. Pabitra and Jyotishara questioned some terms of 'power of attorney' as a partial forgery, and sued a case of 'fraud in document' (*Jaalsaj*) in Dailekh District Court. The trial court quashed the lawsuit on ground of lack of locus-standi on the plaintiffs, dated 2061-01-20, which was upheld by Appellate Court, Surkhet and Supreme Court.

Then, Pabitra and Jyotishara registered a FIR on the same issue under the charge of 'partial forgery' in District Police Office, Dailekh, dated 2065-12-13. Bal Krishna K.C. challenged the FIR and the total criminal procedure in Supreme Court by a writ petition, pleading the principle of double jeopardy.

Judgement

Justice Khilaraj Regmi pronounced the leading judgement. Principle of double jeopardy protects an individual from the repeated trial for the same offence. This principle has two facets: Autrefois acquit and Autrefois convict. In both of these conditions, i.e. if the individual is already acquitted or already convicted, an individual cannot be prosecuted and punished again.

The issue in this case is- Bal Krishna was trialed under Individual Party Case, now the questioned FIR is related to State Party Case.

On this fact, whether double jeopardy attracts or not? The Court opined that the offences are categorized into Individual Party Case or State Party Case for the sake of procedure that who will look after the case. Whoever prosecutes, the case goes against the individual. Change in party to sue the case does not let an individual to

[347] Bal Krishna K.C. v. District Police Office, Dailekh (2010) (NKP 2067, Vol. 9, DN. 8459).

be double jeopardized. The principle of double jeopardy is not concerned with who prosecuted the case; rather against whom the case is prosecuted. Hence, the writ of prohibition is issued.

d) *Sunita Kumari Gautam (Batala) on behalf of Govinda Bahadur Batala 'Jeebit' v. OPMCM* (2011)[348]

Fact

Govinda Bahadur Batala '*Jeebit'* kidnapped and murdered Ram Hari Shrestha. The deceased's wife Sunita Kumari registered a FIR stating the fact that her husband was kidnapped from Koteshwor Kathmandu, taken to Shaktikhor Camp Chitwan, and murdered by the accused. Prosecutor charged murder case to Govinda Bahadur Batala under no. 13(3) of Chapter on Homicide, Muluki Ain. Chitwan District Court, however, convicted him as 'accomplice' pursuant to no 17(3), Chapter on Homicide for a term of three years' imprisonment. Batala was in custody from 2065-02-03 and the decision was delivered on 2068-02-17. In this way, by the time the decision came, he had already completed the term of imprisonment, therefore, he had got to release, but was again taken to police custody- this time for the investigation of 'kidnapping'. Thus his wife Sumita Kumari sued a writ petition of habeas corpus in Supreme Court.

Judgement

Justice Tahir Ali Ansari pronounced the leading judgement. The facts that the deceased was kidnapped from Koteshwor Kathmandu, taken to Shaktikhor Camp Chitwan, and murdered there- all these acts, carried out to get the same consequence, are stages of the same offence- murder. The chain of the stages of crime into the commission of murder cannot be broken down into different offences. The accused- once prosecuted and convicted for the principal offence- cannot be prosecuted again

[348] Sunita Kumari Gautam (Batala) on behalf of Govinda Bahadur Batala 'Jeebit' v. OPMCM (2011) (NKP 2068, Vol. 6, DN. 8638).

and again for every particular chain of acts performed to accomplish that principal offence. Hence, the writ of habeas corpus is allowed.

3.13.3 Concluding Remarks

The fundamental principle of double jeopardy is to safeguard individuals from repeated prosecutions that would subject them to enduring anxiety and uncertainty. The decisions of Supreme Court explained just above have quoted two facets of double jeopardy *Autrefois convict* and *Autrefois acquit,* that refers 'either convicted by the court or acquitted by the court'. But, there is also a third facet - *Autrefois prosecution,* i.e. 'no person can be investigated more than once for the same offence'.

Investigator/prosecutor does also have right to defer the investigation, if the FIR is found to be deceptive, false or fabricated during investigation.[349] Once they decide to defer the investigation; can they again revoke it and charge the case under the same fact? No. Unless additional evidence is found; the decision cannot be revoked.

Hence, double jeopardy law protects a person from successive prosecution and multiple punishments on same facts of a case where the accused has already been prosecuted or has been acquitted/punished by the Court. That's why a new charge cannot be framed against a person on same facts. Prosecuting or punishing defendant second time is victimization of an accused. Here, it is worthnoting to cite the words of Lord Devlin in *Connelly* (1964):[350]

> For the doctrine of autrefois to be applicable, it is essential that the accused had been at risk of conviction for the same offense as the one with which they are currently charged. The term 'offense' encompasses both the factual elements constituting the crime and the legal attributes that render it an offense. To invoke the doctrine, the offense must be identical both in terms of fact and in terms of law.[351]

[349] Muluki Criminal Procedural Code, 2074 (2017), § 11 (Nep.).
[350] Connelly v. Public Prosecutions (1964) AC 1254.
[351] *Id*.

CHAPTER IV

PROVISIONS THAT LIMIT THE COURT IN CRIMINAL CASES

AMBIANCE

In criminal cases, both the provisions and legal principles exist to limit the powers and actions of the court in criminal cases, ensuring fair trials and protecting the rights of the accused. This limitation principle applies to both procedural and substantive aspects of criminal law.

Substantive laws correspond to this principle by defining the scope of criminal offenses and specifying the elements that must be proven for conviction. In international and Nepalese laws, substantive provisions establish clear boundaries for criminal liability, ensuring that individuals are not unfairly prosecuted or convicted.

Procedural limitations, such as the presumption of innocence, the right to a fair trial, and protections against double jeopardy, further safeguard against arbitrary or unjust actions by the court. By adhering to these provisions, courts uphold the principles of justice, accountability, and respect for human rights in criminal proceedings.

This chapter emphasizes how the substantive laws have corresponded to the principle of limitation in international and Nepalese laws with regard to the interpretation of penal statute.

4.1 INTERNATIONAL LAWS

4.1.1 UDHR,[352] ICCPR[353] and ECHR[354]

a) Universal Declaration of Human Rights (UDHR), 1948:

The UDHR is a milestone document in the history of human rights. It proclaims the inalienable rights to which every human being is inherently entitled, regardless of race, colour, religion, sex, language, political or other opinion, national or social origin, property, birth, or other status.

The UDHR consists of 30 articles that outline a broad range of civil, political, economic, social, and cultural rights. Some of the key rights and principles enshrined in the UDHR include: Right to Equality,[355] Right to Life, Liberty, and Security,[356] Freedom from Slavery and Servitude,[357] Freedom from Torture and Cruel, Inhuman, or Degrading Treatment or Punishment,[358] Right to Recognition as a Person before the Law,[359] Right to Freedom of Thought, Conscience, and Religion,[360] Right to

[352] The UDHR is a declaration adopted by the United Nations General Assembly on 10 December 1948 at the Palais de Chaillot, Paris. The Declaration arose directly from the experience of the Second World War and represents the first global expression of rights to which all human beings are inherently entitled.
[353] It is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and in force from 23 March 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of April 2014, the Covenant has 74 signatories and 168 parties.
[354] The ECHR is an international treaty to protect human rights and fundamental freedoms in Europe. Drafted in 1950 by the then newly formed Council of Europe, the convention entered into force on 3 September 1953. The Convention established the European Court of Human Rights (ECtHR).
[355] All human beings are born free and equal in dignity and rights. They are entitled to equal protection under the law without discrimination.
[356] Everyone has the right to life, liberty, and security of person.
[357] Slavery and the slave trade are prohibited in all their forms.
[358] No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.
[359] Everyone is entitled to recognition as a person before the law and is entitled to equal protection of the law without any discrimination.
[360] Everyone has the right to freedom of thought, conscience, and religion, including the freedom to change their religion or belief.

Freedom of Expression,[361] Right to Education,[362] Right to Work and to Just and Favourable Conditions of Work[363] and Right to an Adequate Standard of Living.[364]

The UDHR serves as a foundation for international human rights law and has inspired numerous international treaties, regional human rights instruments, and national constitutions. It continues to be a beacon of hope and a guiding principle for the promotion and protection of human rights around the world. The UDHR articulates the prohibition of retroactive laws in penal proceedings in Article 11(2):

> No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

The Paragraph embraces unequivocally both national and international law. Later instruments also lay out the *nullum crimen* principle, but indicate that rules can be applied even if not part of national or written law at the time of the offence, if they are part of general principles of international law.

b) International Covenant on Civil and Political Rights (ICCPR), 1966:

The ICCPR is a multilateral treaty adopted by the United Nations General Assembly in 1966. It came into force in 1976 and is part of the International Bill of Human Rights, along with the UDHR and ICESCR.

The ICCPR is a legally binding international covenant that focuses on civil and political rights. It outlines the fundamental human rights that should be protected by

[361] Everyone has the right to freedom of opinion and expression, including the freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.
[362] Everyone has the right to education, which shall be free, at least in the elementary and fundamental stages.
[363] Everyone has the right to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment.
[364] Everyone has the right to a standard of living adequate for the health and well-being of themselves and their family, including food, clothing, housing, and medical care.

all member states. Some key provisions of the ICCPR include the right to life, freedom from torture or cruel, inhuman, or degrading treatment or punishment, freedom of expression, freedom of assembly, and the right to a fair trial.

States that are parties to the ICCPR are obligated to submit regular reports to the United Nations Human Rights Committee, which monitors the implementation of the covenant. The committee reviews these reports and engages in a dialogue with the states to ensure compliance with the provisions of the ICCPR.

The ICCPR is an essential instrument in the protection and promotion of human rights globally, emphasizing the importance of civil and political rights as integral to the overall framework of human rights. The ICCPR sets out general prohibition of retroactive punishment, in the following words:

> No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.[365]

But, the second paragraph of that Article incorporates general principles of law recognized by the community of nations which can be applied in Courts without breaching the *nullum crimen* principle:

> Nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.[366]

[365] International Covenant on Civil and Political Rights, *supra* note 113, at art. 15(1).
[366] *Id.* at art. 15(2).

c) European Convention on Human Rights (ECHR), 1950

The ECHR is an international treaty established within the framework of the Council of Europe. It was adopted in 1950 and entered into force in 1953. The primary purpose of the ECHR is to protect and uphold fundamental human rights and freedoms in Europe.

Key features of the ECHR include: Rights and Freedoms,[367] the ECtHR,[368] Protocol System[369] and Council of Europe.[370] The ECHR plays a crucial role in the protection of human rights in Europe, providing a legal framework for individuals to seek redress for violations and contributing to the development of human rights standards in the region.

Article 7 of the ECHR contains a nearly the identical clause:

(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

(2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.

[367] European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 (the ECHR) guarantees a range of civil and political rights and freedoms, including the right to life, prohibition of torture, right to liberty and security, right to a fair trial, freedom of expression, and the right to respect for private and family life.

[368] The enforcement mechanism of the ECHR is the ECtHR. Individuals who believe their rights under the convention have been violated can bring cases before the court after exhausting domestic remedies. The court issues judgments on whether a state has violated the convention and may award compensation to the victims.

[369] The ECHR has been amended and expanded through a series of protocols. States can become parties to the convention and its additional protocols. The First Protocol, for example, grants additional rights related to property, education, and free elections.

[370] The ECHR is distinct from the European Union and is associated with the Council of Europe, which is a separate international organization. The Council of Europe has a broader membership than the EU and focuses on promoting human rights, democracy, and the rule of law.

d) Comparison

The ECHR's provision of Article 7 of 'no punishment without law' – only differs in two details from that of Article 15 of the ICCPR. Firstly, the first paragraph of Article 7 of the ECHR stops short of mentioning that the offender will benefit if a lighter penalty has been introduced since the commission of the offence. Secondly, the wording of the second paragraph refers to 'general principles of law recognized by civilized nations' instead of 'community of nations'. This is, however, explained by the general change in the language adopted in international instruments between the years after the Second World War (ECHR was adopted in 1950), and those during or the years following the decolonization period (ICCPR was adopted in 1966).

Article 15(2) of the ICCPR and 7(2) of the ECHR indicate that even if a state has not codified certain principle of international law – or it is not explicitly included in the applicable law of an international Court – no violation of *nullum crimen* occurs if the conduct in question was criminal under that general principle at the time it took place. This is also analogous to the wording of the Report of the Secretary-General pursuant to Paragraph 2 of the Security Council Resolution 808, setting up the ICTY, stating that the Court must apply norms that are "Beyond any doubt part of customary law so that the problem of adherence of some but not all States to specific conventions does not arise."[371] It has been assimilated in an avant-garde approach as put forward by the Appeals Chamber, "Although the *nullum crimen* principle prevents the Court from creating new law and from interpreting existing law beyond reasonable limits of clarification, it does not preclude the progressive development of law by the Court."[372]

The above mentioned instruments – the UDHR, ICCPR and ECHR – all contain a clause allowing a state to derogate from some of its human rights obligations

[371] UNSC. *Report of the Secretary-General Pursuant to Paragraph 2 of the Security Council Resolution 808*, ¶ 34, U.N. Doc. S/25704 (May 3, 1993).
[372] Prosecutor v. Milutinovic, Šainovic and Ojdanic, Desicion on Dragoljub Ojdanic's Motion Challenging Jurisdiction, IT-99-37-AR72, ¶ 37-38 (Int'l Crim. Trib. for the Former Yugoslavia May 21, 2003) (ICC).

underspecified circumstances, but the articles articulating *nullum crimen* principle are considered so fundamental for the protection of individuals' rights that the ICCPR as well as ECHR explicitly note that no derogation is allowed from those articles.[373]

4.1.2 Charter of Fundamental Rights of the European Union (CFREU), 2000[374]

The CFREU is a legally binding document that outlines the fundamental rights and freedoms guaranteed to individuals within the European Union (EU). It was proclaimed in December 2000 and became legally binding with the entry into force of the Treaty of Lisbon in December 2009.

The Charter consists of 54 articles divided into several sections, covering a wide range of rights and principles, including:

a) Dignity (Articles 1-5): Protects human dignity and prohibits torture, inhuman or degrading treatment or punishment.
b) Freedoms (Articles 6-19): Encompasses various freedoms such as the right to liberty and security, respect for private and family life, the right to marry and the right to asylum.
c) Equality (Articles 20-26): Ensures equality before the law and prohibits discrimination based on various grounds, including sex, race, and religion.
d) Solidarity (Articles 27-38): Includes social and workers' rights, such as the right to work, fair working conditions, and social security.
e) Citizens' Rights (Articles 39-46): Outlines political rights and participation, such as the right to vote and stand as a candidate in European Parliament elections.
f) Justice (Articles 47-50): Guarantees the right to an effective remedy and to a fair trial.

[373] International Covenant on Civil and Political Rights, *supra* note 113, at art. 4(2); European Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 112.
[374] It was solemnly proclaimed on 7 December 2000 by the European Parliament, the Council of Ministers and the European Commission. However, it did not have full legal effect until the entry into force of the Treaty of Lisbon on Dec. 1, 2009.

g) General Provisions (Articles 51-54): Specifies the scope and interpretation of the Charter.

The Charter is legally binding on the EU institutions and on the member states when they are implementing EU law. It does not create new rights but consolidates existing rights scattered across various sources, providing a comprehensive framework for the protection of fundamental rights within the EU.

It's important to note that the Charter does not apply to purely national situations but comes into play when EU law is being implemented or when the actions of EU institutions affect individuals' rights within the scope of EU law. Article 49 of the Charter enshrines principles of legality and proportionality of criminal offences and penalties:

(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
(2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognized by the community of nations.
(3) The severity of penalties must not be disproportionate to the criminal offence.

4.1.3 The Rome Statute, 2002[375]

The Rome Statute is an international treaty that established the ICC. It was adopted in Rome on July 17, 1998, and entered into force on July 1, 2002. The ICC is a permanent international court that prosecutes individuals for the most serious crimes of international concern, such as genocide, crimes against humanity, war crimes, and the crime of aggression.

[375] Rome Statute of the International Criminal Court, *supra* note 277.

Key provisions of the Rome Statute include:

a) Jurisdiction: The ICC has jurisdiction over individuals for the aforementioned crimes committed after July 1, 2002, either on the territory of a state party or by a national of a state party. The jurisdiction can be triggered by a state referring a situation, the UNSC, or the Prosecutor initiating investigations *proprio motu* (on their own authority).
b) Crimes: The Rome Statute defines and codifies the crimes within the jurisdiction of the ICC, including genocide, crimes against humanity, war crimes, and the crime of aggression.
c) Complementarity: The principle of complementarity emphasizes that the ICC is a court of last resort. It will only intervene when national legal systems are unwilling or unable to prosecute individuals for the crimes within the ICC's jurisdiction.
d) Independence of the Court: The Rome Statute ensures the independence of the ICC and its organs, including the Office of the Prosecutor and the judiciary, from external influence.
e) Rights of the Accused: The Statute guarantees the rights of the accused, including the right to a fair trial, the presumption of innocence, and the right to counsel.
f) Victims' Participation and Reparations: The Rome Statute recognizes the rights of victims to participate in proceedings and seek reparations for harm suffered as a result of the crimes.

The ICC is based in The Hague, Netherlands, and operates as a court of last resort, stepping in when national jurisdictions are unwilling or unable to prosecute individuals for the specified crimes. As of my knowledge cut-off in January 2022, many countries have ratified the Rome Statute, while some, including the United States, have not. The ICC has faced criticism and challenges, but it remains an important institution for international criminal justice.

The Rome Statute of the ICC explicitly prescribes the principle of limitation. Article 22 stipulates:

(1) A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.
(2) The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favor of the person being investigated, prosecuted or convicted.
(3) This Article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

Article 24 provides about Non-retroactivity principle as below:[376]

(1) No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.
(2) In the event of a change in the law applicable to a given case prior to a final judgment, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

4.1.4 African Charter on Human and Peoples' Rights (ACHPR), 1981[377]

The ACHPR, also known as the Banjul Charter, is a regional human rights instrument adopted by the OAU, now the AU, on June 27, 1981, in Banjul, the Gambia. The Charter entered into force on October 21, 1986.

Key features of the ACHPR include:[378]

a) Scope and Purpose: The Charter is designed to promote and protect human rights and fundamental freedoms on the African continent. It encompasses both civil and political rights, as well as economic, social, and cultural rights.

[376] Rome Statute of the International Criminal Court, *supra* note 277, at art. 24.
[377] The ACHPR (also known as the Banjul Charter) is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent. Oversight and interpretation of the Charter is the task of the African Commission on Human and Peoples' Rights, which was set up in 1987 and is now headquartered in Banjul, Gambia. A protocol to the Charter was subsequently adopted in 1998 whereby an African Court on Human and Peoples' Rights was to be created.
[378] RACHEL MURRAY, THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS: A COMMENTARY (2019).

b) Collective Rights: The Charter emphasizes not only individual rights but also the rights of groups, communities, and peoples. It recognizes the right to self-determination and the right to freely dispose of natural resources.
c) Civil and Political Rights: The Charter outlines various civil and political rights, such as the right to life, freedom from torture and cruel treatment, freedom of expression, and the right to a fair trial.
d) Economic, Social, and Cultural Rights: It also includes provisions for economic, social, and cultural rights, including the right to work, education, health, and a favorable environment.
e) Enforcement Mechanisms: The African Charter establishes the African Commission on Human and Peoples' Rights as a regional human rights body responsible for monitoring the implementation of the Charter.
f) Ratification: States that are members of the African Union can ratify the Charter, indicating their commitment to upholding its principles. As of my last knowledge update in January 2022, many African countries have ratified the Charter.

The ACHPR aims to promote and protect human rights and basic freedoms in the African continent, Article 7(2) of which provides:

> No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

4.1.5 Arab Charter on Human Rights (ArCHR), 2004[379]

The ArCHR is a regional human rights instrument adopted by the member states of the League of Arab States. It was adopted on September 15, 2004, and entered into force on March 15, 2008. The charter was signed in Tunisia and is often referred to as the "Tunis Charter."

[379] Arab Charter on Human Rights, *supra* note 117.

Key features of the ArCHR include:

a) Scope and Purpose: Similar to other human rights instruments, the Arab Charter aims to promote and protect human rights and fundamental freedoms within the Arab region. It covers civil and political rights, as well as economic, social, and cultural rights.
b) Islamic Principles: The Arab Charter explicitly acknowledges the principles of the Islamic Sharia and affirms that the rights and freedoms stipulated in the charter are subject to the Islamic Sharia.
c) Civil and Political Rights: The charter outlines various civil and political rights, including the right to life, freedom from torture and cruel treatment, freedom of expression, and the right to a fair trial.
d) Economic, Social, and Cultural Rights: It includes provisions for economic, social, and cultural rights, such as the right to work, education, health, and a decent standard of living.
e) Limitations: The Charter recognizes that the exercise of rights and freedoms is subject to certain limitations determined by law for the purpose of safeguarding the rights of others, protecting public order, or for the common good.
f) Enforcement Mechanisms: The Arab Charter establishes the Arab Human Rights Committee as a supervisory body to monitor the implementation of the Charter. The Committee is also responsible for receiving and considering complaints.

The ArCHR reflects regional perspectives on the right to liberty and security of persons, equality of persons before the law, protection of persons from torture, the right to own private property, freedom to practice religious observance and freedom of peaceful assembly and association.

Article 15 of the ArCHR articulates about the limitation principle as below:

> No crime and no penalty can be established without a prior provision of the law. In all circumstances, the law most favourable to the defendant shall be applied.

4.1.6 Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention)[380]

The Geneva Convention relative to the Treatment of Prisoners of War, commonly known as the Third Geneva Convention, is one of the four Geneva Conventions adopted during World War II. It was first adopted in 1929 and later revised in 1949. The Third Geneva Convention specifically addresses the treatment of prisoners of war during armed conflicts.

Key provisions of the Third Geneva Convention include:[381]

a) Definition of Prisoners of War (POWs): The convention provides a detailed definition of who qualifies as a prisoner of war. This includes members of the armed forces of a party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.
b) Treatment of POWs: The convention sets out fundamental principles for the treatment of prisoners of war. It prohibits any form of physical or mental torture, as well as any coercion to obtain information. POWs must be treated with humanity and protected against acts of violence, intimidation, and insults.
c) Humane Treatment: The convention emphasizes the humane treatment of prisoners, including the provision of adequate food, clothing, and medical care. POWs are entitled to respect for their person and honor.
d) Protection against Discrimination: The convention prohibits any discrimination based on race, nationality, religious beliefs, political opinions, or other similar criteria among prisoners of war.
e) Protection of Personal Property: The personal property of prisoners of war, except for military items, is to be respected. They are allowed to retain their personal possessions.
f) Communication with the Outside World: POWs have the right to send and receive mail. They are also entitled to receive visits, including from representatives of the protecting power and the International Committee of the Red Cross (ICRC).

[380] Geneva Convention Relative to the Treatment of Prisoners of War, *supra* note 110.
[381] ICRC, COMMENTARY ON THE THIRD GENEVA CONVENTION (2021).

g) Work and Compensation: The convention outlines the conditions under which prisoners of war may be required to work and the compensation they should receive.
h) Release and Repatriation: The convention establishes rules for the release and repatriation of prisoners of war, specifying that they must be released and repatriated without delay after the cessation of active hostilities.

The Third Geneva Convention remains a cornerstone of international humanitarian law, providing crucial protections for individuals captured during armed conflicts. It has been widely ratified and is considered customary international law. It's Article 99 articulates the principle of limitation as below:

> No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by international law, in force at the time the said act was committed.[382]

4.1.7 Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)[383]

The Fourth Geneva Convention known as the "Geneva Convention relative to the Protection of Civilian Persons in Time of War" specifically addresses the protection of civilians during armed conflicts, including international armed conflicts and those that occur within the boundaries of a single country (often referred to as non-international armed conflicts).

Key principles and provisions of the Fourth Geneva Convention include:[384]

a) General Protections for Civilians: The Convention establishes a set of fundamental guarantees for civilians who are not taking part in the hostilities. It prohibits violence, intimidation, and reprisals against civilians.
b) Humane Treatment: Civilians are to be treated with humanity and shall not be subjected to torture, cruelty, or degrading treatment. The Convention also prohibits taking of hostages.

---

[382] *Id.* at art. 99.
[383] Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *supra* note 111.
[384] ICRC, *supra* note 381.

c) Protection of Personal Property: Civilians' personal property must be respected and protected, except when it is used for military purposes.
d) Treatment of the Wounded and Sick: The Convention extends protections to the wounded and sick, whether they are civilians or military personnel. Medical personnel, establishments, and transports must be respected and protected.
e) Civilian Internees: The Convention provides rules regarding the treatment of civilians who are interned during armed conflicts. It specifies that they must be treated humanely and outlines conditions for internment.
f) Family Reunification: The Convention emphasizes the importance of family unity and encourages efforts to facilitate the reunion of families that have been separated due to armed conflicts.
g) Occupied Territories: In situations of occupation, the Convention establishes rules to protect the rights and well-being of civilians living in the occupied territory. It addresses issues such as forced displacement, property rights, and the obligations of the occupying power.
h) International Humanitarian Assistance: The Convention recognizes the right of humanitarian organizations to offer their services for the protection of civilians and establishes the conditions under which they can operate.

The Fourth Geneva Convention, like the other Geneva Conventions, reflects the humanitarian principles aimed at minimizing the suffering and protecting the rights of individuals who are not taking part in the hostilities. The conventions are considered fundamental in international humanitarian law and are widely accepted as customary international law. Violations of the Fourth Geneva Convention can be considered war crimes under international law.

Article 65 and 67 are relevant on the limitation principle:

> Article 65. The penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language. The effect of these penal provisions shall not be retroactive.

Article 67. The Courts shall apply only those provisions of law which were applicable prior to the offence, and which are in accordance with general principles of law, in particular the principle that the penalty shall be proportioned to the offence. They shall take into consideration the fact that the accused is not a national of the Occupying Power.

4.1.8 American Convention on Human Rights (ACHR), 1978[385]

The ACHR is an international human rights treaty adopted by member states of the OAS. The convention was signed in San Jose, Costa Rica, on November 22, 1969, and entered into force on July 18, 1978. It is one of the primary human rights instruments in the Americas.

Key provisions of the American Convention on Human Rights include:[386]

a) Civil and Political Rights: The convention affirms a range of civil and political rights, including the right to life, liberty, and personal security, the right to a fair trial, freedom of expression, and freedom of assembly and association.
b) Economic, Social, and Cultural Rights: The convention recognizes the importance of economic, social, and cultural rights, such as the right to work, the right to education, and the right to health.
c) Protection of Persons: The convention includes provisions to protect individuals from torture, inhuman or degrading treatment, and arbitrary detention.
d) Rights of Special Groups: It addresses the rights of specific groups, including women, children, indigenous peoples, and migrants.
e) Advisory Jurisdiction of the Inter-American Court of Human Rights: The convention establishes the Inter-American Court of Human Rights, which has advisory and contentious jurisdiction to interpret and apply the provisions of the convention.

[385] American Convention on Human Rights, *supra* note 114.
[386] LUDOVIC HENNEBEL & HÉLEN TIGROUDJA, THE AMERICAN CONVENTION ON HUMAN RIGHTS: A COMMENTARY (2022).

f) State Obligations: States parties to the convention undertake to respect and ensure the rights and freedoms recognized in the treaty, and they agree to take measures to give effect to these rights within their domestic legal systems.
g) Individual Petitions: The convention allows individuals to submit petitions to the IACHR alleging violations of their human rights. The IACHR can bring cases before the Inter-American Court of Human Rights.

The ACHR plays a crucial role in promoting and protecting human rights in the Americas. It complements the work of the IACHR and the Inter-American Court of Human Rights in addressing human rights violations and promoting adherence to the principles outlined in the treaty. Article 9 of The ACHR enshrines freedom from ex post facto laws:

> No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.[387]

4.1.9 Convention on the Rights of the Child (CRC)[388]

The U.N. Convention on the Rights of the Child is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. It was adopted by the United Nations General Assembly on November 20, 1989. It is one of the most widely ratified human rights treaties in the world, with almost every country being a party to it.

The CRC outlines the rights that should be universally guaranteed to all children, defined as individuals under the age of 18, regardless of their race, religion, or nationality. The convention is based on the principle that children are individuals with their own rights and dignity and that they should be treated with respect and protected from discrimination and exploitation.

[387] American Convention on Human Rights, *supra* note 114, at art. 9.
[388] U.N. Convention on the Rights of the Child, *supra* note 116.

The CRC consists of 54 articles that cover a wide range of rights, including the right to life, survival, and development; the right to be protected from violence, abuse, and neglect; the right to education; and the right to participate in decisions that affect them. It also emphasizes the importance of the best interests of the child as a primary consideration in all actions and decisions concerning children.

States parties to the CRC are required to take measures to ensure that the rights outlined in the convention are respected and protected. They are also obligated to submit periodic reports to the Committee on the Rights of the Child, an independent body of experts, detailing the steps they have taken to implement the convention.

The Convention on the Rights of the Child has played a crucial role in raising awareness about children's rights globally and has been a catalyst for legislative and policy changes in many countries. It has clearly articulated that:

> No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed.[389]

4.2 NEPALESE LEGAL PROVISIONS

4.2.1 Muluki Criminal Code, 2074 (2017)

a) An Outline of the Development of Criminal Law in Nepal

The influence of Hinduism, moral values, and ethics on the criminal law of Nepal dates back to ancient times and continues to shape its legal system to this day. The early legal codes in Nepal, such as *Mundhum* of the Kiratis, were deeply rooted in religious and socio-economic principles. However, it is often regarded that the first formal legal code in Nepal was the *Manabnyayasastra* issued by King Jayasthiti Malla in 1379.[390] This code drew heavily from Hindu religious texts such as

[389] *Id.* at art. 40(2)(a).
[390] MINISTRY OF COMMUNICATION AND INFORMATION TECHNOLOGY, DEPARTMENT OF INFORMATION AND BROADCASTING, NEPAL PARICHAYA 82 (8th. ed. 2020).

Manusmriti, *Yagyawalkasmirti*, *Mitachhyara*, and *Naradsmirti*, encompassing both substantive and procedural laws.[391]

A significant milestone in the evolution of Nepalese law was the Muluki Ain of 1854, formulated during the reign of Jung Bahadur Rana. This comprehensive legal code, drafted by the Ain Kausala Commission, borrowed elements from the Napoleonic Code. It introduced the principle of equality before the law and addressed both civil and criminal cases, applying uniformly across the nation. Subsequent amendments, notably the Muluki Ain of 1963, marked the beginning of the modern criminal justice system in Nepal.

In its latest iteration, the Muluki Ain has been consolidated and revised into the MCC of 2017. While some critics argue that the MCC represents a departure from its historical roots,[392] the preamble of the code explicitly states that it is an amendment and consolidation of existing laws rather than a completely new code.[393]

With 2017 version, Nepal made a historic shift in its legal system by separating substantive criminal law, procedural criminal law, and sentencing into distinct statutes: the Muluki Criminal Code, Muluki Criminal Procedural Code, and Criminal Offences (Sentencing and Execution) Act, respectively. This marked a significant departure from previous legal frameworks and aimed to provide a more structured and comprehensive approach to criminal justice administration. The Code also listed several principles of criminal law from Sec. 6 to Sec. 32.

In terms of crime investigation and trial system, historically, Nepal practiced an inquisitorial system, guided by the Government Cases Act, 2017 (1960). However, with the promulgation of the Government Cases Act, 2049 (1992), Nepal

[391] *Id.* at 86-89.
[392] Bishwo Raj Koirala, *Features and Challenges of the New Criminal Codes in Nepal*, PROSEC J. 111, 127 (2018).
[393] Muluki Criminal Code, 2074 (2017), 1 Preamble (Nep.): "Whereas, it is expedient to provide for a timely code on criminal offences, by amending and consolidating the laws in force relating to criminal offences, in order to maintain morality, decency, etiquette, convenience, economic interest of the general public by maintaining law and order in the country, maintain harmonious relationship and peace among various religious and cultural communities, and prevent and control criminal offences; Now, therefore, the Legislature-Parliament under clause (1) of art. 296 of the Constitution of Nepal has enacted this Act."

transitioned to a common law-based adversarial system, which remains in place today.

Despite these reforms, Nepal still lacks a separate criminal trial court, a notable gap in its legal infrastructure.[394]

The evolution of Nepal's criminal law can be outlined through the following six stages of development:[395]

(1) Pre-Codification Era (Gopal and Mahispal Dynasty)	This era is identified as a distinct period because it lacked codified laws in Nepal. During the reign of the Gopal and Mahispal Dynasties, spanning over 505 years and 161 years and 2 months respectively, the legal system primarily relied on customs, traditions, rites, and social practices. Punishments were predominantly punitive in nature, and laws were rooted in moral principles, with morality being defined by the actions guided by the leader of the '*Vansha*,' who held the title of King.
(2) Codification Era (Kirat to Malla Dynasty)	This period is distinct because it marked the introduction of codified texts in Nepal. The *Mundhum*, a sacred text of the Kirati people, served as the first-ever codified text in Nepal, providing official guidelines for regulating socio-moral and religious affairs. During the Malla period, King Jayasthiti Malla issued the *Manabnyayasastra* in 1379, considered the first codified law of Nepal. Throughout this period, society was centered around rituals and governed by *dharmasastra*, with the King himself revered as the incarnation of Lord Vishnu.

[394] The only specialized criminal court in Nepal is 'Special Court' which looks after corruption, money laundering etc. Nepal does not have criminal and civil trial courts till the date. Once, there was criminal and civil bench in the same district court during the period of Chief Justice Ram Kumar Prasad Shah, but it could not last longer.

[395] ACHARYA, *supra* note 125, at 37-41.

(3) Period of Systematic Codified Law & Muluki Ain, 1854 (1768 AD to 1960 AD)	This period from 1768 to 1960 in Nepal is marked by significant historical milestones, including the unification of the country in 1768 and the promulgation of the Muluki Ain in 1854. The Muluki Ain represented the first comprehensive and codified national law in Nepal. It got much of its impetus from Jung Bahadur Rana's exposure to legal systems during his travels to England and France. The Muluki Ain established principles of equality before the law and governed both civil and criminal cases nationwide. This legal framework was further developed with the enactment of the Government Cases Act, 2017 (1960).
(4) Period of Modern Criminal Justice System & Muluki Ain, 1963 (1960 to 1992)	This period from 1960 to 1992 in Nepal marks a significant transition towards a modern criminal justice system. It began with the Government Cases Act, 2017 (1960), which introduced a trial system, mostly inquisitorial, ensuring fair trials. The Muluki Ain, 2020 (1963), along with the Evidence Act, 2031 (1974), further modernized the legal system. These laws were influenced by democratic movements and secular principles, although some caste and creed-based punishments persisted. The period culminated with the promulgation of the Government Cases Act, 2049 (1992), signaling continued advancements in Nepal's legal landscape.
(5) Post-Restoration of Democracy Era (1992-2017)	The period from 1992 to 2017 in Nepal is marked by the adoption of the adversarial trial system through the Government Cases Act, 2049 (1992). Coinciding with the restoration of democracy in 1990, the Constitution of the Kingdom of Nepal, 2047 (1990) was enacted, emphasizing human rights principles, setting the stage for modernization. Major political upheavals, including the Maoist insurgency and subsequent democratic movements led to constitutional

	reforms, culminating in the declaration of Nepal as a Federal Democratic Republic in 2008 and the passage of the republican Constitution of Nepal, 2072 (2015). This period also witnessed the introduction of the Penal Code and Penal Procedural Code in 2017.
(6) Era of 'Penal Code' Law under Federalism (2017 to till date)	The era from 2017 onwards is characterized by the introduction of separate substantive, procedural, and sentencing acts by the parliament, namely the Muluki Criminal Code, Muluki Criminal Procedural Code, and Criminal Offences (Sentencing and Execution) Act, 2074 (2017). This transformation has led to notable shifts in the judicial process, including the establishment of separate sentencing hearings. The authority to issue arrest warrants has been shifted to the courts, marking a significant departure from previous practices. and has envisioned a more restricted police power framework, guiding investigations under prosecution oversight.

b) Provisions in MCC That Limit the Court in Criminal Cases

The MCC also articulate the provisions focusing on General Principles of Criminal Justice, which outlines underlying criminal justices aimed at limiting the court's authority in criminal cases. Sections 6 and 7 establish fundamental principles within the criminal justice system. Section 6 states that actions are not deemed criminal if they comply with the law or are exempted by it, emphasizing the significance of legality in defining criminal behavior. Similarly, Section 7 emphasizes non-retroactivity and proportionality in sentencing, ensuring that individuals cannot be found guilty of offenses that were not criminalized at the time of their actions and prohibiting punishments more severe than those applicable at the time of the offense. These provisions collectively uphold legal certainty and fairness, safeguarding individuals from arbitrary prosecution and excessive punishment while promoting adherence to the rule of law.

Thus, the constitutionally guaranteed fundamental rights to principle of limitation has also been translated in MCC. Part one, Chapter two: On General Principles of Criminal Justice provisions, as below:

> Section 6. No act shall be criminalized which is to be done under law or exempted by law.
>
> Section 7. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under the law. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

4.2.2 Constitution of Nepal

a) An Outline of the Development of the Constitutional Law in Nepal

The development of constitutional law in Nepal has been a dynamic and multifaceted process, shaped by historical events, political movements, and societal transformations. Prior to the 1950s, Nepal was under the rule of a hereditary monarchy, where power was concentrated in the hands of the monarch and a small ruling elite. During this period, constitutional law was largely absent, and governance was characterized by autocratic rule.[396]

The shift towards democratization began in the mid-20th century, marked by the end of the Rana regime and the establishment of a constitutional monarchy. In 1951, Nepal witnessed the promulgation of its first constitution, which introduced a parliamentary system with limited democratic rights. However, subsequent constitutional developments, such as the 1962 constitution under King Mahendra, saw the consolidation of power within the monarchy through the imposition of a party-less Panchayat system, curtailing democratic freedoms.[397]

---

[396] Girdhari Dahal, *Constitution of Nepal and Political Development: Adaptation and Challenges of Implication*, 6 JANAPRIYA J. OF INTERDISCIPLINARY STUDIES 148, 149 (2017).
[397] *Id*. at 152.

The late 1980s and early 1990s witnessed significant pro-democracy movements, leading to the promulgation of the 1990 Constitution by King Birendra. This constitution marked a crucial step towards democratization, guaranteeing fundamental rights, the separation of powers, and the establishment of a multiparty parliamentary system. Despite these advancements, political stability remained elusive, exacerbated by the Maoist insurgency that plagued Nepal from 1996 to 2006.

The Comprehensive Peace Accord of 2006 brought an end to the decade-long conflict, resulting in the abolition of the monarchy and the establishment of an interim constitution in 2007.[398] This interim framework paved the way for the formation of a Constituent Assembly tasked with drafting a new permanent constitution. In 2015, Nepal adopted its new constitution, ushering in a federal democratic republic, with provisions for fundamental rights, federalism, and a bicameral legislature.

However, the post-2015 period has been characterized by challenges in implementing the new constitution, particularly regarding issues of federalism, inclusion, and identity-based politics. Efforts to address grievances and amend certain provisions have been ongoing, reflecting the evolving nature of constitutional law in Nepal. Despite these challenges, Nepal's constitutional journey underscores its commitment to democratic governance and the rule of law as it navigates the complexities of its diverse society and political landscape.

The principle of *nullum crimen sine lege*, *nulla poena sine lege* has deeply embedded itself into the core principles of constitutional provisions, stipulating that only the law can define crimes and prescribe penalties, not the judge nor their interpretations.[399] These provisions have been present in the constitution of Nepal since its inception, reflecting a commitment to legal clarity and constraint on judicial authority in criminal matters.

[398] *Id*. at 153.
[399] CONST. OF NEPAL, *supra* note 13, at art. 20(4).

b) Existing Constitutional Provisions That Limit the Court in Criminal Cases

Article 20 of the Constitution of Nepal delineates a comprehensive framework of rights pertaining to justice, aiming to protect individuals' fundamental rights within the legal system. The provisions outlined in this Article establish crucial safeguards to uphold the principles of fairness, equality, and due process.

Firstly, Article 20(1) mandates that no person shall be detained in custody without being informed of the grounds for their arrest. This provision ensures that individuals are aware of the reasons for their detention, promoting transparency and accountability in law enforcement procedures. Secondly, Article 20(2) guarantees individuals who are arrested the right to consult a legal practitioner of their choice from the moment of their arrest. Additionally, it ensures confidentiality of legal consultations and advice, thereby safeguarding the rights of the accused to adequate legal representation and defense. Furthermore, Article 20(3) stipulates that any person who is arrested must be promptly brought before the adjudicating authority within 24 hours, excluding travel time. This provision aims to prevent arbitrary detention and ensures that individuals are promptly informed of the charges against them, facilitating access to justice. Article 20(4) reinforces the principle of legality by prohibiting punishment for acts that were not punishable by law at the time of their commission, and by restricting punishments to those prescribed by law at the time of the offense. This safeguards individuals from retroactive application of laws and excessive or arbitrary punishment. Moreover, Article 20(5) upholds the presumption of innocence until proven guilty, a fundamental principle of criminal justice. This ensures that individuals accused of offenses are treated fairly and impartially throughout legal proceedings.

Additionally, Article 20(6) enshrines the principle of double jeopardy, preventing individuals from being tried and punished multiple times for the same offense. This protects individuals from undue harassment and ensures finality in legal proceedings. Article 20(7) safeguards against self-incrimination by prohibiting individuals accused of offenses from being compelled to testify against themselves.

This upholds the right to silence and prevents coerced confessions. Furthermore, Article 20(8) guarantees individuals the right to be informed of any legal proceedings taken against them, ensuring transparency and enabling individuals to participate effectively in their defense. Article 20(9) underscores the right to a fair trial by an independent, impartial, and competent court or judicial body. This ensures that legal proceedings are conducted in accordance with the principles of fairness, impartiality, and judicial independence. Lastly, Article 20(10) ensures that indigent parties have access to free legal aid in accordance with the law, thereby promoting equality before the law and ensuring that all individuals, regardless of their financial means, have access to justice. In this way, Article 20 of the Constitution of Nepal establishes a robust framework of rights relating to justice, aiming to protect and uphold the rights of individuals within the legal system, promote fairness and equality, and ensure access to justice for all.

On the other hand, Article 126 of the Constitution of Nepal plays a crucial role in ensuring the adherence to recognized principles of justice within the court system. Article 126(1) specifically mandates that powers relating to justice in Nepal shall be exercised by courts and other judicial institutions in accordance with the Constitution, other laws, and recognized principles of justice. This provision underscores the importance of upholding the principles of justice in all legal proceedings conducted within Nepal. It emphasizes that the exercise of judicial powers must be in conformity with the Constitution, which includes provisions safeguarding fundamental rights and ensuring due process of law. Additionally, it requires adherence to other laws enacted by the legislature, further reinforcing the legal framework within which justice is administered.

Moreover, Article 126(1) emphasizes the significance of recognized principles of justice, which may encompass principles such as fairness, equality, impartiality, and the rule of law. By requiring courts and judicial institutions to abide by these recognized principles, the provision aims to ensure that legal proceedings are conducted in a manner that upholds the fundamental values of justice and protects the rights of individuals.

In relation to Article 20 of the Constitution, Article 126(1) serves to reinforce the overarching commitment to justice and fairness within the legal system of Nepal. It complements the rights and protections guaranteed under Article 20 by ensuring that the exercise of judicial powers aligns with established legal principles and norms. Together, these provisions contribute to the promotion of a just and equitable legal system in Nepal, where the rights of individuals are respected, and justice is administered in accordance with the rule of law.

(i) Article 20 (4)

Article 20(4) of the Constitution of Nepal serves to protect individuals from being punished for acts that were not considered offenses at the time of their commission, and it prevents individuals from facing punishments greater than those prescribed by law at the time of the offense. This provision aligns closely with the principle of limitation, ensuring that legal proceedings adhere to established boundaries and do not retroactively apply laws to the detriment of individuals.

Principle of limitation is constitutionally guaranteed in Article 20(4) of Constitution of Nepal, 2072 (2015) that No person shall be punished for an act which was not punishable by law when the act was committed, nor shall any person be subjected to a punishment greater than that prescribed by the law in force at the time of the commission of the offence.

The historical evolution of Article 20(4) in various provisions of past constitutions underscores its enduring significance:

Constitution of Nepal	**Provisions**
GoN Act, 2004 (1998)	Art. 4 “Equality before the laws, Cheap and Speedy Justice.”
The Interim GoN Act, 2007 (1951)	Art. 18(1) “No person is convicted of any offence except for violation of law in force at the time of the commission

	of the act charged as an offence, nor is subjected to a penalty greater than that which might have been inflected under the law in force the time of the commission of the offence."
Constitution of Kingdom of Nepal, 2015 (1959)	Art. 3(3) "No person shall be punished for an act, which was not punishable by law when the act was done, nor shall any person be subjected to a punishment greater than that prescribed by law for an offence when the offence was committed."
The Constitution of Nepal, 2019 (1960)	Art. 11(3) "No person shall be punished for an act which was not punishable by law when the act was done, nor shall any person be subject to a punishment greater than that prescribed by law for an offence when the offence was committed."
The Constitution of the Kingdom of Nepal, 2047 (1990)	Art. 14(1) "No person shall be punished for an act which was not punishable by law when the act was committed, nor shall any person be subjected to a punishment greater than that prescribed by the law in force at the time of the commission of the offence."
The Interim Constitution of Nepal, 2063 (2007)	Art. 24(4) "No person shall be punished for an act which was not punishable by law when the act was committed, and no person shall be subjected to a punishment greater than that prescribed by the law in force at the time of the offence."
Constitution of Nepal, 2072 (2015)	Art. 20(4) "No person shall be liable for punishment for an act which was not punishable by the law in force when the act was committed nor shall any person be subjected to a punishment greater than that prescribed by the law in force at the time of the commission of the offence."

This progression underscores the enduring commitment to the principle that no individual should be penalized for an act that was not considered an

offense at the time it was committed, and no punishment should exceed what was prescribed by law at the time of the offense.

(ii) Article 126(1)

Article 126(1) underscores the importance of adhering to recognized principles of justice, including the principle of limitation, in the exercise of judicial powers by courts in Nepal. By requiring courts to operate within the framework of the Constitution, other laws, and recognized principles of justice, this provision reinforces the notion that legal proceedings must respect the limitations imposed by law and uphold fundamental principles of fairness and justice.

The principle of justice is further underscored in Article 126(1) of the Constitution, affirming that the authority concerning justice in Nepal shall be wielded by courts and other judicial entities in accordance with the stipulations laid down in this Constitution, existing laws, and the acknowledged principles of justice.

The articulation for adherence to recognized principles of justice has evolved historically through various provisional stages, as demonstrated by the constitutional developments in Nepal:

Constitution of Nepal	**Provisions**
GoN Act, 2004 (1998)	Part v. "Administration of Justice" Art. 49 "Justice shall be administered by Judges in public courts, established for the purpose. The court shall comprise courts of first instance and also courts of appeal."
The Interim GoN Act, 2007 (1951)	Part III- Chapter 3 "Judiciary"

	Art. 32(1) "There shall be a Pradhan Nyayalaya." (2)The constitution, powers and functions of the Pradhan Nyayalaya shall be as determined by law.
Constitution of Kingdom of Nepal, 2015 (1959)	Part VI "The Judiciary"
The Constitution of Nepal, 2019 (1960)	Part 11 "Supreme Court"
The Constitution of the Kingdom of Nepal, 2047 (1990)	Art. 84 "Powers relating to Justice in the Kingdom of Nepal shall be exercised by courts and other judicial institutions in accordance with the provisions of this Constitution, the laws and the recognized principles of justice."
The Interim Constitution of Nepal, 2063 (2007)	Art. 100(1) "Powers relating to justice in Nepal shall be exercised by courts and other judicial institutions in accordance with the provisions of this Constitution, the laws and the recognized principles of justice."
Constitution of Nepal, 2072, (2015)	Art. 126(1) "Powers relating to justice in Nepal shall be exercised by courts and other judicial institutions in accordance with this Constitution, other laws and recognized principles of justice."

These provisions illustrate the progression towards institutionalizing the principles of justice within the legal framework of Nepal, ensuring that the administration of justice aligns with established legal norms and recognized principles of fairness.

Together, these constitutional provisions Article 20(4) and Article 126(1) ensure that the legal system in Nepal operates within the framework of recognized principles of

justice, including the principle of limitation, which safeguards individuals from being punished for acts that were not illegal at the time of their commission and from facing excessive punishment.

4.3 TREATY OBLIGATION: VIENNA CONVENTION ON THE LAW OF TREATIES AND NEPAL TREATY ACT

4.3.1 Vienna Convention on the Law of Treaties, 1969

a) An Outline Info about VCLT

Treaty obligations represent the legal responsibilities and commitments that states agree to uphold upon becoming parties to international treaties or agreements. These obligations serve as foundational elements within the international legal framework and cover a broad spectrum of commitments, ranging from proscriptions on certain actions to mandates for specific measures, and obligations to achieve particular outcomes. When states ratify or accede to treaties, they voluntarily undertake these obligations and are expected to adhere to them in good faith. Treaties stand as binding agreements under international law, reflecting the mutual consent of states to be bound by the terms outlined within them.

The Vienna Convention on the Law of Treaties, adopted in 1969 and coming into effect in 1980, serves as the principal international treaty governing the formation, interpretation, and termination of treaties.[400] This Convention establishes a comprehensive framework for understanding the rights and obligations of states concerning treaties. It delineates clear rules and procedures for the negotiation and finalization of treaties, encompassing requirements for authentication, registration, and enactment. Moreover, the Vienna Convention addresses pivotal issues such as the interpretation of treaty provisions, the execution and compliance with treaty obligations, as well as the amendment, modification, termination, and suspension of treaties.

[400] VIENNA CONVENTION ON THE LAW OF TREATIES, 1969.

A pivotal facet of the Vienna Convention is its stipulations on treaty interpretation. According to the Convention, the interpretation of treaty provisions should be grounded in the ordinary meaning of terms, considered within their context, and aligned with the object and purpose of the treaty. This approach aims to foster consistency and predictability in the application of treaty obligations, ensuring that states comprehend their rights and duties under international law. Additionally, the Vienna Convention underscores principles of good faith and prohibits actions that would undermine the objectives and purposes of treaties, emphasizing the significance of adherence and mutual respect among treaty signatories.

Furthermore, the Vienna Convention furnishes mechanisms for resolving disputes arising from treaty interpretation or implementation. States can pursue avenues such as diplomatic channels, international arbitration, or adjudication before international courts or tribunals. By furnishing clear rules and procedures for treaty interpretation and dispute resolution, the Vienna Convention contributes to upholding international peace and security while fostering cooperation and mutual understanding among states. Overall, the Vienna Convention on the Law of Treaties plays an indispensable role in shaping the practices of treaty-making and treaty implementation, serving as a cornerstone of the contemporary international legal order.

The Vienna Convention on the Law of Treaties, 1969 (VCLT), serves as a treaty governing international law on treaties between states. Its primary aim is to codify and regulate the principles and rules governing the conclusion, interpretation, and execution of treaties between states.

Key provisions of the Vienna Convention on the Law of Treaties include:[401]

(i) Definition of a Treaty (Article 2): The convention provides a comprehensive definition of what constitutes a treaty, encompassing agreements between states as well as international organizations.

[401] MARK E. VILLIGER, COMMENTARY ON THE 1969 VIENNA CONVENTION ON THE LAW OF TREATIES (2008).

(ii) Formation of Treaties (Articles 7-16): The VCLT outlines the procedures for the conclusion of treaties, including the authority of representatives, the consent to be bound by a treaty, and the expression of consent.

(iii) Interpretation of Treaties (Articles 31-33): The convention establishes principles for the interpretation of treaty texts, emphasizing the ordinary meaning of terms, the context, and the object and purpose of the treaty.

(iv) Invalidity, Termination, and Suspension of Treaties (Articles 46-64): The VCLT sets out the circumstances under which treaties may be considered invalid, terminated, or suspended, including issues such as fraud, coercion, or a fundamental change of circumstances.

(v) Reservations (Articles 19-23): The convention provides rules regarding the acceptance and objections to reservations made by states when signing, ratifying, accepting, approving, or acceding to a treaty.

(vi) Depositaries and Notifications (Articles 77-84): The VCLT addresses the roles of depositaries in keeping treaty texts and receiving notifications related to treaties.

(vii) State Succession (Articles 34-42): The convention establishes rules concerning the continuity of treaties in the event of a change in the government or the emergence of a new state.

(viii) Amendments and Modification of Treaties (Articles 39-41): The VCLT provides guidance on how treaties may be amended or modified.

The fundamental aim of the Vienna Convention on the Law of Treaties is to formalize and oversee the principles and regulations dictating the initiation, understanding, and execution of treaties among states. It stands as a pivotal document in international law, offering a structured approach for the negotiation, finalization, and understanding of treaties. By establishing guidelines, it fosters stability and foresight within the international legal framework, outlining rules for state behaviour in their treaty interactions.

b) Related Vital Provisions- Articles 26, 27 and 46

Article 26. *'Pacta Sunt Servanda'*

> Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 27. Internal Law and Observance of Treaties

> A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46.

Article 46. Provisions of Internal Law Regarding Competence to Conclude Treaties

> (1)A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
>
> (2)A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

4.3.2 Nepal Treaty Act, 2047 (1990)

The principle of legality and limitation of Court in criminal law are valuably relevant in both procedural and substantive aspects in context of Nepal as it has internalized the law through the treaties obligation.

a) An Outline Info about Treaty Act

The Nepal Treaty Act, 2047 (1990) is a legislative enactment that governs the process of ratification, accession, and implementation of international treaties by the

GoN. Enacted in 1990, this law provides a legal framework for Nepal's engagement with the international community through treaties and agreements.

It outlines the procedures and requirements that must be followed by the government when entering into treaties with other nations or international organizations. It establishes mechanisms for the review, approval, and implementation of treaties, ensuring transparency, accountability, and adherence to Nepal's national interests and legal principles.

Key provisions of the Nepal Treaty Act, 2047 (1990) include:

(i) Authority to Enter into Treaties: The Act specifies the authority of the GoN to negotiate, conclude, and ratify treaties on behalf of the country. It delineates the roles and responsibilities of relevant government agencies and officials in the treaty-making process.

(ii) Parliamentary Oversight: The Act requires the government to seek the opinion of the concerned committees of the Legislature-Parliament before ratifying or acceding to treaties. This provision ensures parliamentary oversight and scrutiny of proposed treaties, allowing for comprehensive review and assessment of their implications.

(iii) National Interest Considerations: The Act emphasizes the importance of safeguarding Nepal's national sovereignty, territorial integrity, and national security interests in the treaty-making process. It stipulates that treaties involving these critical issues require the approval of a two-thirds majority of the total number of members in the Legislature-Parliament.

(iv) Procedure for Ratification and Accession: The Act sets forth the procedural requirements for ratifying or acceding to treaties, including the submission of recommendations by the Council of Ministers to the President for approval. It also outlines the steps for depositing instruments of ratification or accession with the relevant international authorities.

(v) Implementation and Enforcement: The Act establishes mechanisms for the implementation and enforcement of treaties within Nepal's legal system. It

specifies the legal status of treaties and their relationship with domestic law, ensuring that treaty obligations are upheld and enforced in accordance with Nepal's legal framework.

Overall, the Nepal Treaty Act, 2047 (1990) plays a crucial role in regulating Nepal's engagement with the international community through treaties and agreements. By providing clear procedures and requirements for treaty-making, this law facilitates Nepal's participation in the global arena while safeguarding its national interests and legal principles.

b) Related Provision- Section 9

Section 9 of the Nepal Treaty Act, 2047 (1990) outlines the procedure for ratifying or acceding to treaties by the GoN. This Section sets forth the requirements and steps that must be followed before Nepal can become a party to an international treaty.

Specifically, Section 9 stipulates that treaties shall be ratified or acceded to by the GoN upon the recommendation of the Council of Ministers. The recommendation for ratification or accession must be submitted to the President for approval.

Additionally, before ratifying or acceding to a treaty, the GoN is required to seek the opinion of the concerned committees of the Legislature-Parliament. This step ensures parliamentary oversight and scrutiny of proposed treaties, allowing for a comprehensive review of their implications and potential impact on Nepal's legal and policy framework.

Furthermore, Section 9 specifies that treaties involving issues of national sovereignty, territorial integrity, or national security shall be ratified or acceded to only after the approval of a two-thirds majority of the total number of members in the Legislature-Parliament. This provision underscores the importance of safeguarding Nepal's core national interests and ensures that treaties with significant implications undergo thorough parliamentary deliberation and scrutiny.

Overall, Section 9 of the Nepal Treaty Act, 2047 (1990) establishes a clear and transparent process for ratifying or acceding to treaties, emphasizing the role of the Council of Ministers and the Legislature-Parliament in the decision-making process. By requiring parliamentary oversight and approval for treaties of critical importance, this Section aims to safeguard Nepal's sovereignty, territorial integrity, and national security interests.

Section 9. Treaty Provisions Enforceable as good as Laws:

(1) In case of the provisions of a treaty, to which Nepal or GoN is a party upon its ratification accession, acceptance or approval by the Parliament, inconsistent with the provisions of prevailing laws, the inconsistent provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws.

(2) Any treaty which has not been ratified, accede to, accepted or approved by the Parliament, though to which Nepal or GoN is a party, imposes any additional obligation or burden upon Nepal, or GoN, and in case legal arrangements need to be made for its enforcement, GoN shall initiate action as soon as possible to enact laws for its enforcement.

4.4 MODEL CRIMINAL CODE, 2007[402]

4.4.1 Background Introduction

Model Codes for Post-Conflict Criminal Justice is a three-volume series designed to assist those working in criminal law reform in post conflict states.

- Volume 1: Model Criminal Code
- Volume 2: Model Code of Criminal Procedure
- Volume 3: Model Detention Act and Model Police Powers Act

[402] MODEL CODES, *supra* note 94.

The series of these three volumes are the product of a five-year project spearheaded by the United States Institute of Peace and the Irish Centre for Human Rights, in cooperation with the United Nations Office of the High Commissioner for Human Rights and the United Nations Office on Drugs and Crime.[403] Based on United Nations standards, the Model Codes provide practical guidance on how to translate international human rights and criminal law standards into everyday practice.[404]

The Model Codes Project began in 2001, inspired by the Brahimi Report recommendation,[405] initially with a small group of experts convened to create a draft of the Model Codes. In recognition of the critical importance of widespread consultation and participation, the expert group soon mushroomed into a network of three hundred experts from all regions of the world, encompassing both academic and practitioner communities. The experts included comparative and international law experts, judges, prosecutors, defense counsel, police, human rights advocates, and military officers. Finally, it was published in three volumes collectively known as Model Codes for Post-Conflict Criminal Justice.[406]

In the lists of organizations and individuals who contributed to the Model Codes Project for the criminal law reform process include three hundred people from more than one hundred organizations and over fifty countries contributed to the Model Codes Project. The Contributors were also from Nepal. As professional institution Nepal Bar Council and National Human Rights Commission, Nepal have contributed.[407]

At individual level Upendra Kant Aryal and Bigyan Sharma from Nepal Police, Sushil Kumar Pant and Shambhu Thapa from Nepal Bar Council, Sushil Pyakurel as human rights activist from NHRC, Nepal and Yubraj Sangroula as Academician, from Kathmandu School of Law have contributed to this project from Nepal.[408]

---

[403] *Id.* at 2.
[404] *Id.* at xvi, Foreword.
[405] U.N. Secretary General, *Report of the Panel on United Nations Peace Operations (Brahimi Report)*, U.N. Doc. A/55/305-S/2000/809 (Aug. 21 2000).
[406] *Id.* at xviii, Preface.
[407] *Id.* at xxv, Contributors.
[408] *Id.* at xxix-xxxix, Contributors.

4.4.2 Model Criminal Code Structural Info

The Model Criminal Code is the first volume of the project published in 2007. It consists of the substantive criminal code, as a tool of assistance for the uniformity of criminal justice system, particularly in post-conflict societies to have their criminal justice system at the minimum standard.

The Model Penal Code is prefixed with four accessorial chapters, and it is suffixed with annex and index. Chapter 1 outlines the need for the criminal law reform in post-conflict states, the evolution of interest in the topic among the international community, and the drafting and consultation process used to create the Model Codes. Chapter 2 discusses the many potential uses of the Model Codes in the post-conflict criminal law reform efforts. Chapter 3 sets an overview of the Model Criminal Code. Chapter 4 sets out guiding principles for those involved in the process of criminal law reform.[409]

Prof. Andrew Ashworth writes about the prepublication praise that "The publication of volume 1 of *model Codes for Post-Conflict Criminal Justice* marks an advance of great international significance for post-conflict societies- the arrival of a criminal code drafted in admirably clear and uncomplicated language, supported by detailed commentaries, and designed explicitly for such societies. This code, with its measured approach, will enable jurisdictions emerging from conflict to more quickly toward re-establishing the rule of law and a fair criminal justice system, without the need to start the reform process afresh. It is an outstanding piece of work."[410]

4.4.3 Model Criminal Code

a) Outlines of the Code

The Model Criminal Code consists of two parts. Part I: General Part consists of 14 Sections from Articles 1 to 85, and Part II 'Special Part' consists of 17 Sections from

[409] *Id.* at 2, Introduction.
[410] Andrew Ashworth, *Prepublication Praise for Model Codes for Post-Conflict Criminal Justice, in* 1 MODEL CRIMINAL CODE: MODEL CODE FOR POST-CONFLICT CRIMINAL JUSTICE (2007).

Articles 86 to 200. In this way, altogether, it is formed of 31 Sections and 200 Articles.

The General Part covers definitions, fundamental principles, jurisdiction, double jeopardy, statutory limitations, time and place of commission of a criminal offense, criminal offense, criminal responsibility, and commission of criminal offense, justification and exclusion of criminal responsibility, criminal attempt, participation in a criminal offense, penalties, confiscation of the proceeds of crime and property, dispositions applicable to juveniles and adults on trial for criminal offenses committed as juveniles.[411]

The Special Part is composed of specific offences. It includes Genocide, Crimes against Humanity and War Crimes, Offenses against Life and Limb, Sexual Offenses, Offenses against the Rights of Persons, Offenses against Children, Property Offenses, Economic Offenses, Organized Crime Offenses, Corruption Offenses, Corruption-Related Offenses and Other Offenses Involving a Public Official, Offenses against the State, Public Safety and Security, Offenses against United Nations and Associated Personnel, Offenses Involving Firearms, Ammunition, Explosives and Weapons, Drug Offenses, Election Offenses, Cybercrime Offenses and Offenses against the Administration of Justice.[412]

b) Provisions Relating to Interpretational Limitations

The gene of interpretational limitations of court in criminal cases gets its seed in the grundnorm of principle of legality. The principle of legality is universally accepted. One of its derivatives is strict construction of penal statutes which limits the judges in interpreting the criminal codes in the way to construe loose elements of crime.

Under Section 2: Fundamental Principles, two Articles are delineated: Article 2 and 3. Article 2 focuses on 'Purpose and Limits of Criminal Legislation,' emphasizing that criminal offenses and penalties should only be established for acts that threaten

[411] *Id.* at v-ix, Contents.
[412] *Id.* at x-xiv, Contents.

or violate human rights, fundamental freedoms, and other rights and social values safeguarded by the constitution. Such offenses and penalties must be prescribed with the objective of safeguarding these rights and values. Additionally, the determination of criminal offenses and the associated penalties should be guided by the necessity for maintaining criminal justice and should be proportional to the level and nature of the threat posed to human rights, fundamental freedoms, and other protected values.

On the other hand, Article 3 centers on the 'Principle of Legality.' It asserts that this principle is universal across legal systems and is rooted in the necessity for clarity and certainty within the law. Legal certainty is an essential component of the broader concept of the rule of law. Although acknowledged universally, the articulation of this principle varies across legal systems, reflecting the diverse legal traditions to which they belong.

It provisions the following codes under the Article 3, Principle of Legality:

(1) Criminal offenses and penalties must be prescribed only by law.
(2) No penalty may be imposed upon any person for committing a criminal offense that did not constitute a criminal offense prior to it being committed and for which a penalty was not prescribed by law.
(3) Paragraphs 1 and 2 do not prejudice the trial and punishment of any person for any act or omission that, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.
(4) The definition of the *criminal offense* must be strictly construed, and the use of analogy in the interpretation of a criminal offense is prohibited.
(5) If the law was amended on one or more occasions after a criminal offense was perpetrated, the law that most favors the accused must be applied.
(6) A penalty that is heavier than the one that was applicable at the time a criminal offense was committed may not be imposed upon a person convicted of that offense.

Of them, the construction of sub-Article (1) 'must be prescribed only by law' strictly prohibits criminalization of interpretation, and sub-Article (4) 'criminal offense must be strictly construed' envisions no liberal interpretation of penal statutes. The sub-Article (4) further qualifies that 'the use of analogy in the interpretation of a criminal offense is prohibited.' In totality, the Article 3 articulately sets the minimum standard of criminalization and the scope of interpretation of penal statutes strictly, not by the use of analogy. The term 'crime must be prescribed only by law' limits the judges to expand the constituent element of crime beyond the strict prescription of law.

c) Commentary on the Provisions Relating to Interpretational Limitations

In the commentary part of Article 3, the Model Code categorically submits the following feedbacks:

> It is relevant to note that in applying the law, there cannot be a total absence of judicial discretion. The Code, for example, sets down the applicable defences available to a person who has committed a criminal offense, as required by the legality principle. Article 21, on necessity, sets out the interests that a person can protect by his or her act of necessity, including 'other protected interests.' This phrase requires judicial interpretation to give it a legal meaning. The distinction between this discretion and the sort of discretion found in systems that have a generally flexible attitude toward judicial discretion, though, is that the discretion is limited and is defined by law, as opposed to being a broad, open and general one.[413]

Thus, it expounds that the discretion is limited, and that limited discretion is also defined by law; not on subjectivism and personal opinion based.

Article 3 delineates the four fundamental elements that embody the principle of legality within the legal system. Firstly, it prohibits retroactive application of laws, ensuring individuals cannot be prosecuted or penalized for conduct not deemed criminal at the time. Secondly, laws must originate from a legislative act and be

[413] *Id.* at 38.

codified in written form to provide clarity and certainty. Thirdly, laws must be specific and unambiguous, allowing individuals to understand their rights and obligations clearly. Lastly, the principle prohibits the use of analogy in legal interpretation, ensuring that laws are not extended beyond their explicit provisions. Moreover, in cases of conflicting interpretations, the principle mandates that interpretations favour the accused, safeguarding their rights and liberties. These elements collectively uphold the rule of law, fairness, and predictability within the legal system, ensuring that individuals are protected from arbitrary or unjust treatment.

In this way, the Model Criminal Code legislates the basic standard of criminal law and interpretation of criminal law. In which, the part that the law must be specific and clear, and the use of analogy is prohibited include 'the principle that where interpretation of the law conflict, they must be read in favour of the accused.'[414]

[414] *Id.*

CHAPTER V

INTERNATIONAL JUDICIAL DECISIONS

5.1 INTRODUCING DATA

For the purpose of this study, international judicial decisions cover up two categories of court's decisions:

a) Decisions of International Courts, and
b) Foreign Supreme Court's Decisions.

The decisions of international courts refer to the decisions of permanent international courts, whereas the decisions of tribunals refer to the decisions of international ad hoc tribunals. Due to the limitation and scope of the study, the decisions of ad hoc international tribunals have not been studied since the origin of these ad hoc tribunals were retrospective. All of the international military tribunals were set after the incident happened.

Its origin was to disperse the retrospective effect by today's laws to yerterback's act, which simply violates legality principle, thus the study of the decisions of the Nuremberg IMT, IMTFE/Tokyo Tribunal, ICTR and ICTY were consciously excluded. The issues of legality principle and legitimacy of judgments delivered by the ad hoc Tribunals are debatable because of their criminalization directly under international law having retrospective effect.

Here, the sample cases of permanent international courts have been studied including of the ICC, I.C.J. and ECtHR. And, some major decisions of leading common law countries have been studied including of United Kingdom, USA and India.

The total data studied under this title are 16 cases, as below:

Table 5.1: International Court's Decisions

International Court Decisions		**Number of Decisions**
Decisions of International Court	ICC	1
	I.C.J.	1
	ECtHR	2
Foreign Supreme Court Decisions	UK	4
	USA	4
	INDIA	4
Total		***16***

5.2 DECISIONS OF INTERNATIONAL COURTS

5.2.1. Decision of International Criminal Court (ICC)

Case 1: *Prosecutor v. Thomas Lubanga Dyilo* (2012)[415]

Factual Background:

Beginning in 1999, ethnic tensions and competition for resources in the district escalated into devastating conflict. Ituri, a district of Orientale Province in the north east of the Democratic Republic of the Congo (DRC) comprising of approximately 18 different ethnic groups, was fertile and rich in resources, and groups inside and outside the DRC sought to exploit it.[416] The ethnic groups included Lendu, Ngiti and Hema. During the Belgian colonial rule of the DRC, the ethnic divide between Lendu and Hema was highly emphasized, with the colonizers favouring Hema group. After the colonial rule ended, Hema remained the group in Ituri to own large businesses as well as large farms previously owned by Belgian colonists belonged to Hema community. In 1998/1999, some Hema groups tried to evict Lendu inhabitants from their land, leading to armed confrontations. The Hema

[415] Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06-2842, Judgment (Mar. 14, 2012) (ICC).
[416] *Id.* at 43, ¶ 71-73.

groups were previously supported by the Ugandan People's Defence Force (UPDF) and were allegedly responsible for attacks on Lendu villages.

From 1999 to the middle of 2003, several opposing rebel faction leaders struggled for political power in Ituri, causing much conflict on the territory. The local ethnic problems escalated with the involvement of national and foreign factions attempting to gain control of Ituri, including Ugandan and Rwandan armies.[417]

On this backdrop, Thomas Lubanga Dyilo became one of the founding members and the President of the *Union des Patriotes Congolais* (UPC) on 15 September 2000, with the ambition to gain power in Ituri. Under his leadership, the Hema UPC became one of the main actors in the Ituri Conflict. In 2001, he became the Minister of Defense in the *Rassemblement Congolais pour la Démocratie – Kisangani/ Mouvement de Libération* (RCD-ML), the government then in power of the DRC.[418] It seized control of Bunia, capital of the gold-rich Ituri region in 2002, and demanded that the Congolese government recognize Ituri as an autonomous province.[419]

The need for the substantial army led to Lubanga's UPC to recruit young people, regardless of age. Schools and general public were coercively targeted which led to the conscription, enlistment and use of children below 15 years of age. In September 2002, the UPC then formally created *Force Patriotique pour la Libération du Congo* (FPLC), the military group consisting of trained officers and soldiers, to take over Ituri.[420] Lubanga (who it is contended was jointly President of UPC and the Commander-in-chief of the FPLC) directed military takeovers of Mongbwalu, Bambi, Lipri and Kobu.[421] It is also suggested that he ensured the military was properly equipped with funds, ammunitions, weapons and vehicles. Furthermore, children were abducted to be recruited in the FPLC, creating fear amongst the population causing them to enlist the children during recruitment campaigns.[422]

---

[417] *Id.* at 45, ¶ 76.
[418] *Id.* at 24, ¶ 24.
[419] *Id.* at 24, ¶ 25.
[420] *Id.* at 25. ¶ 27.
[421] *Id.* at 25, ¶ 28.
[422] *Id.* at 25, ¶ 29, 30.

In March 2004, the Congolese government authorized the ICC to investigate and prosecute the atrocities between September 2002 to August 2003. On 17 March 2006, Lubanga became the first person ever arrested under the ICC.

Confirmation of Charges:

On 28 August 2006, the Prosecution filed the Document Containing the Charges, charging Thomas Lubanga Dyilo as a co-perpetrator, for conscripting and enlisting children under the age of fifteen years and using these child soldiers to actively participate in hostilities between 1 July 2002 and 31 December 2003.[423] The confirmation of charges hearing is to determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged.[424] The Chamber opined that:

> In the opinion of the Chamber, the purpose of the confirmation hearing is limited to committing for trial only those persons against whom sufficiently compelling charges going beyond mere theory or suspicion have been brought.[425] This mechanism is designed to protect the rights of the Defense against wrongful and wholly unfounded charges.[426]

On 29 January 2007, the Pre-trial Chamber I confirmed the charges against Lubanga stating that:

> Thomas Lubanga Dyilo is responsible, as co-perpetrator, for the charges of enlisting and conscripting children under the age of fifteen years into the FPLC and using them to participate actively in hostilities within the meaning of Articles 8(2)(b)(xxvi) and 25(iii)(a) of the Statute from early September 2002 to 2 June 2003.[427]

---

[423] *Thomas Lubanga Dyilo,* ICC-01/04-01/06-803-Conf-tEN, Decision on the Confirmation of Charges (Jan. 29, 2007), ¶ 20 (ICC).
[424] Rome Statute of the International Criminal Court, *supra* note 277, at art. 61(7).
[425] *Dyilo, supra* note 423, at ¶ 37 (ICC). *See also,* United Nations High Commission for Human Rights, *Report of the Committee against Torture,* U.N. Doc. A/53/44, Annex IX, ¶ 6.
[426] *Dyilo, supra* note 423, at ¶ 37 (ICC).
[427] *Id.* at 157.

Additionally, the Pre-Trial Chamber confirmed that there was sufficient evidence to establish substantial grounds to believe that:

> Thomas Lubanga Dyilo is responsible, as co-perpetrator, for the charges of enlisting and conscripting children under the age of fifteen years into the FPLC and using them to participate actively in hostilities within the meaning of Article 8(2)(e)(vii) of the Statute from 2 June to 13 August 2003.[428]

Furthermore, during the confirmation hearing, the Defense raised an issue of principle of legality, arguing that Thomas Lubanga Dyilo was not aware of the existence of the crime of enlisting and conscripting children under the ages of fifteen years and using them to participate actively in hostilities. The Defense further argued that he could not foresee that the conduct in question was criminal in nature and could therefore entail his criminal responsibility. The Defense noted that 'neither Uganda nor the DRC brought to the knowledge of the inhabitants of Ituri the fact that the Rome Statute had been ratified and that conscripting and enlisting child soldiers entailed individual criminal responsibility.'[429].

The Court held that the objection of the Defense relies on the possibility of excluding criminal responsibility on account of a mistake of the law in force, rather than on the principle of legality. The Court found that the Rome Statute which came into force on 1 July 2002, entailed the criminal responsibility and punishment for the offences of enlisting, conscripting and using children under the age of fifteen years to participate actively in hostilities.[430]

> Accordingly, there is no infringement of the principle of legality if the Chamber exercises its power to decide whether Thomas Lubanga Dyilo ought to be committed for trial on the basis of written *(lex scripta)* pre-existing criminal norms approved by the State Parties to the Rome Statute *(lex praevia)*, defining prohibited conduct

[428] *Id.* at ¶ 158.
[429] *Id.* at ¶ 296.
[430] Rome Statute of the International Criminal Court, *supra* note 277, at arts. 8(2)(b)(xxvi), 8(2)(e)(vii).

and setting out the related sentence *(lex certa)*, which cannot be interpreted by analogy *in malam partem (lex stricta).*[431]

Additionally, the Court observed that even the scope of mistake of law within Article 32(2) of the Rome Statute is relatively limited and that it could not be the ground to exclude criminal responsibility. Thus, the Court was satisfied with the finding of conformation of the charges against the defendant.

Verdict:

The verdict was rendered by Trial Chamber I, composed of Judge Adrian Fulford (United Kingdom), as Presiding Judge, Judge Elizabeth Odio Benito (Costa Rica) and Judge René Blattmann (Bolivia). Although the first two judges have written separate and dissenting opinions on some issues, the verdict was unanimous.

The Court found that Thomas Lubanga Dyilo and his co-perpetrates agreed to and participated in a common plan to build an army for the purpose of establishing and maintaiing political and military control over Ituri, by conscripting and enlisting children under fifteen years of age and using them to actively participate in hostilities.[432] The Court found, beyond a reasonable doubt, that Thomas Lubanga Dyilo acted with intent and knowledge (requirement under Article 30) and was aware of the factual circumstance that established the existence of the armed conflict as well as the nexus between those circumstances and his own conduct.[433]

On 10 July 2012, Trial Chamber I sentenced Thomas Lubanga Dyilo to a total period of 14 years of imprisonment.[434] The time he spent in the ICC's custody was deducted from this total sentence.[435]

[431] *Dyilo*, *supra* note 423, at ¶ 303 (ICC).
[432] *Dyilo*, *supra* note 415, at ¶ 1351 (ICC).
[433] *Id.* at ¶ 1357.
[434] The verdict was confirmed by Appeals Chamber on 1 December 2014.
[435] There were basically three controversies regarding this trial: (i) The trial was halted on 13 June 2008 when the court ruled that the Prosecutor's refusal to disclose potentially exculpatory evidence had breached Lubanga's right to a fair trial. (ii) Human rights groups have expressed their concern about the narrow scope

5.2.2 Decisions of International Court of Justice (I.C.J.)

Case 1: *India v. Pakistan* (2019)[436]

Factual Background:

On 3 March 2016, the Pakistani police arrested Mr. Kulbhushan Sudhir Jadhav (hereinafter Mr. Jadhav), an Indian national accusing him of espionage and terrorist activities. At the time of the arrest, Mr. Jadhav was in possession of an Indian passport bearing the name 'Hussein Mubarak Patel.' On 25 March 2016, the Pakistani officials informed the High Commissioner of India in Islamabad of Mr. Jadhav and the circumstances of his arrest[437] and on the same day, the High Commissioner of India sent a Note Verbale to the Ministry of Foreign Affairs of Pakistan, referring to "*the purported arrest of an Indian in Baluchistan*"[438] and requesting for consular access to the said individual.

On 8 April 2016, the Pakistani police authorities filed a First Information Report (FIR) detailing the alleged involvement of Mr. Jadhav in espionage and terrorism activities and the investigation undertaken by the Pakistani military authorities. On 22 July 2016, it was alleged that Mr. Jadhav made a confessional statement before the magistrate in Pakistan.[439] On 21 September 2016, Mr. Jadhav's trial began before the Field General Court Martial. The details of the trial were made public through press release and a statement dated 10 and 14 April 2017 respectively. The details provided that Mr. Jadhav was tried under Section 59 of the Pakistan Army Act, 1952 and Section 3 of the Official Secrets Act, 1923. Pakistan asserted that Mr. Jadhav was provided with three weeks' time to prepare for his defense and 'a law qualified field officer' was specifically appointed for the same.

---

of the charges against Lubanga, and urged the Prosecutor to add more crimes to the indictment. (iii) Lubanga's lawyer complained that the defense team was given a smaller budget than the Prosecutor.

[436] Jadhav (India v. Pakistan), Judgments, 2019 I.C.J. Reports 418 (I.C.J.).

[437] The circumstances of the arrest were disputed by both the parties, with Pakistan claiming that Mr. Jadhav was performing espionage and terrorism activities on behalf of India whereas India asserted that he was kidnapped from Iran and transferred to Pakistan where he was detained and interrogated.

[438] Jadhav (India v. Pakistan), Counter-Memorial of the Islamic Republic of Pakistan, 2017 I.C.J. ¶ 37-38 (Dec. 13): Pakistan asserted that India identified Mr. Jadhav as the individual in question in the Note Verbale on 10 June 2016 (I.C.J.).

[439] *Id.* at 30-33, ¶ 106.

On 10 April 2017, Mr Jadhav was sentenced to death by the Court Martial. The High Commission of India in Islamabad transmitted an appeal against the sentence under Section 133(B) as well as a petition to the Federal Government of Pakistan under Section 131 of the Pakistan Army Act. The appeal was rejected by the Military Appellate Court. Subsequently, Pakistan released a press statement stating that Mr. Jadhav had made a mercy petition was made to the Chief of Army Staff. However, India claims that it has received neither clear information on the circumstances of the appeal nor the status of any appeal or petition concerning Mr. Jadhav's sentence.

On 8 May 2017, India filed an application instituting proceedings against Pakistan alleging the violations of the Vienna Convention on Consular Relations of 24 April 1963 (hereinafter 'Vienna Convention') in the matters of the detention and trial of Mr. Jadhav as well as a Request for the indication of provisional measures.

By an order of18 May 2017, the Court unanimously indicated the following provisional measure:

> Pakistan shall take all measures at its disposal to ensure that Mr. Jadhav is not executed pending the final decision in these proceedings and shall inform the Court of all the measures taken in implementation of the present Order.[440]

And, unanimously decided that "until the Court has given its final decision, it shall remain seised of the matters which form the subject-matter of this Order."[441]

Issues:

According to India, Pakistan violated its duty under the Vienna Convention:

a) by failing to inform India, without delay, of the arrest and detention of its national;
b) by failing to inform Mr. Jadhav of his rights under Article 36 of the Vienna Convention;

[440] Jadhav (India v. Pakistan), Provisional Measures, Order of 18 May 2017, 2017 I.C.J. Reports 246 (I.C.J.).
[441] *Id.*

c) by denying the Indian consular office access to Mr. Jadhav to converse and correspond with him or arrange for his legal representation.

In response, Pakistan raised objection of admissibility of claims on the following grounds:

a) Abuse of process;
b) Abuse of rights;
c) Unlawful conduct.

On matters of jurisdiction, India provided that the Court has jurisdiction over the issue under Article 36 of the Vienna Convention and Article I of the Optional Protocol. Further, India also asked the Court to declare that the sentence of the Military Court against Mr. Jadhav was "in defiance of elementary human rights of Jadhav, which are also to be given effect as mandated under Article 14 of the ICCPR, is violative of international law and the provisions of the VCLT."[442]

Verdict:

Jurisdiction of the Court: On matters relating to the jurisdiction, the Court found that both India and Pakistan were parties[443] to the Vienna Convention and the Optional Protocol without any reservations or declarations. The Court found that the dispute in the present case concerned "the question of consular assistance with regards to the arrest, detention, trial and sentencing of Mr. Jadhav."[444] The Court observed that its jurisdiction in the present case arose from Article I of the Optional Protocol. In regards to the jurisdiction under the ICCPR, the Court cited *Coratia v. Serbia*[445] and noted that its jurisdiction did not extend "to the determination of breached of international law obligations other than those under the Vienna Convention"[446].

[442] Jadhav (India v. Pakistan), Memorial of the Republic of India, 2017 I.C.J. 88 (Sept. 13) (I.C.J.).
[443] India became party to the Vienna Convention on 28 December 1977 while Pakistan became a party to the Vienna Convention on 14 May 1969.
[444] *Jadhav*, *supra* note 436, at 430, ¶ 35 (I.C.J.).
[445] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, 2015 (I) I.C.J. Reports 45-46, ¶ 152 (I.C.J.).
[446] *Jadhav*, *supra* note 436, at 430, ¶ 36 (I.C.J.).

Objections raised by Pakistan: The Court entered the merits of the case and first examined each of Pakistan's three contention concerning the admissibility of India's application. First, Pakistan contested that India abused the process when requesting for the indication of provisional measures since there were domestic measures for appeal and clemency process and that Mr. Jadhav's execution would have been stayed until all measures were exhausted. Further, Pakistan claimed that India failed to exhaust the process of arbitration and conciliation under Article II and Article III respectively of the Optional Protocol. The Court rejected the first contention, stating that there was no certainty as to when the decision on the appeal or petition would be rendered regarding the sentence against Mr. Jadhav. Additionally, the Court cited *USA v. Iran*[447] where the Court had already interpreted that Articles II and III of the Optional Protocol did not lay down "precondition of the applicability of the precise and categorical provision contained in Article I establishing the compulsory jurisdiction of the Court in respect of disputed arising out of the interpretation or application of the Vienna Convention in question. Article II and III provide only that, as a substitute for recourse to the Court, the parties may agree upon resort either to arbitration or to conciliation."[448]

Second, Pakistan contended that India abused various rights under international law by i) refusing to provide evidence of Mr. Jadhav's nationality, ii) failing to engage in assisting Pakistan in the criminal investigation process against Mr. Jadhav, and iii) authorizing Mr. Jadhav's espionage activities. The Court rejected the second contention noting that since both India and Pakistan have considered Mr. Jadhav as an Indian citizen, there was no room for doubt as to the nationality of Mr. Jadhav. The Court further clarified that "while Pakistan has not clearly explained the link between these allegations and the rights invoked by India on the merits, in the Court's view, such allegations are properly a matter for the merits and therefore cannot be invoked as a ground of inadmissibility."[449]

Third, Pakistan raised objection to India's application on the basis of alleged unlawful conduct of India. Pakistan relied on the doctrine of clean hands and the principles of *ex turpi*

[447] Case Concerning United States Diplomatic and Consular Staff in Tehran (USA v. Iran), Judgment, 1980 I.C.J. Reports (I.C.J.).
[448] *Id.* at 25-26, ¶ 48.
[449] *Jadhav*, *supra* note 436, at 435, ¶ 57 (I.C.J.).

causa [non oritur actio] and *ex injuria jus non orituri* and contended that India failed to provide the requested assistance in the criminal investigations against Mr. Jadhav. The Court rejected the objection based on the doctrine of clean hands, recalling the holding in *Iran v. USA*[450] that stated "even if it were shown that the Applicant's conduct was not beyond reproach, this would not be sufficient per se to uphold the objection to admissibility raised by the Respondent on the basis of the 'clean hands' doctrine"[451].

Furthermore, while Pakistan did not raise objection to the jurisdiction of the Court, it did raise objection as to the applicability of Article 36 of the Vienna Convention. In the alternative, Pakistan submitted that:[452]

a) Article 36 of the Vienna Convention does not apply in "*prima facie* cases of espionage";
b) Customary international law governs cases of espionage in consular relations and allows States to make exceptions to the provisions on consular access contained in Article 36;
c) The 2008 Agreement on Consular Access between India and Pakistan (hereinafter "2008 Agreement") regulates the consular access in the present case rather than Article 36 of the Vienna Convention.

In regards to the alternative submissions, the Court entered into the interpretation of Article 36 of the Vienna Convention. Noting that India is not a party to the Vienna Convention on the Law of Treaties whereas Pakistan, although a signatory, had not ratified the convention, the Court interpreted the Vienna Convention under the customary rules of treaty interpretation.

> Under these rules of customary international law, the provisions of the Vienna Convention on Consular Relations must be interpreted in good faith in accordance with the ordinary meaning to be given to their terms in their context and in the light of the object and purpose of the Convention. To confirm the meaning resulting from

[450] Case Concerning Certain Iranian Assets (Iran v. USA), Preliminary Objections, Judgment, 2019 I.C.J. Reports 44, ¶ 122 (I.C.J.).
[451] *Id.*
[452] *Jadhav*, *supra* note 436, at 446-47, ¶ 68 (I.C.J.).

that process, or to remove ambiguity or obscurity, or to avoid a manifestly absurd or unreasonable result, recourse may be had to supplementary means of interpretation, which include the preparatory work of the Convention and the circumstances of its conclusion.[453]

Article 36 of the Vienna Convention on Consular Relations reads as follows:

> Communication and contact with nationals of the sending State
>
> (1) With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
>
> a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
>
> b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;
>
> c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

[453] *Id.* at 438, ¶ 71.

(2) The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.

The Court observed that no provision under the Vienna Convention contained a reference to cases of espionage specifically, nor did Article 36 exclude from its scope certain categories of persons, such as those suspected of espionage. Furthermore, the Court also observed that the *travaux préparatoires* of the Vienna Convention also confirmed the interpretation. Thus, it concluded that "when interpreted in accordance with the ordinary meaning to be given to the terms of the Vienna Convention in their context and in the light of its object and purpose, Article 36 of the Convention does not exclude from its scope certain categories of persons, such as those suspected of espionage."[454]

Furthermore, regarding the application of the 2008 Agreement, the Court held that it could not be interpreted as "denying consular access in the case of an arrest, detention or sentence made on political or security grounds. Given the importance of the rights concerned in guaranteeing the 'humane treatment of nationals of either country arrested, detained or imprisoned in the other country', if the Parties had intended to restrict in some way the rights guaranteed by Article 36, one would expect such an intention to be unequivocally reflected in the provisions of the Agreement."[455] Thus, the Court found that the Vienna Convention was applicable in the present case, regardless of the allegations of espionage against Mr. Jadhav.

Examination of India's Claims: After verifying the admissibility of India's claims, the Court entered into the merit of the case, mainly India's claim that Pakistan violated its obligations under Article 36 of the Vienna Convention.

First, regarding India's claim that Pakistan failed to inform India, without delay, of Mr. Jadhav's arrest and detention, the Court observed that Pakistan had not contested India's

[454] *Id.* at 439, ¶ 75.
[455] *Id.* at 444, ¶ 94.

assertion that Mr. Jadhav had indeed not been informed of his rights under Article 36, paragraph 1(b) of the Vienna Convention. Pakistan had asserted that the right to be informed of the rights under Article 36 did not apply to '*prima facie* cases of espionage', an assertion that the Court rejected. Thus, the Court found that Pakistan had breached its obligation under such provision. Further, regarding the alleged breach of obligation to inform India 'without delay' of Mr. Jadhav's situation, the Court found that the notification made to India after some three weeks after the arrest and detention of Mr. Jadhav was a breach of the obligation to inform without delay set out under Article 36, paragraph 1(b) of the Vienna Convention.[456]

The Court tuned to India's claim that Pakistan failed to provide consular access to Mr. Jadhav. Pakistan maintained that the Mr. Jadhav was allowed to choose a lawyer and he opted to be represented by an in-house defending officer.[457] The Court was of the view that India's alleged failure to co-operate in the investigation process in Pakistan did not relieve Pakistan of its obligation to grant consular access, and did not justify Pakistan's denial of access to Mr. Jadhav by consular officers of India. The Court held a breach of obligation under Article 36, paragraph 1(c), holding that:

> Article 36, paragraph 1(c), provides that consular officers have the right to arrange legal representation for a detained national of the sending State. The provision presupposes that consular officers can arrange legal representation based on conversation and correspondence with the detained person. In the view of the Court, Pakistan's contention that Mr. Jadhav was allowed to choose a lawyer for himself, but that he opted to be represented by a defending officer qualified for legal representation, even if it is established, does not dispense with the consular officers' right to arrange for his legal representation.[458]

India's contention to *restitutio in integrum*: The Court turned to the India's submissions requesting the Court:

---

[456] *Id.* at 449, ¶ 111-113.
[457] *Id.* at 450, ¶ 115.
[458] *Id.* at 451, ¶ 118.

a) to declare the sentence handed down by the Pakistani's court to be violative of international law and the Vienna Convention;
b) to annul the decision and to restrain Pakistan from giving effect to the sentence or conviction;
c) to release Mr. Jadhav and to facilitate his safe passage to India.

In this regard, the Court reiterated that it was not the sentence or the conviction of Mr. Jadhav which are to be regarded as violation of Article 36 of the Vienna Convention and thus, the Court found that the submission made by India could not be upheld:

> … the Court recalls that its jurisdiction has its basis in Article I of the Optional Protocol. This jurisdiction is limited to the interpretation or application of the Vienna Convention and does not extend to India's claim based on any other rules of international law.[459]

However, the Court found that Pakistan was under an obligation to provide, by means of its own choosing, effective review and reconsideration of the conviction and sentence of Mr. Jadhav, so as to ensure that full weight was given to the effect of the violation of the rights set forth in Article 36 of the Vienna Convention.

5.2.3 Decisions of European Court of Human Rights (ECtHR)

Case 1: *Streletz, Kessler and Krenz v. Germany* (2001)[460]

Factual Background:

On 13 August 1961, the Berlin Wall was built between the German Democratic Republic (GDR) and Federal Republic of Germany (FRG) by the GDR, to hinder the fleeing of Germans from GDR to FRG. An added security measure consisted the installation of anti-personnel mines and automatic-fire systems (*Selbstschussanlagen*) as well as East German

[459] *Id.* at 455, ¶ 135.
[460] Streletz, Kessler and Krenz v. Germany, App. No. 34044/96, 35532/97 and 44801/98 (Mar. 22, 2001) (ECtHR).

border guards which led to the death of many people attempting to cross the border to reach the West.

In GDR, the Socialist Unity Party was the ruling party and its Central Committee was not only the decision-making body of the party but also the most powerful authority in GDR. The Secretary-General of the party presided over the National Defense Council of GDR. The National Defense Council made decisions of the annual orders of the Ministry of Defense. From 1961 onwards, the National Defense Council discussed regularly on consolidation and improvement of border security installations and the use of firearms. Subsequent ordered by the Ministry of Defense was thus aimed to protect the GDR's borders at all costs, and stated that "border violators" had to be arrested or "annihilated"; these orders were implemented based on a chain of command, by the commanding officers of the border-guard regiments.[461]

All the applicants were members of Socialist Unity Party. Amongst the applicants, Mr. Fritz Streletz was the member of the National Defense Council from 1971 onwards and the Deputy Defense Minister from 1979 to 1989. Mr. Heinz Kessler was the Chief of Staff of the National People's Army and a member of the National Defense Council from 1967 and the Minister of Defense from 1985 to 1989. Mr. Egon Krenz was a member of the Central Committee of the Socialist Unity Party from 1973 onwards, and Secretary-General of the Socialist Unity Party's Central Committee and the President of the Council of State and the National Defense Council from October to December of 1989.

After the fall of the Berlin Wall on 9 November 1989, the system in GDR collapsed and the reunification of Germany began on 3 October 1990. The newly elected parliament of the GDR urged the German legislature to ensure that criminal prosecution would be brough in respect to the injustice committed by the Socialist Unity Party.[462]

Mr. Streletz and Mr. Kessler were prosecuted, convicted and sentenced to five years and six months imprisonment and seven years and six months imprisonment respectively by the Berlin Regional Court for 'incitement to commit intentional homicide, on the ground that

[461] *Id.* at ¶ 15.
[462] *Id.* at ¶ 18.

they shared responsibility for the deaths of a number of young people aged between 18 and 28 who had attempted to flee the GDR between 1971 and 1989 by crossing the border between the two German States (six and seven cases respectively). The victims had died after triggering anti-personnel mines laid along the border or after being shot by the East German Border guards.'[463]

The Regional Court applied the classification of offences under the GDR law and then applied the criminal law of FRG, partly because it was the law applicable where the offences occurred and partly because it was more lenient than the criminal law of GDR. The conviction and application of law was upheld by the Federal Court of Justice. It also reclassified the offences according to the criminal law of FRG and amended charges against the two applicants and found them guilty of intentional homicide as indirect principles. Mr. Krenz was prosecuted, convicted and sentenced for six years and six months of imprisonment in the same manner as the two applicants for the crime of intentional homicide of four young people, as an indirect principle.

Upon appeal, the Federal Constitutional Court dismissed the appeals by the applicants, relying on the Radbruch Formula 46 and noting that the border policy constituted 'extreme injustice'.

Issues:

The three applicants submitted that the acts on accounts of which they were prosecuted did not constitute offences at the time when they were committed, according to the law of GDR or the international law. Hence, they submitted that the German Courts had breached Article 7 of the European Human Rights Convention.

They also submitted that the decision of the Federal Constitutional Court was incompatible with Article 1 of the Convention.

[463] *Id.* at ¶ 19.

Verdict:

The Court unanimously held that the applicants' complaint could not be raised under Article 7 of the Convention. The Court considered that the principles applied by the Federal Constitutional Court had general scope and were therefore equally valid in respect of persons who were not former nationals of the GDR. Accordingly, there had been no discrimination contrary to Article 14 of the Convention taken together with Article 7. It considered that GDR's border policing policy flagrantly infringed human rights and above all, the right to life, a violation of which cannot be covered under the protection of Article 7.[464]

The Court also observed that it did not function to deal with errors of facts or law allegedly committed by national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention.[465] Hence, the Court ruled that its jurisdiction was limited to the consideration "from the point of view of Article 7, whether the acts of the applicants at the time they were committed, constituted an offence defined with sufficient accessibility and foreseeability by the law of the GDR or international law"[466].

Furthermore, the Court clearly stated that:

> However, as the interpretation and application of domestic law are primarily matters to be assessed by the domestic courts, it is not for the Court to express an opinion on these different approaches, which illustrate the legal complexity of the case. It is sufficient for the Court to satisfy itself that the result reached by the German courts was compatible with the Convention…[467]

Case 2: *Kokkinakis v. Greece* (1993)[468]

Factual Background:

[464] *Id.* at ¶ 87.
[465] *Id.* at ¶ 49.
[466] *Id.* at ¶ 51.
[467] *Id.* at ¶ 66.
[468] *Kokkinakis, supra* note 282 (ECtHR).

The Applicant, Mr Minos Kokkinakis, was a retired businessman of Greek nationality who was born into an Orthodox family in Sitia (Crete) in 1919. He became Jehovah's Witness in 1936 after which he was arrested many times for proselytism.

On 2 March 1986, along with his wife, they called at the home of a Mrs Georgia Kyriakaka, the wife of a cantor of the local Orthodox Church. Mr and Mrs Kokkinakis entered into a discussion with Mrs Kyriakaka about religion with a view to converting her to their religious beliefs. Mr Kyriakaka on hearing of the visit contacted the local police and Mr and Mrs Kokkinakis were arrested and charged for proselytism.[469]

Proselytism was criminalized[470] during the dictatorship of Metaxas for the first time by Section 4 of Law no. 1363/1938 under which the applicant and his wife were prosecuted in the Lasithi Criminal Court. The Court, dismissing the defence objection over the constitutionality of this law, found them guilty of proselytism and sentenced each of them to four months imprisonment, convertible into a pecuniary penalty of 400 drachmas per day's imprisonment, and a fine of 10,000 drachmas.[471]

The applicant and his wife appealed against this judgment. The Crete Court of Appeal upheld Mr. Kokinakis' conviction but reduced the prison sentence to three months and converted it into pecuniary penalty of 400 drachmas per day. Mr. Kokinakis appealed to the Court of Cassation, objecting on the constitutionality of Law no. 1363/1938, stating it contravened with Article 13 of the Constitution.[472] The appeal was dismissed adhering to the following reason:

> Section 4 of Law no. 1363/1938, substituted by Section 2 of Law no. 1672/1939 providing for the implementation of Articles 1 and 2 of the Constitution and enacted under the 1911 Constitution then in force, Article 1 of which prohibited proselytism and any other interference with the dominant religion in Greece, namely the Christian Eastern Orthodox Church, not only does not contravene Article 13 of the 1975 Constitution but is fully compatible with the Constitution, which recognises

[469] *Id.* at ¶ 7.
[470] *Id.* at ¶ 16.
[471] *Id.* at ¶ 9.
[472] *Id.* at ¶ 11.

the inviolability of freedom of conscience in religious matters and provides for freedom to practise any known religion, subject to a formal provision in the same Constitution prohibiting proselytism in that proselytism is forbidden in general whatever the religion against which it is directed, including therefore the dominant religion in Greece, in accordance with Article 3 of the 1975 Constitution, namely the Christian Eastern Orthodox Church.[473]

Issues:

Finally, Mr. Kokkinakis appealed to the ECtHR under Articles 7, 9, 10 and 14 of the ECHR. Mr. Kokkinakis submitted that the provisions of Greek law relating to the offence of proselytism were too vague to give rise to a properly defined criminal act. In particular, the wording that set out the actus reus of the offence, beginning with the word 'notably' produced an incomplete and therefore undefined list of possible actions that give rise to the offence. Furthermore, the provision, in the use of the word 'attempt' and 'indirect', created a criminal act where no activity in line with the actus reus definition had occurred.[474]

Verdict:

The Court found that the applicant's complaint was mainly concerned with the restriction on the exercise of his freedom of religion. In regards to an alleged violation of Article 9, the Court unanimously held that there had been a violation of Kokkinakis' rights under the article.[475] Article 9 of the ECHR provides that:

(1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the

[473] *Id.* at ¶ 12.
[474] *Id.* at ¶ 25-26.
[475] *Id.* at ¶ 26(b).

> interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Examining the applicant's claim from the point of view of the phrase "prescribed by law", the Court noted that since the domestic court of Greece had already ruled that Section 4 of Law no. 1363/1938 was compatible with the Greek Constitution.

> The Court has already noted that the wording of many statutes is not absolutely precise. The need to avoid excessive rigidity and to keep pace with changing circumstances means that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague. Criminal-law provisions on proselytism fall within this category. The interpretation and application of such enactments depend on practice.
>
> In this instance there existed a body of settled national case-law … This case-law, which had been published and was accessible, supplemented the letter of Section 4 and was such as to enable Mr Kokkinakis to regulate his conduct in the matter.
>
> As to the constitutionality of Section 4 of Law no. 1363/1938, the Court reiterates that it is, in the first instance, for the national authorities, and in particular the courts, to interpret and apply domestic law. And the Greek courts that have had to deal with the issue have ruled that there is no incompatibility.[476]

However, by a six to three vote, the Court found the interreference in Mr. Kokkinakis's right was indeed a breach of Article 9, since it was not necessary in a democratic society. It explained that:

> The Court has consistently held that a certain margin of appreciation is to be left to the Contracting States in assessing the existence and extent of the necessity of an interference, but this margin is subject to European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court.

[476] *Id.* at ¶ 40.

> The Court's task is to determine whether the measures taken at national level were justified in principle and proportionate.[477]

The Court found a breach of Article 9, stating that:

> … Scrutiny of Section 4 of Law no. 1363/1938 shows that the relevant criteria adopted by the Greek legislature are reconcilable with the foregoing if and in so far as they are designed only to punish improper proselytism, which the Court does not have to define in the abstract in the present case.
>
> The Court notes, however, that in their reasoning the Greek courts established the applicant's liability by merely reproducing the wording of Section 4 and did not sufficiently specify in what way the accused had attempted to convince his neighbour by improper means. None of the facts they set out warrants that finding.
>
> That being so, it has not been shown that the applicant's conviction was justified in the circumstances of the case by a pressing social need. The contested measure therefore does not appear to have been proportionate to the legitimate aim pursued or, consequently, necessary in a democratic society ... for the protection of the rights and freedoms of others.[478]

The applicant had also relied on Article 7 which provided that:

> (1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
> (2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

[477] *Id.* at ¶ 47.
[478] *Id.* at ¶ 48-49.

In regards to Article 7, the Court rejected the claim by eight votes to one, explaining that:

> The Court points out that Article 7(1) of the Convention is not confined to prohibiting the retrospective application of the criminal law to an accused's disadvantage. It also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege)* and the principle that the criminal law must not be extensively construed to an accused's determent, for instance by analogy: it follows from this that an offence must be clearly defined in law. This condition is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him liable.[479]

With this observation, the Court held unnecessary to examine the case under Article 10 or 14.

5.3 FOREIGN SUPREME COURTS' DECISIONS

5.3.1 United Kingdom

Case 1: *Knuller v. DPP* (1973)[480]

Factual Background:

The defendants were directors of a company which published a fortnightly magazine. On an inside page under a column headed "males" advertisements were inserted inviting readers to meet the advertisers for the purpose of homosexual practices. They were charged with conspiracy to corrupt public morals as established in *Shaw* (1961).[481] And, they were convicted on counts of conspiracy to corrupt public morals and conspiracy to outrage public decency.

[479] *Id.* at ¶ 52.
[480] *Knuller*, *supra* note 103 (UKHL).
[481] *Shaw*, *supra* note 130 (UKHL).

The appellants appealed on the grounds that an agreement by two or more persons to insert advertisements in a magazine for the purpose of homosexual acts taking place between consenting adult males in private did not constitute the offence of conspiracy to corrupt public morals; that the judge misdirected the jury as to the effect of the Sexual Offences Act 1967 on the charge of conspiracy to corrupt public morals; that such an agreement did not constitute the offence of conspiracy to outrage public decency and that the trial judge failed to direct the jury that for that offence the agreement must envisage something in the nature of a public exhibition which was indecent.

Issue:

The Court required to rule on whether the law of England recognised as an offence the act of 'conspiracy to corrupt public morals' and whether the defendant could be convicted of such an offence.

Verdict:

The House of Lord ruled that the law does recognise as an offence the act of conspiracy to corrupt public morals, as it was created by *Shaw*. While the House of Lords doubted the correctness of the decision in *Shaw*, they declined to depart from it. Lord Reid commented:

> I dissented in *Shaw's case.* On reconsideration, I still think that the decision was wrong and I see no reason to alter anything which I said in my speech. But it does not follow that I should now support a motion to reconsider the decision. I have said more than once in recent cases that our change of practice in no longer regarding previous decisions of this House as absolutely binding does not mean that whenever we think that a previous decision was wrong, we should reverse it. In the general interest of certainty in the law we must be sure that there is some very good reason before we so act.

Case 2: *Regina v. Rimmington and Goldstein* (2005)[482]

Factual Background:

Two separate appeals arising from different facts were heard and decided together by the House of Lord as both the cases had a common question requiring the interpretation of the crime of causing public nuisance.

Mr. Rimmington was charged and indicted with a single count of public nuisance for sending 538 separate postal packages containing racially offensive materials to cause annoyance, harassment, alarm or distress.[483] Mr. Goldstein was also charged and indicted for a single count of public nuisance for posting an envelope containing salt to his friend as a joke.[484] However, the salt escaped the envelope at a postal sorting office, which was closed as a precaution so that tests could be carried out to determine whether the material spilt was dangerous, causing deliveries to be cancelled for the day.

The Court of Appeals dismissed both the appeals against the conviction.

Issues:

The appellants contended the conviction stating that:

a) The conduct formerly chargeable as the crime of public nuisance was not subjected to express statutory provision;
b) The conduct should be charged under the appropriate statutory provision and not as public nuisance;
c) The crime of public nuisance has ceased to have any practical application or legal existence.

[482] *Rimmington, supra* note 134 (UKHL).
[483] *Id.* at ¶ 2.
[484] *Id.* at ¶ 4.

Verdict:

In regard to the first contention, the House of Lord held that "the most typical and obvious causes of public nuisance are now subject of express statutory prohibition."[485]. Several legal provisions from specific statutes such as Section 1 of the Protection from Harassment Act 1997, Section 32 of the Crime and Disorder Act 1998, Section 63 of the Criminal Justice and Public Order Act 1994, Section 114 of the Anti-terrorism, Crime and Security Act 2001, Section 1 of the Malicious Communications Act 1988 were taken into account by the House of Lords to conclude that the common law offence of public nuisance was redundant and it should no longer be considered an offence under the English Law.

As to the second contention, the Lords agreed that unless there is a good reason to prosecute under the general common law, where the conduct is regulated by a specific statutory provision, the conduct must be prosecuted under that provision.

Where Parliament has defined the ingredients of an offence, perhaps stipulating what shall and shall not be a defence, and has prescribed a mode of trial and a maximum penalty, it must ordinarily be proper that conduct falling within that definition should be prosecuted for the statutory offence and not for a common law offence which may or may not provide the same defences and for which the potential penalty is unlimited.[486]

As to the third contention, the House of Lords explained that it is the task of the Parliament, following careful consideration, whether the crime of public nuisance continues serve public interest and that it is not open to the House to conclude that the common law crime of causing public nuisance no longer exists.[487]

Next, the House of Lord concluded on the submission of the defence that the crime of causing public nuisance lacked the certainty and predictability to be valid under Article 7 of the ECHR.

[485] *Id.* at ¶ 31.
[486] *Id.* at ¶ 30.
[487] *Id.* at ¶ 31.

Article 7. No punishment without law:

> (1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

The Lords iterated that an offence must be clearly defined in law but accepted that absolute certainty is unattainable, and that some degree of vagueness is inevitable and development of the law is a recognised feature of common law courts. Article 7, the Lords held, precludes only the punishment of acts not previously punishable, and existing offences may not be extended to cover facts which did not previously constitute a criminal offence. The law can be interpreted in order to clarify and adapt to new circumstances but it must be consistent with the essence of the offence and the law should not be extensively construed to the detriment of the accused, for instance, by analogy.[488]

The definition of the offence of causing a public nuisance as an act not warranted by law or an omission to discharge a legal duty the effect of which was to endanger the life, health, property or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty's subjects was clear, precise, adequate and based on a discernible rational principal. However, to permit a conviction of causing a public nuisance to rest on an injury caused to separate individuals rather than on an injury suffered by the community or a significant section of it as a whole contradicted the rationale of the offence and perverted its nature.[489]

Case 3: *Regina v. Jones* (2006)[490]

Factual Background:

On 29th March, 2006, the Appeals Committee of the House of Lords gave its judgement in the matter of *Jones.* A total of five appellants were heard, on appeal against a judgement of

[488] *Id.* at ¶ 35.
[489] *Id.* at ¶ 37.
[490] *Jones, supra* note 137 (UKHL).

the Court of Appeal (Criminal Division) delivered by Latham L.J., in which that Court had denied their earlier appeal, against a preparatory criminal ruling given by Grigson J., sitting then as a trial judge, in the Crown Court at Bristol.

These appellants were charged with preparatory criminal damage charges, under the Criminal Damage Act, 1971, in relation to them having been arrested inside the perimeter wire fence at Royal Air Force base at Fairford in Gloucestershire, at various different times in the week immediately prior to the launch of the military attack upon, and subsequent invasion of, Iraq, beginning on 20th March, 2003. The base was at time being used for the stationing of US Air Force B-52 long-range strategic bomber aircraft, and each of the Appellants had entered with the intention of doing damage to the equipment on the base, so as to inhibit and/or delay, the war-fighting capacity of those aircraft.

These appellants sought permission to put before their trial jury that, they had been justified in acting as they had, or had intended to act, because they were employing only reasonable means to try to prevent the commission of a crime; to wit, the on-going military preparations for the aerial bombardment of Iraq, which they contended comprised in the commission of a crime against peace / crime of aggression, under *jus cogens* rules of customary international criminal law. They further argued that these crimes were crimes for purpose of the provisions of Section 3(1) of the Criminal Law Act 1967, use of reasonable force for crime prevention.

Section 3 of the Criminal Law Act 1967 provides:

(1) A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.
(2) Sub-section (1) above shall replace the rules of the common law on the question when force used for a purpose mentioned in the subsection is justified by that purpose.

The cases of these defendants were heard, and they were convicted by, District Judges, sitting at Southampton and Cirencester magistrates' Courts respectively. Defences under

both Section 3, and in relation to the activities so disrupted being unlawful, in that those activities were part and parcel of the commission of an offence of aggression, were summarily rejected by those Judges respectively. Case stated defendants' appeals were then made in each of these matters, to the Queen's Bench Division of the High Court, judgement being given in 2005, and which then bound the High Court in relation to their earlier findings.

Issues:

The Appeal Division cited the following point of law as being raised by their decision in the *Jones* appeals matters:

Is the crime against peace and/or crime of aggression capable of being a 'crime' within the meaning of Section 3 of the Criminal Law Act 1967 and, if so, is the issue justiciable in a criminal trial?

Verdict:

The House rejected the submission of the appellants stating that the 'crime' in Section 3 covers a crime that is established in customary international law, such as the crime of aggression. It observed that:

> The focus of the Act is entirely domestic, and it would seem highly unlikely that Parliament understood 'crime' in Section 3 as covering crimes recognised in customary international law but nor assimilated into our domestic law by any statute or judicial decision. In construing a domestic statute, the ordinary practice is to treat 'offence', in absence of an express provision to the contrary, as referring to an offence committed here against a common law or statutory rule.[491]

Further, the House explained that the courts do not have the power to create new criminal offences and statutes are the sole source of new criminal offences.[492] Additionally, the

[491] *Id.* at ¶ 26.
[492] *Id.* at ¶ 28.

House clarified only the legislation made by the Parliament can that to give domestic effect to crimes established in customary international law.[493]

> These reasons, taken together, are very strong grounds for rejecting the appellants' contention, since they reflect what has become an important democratic principle in this country: that it is for those representing the people of the country in Parliament, not the executive and not the judges, to decide what conduct should be treated as lying so far outside the bounds of what is acceptable in our society as to attract criminal penalties. One would need very compelling reasons for departing from that principle.[494]

Case 4: *Thet v. DPP* (2006)[495]

Factual Background:

On 8 May 2005, the appellant, a Burmese national, entered the United Kingdom with a false passport and cleared the Immigration Control. He handed the passport to his facilitator and on 13 May 2006 and subsequent dates, he went to attend asylum screening interviews. He was unable to provide a genuine passport or documents that he used to enter the country and attributed such failure to the fact that he was a former political prisoner in Burma. He was charged with the offence under Section 2(1) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, which criminalises the act of failing to provide immigration document at a leave or asylum interview.

In the district court, the appellant relied on the defence under Section 2(3)(b) and Section 2(6)(b).

> Section 2(3): But a person does not commit an offence under subsection (1) or (2) if:

[493] *Id.*
[494] *Id.* at ¶ 29.
[495] Thet v. DPP, (2006) EWHC 2701 (UKHL).

(b) within the period of three days beginning with the date of the interview the person provides to an immigration officer or to the Secretary of State a document of the kind referred to in that subsection.

Section 2(6): When the charge for an offence under subsection (1) or (2) relates to an interview which takes place after the defendant has entered the United Kingdom:

(b) it is a defence for the defendant to prove that he has a reasonable excuse for not providing a document in accordance with subsection (3).

The district judge held that both these subsections applied only to an immigration document that the immigrant used on the voyage and does not extend to instances where the documents never existed.[496] The judge also dismissed the appellant defence these subsections applied to a false immigration document that was used in the journey on the grounds that the appellant failed to demonstrate that it was unreasonable to expect him to not comply with the facilitator's instruction to return the false passport.[497]

Issues:

The questions for the opinion of this Court were specified by the district judge as follows:

a) Is the defence under Section 2(6)(b) available to a defendant in relation to a genuine document, as defined by Section 2(1), where no such document exists?
b) If so, can Section 2(6)(b) provide a defence in relation to a genuine document where the accused has travelled to and entered the United Kingdom using a false document which he has not provided in accordance with Section 2(3) and has no reasonable excuse for not having done so?

Verdict:

The defence under Sec. 2(6)(b) dealt only with the immigration document that Subsection 3 required should be provided within three days of the interview, namely a genuine

[496] *Id.* at ¶ 7.
[497] *Id.* at ¶ 8.

document which identified the immigrant and was in force. In the instant case, given that the defendant had succeeded in satisfying the district judge that it was impossible for him to obtain a passport in his country of origin; he had clearly had a reasonable excuse for not providing a genuine immigration document within three days of his asylum interview. In those circumstances, he had a valid defence to the offence under Sec. 2(3) of the 2004 Act of failing to produce an immigration document within three days of interview.[498]

Assimilating the principle that 'the court cannot extend the ambit of the statute to impose criminal liability', the Lord Chief Justice referred the case to the parliamentary debates to enlarge the scope of liability to act prospectively:

> The reason that lay behind the Parliamentary decision to create this offence was not in order to deal generally with those who arrived here seeking asylum without documentation, or who presented false documentation, but to deal with the problem that that created by disabling the authorities from establishing precisely where they came from.[499]

5.3.2 United States of America

Case 1: *Connally v. General Construction Co.* (1926)[500]

Factual Background:

The Commissioner of Labour complained that the rate of wages paid by the company to laborers was only $3.20 per day, whereas, he asserted, the current rate in the locality where the work was being done was $3.60, and gave notice that, unless advised of an intention immediately to comply with the law, action would be taken to enforce compliance.

In determining the rate of wages to be paid by the company, the commissioner claimed to be acting under authority of a statute of Oklahoma, which imposes upon him the duty of carrying into effect all laws in relation to labour. In the territory surrounding the bridges

[498] *Id.* at ¶ 24.
[499] R v. Da Hua Weng and Guo Xing Wang, (2005) EWCA Crim. 2248, ¶ 7.
[500] *Connally*, *supra* note 275 (USA).

being constructed by plaintiff, there is a variety of work performed by laborers, etc., the value of whose services depends upon the class and kind of labour performed and the efficiency of the workmen. Neither the wages paid nor the works performed were uniform. Wages have varied since plaintiff entered into its contracts for constructing the bridges and employing its men, and it is impossible to determine under the circumstances whether the sums paid by the plaintiff or the amount designated by the commissioner or either of them constitute the current per diem wage in the locality. Further averments are to the effect that the commissioner has threatened the company, and its officers, agents, and representatives, with criminal prosecutions under the foregoing statutory provisions, and, unless restrained, the county attorneys for various counties named will institute such prosecutions; and that each day's failure to pay current wages shall constitute a separate offense, maximum penalties may be inflicted aggregating many thousands of dollars in fines and many years of imprisonment.

Issues:

The constitutional grounds of attack, among others, are that the statutory provisions, if enforced, will deprive plaintiff, its officers, agents and representatives, of their liberty and property without due process of law, in violation of the Fourteenth Amendment to the Federal Constitution; that they contain no ascertainable standard of guilt; that it cannot be determined with any degree of certainty what sum constitutes a current wage in any locality; and that the term 'locality' itself is fatally vague and uncertain. The question whether given legislative enactments have been thus wanting in certainty has frequently been before the Court.

Verdict:

US Supreme Court decided that a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law. That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well- recognized requirement, consonant alike with ordinary notions of fair play and the

settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.

The dividing line between what is lawful and unlawful cannot be left to conjecture. The citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions. A criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue. Penal statutes prohibiting the doing of certain things, and providing a punishment for their violation, should not admit of such a double meaning that the citizen may act upon the one conception of its requirements and the Courts upon another.

Justice Sutherland opined:

> The terms of a penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties… and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.[501]

Case 2: *USA v. Wiltberger* (1820)[502]

Factual Background:

The defendant, an American citizen, was charged with manslaughter of a seaman, also an America citizen, on board an American ship, the *Benjamin Rush*, in the River Tigris, China, about 100 yards away from the shore and in four and half fathoms water, and below the low water mark, thirty-five miles above the mouth of the river. The place in the river where the

[501] *Id.* at 385.
[502] USA v. Wiltberger, 18 U.S. 76 (1820) (USA).

offence was committed has fresh water, except in dry seasons and the tide ebbs and flows at, and above the said place.

The defendant was prosecuted under Sec. 12 of the Act for the Punishment of Certain Crimes Against the United States, 1790 and the Section stated the following:

> Sec. 12.
>
> And be it enacted that if any seaman or other person shall commit manslaughter on the high seas or confederate, … such person or persons so offending and being thereof convicted shall be imprisoned not exceeding three years and fined not exceeding one thousand dollars.

The defendant was indicted for manslaughter by the Circuit Court of Pennsylvania, and the jury found the defendant guilty of the offence. The verdict was however subject to the opinion of the Supreme Court of the United States on the question of whether the courts of the United States had jurisdiction over the matter of facts at hand.

Issues:

The Court was faced with the issue of whether the court of the United States had jurisdiction over the crime of manslaughter committed by its citizen under the relied upon statute. More specifically, the words of the statute criminalized the act of manslaughter on 'high seas.' The Court, thus, had to rule whether the statute applied to the specific place where the offence was committed.

Verdict:

Chief Justice John Marshall delivered the unanimous opinion of the Court holding that the Circuit did not have jurisdiction over the matter of facts in the presented case under the section relied upon by the prosecution.

In this case, the Government had contended that although penal laws should be construed strictly, the construction should be governed by the intention of the legislature. It contended

for a construction of the whole Act which would engraft the words of the 8th section, descriptive of the place in which murder might be committed, on the 12th section, which described the place where manslaughter might be committed. The 8th section provides "If any person or persons, shall commit upon the high seas or in any river, haven, basin or bay, out of the jurisdiction of any particular State, murder…" The Government claimed the transfer of the words 'river, haven, basin or bay' from the 8th section to the 12th section would express the obvious intention of the legislature.

However, the Court rejected the contention, stating that:

> The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one, indeed, which would justify a court in departing from the plain meaning of words, especially, in a penal act, in search of an intention which the words did not themselves suggest. It would be dangerous, indeed, to carry the principle, that a case which is within the reason or mischief of a statute, is within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity, or of kindred character, with those which are enumerated. If this principle has ever been recognized in expounding criminal law, it has been in cases of considerable irritation, which it would be unsafe to consider as precedents forming a general rule for other cases.[503]

The Court opined that the strict rule of construction of penal laws is founded on "the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department."[504]

On the specific issue of the interpretation of the intention of the legislature regarding the 12th section, the Court observed that the 12th section governs the crime of manslaughter, a separate criminal act to murder, and a crime not mentioned under the 8th section, and the law clearly describes the place in which it must be committed as the 'high seas', in order to

[503] *Id.* at ¶ 95-96.
[504] *Id.* at ¶ 95.

give jurisdiction to the courts of the United States. The Court affirmed that the section does not provide for jurisdiction for manslaughter committed elsewhere.

Case 3: *State of Louisiana v. Freddie Daniels* (1958)[505]

Factual Background:

The defendant was convicted of a violation of Sec. 122 of the Criminal Code of Louisiana Revised Statutes, 'Public intimidation', and was sentenced to 5 years in State Penitentiary. The basis for the criminal charge and the conviction was the defendant's use of force upon a prison guard.

On 22 February 1958, the defendant, who was a convict inmate at the State Penitentiary at Angola at the time, was out of line on the way to the evening meal, according to Otis Edwards, a correctional officer in charge of the defendant's dormitory. In his testimony, Edwards claimed that the defendant ignored Edward's instructions to go to the end of the line. When Edwards took the defendant by the upper arm and told him to go to the end of the line, the defendant shoved Edwards and drew his fist to hit him. Edwards accepted that he also took a swing at the defendant in order to protect himself, and both of them hit each other at the same time and Edwards got knocked down to his knees. When questioned whether the defendant was attempting to influence him or make him do something by using his position as a prison guard, Edwards answered in the negative.

Issues:

The Court required to decide upon whether the act of the defendant could be inferred within the crime of 'public intimidation' under Sec. 122 of the Criminal Code, 1804. The law reads as follows:

> Public intimidation is the use of violence, force, or threats, upon any of the following person, with the intent to influence his conduct in relation to his position, employment, or duty:

[505] State of Louisiana v. Freddie Daniels, 109 So. 2d 896 (1958) (USA).

a) Public officer or public employee; or
b) Grand or petit juror; or
c) Witness, or person about to be called as a witness upon a trial or other proceeding before any court, board or officer authorized to hear evidence or to take testimony; or
d) Voter or election official at any general, primary, or special election.

Whoever commits the crime of public intimidation shall be fined not more than one thousand dollars or imprisoned, with or without hard labor, for not more than five years or both.

Verdict:

The Court examined the testimony of Edwards and aligned it with the text of the law defining the crime of public intimidation. The Court found that the conviction should be set aside as there was a lack of evidence that the defendant hit Edwards, a public employee, "with the intent to influence his conduct in relation to his position, employment or duty" as outlined by the law.

The State argued that only a general criminal intent must be proved to support the conviction and that the intent of the defendant need not be proven as a fact, rather it could be inferred from the circumstances of the transaction. The Court rejected the contention of the State that the crime of public intimidation may be committed with general criminal intent and without specific criminal intent. It held that:

> The statutory definition of the crime of public intimidation provides that it is the use of force upon a public employee "*with intent to influence his conduct in relation to his position, employment, or duty*." The italicized provisions (…) qualify the intent statutorily required to commit the crime defined. The statutory crime is thus not the intentional use of force or threats upon a public employee, but rather the use of force

> or threats upon him with the specific intent to influence his conduct in relation to his duties.[506]

Thus, the Court found that the State had the burden of proof to show that the defendant actively desired to influence the conduct of the prison guard when he hit him. The defendant was ordered to be discharged on the grounds of absence of evidence as to the fulfillment of the essential elements of the crime of public intimidation as provided in the law.

Case 4: *Abuelhawa v. United States* (2009)[507]

Factual Background:

The agents of the Federal Bureau of Investigation believed that Mohammed Said was selling cocaine and got a warrant to wire-tap his cell phone. They recorded six calls between Said and the petitioner, Salman Khade Abuelhawa. Abuelhawa arranged to buy a gram of cocaine in two separate transactions. Both Said and Abuelhawa were charged with six felonies under §841(a)(1) and (b) of the Controlled Substances Act. The prosecution argued that each of the six phone calls were made 'in causing or facilitating' Said's felonies in violation of §843(b), which provides:

> "It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this subchapter or subchapter II of this chapter. Each separate use of a communication facility shall be a separate offence under this subsection. For purposes of this subsection, the term 'communication facility' means any and all public and private instrumentalities used or useful in the transmission of writing, sings, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication." (§843(b)).

[506] *Id.* at 897.
[507] Abuelhawa v. United States, 556 U.S. 816 (2009) (USA).

The jury convicted Abuelhawa of all six felony counts, dismissing his argument for acquittal that his efforts to commit misdemeanors could not be treated as causing or facilitating Said's felonies. The Court of Appeals for the Fourth Circuit reasoned that the term 'facilitate' should be given its common meaning and be interpreted as 'to make easier or less difficult, or to assist or aid'. However, it upheld the conviction of Abuelhawa, stating that his use of phone to buy cocaine counts as 'ordinary facilitation' as it made Said's distribution easier and possible.

Issues:

The question in this case was whether someone violates §843(b) in making a misdemeanor drug purchase by attributing his phone call to the drug dealer the element of facilitation of the felony of drug distribution.

Verdict:

Justice Scouter delivered opinion for the unanimous Court and reversed the judgement of the Court of Appeals for the Fourth Circuit. The Court rejected the argument of the prosecution that Abuelhawa using his cell phone to make drug purchases satisfies the plain meaning of the term 'facilitate' under §843(b) as it allowed for an easier and efficient transaction of drug distribution. The Court opined that the words in a statute are not read as a collection of isolated phrases.

The Court explained that the it would presume Congress enacted §843(b) with knowledge of the traditional judicial limitation on applying the terms like 'aid', 'abet' and 'assist', and that Congress had comparable scope in mind when it used the term 'facilitate'.[508] The Court referred to the legislative intent of Congress to treat purchase of drugs for personal use more leniently (as a misdemeanor) than the felony for distribution and to narrow the scope of communications provisions to cover only those which facilitated drug felony. The Court further explained that if the prosecution's interpretation is to be accepted as the general intention of Congress, then Abuelhawa's purchase of drug through his cell phone would possibly sentence him to 24 years in prison for six felony counts whereas, if he purchased

[508] *Id.* at 821.

the same amount of drug minus the cell phone, his charge would be reduced to two counts of misdemeanors and a possible sentence of two years in prison.[509]

> There is no question that Congress intended §843(b) to impede illicit drug transactions by penalizing the use of communication devices in coordinating illegal drug operations, and no doubt that its purpose will be served regardless of the outcome in this case. But it does not follow that Congress also meant a first-time buyer's phone calls to get two small quantities of drugs for personal use to expose him to punishment 12 times more severe than a purchase by a recidivist offender and 8 times more severe than the unauthorized possession of a drug used by rapists.[510]

5.3.3 India

Case 1: *Motibhai Fulabhai Patel v. M/S. R. Prasad* (1969)[511]

Factual Background:

The appellants held Central Excise licenses in Forms L-2 and L-5 for the purpose of storing, selling and processing duty paid and non-duty paid tobacco. On 23 December 1958, the Superintendent of Central Excise, Preventive Headquarters, Baroda raided the appellant's godown where duty-paid tobacco was kept. Around 1,64,834.50 lbs of a mixture of tobacco was seized from the premise and the seized amount included 60,770 lbs of tobacco on which duty had not been paid.

The appellants were held guilty of contravening rule 40 of the Central Excise Rules 1944 by the Collector and a penalty of Rs. 2,000/- was levied against them as well as the duty payable under the law. Further, it was ordered to confiscate the entire quantity of the tobacco seized. The appellants were given the option to secure the release of the tobacco for a payment of a fine of Rs. 1 lakh.

---

[509] *Id.* at 822.
[510] *Id.*
[511] Motibhai Fulabhai Patel v. M/S. R. Prasad, (1969) 2 SCR 580 (India).

The appellants filed an appeal as well as a revision against the Collector's order, but both applications were dismissed. A writ petition challenging the legality of the order under Article 226 of the Constitution was also dismissed by the High Court.

Issues:

The appellants then appealed to the Supreme Court challenging the Collector's order of confiscation as the confiscated tobacco contained a mixture of both duty-paid tobacco as well as tobacco on which duty had not been paid. Alternatively, the appellants contended that the Collector could not have confiscated more than 60,770 lbs. of tobacco. The Court had to rule on the legality of the Collector's order under rule 40.

Verdict:

The Court ruled in favour of the appellants ordering the Collector to refund a sum of Rs. 65,000/- of the fine amount of Rs. 1 lakh that the appellants had paid to release the confiscated tobacco. The Court observed that rule 40 permitted the Central Excise authorities to confiscate only those goods on which duty was not paid and the Collector's order to confiscate the entire mixture of tobacco was thus not permissible.

> It must also be remembered that in dealing with a provision relating to forfeiture we are dealing with a penal provision. It would not be proper for us to extent the scope of that provision by reading into it words which are not there and thereby widen the scope of the provision relating to confiscation… No rule of law should be so interpreted as to permit or encourage its circumvention. If by the wrongful act of a party he renders it impossible for the authorities to confiscate under rule 40 of the non-duty paid goods, it is in our opinion open to those authorities to confiscate from out of the good seized, goods of the value reasonably representing the value of the non-duty paid goods mixed in the goods seized.[512]

[512] *Id.* at 587.

Case 2: *Subash Parbat Sonvane v. State of Gujarat* (2002)[513]

Factual Background:

Subash Parbat Sonvane was convicted for acceptance of bribe under Section 7 of the Prevention of Corruption Act 1988 and sentenced to six months' rigorous imprisonment and a fine of Rs. 500. He was further convicted for criminal misconduct by a public servant under Section 13(1)(d) and 13(2) and sentenced to one-year rigorous imprisonment and a fine of Rs. 500/-. In default of the fine on either of the sentences, he would have to undergo an additional imprisonment of fifteen days. His appeal against the judgment was dismissed by the High Court. He then challenged the order against the appeal in the Supreme Court.

During the admission hearing, the Court passed the following order:

> Considering the contentions raised by learned counsel for the petitioner and the evidence on record the impugned order passed by Special Judge and confirmed by the Hogh Court with regards to the conviction of the petitioner under Section 7 of the Prevention of Corruption Act cannot be assailed in any manner. Hence, with regard to that part of the judgment this petition is dismissed. However, with regard to the conviction of the petitioner under Section 13(1)(d) issue notice returnable on 9th January, 2002.[514]

Issues:

Section 13(1)(d) of the Prevention of Corruption Act reads as follows:

> Section 13: Criminal misconduct by a public servant – (1) A public servant is said to commit the offence of criminal misconduct, –
>
> (d) if he, -

[513] Subash Parbat Sonvane v. State of Gujarat, (2002) 5 SCC 86 (India).
[514] *Id.* at ¶ 3.

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, *obtains* for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, *obtains* for any person any valuable thing or pecuniary advantage without any public interest;

The appellant submitted that the judgment and order passed by the High Court confirming the conviction under Section 13(1)(d)(i) is illegal and erroneous. He argued that the prosecution failed to satisfy the requirement under this section that the appellant had obtained for himself or for any other person any valuable thing or pecuniary advantage, by corrupt or illegal means.

The Court, thus, had to rule on whether the appellant could be convicted under Section 13(1)(d) of the Prevention of Corruption Act.

Verdict:

The Court observed that under Section 13(1)(a) and (b), the legislature had specifically used the words 'accepts' or 'obtains'. However, in Section 13(1)(d), the word 'accepts' was omitted and the word 'obtains' was emphasized. Hence, the Court found, conviction under Section 13(1)(d) required evidence that the accused 'obtained' for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing or pecuniary advantage without any public interest.[515]

The Court referred to *C.K. Damodaran Nair* (1997)[516] where the Court had previously interpreted the word 'obtain' under Section 5(1)(d) of the Prevention of Corruption Act:

[515] *Id.* at ¶ 6.
[516] C.K. Damodaran Nair v. Govt. of India, (1997) 9 SCC 477 (India).

> … 'Obtain' means to secure or gain (something) as the result of request or effort (*Shorter Oxford Dictionary*). In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a *primary requisite for an offence under Section 5(1)(d)* of the Act…[517]

In this particular case, the complainant as well as the *panch* witness, in their testimonies, did not state that the appellant demanded any gratification. The complainant was hostile in court thus, the court had to rely on the *panch* witness. According to the witness, the accused appellant had informed the complainant to come to the police station in the evening for a witness statement. When he started to walk towards the toilet, the complainant had followed him and gave something to the accused appellant. The appellant took the same and put it in his pocket. The Court held that it would be unreasonable to infer that the appellant demanded money from the complainant, especially when the complainant has denied the entire facts and the witness has not expressly stated so. Hence, the appeal was partly allowed and the appellant was acquitted of charges under Section 13(1).

Case 3: *M. Narsinga Rao v. State of Andhra Pradesh* (2001)[518]

Factual Background:

Mr. N. Narsinga Rao was a manager at the Milk Chilling Centre attached to Andhra Pradesh Dairy Development Co-Operative Federation. He was alleged to have received bribe money of IRs. 500/- from a milk-transporting contactor and was caught red-handed on 20 April 1989 in a trap arranged by the Anti-Corruption Bureau (ACB). The tainted money was recovered from the appellant's pocket. He was charged under Section 7 and 13(2) of the Prevention of Corruption Act. Although the complainant and witness denied the prosecution's allegations (hostile) and the appellant argued that one *K* had orchestrated a false trap against him and forcibly stuffed the notes in his pocket, he was convicted under both sections by the trial court. The High Court upheld the conviction. However, it found that even in the absence of direct evidences, the rest of the evidences proved that the appellant had accepted the money which gave rise to presumption under Section 20 of the

[517] *Id.* at 483, ¶ 12.
[518] M. Narsinga Rao v. State of Andhra Pradesh, (2001) 1 SCC 691 (India).

Prevention of Corruption Act that the appellant had accepted illegal gratification.[519] The High Court reduced the sentence of the appellant.

Issues:

The appellant contended that the presumption under Section 20 can be drawn only in instances where there are direct evidences of accepting or obtaining illegal gratification. Mere handing of some notes is not sufficient proof of illegal gratification, unless the prosecution can prove that the amount was indeed a graft.

The issue thus, revolved around whether the legal presumption under Section 20 be based on a factual presumption.[520]

Verdict:

In regards to the contention that the presumption under Section 20 can only be drawn in the presence of direct evidence that proves that a public servant accepted or obtained illegal gratification and it cannot depend on inference of the fact, the Court first delved into the meaning of presumption, specifically the term 'shall be presumed' under Section 20. The Court observed that the term 'shall be presumed' fell under the category of legal presumptions as defined in Section 4 of the Evidence Act.[521] The condition to draw legal presumption under Section 20 is to prove that the public servant had accepted or agreed to accept any gratification, however, it is not a condition that must be satisfied by direct evidence only.

Furthermore, the Court explained that:

> Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in law of evidence is a rule indicating the stage shifting the burden of proof. From a certain fact or facts, the court can draw an inference and that would remain until such inference is either

[519] *Id.* at ¶ 7.
[520] *Id.* at ¶ 1.
[521] *Id.* at ¶ 13.

> disproved or dispelled… However, as a caution of prudence we have to observe that it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion.[522]

The Court, thus, explained that the presumption under Section 20 could legitimately be drawn by the courts and the opposition party has the burden of proof to dispel or disprove that presumption. However, failure to disprove the presumption would allow the presumption to stick and the court can hold that the prosecution has proved that the appellant received the said amount. Thus, the Court dismissed the appeal.

Case 4: *State of Rajisthan v. Vinod Kumar* (2012)[523]

Factual Background:

On 28 August 2002, after attending a memorial function, Guddi, the complainant, and her brother-in-law, Babu Lal, had stayed at the Jai Hotel. Two men came to their room, introducing themselves as the Station House Officers and stated they want to check the room. Guddi and her brother-in-law were questioned of their relationship with each other but the officer raised question as to why such a relationship had not been disclosed in the hotel register. Under this pretext, the men took her brother-in-law outside after which they came to the room one after the other, bolted the door from inside, pushed her on the bed forcibly and committed rape upon her. The two men ran away after committing the crime.

On 29 August 2002, the complainant, along with her brother-in-law, filed an FIR along with a description of the two men. The FIR was registered under Section 376, 120B of the IPC and the investigation commenced. The accused were identified and arrested as Vinod Kumar and Heera Lal and a chargesheet under Section 376, 120B and Section 3(2)(5) of SC/ST Act was filed. Both defendants denied their involvement but failed to adduce any evidence. The trial court convicted the two defendants and sentenced them to 7 years of rigorous imprisonment and a fine of IRs. 5,000/- each. On appeal to the High Court, their

[522] *Id.* at ¶ 17, 18.
[523] State of Rajisthan v. Vinod Kumar, (2012) 6 SCC 770 (India).

conviction was upheld, however, the sentence was reduced to a term of 3 months' imprisonment each.

Issues:

The State submitted that in case of rape, the mandatory provision under Section 376 of the IPC awarded a minimum punishment of 7 years. Awarding a lesser punishment than prescribed by the mandatory provision was an exception, provided the court record the adequate and special reasons for such extension. However, in the present case, the High Court failed to record any adequate and special reason for such a substantive reduction in punishment.

Thus, the Supreme Court of India required to provide a decision on whether such reduction in punishment was justified, and that too without any record of adequate and special reason.

Verdict:

The Court observed that the proviso is an exception to the general rule and. Exception, the Court explained, was provided with the object of taking it out of the scope of the basic law and what is included in it and what the legislature desired to be excluded.

> The natural presumption in law is that but for the proviso, the enacting part of the Section would have included the subject matter of the proviso, the enacting part should be generally given such a construction which would make the exceptions carved out by the proviso necessary and a construction which would make the exceptions unnecessary and redundant should be avoided.[524]

The Court held that:

> … the law on the issue can be summarised to the effect that punishment should always be proportionate/ commensurate to the gravity of offence. Religion, race caste, economic or social status of the accused or victim are not the relevant factors for determining the quantum of punishment. The court has to decide the punishment

[524] *Id.* at ¶ 19.

after considering all aggravating and mitigating factors and the circumstances in which the crime has been committed. Conduct and state of mind of the accused and age of the sexually assaulted victim and the gravity of the criminal act are the factors of paramount importance. The court must exercise its discretion in imposing the punishment objectively considering the facts and circumstances of the case. The power under the proviso is not to be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation. The legislature introduced the imposition of minimum sentence by amendment in the IPC, therefore, the courts are bound to bear in mind the effect thereof.

The court while exercising the discretion in the exception clause has to record "exceptional reasons" for restoring to the proviso. Recording of such reasons is *sine qua non* for granting the extraordinary relief. What is adequate and special would depend upon several factors and no straight jacket formula can be laid down.[525]

The Court noted that the High Court had failed to record any adequate and special reasons for reducing the sentence. It held that such an order violated the mandatory requirement of the law and defeated the legislative intention, making a mockery of the criminal justice system. Thus, the Court allowed the appeal and restored the sentence of seven years' imprisonment granted by the trial court.

5.4 CONCLUDING OBERVATIONS

In *Araki Sadao* (1948),[526] the Tokyo Tribunal's Justice Pal voiced his famous dissent in favor of limitation principle, which was based on the belief that no retroactive legislation was admissible and that no crime of aggression existed under international law at the material time.[527] The voice of the Tokyo Tribunal's Justice Pal and limitation principle, then, was provisioned in *International Criminal Tribunal for Rwanda (ICTR)* and *International Criminal Tribunal for the Former Yugoslavia (ICTY)*. However, the decisions of ad hoc

[525] *Id.* at ¶ 20.
[526] USA v. Araki Sadao, Judgment of the Hon'ble Mr Justice Pal, 26, 69-153 (Intl. Mil. Trib. for the Far East Apr. 29 1946), *reprinted in* N BOISTER AND R CRYER, DOCUMENTS ON THE TOKYO INTERNATIONAL MILITARY TRIBUNAL: CHARTER, INDICTMENT AND JUDGEMENTS 822, 840–874 (2008).
[527] *Id*.

international tribunals have not been studied for the reason that their origin was retrospective, despite their interpretation.

With the entry into force of the Rome Statute,[528] the international criminal law got firmed code-based approach. The Rome Statute codifies the applicable customary law in statutory definitions (Article 6–8, Rome Statute) and precludes their retroactive application (Articles 11 and 24, Rome Statute). The Rome Statute also explicitly prohibits judges from applying the law by analogy to the detriment of the accused and requires that ambiguities be resolved in favour of the accused (Article 22(2), Rome Statute). These imperatives were highlighted by the ICC at the first occasion in *Lubanga Dyilo* (2007).[529]

The International Court of Justice (I.C.J.) in *Jadhav* (2019)[530] ruled that Pakistan has violated the Article 36 of Vienna Convention by failing to inform India of Mr. Kul Bhusan Jadhav's arrest and detention and not informing him of his right to consular access. This case reflects the limitation principle to be employed by every judiciary of the world. The military court of Pakistan should have abided Article 36. The scope assured by the Article 36 cannot be violated by the mere interpretation of the Pakistani court. However, the Court also clearly restrained itself within the judicial limitations by dismissing India's submission to annul the decisions of the court of a sovereign State.

The decisions of ECtHR in *Krenz* (2001)[531] and *Kokkinakis* (1993)[532] have equally interpreted Article 7 and 14 of the ECHR voicing loudly the legality principle. In the former case, the Court actively deduced that it was not within its jurisdiction to test the legality of the decisions of the national courts of a sovereign State. It can be assessed that the same line of reasoning was provided in the *Jadhav* by the ICC. In *Kokinakis,* the Court explained that the prosecution and conviction of a person under the penal statute must be justified within the scope of the statutory wording.

[528] Rome Statute of the International Criminal Court, *supra* note 277.
[529] *Dyilo*, *supra* note 415, at ¶ 303 (ICC).
[530] *Jadhav*, *supra* note 436 (I.C.J.).
[531] *Krenz, supra* note 460 (ECtHR).
[532] *Kokkinakis, supra* note 282 (ECtHR).

The aspirations of the international courts are much clearer in the decisions of the United Kingdom, USA and India. In UK the conflict between non-retroactivity principle and the functioning of the criminal law as a means of social defence reached its modern apotheosis in *Shaw* (1962).[533] It was echoed in *Rimmington* (2005)[534] where the House of Lords iterated that the courts had no power to create new offences so they had no power to abolish offences. And, in *Jones* (2006)[535] the House of Lords much clearer that statute law is the sole source of new criminal offences and it is for those elected representatives of the country in Parliament, not the executive and not the judge, to decide what conduct should be treated as criminal.

The voice of USA is also the similar as declared in *Connally*[536] where the US Supreme Court clearly presented that the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well- recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.

In *Witlberger*,[537] the US Supreme Court interpreted the law keeping in mind the intentional omission of a term in the law by Congress. The Court refused to extend the scope of the law, holding that no matter the gravity of the act, it cannot be criminalized unless the legislating body criminalizes it. Similarly, in *Freddie*,[538] the Louisiana Supreme Court explained that the courts do not have the power to expand the scope of the terms used in the legal provisions by speculation or analogy.

In India, the Supreme Court held in *Motibhai*[539] that when interpreting penal statutes, the courts should not add new words and strictly interpret the terms provided by the legislature.

[533] *Shaw, supra* note 130 (UKHL).
[534] *Rimmington, supra* note 134 (UKHL).
[535] *Jones, supra* note 137 (UKHL).
[536] *Connally, supra* note 275 (USA).
[537] *Wiltberger, supra* note 502 (USA).
[538] *Daniels, supra* note 505 (USA).
[539] *Patel, supra* note 511 (India).

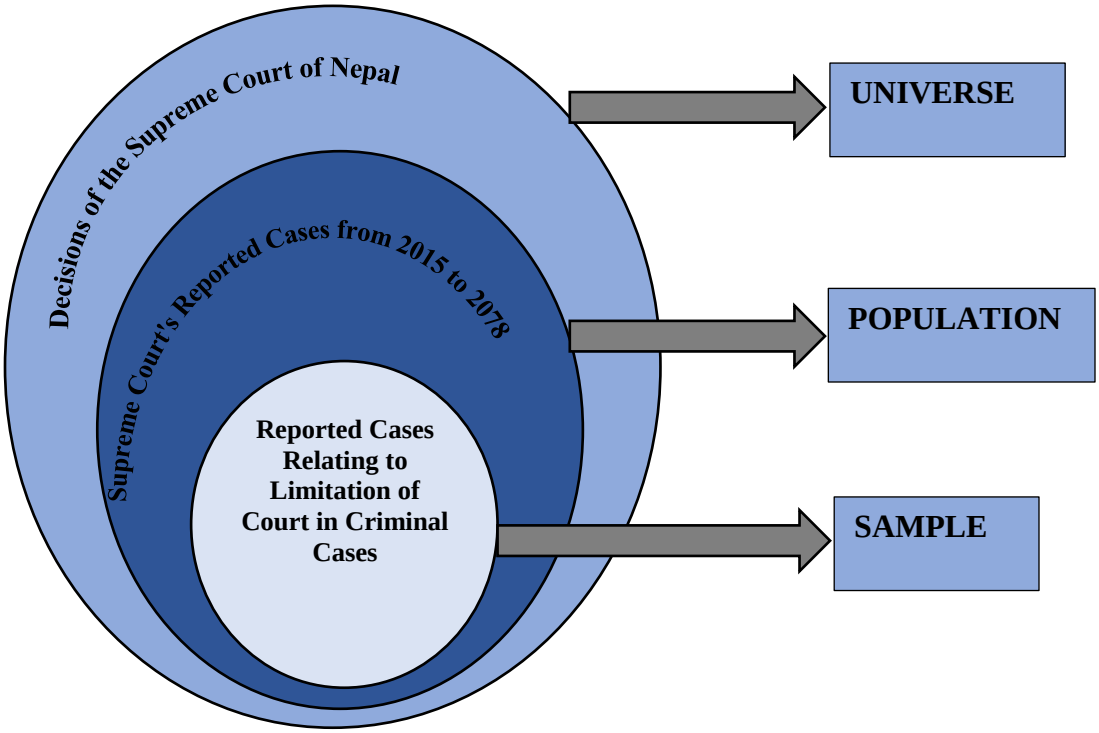
In *Subash Sonavane*,[540] the Court reiterated that words provided in the statute must be strictly construed. Where the statute envisions specific intent by including or excluding certain words, analogy should not be used to infer general intent. Furthemore, in *M. Narsinga*,[541] the Court provided an extensive explanation regarding the discretion of the court to presume certain facts and the limitations of such presumptions. In *Vinod Kumari*,[542] the Supreme Court assimilated the judicial limitation on interpretation as it held that the violation of mandatory requirements without adequate and proper reason by the court would defeat the legislative intent and make a mockery of the criminal justice system.

[540] *Sonvane, supra* note 513 (India).
[541] *Narsinga Rao, supra* note 518 (India).
[542] *Vinod Kumar, supra* note 523 (India).

CHAPTER VI

SUPREME COURT CASES RELATING TO INTERPRETATIONAL LIMITATIONS

6.1 INTRODUCING DATA: UNIVERSE, POPULATION AND SAMPLING



At first, all of the Supreme Court's reported cases from 2015 B.S. to 2078 B.S. (1958 A.D. to 2021 A.D.) have been looked over and only the related cases from them have been congregated into the following three clusters:

1. Cases Relating to Criminal Law
2. Writs Relating to Criminal Law
3. General Cases Relating to Interpretation of Statutes

Second, all these cases are further clustered into the four thematic categories, as below:

Thematic Categories:	
Theme A	Cases Interpreting Limitations of Court
Theme B	Cases Assimilating Limitations of Court
Theme C	Cases Violating Limitations of Court
Theme D	Cases Relating to General Interpretation of Statutes

Third, each thematic category is built by fetching the data from each of the above three clusters, as below:

Total Cases Interpreting Limitations of Court (Total A)	1A + 2A + 3A
Total Cases Assimilating Limitations of Court (Total B)	1B + 2B + 3B
Total Cases Violating Limitations of Court (Total C)	1C + 2C + 3C
Total Cases Relating to General Interpretation of Statutes (Total D)	1D + 2D + 3D

Fourth, the cases under each thematic category have been analysed. Basically, the pin point is drawn at what language the Supreme Court has interpreted the limitation and how it has violated the same, the ratio of interpretation and violation and also the recurrence of judges into it. It is presented in Chapter 7, of which inferential statistics is drawn in Chapter 8.

Fifth, the findings are enumerated in Chapter 9.

6.2 DATA: POPULATION AND SAMPLE

6.2.1 Population Collected and Clustered

The data presented below in Table 6.1: Population, is a numerical representation of the cases decided by the Supreme Court of Nepal reported on the website of Nepal Kanoon Patrika (NKP)[543] from the year 2015 B.S. to 2078 B.S. (1958 A.D. to 2021 A.D.).

They are carefully chosen towards matching the clusters of-

[543] nkp.gov.np

a) Criminal Cases
b) Writs Relating to Criminal Cases
c) General Cases Relating to Interpretation of Statutes

The NKP website 'nkp.gov.np' served as the primary source for the numerical data. The website search tool was utilized to sort the cases. The writs and other cases were short-listed on the basis of their relation to criminal law, criminal justice system, and interpretation of statutes.

In this way, the population of the studies represent as below, presented under table 6.1:

Table 6.1: Population

S.N.	**NKP YEAR**	**POPULATION**	**Related Cases Shortlisted from the Population**		
		Total Reported Cases	Total Reported Criminal Cases (BLACK)	Total Writs Relating to Criminal Cases (RED)	Total General Cases Relating to Interpretation of Statutes (BLUE)
1.	2015	11	04	01	-
2.	2016	75	16	-	-
3.	2017	32	04	04	-
4.	2018	45	07	-	01
5.	2019	21	02	-	-
6.	2020	40	-	02	-
7.	2021	38	04	05	-
8.	2022	40	04	05	-
9.	2023	53	11	04	-
10.	2024	30	02	01	-
11.	2025	64	05	-	-
12.	2026	71	10	03	-

13.	2027	55	13	02	-
14.	2028	73	05	05	-
15.	2029	61	09	-	-
16.	2030	79	04	-	-
17.	2031	84	07	01	-
18.	2032	72	11	02	-
19.	2033	59	05	01	-
20.	2034	110	04	01	01
21.	2035	102	12	01	-
22.	2036	100	12	04	-
23.	2037	115	14	04	-
24.	2038	103	14	01	-
25.	2039	86	03	02	-
26.	2040	252	33	05	-
27.	2041	356	5**2**	-	01
28.	2042	361	61	-	02
29.	2043	369	55	-	-
30.	2044	367	58	-	-
31.	2045	367	72	-	-
32.	2046	348	61	-	01
33.	2047	202	37	06	01
34.	2048	205	30	04	02
35.	2049	234	24	01	-
36.	2050	165	08	-	01
37.	2051	113	09	-	01
38.	2052	195	07	-	-
39.	2053	180	13	01	-
40.	2054	184	30	-	-
41.	2055	162	26	02	02
42.	2056	189	34	-	-

43.	2057	131	26	-	-
44.	2058	85	11	-	-
45.	2059	109	15	-	01
46.	2060	145	29	-	-
47.	2061	170	33	01	02
48.	2062	158	20	01	01
49.	2063	168	37	-	01
50.	2064	110	27	04	03
51.	2065	137	26	08	04
52.	2066	244	41	05	05
53.	2067	242	43	06	02
54.	2068	213	40	01	01
55.	2069	198	33	-	-
56.	2070	161	34	03	01
57.	2071	218	59	02	-
58.	2072	201	56	01	-
59.	2073	220	62	01	01
60.	2074	185	58	03	-
61.	2075	241	73	-	03
62.	2076	250	81	12	01
63.	2077	207	64	32	-
64.	2078	181	69	34	-
Grand Total		***9842***	***1729***	***182***	***39***

6.2.2 Sample Selected and Studied

From the total population of 9842 reported cases of Supreme Court of Nepal from 2015 B.S. to 2078 B.S. (1958 A.D. to 2021 A.D.), total reported criminal cases were 1729, total writs relating to criminal cases were 182 and general cases relating to interpretation of statutes 39. From them, the relevant 104 out of 1729 criminal cases, 39 out of 182 writs relating to criminal cases and 39 out of 39 cases relating to interpretation of statutes have been found

relating to the thematic categories as specified above in 6.1.[544] chronologically presented in number as below:

Table 6.2: Sample Selected

S.N.	NKP Year	Criminal Cases Relating to Interpretation of Statutes (precisely denoted by a symbol Black)	Writs Relating Interpretation of Statutes (precisely denoted by a symbol Red)	General Cases Relating to Interpretation of statutes (precisely denoted by a symbol Blue)
1.	2015	2	1	
2.	2016	1		
3.	2017		2	
4.	2018	1		1
5.	2019	1		
6.	2022	1	3	
7.	2026		2	
8.	2027		2	
9.	2028	1	2	
10.	2030	1		
11.	2031		1	

[544] (i) Theme A: Cases Interpreting Limitations of Court, (ii) Theme B: Cases Assimilating Limitations of Court, (iii) Theme C: Cases Violating Limitations of Court, and (iv) Theme D: Other Cases Relating to Interpretation of Statutes

12.	2032	1	1	
13.	2034		1	1
14.	2035	3		
15.	2036	1		
16.	2038	1		
17.	2040		1	
18.	2041	1		1
19.	2042			2
20.	2044	1		
21.	2045	1		
22.	2046	1		1
23.	2047	1	1	1
24.	2048		1	2
25.	2049	1	1	
26.	2050	1		1
27.	2051			1
28.	2052	1		
29.	2054	1		
30.	2055	1		2

31.	2056	1		
32.	2057	2		
33.	2059	1		1
34.	2061	1	1	2
35.	2062	4	1	1
36.	2063	5		1
37.	2064	3	1	3
38.	2065	1	4	4
39.	2066	3	3	5
40.	2067	1	3	2
41.	2068	3		1
42.	2069	7		
43.	2070	1	1	1
44.	2071	2	1	
45.	2072	1		
46.	2073	10	1	1
47.	2074	8	2	
48.	2075	7		3
49.	2076	6		1

50.	2077	7	2	
51.	2078	6	2	
Total		***104***	***41***	***39***

Among the above 104 criminal cases, 41 writs relating to criminal law and other 39 general cases relating to interpretation of statutes; the ratio of them into thematic distribution was found as below:

Table 6.3: Thematic Data

Subject/Themes:	Cases Interpreting Limitations of Court (Theme A)	Cases Assimilating Limitations of Court (Theme B)	Cases Violating Limitations of Court (Theme C)	Cases Relating to General Interpretation of Statutes (Theme D)	*Total*	*Remarks*
Criminal Cases Relating to Interpretation of Statutes (Black)	31	37	21	15	104	Case details attached in Appendix-1
Writs Relating Interpretation of Statutes (Red)	11	18	4	8	41	Case details attached in Appendix-2

General Cases Relating to Interpretation of Statutes (Blue)	5	3	1	30	39	Case details attached in Appendix-3
Total	***47***	***58***	***26***	***53***	***184***	

6.3 CASES INTERPRETING LIMITATIONS OF THE COURT

6.3.1 Criminal Cases Interpreting Limitations of the Court

The Supreme Court of Nepal has interpreted the limitations of court in a total of 31 criminal cases. These cases have been presented chronologically with a brief synopsis as below:

1. In the case of *Hem Bahadur Malla Thakuri* (1993),[545] the Division Bench[546] of the Supreme Court held that a person cannot be held guilty of a crime when there is an absence of factual accusation. The Court ruled that "The charge sheet is unable to claim which acts [of the defendant] have malafide intention and how such acts are negligent, there is no proof of malafide intention and negligence nor is there proof for the claim that more quantity [of wood] was made available [to the wood-based industries] than the [wood production] capacity, hence, the accusation of malafide intention and negligence seems not to be based on facts. In the absence of factual accusation, it would be unjust of the court to establish guilt."[547]
2. On matters relating incest in the case of *Ram Prasad Rai* (1995),[548] the Division Bench[549] of the Supreme Court clarified that a person cannot be held guilty through interpretation. The Court explained that "There is no obligation on the general public to have knowledge of printing or publishing errors in subsequent editions of the Muluki Ain, 2020 after the first edition is published. They only have the duty to

[545] HMG v. Hem Bahadur Malla Thakuri (1993) (NKP 2050, Vol. 7, DN. 4767).
[546] Justice Ratna Bahadur Singh and Justice Govinda Bahadur Shrestha.
[547] (1993) NKP 2050, Vol. 7, DN. 4767, at ¶ 223.
[548] Ram Prasad Rai v. Mil Bahadur Rai (1995) (NKP 2052, Vol. 3, DN. 5077).
[549] Justice Kedarnath Upadhayay and Justice Narendra Bahadur Neupane.

abide by and perform their duties as per the existing laws. As such, [the court] can neither interpret the law in a manner which would imply a different law is being applied rather than the Muluki Ain which has been published and circulated for the past 20 years nor can [the court] use such interpretation to convict a person, based on the argument that the provision changed from the initial 'daughter of the daughter of either the elder or younger son of the same grandfather' to 'daughter of the son…', due to the replacement of one word in the subsequent edition of the Muluki Ain."[550]

3. In the case of *Lok Man Singh Karki* (2005),[551] the Division Bench[552] of the Supreme Court determined that the appeal was not filed as per the provision under the special act, the Government Cases Act, which came into force after the Commission for the Investigation of Abuse of Authority Act, where it mandates the filing of appeals through the public prosecutor in cases where the HMG is the plaintiff.[553] The Court held that interpretation that would affect the provision of the Government Cases Act would not be justifiable.[554]
4. In the case of *Kirti Bahadur Chand (alias Dambar Bahadur)* (2002),[555] the Full Bench[556] of the Supreme Court set the precedent that "The rule of statutory interpretation states that provisions of a statute must be construed harmoniously, thus, the law should not be interpreted in a manner which can complicate the procedural aspect or in an inconsistent manner. If the language of the Act is ambiguous, it should not be construed in a manner that adversely affects the legal rights of the parties."[557]
5. In the case of *Uttam Lama* (2004),[558] the Full Bench[559] of the Supreme Court affirmed the limitation of the court to interpret the laws stating that an act can be criminalized only by the substantive law.[560] Furthermore, the Court also explained

[550] (1995) NKP 2052, Vol. 3, DN. 5077, at ¶ 11.
[551] HMG v. Lok Man Singh Karki (1999) (NKP 2056, Vol. 8, DN. 6764).
[552] Justice Mohan Prasad Sharma and Justice Rajendra Raj Nakhwa.
[553] (1999) NKP 2056, Vol. 8, DN. 6764, at ¶ 33.
[554] *Id.*
[555] HMG v. Kirti Bahadur Chand (alias Dambar Bahadur) (2002) (NKP 2059, Vol. 3/4, DN. 7070).
[556] Justice Govinda Bahadur Shrestha, Justice Harish Chandra Upadhayay and Justice Min Bahadur Rayamajhi.
[557] (2002) NKP 2059, Vol. 3/4, DN. 7070, at ¶ 44.
[558] Uttam Lama v. HMG (2004) (NKP 2061, Vol. 9, DN. 7432).
[559] Justice Hari Prasad Sharma, Justice Anup Raj Sharma and Justice Balram K.C.
[560] (2004) NKP 2061, Vol. 9, DN. 7432, at ¶ 26.

the limitation of the legislation, stating that it cannot construct criminal law to be applied retroactively, whether to criminalize an act which was not a crime at the time it happened or to increase the punishment for an act for which the law at the time provided a lower punishment.[561]

6. In the case of *Raju Basnet* (2006),[562] it can be found that the Division Bench[563] of the Supreme Court established the limitation of the court stating that "When deciding a case, the court must render a judgment on whether the accusations can be sustained based on reasoned assessment of the evidences presented. Additionally, the court must refrain from addressing issues not claimed in the charge sheet."[564]
7. In the case of *Kedar Chandra Khanal* (2006),[565] the Division Bench[566] of the Supreme Court explained "if the prosecution has intentionally omitted a party as a defendant and the court [*sua sponte*] makes such a party the defendant to the case employing no. 139 of Court Management, it would be equivalent to the court taking over the jurisdiction of the prosecuting party, which is contrary to the values and norms of judicial process in an adversarial legal system."[567]. Hence, where the prosecuting party is not able to make a person (natural or legal) the defendant to a case, the court cannot itself act in the capacity of the prosecution to hold the person criminally liable.
8. In the case of *Rajendra Maharjan* (2006),[568] the Division Bench[569] of the Supreme Court expressed the court's limitation stating that "The court delivers a judgment confined to the factual and objective evidences presented by the prosecution and the defence. The court cannot go beyond the facts of the case to render justice."[570]
9. In the case of *Yadav Dawadi* (2009),[571] the Division Bench[572] of the Supreme Court held that where the law clearly specifies the time limit [for appeal], the notice of the

[561] *Id.* at ¶ 21.
[562] Raju Basnet v. GoN (2006) (NKP 2063, Vol. 3, DN. 7666).
[563] Justice Anup Raj Sharma and Justice Tahir Ali Ansari.
[564] (2006) NKP 2063, Vol. 3, DN. 7666, at ¶ 23.
[565] HMG v. Kedar Chandra Khanal (2006) (NKP 2063, Vol. 6, DN. 7712).
[566] Justice Kedar Prasad Giri and Justice Gauri Dhakal.
[567] (2006) NKP 2063, Vol. 6, DN. 7712, at ¶ 19.
[568] Rajendra Maharjan v. GoN (2006) (NKP 2063, Vol. 11, DN. 7788).
[569] Justice Anup Raj Sharma and Justice Kalyan Shrestha.
[570] (2006) NKP 2063, Vol. 11, DN. 7788, at ¶ 31.
[571] GoN v. Yadav Dawadi (2009) (NKP 2066, Vol. 6, DN. 8178).
[572] Justice Tahir Ali Ansari and Justice Prakash Osti.

time limit [to file the appeal] sent to the party or the judgment of the court cannot increase or decrease such specific time limit.[573] The court cannot increase or reduce the time limit set by the law as it cannot alter the laws made by the legislator.[574]

10. In the case of *Tara Prasad Devkota* (2009),[575] the Division Bench[576] of the Supreme Court expounded the following precedent: "The legislature defines and determines what act constitutes a crime. The legislature also determines the punishment for the crime and whether or not the object or vehicle used in the commission of the crime would be confiscated. In criminal justice system, the court applies such legal provisions accordingly. The court cannot impose a punishment not provided by the law; thus, where the court must punish and confiscate the vehicle to commit the crime [smuggling forest products] as per the law, it would be contrary to the provision confiscation used under Section 66 of the Forest Act, 2049 (1992) to misinterpret the law or disregard the legal provision and allow for the vehicle to not be confiscated."[577]
11. In the case of *Yagya Bahadur Thapa* (2012),[578] the Full Bench[579] of the Supreme Court explained that "The court must administer justice based on evidences after the examination and evaluation of these evidences. The court should not create evidence to establish a crime or establish the guilt of the defendant. If the evidences presented cannot confirm the charges against a person beyond a reasonable doubt, the court cannot assume the role of the prosecution or the investigation party to convict a person without evidence."[580]
12. In the case of *Indra Bahadur Nepali* (2012),[581] the Division Bench[582] of the Supreme Court held that "When there is a substantial difference in the application of the legal provisions, the provision should not be interpreted the judges with a subjective

[573] (2009) NKP 2066, Vol. 6, DN. 8178, at ¶ 4.
[574] *Id.* at ¶ 6.
[575] GoN v. Tara Prasad Devkota (2009) (NKP 2066, Vol. 10, DN. 8254).
[576] Justice Rana Bahadur Bom and Justice Aawdesh Kumar Yadav.
[577] (2009) NKP 2066, Vol. 10, DN. 8254, at ¶ 6.
[578] GoN v. Yagya Bahadur Thapa (2012) (NKP 2069, Vol. 2, DN. 8764).
[579] Justice Damodar Prasad Sharma, Justice Aawdesh Kumar Yadav and Justice Girish Chandra Lal.
[580] (2012) NKP 2069, Vol. 2, DN. 8764, at ¶ 14.
[581] GoN v. Indra Bahadur Nepali (2012) (NKP 2069, Vol. 5, DN. 8826).
[582] Justice Damodar Prasad Sharma and Justice Bharat Raj Upreti.

judicial mind but rather in an objective manner after a detailed study of the whole Act to reflect on the intention of the legislative."[583]

13. In the case of *Molhuysen Hendrik Otto* (2012),[584] the Division Bench[585] of the Supreme Court upheld the principle of strict interpretation in criminal law stating that "If an act or omission is not criminalized by the prevailing criminal law, such act or omission cannot be deemed to be an offence by adopting a liberal interpretation [of the criminal law]."[586]. Furthermore, the Court explained the principle of legality asserting that "As the prosecution claim cannot prevail even if doubt or dilemma arise as to whether the prosecuted act is a criminal offence or not [in the purview of the provisions in the related sections], it is legally incompatible to declare an act as a crime where such act is not referred to in the criminal law, or the prevailing law does not criminalize such act."[587]
14. In the case of *Raju Lama* (2014),[588] the Division Bench[589] of the Supreme Court explained that the appeal claims of the GoN asserting that all actors, in an organized crime of narcotic nature, are principal offenders as there are no principal offender and secondary offenders, such claim is contrary to the provision under Section 17 of the Narcotics Control Act, 2033 (1976). If the court were to interpret the law as per such appeal claim, not only would the provision under Section 17 be ineffective, but the intention of the legislature to punish those who conspire, attempt, abet and are accomplice will be obscured. Hence, the Court held that "The court cannot interpret in a manner which would render the intention of the legislature ineffective."[590]
15. In the case of *Durga Karki* (2015),[591] the Division Bench[592] of the Supreme Court clarified that separate laws have criminalized the acts of a person that can cause loss to the banking system and the harm created by acts of person in a person-to-person negotiable transactions and the remedies are also provided in a different manner for

[583] (2012) NKP 2069, Vol. 5, DN. 8826, at ¶ 4.
[584] Molhuysen Hendrik Otto v. GoN (2012) (NKP 2069, Vol. 7, DN. 8860).
[585] Justice Kalyan Shrestha and Justice Gyanendra Bahadur Karki.
[586] (2012) NKP 2069, Vol. 7, DN. 8860, at ¶ 5.
[587] *Id.* at ¶ 6.
[588] GoN v. Raju Lama (2014) (NKP 2071, Vol. 5, DN. 9164).
[589] Justice Sushila Karki and Justice Dr. Bharat Bahadur Karki.
[590] (2014) NKP 2071, Vol. 5, DN. 9164, ¶ 5.
[591] GoN v. Durga Karki (2015) (NKP 2072, Vol. 8, DN. 9452).
[592] Chief Justice Kalyan Shrestha and Justice Om Prakash Mishra.

each of these acts, thus, where the right procedure of law has not been followed, the court cannot justly conclude the case.[593] Hence, the Court upheld that "The duty of the court is limited to discerning whether the claims have been filed in the manner specified in the prevailing law. The court cannot uphold a claim made in a wrongful way."[594]

16. In the case of *Pushpa Tamang* (2016),[595] the Division Bench[596] of the Supreme Court declared that the matter of jurisdiction is a fundamental issue in any case, thus, even if the parties do not contest to the matter of jurisdiction, the judicial body has the right to refuse hearing of a case outside of their jurisdiction.[597] The Court affirmed that "The court must exercise its judicial power within the limits conferred by the Constitution and the law. The [judicial authority] can deliver remedy only within the jurisdiction conferred upon it. The act of utilizing the authority not conferred upon or utilizing more authority than conferred by the law ensues the violation of jurisdiction and the decisions and orders made so will be rendered null and void. If the [judiciary] crosses its jurisdictional limitation in judicial processes, it will create judicial anarchy whereby it will lead to confusion regarding justice and significance of arbitrary actions [by courts]."[598]
17. In the case of *Prashu Ram Pokhrel* (2017),[599] the Division Bench[600] of the Supreme Court affirmed the limitation of the role of the courts stating that "As the legal system of Nepal is based on an adversarial model where, unless the law specifies otherwise, the burden of proof falls on the prosecuting party and the role of the court is limited to administering fair justice, thus, if the court assumes the role of the party to the case and shows priority for evidence collection then the prosecuting party will be exempted from the burden of proving the guilt [of the defendant]."[601]

[593] (2015) NKP 2072, Vol. 8, DN. 9452, at ¶ 12.
[594] *Id.* at ¶ 15.
[595] GoN v. Pushpa Tamang (2016) (NKP 2073, Vol. 7, DN. 9643).
[596] Justice Bishambhar Prasad Shrestha and Justice Sapana Pradhan Malla.
[597] (2016) NKP 2073, Vol. 7, DN. 9643, at ¶ 2.
[598] *Id.*
[599] GoN v. Prashu Ram Pokhrel (2017) (NKP 2074, Vol. 1, DN. 9750).
[600] Justice Kedar Prasad Chalise and Justice Bishambhar Prasad Shrestha.
[601] (2017) NKP 2074, Vol. 1, DN. 9750, at ¶ 5.

18. In the case of *Mahendra Gautam* (2017),[602] the Division Bench[603] of the Supreme Court explained, on the issue of illicit enrichment, that "When the prosecuting party is unable to initiate a claim with certainty of the defendant's expenditure amount, and the defendant is unable to claim with certainty their livelihood expenditure amount that is covered by agricultural income, in such a context, the court cannot by itself investigate into the facts during the defendant's check period and draw new conclusion in an adversarial trial system. This does not fall within the scope of the court functions in criminal law."[604].
19. In the case of *Rameshwor Shrestha* (2017),[605] the Division Bench[606] of the Supreme Court held that "Only the legislature has the authority to determine what human actions is to be criminalize and what punishment is to be meted out in the circumstances such actions occur. The convicted person should only bear the punishment clearly prescribed for that criminalized act. Where the legislature has not prescribed the punishment for the crime, the judge cannot arbitrarily interpret the law in a manner unfavourable to the convicted person and sentence the convicted person with additional punishment of another related crime."[607]
20. In the case of *Chatra Bahadur Bhandari* (2017),[608] the Division Bench[609] of the Supreme Court held that since "The legislature determines, through statute, which acts are to be criminalized, what punishment is to be imposed for what crimes as well as the time limit within which the complaint or charge sheet must be filed for each crime."[610], the statute of limitation set by the law cannot be changed or interpreted as unlimited or unrestricted, by use of argument or reason, contrary to the intention of the legislature.

[602] GoN v. Mahendra Gautam (2017) (NKP 2074, Vol. 1, DN. 9751).
[603] Justice Hari Krishna Karki and Justice Bishambhar Prasad Shrestha.
[604] (2017) NKP 2074, Vol. 1, DN. 9751, at ¶ 21.
[605] Rameshwor Shrestha v. GoN (2017) (NKP 2074, Vol. 2, DN. 9765).
[606] Justice Devendra Gopal Shrestha and Justice Sapana Pradhan Malla.
[607] (2017) NKP 2074, Vol. 2, DN. 9765, at ¶ 10.
[608] GoN v. Chatra Bahadur Bhandari (2017) (NKP 2074, Vol. 5, DN. 9810).
[609] Justice Devendra Gopal Shrestha and Justice Purushottam Bhandari.
[610] (2017) NKP 2074, Vol. 5, DN. 9810, at ¶ 6.

21. In the case of *Trilok Kumar Yadav* (2018),[611] the Division Bench[612] of the Supreme Court reaffirmed that "The judiciary does not legislate, amend or repeal laws. The court cannot interpret the laws in a manner which nullifies the clear provisions of the statute. When applying the laws, the court must assimilate the legislative intent, sentiment and purpose and interpret the laws."[613] and the held that "Decisions made in the name of purpose arbitrarily by violating the limitations set by the law cannot be accepted as justified. Such actions lead to increases confusion and uncertainty regarding judicial process and judicial anarchy. Where the law commands for mandatory sentence of both imprisonment and fine as punishment, the purpose of the justice will be defeated by sentencing [convicted person] with only imprisonment, proclaiming the purpose of justice will be served."[614]
22. In the case of *Thag Bahadur Sunar* (2018),[615] the Division Bench[616] of the Supreme Court explained that "It is customary as well as the rule of law for the accused to be punished according to the prevailing laws. After the person is convicted of a crime, it is contrary to the principles of justice to determine the sentence arbitrarily, instead of sentencing according to the prevailing legal provision."[617]
23. In the case of *Kul Bahadur Karki* (2019),[618] the Division Bench[619] of the Supreme Court affirmed that "In the case where there are two laws that criminalize an offence and provide different punishment, determining under which law to seek remedy becomes the subject of discretion of the plaintiff and the prosecutor. Where there are two parallel legal paths, the court cannot state that which path the plaintiff should choose."[620]
24. In the case of *Bishnu Kumar Yakhkha Rai* (2019),[621] the Division Bench[622] of the Supreme Court affirmed that "Based on facts and evidences of fragmented and

[611] GoN v. Trilok Kumar Yadav (2018) (NKP 2075, Vol. 7, DN. 10060).
[612] Justice Ishwor Prasad Khatiwada and Justice Dr. Ananda Mohan Bhattarai.
[613] (2018) NKP 2075, Vol. 7, DN. 10060, at ¶ 5.
[614] *Id*.
[615] GoN v. Thag Bahadur Sunar (2018) (NKP 2075, Vol. 9, DN. 10090).
[616] Justice Dipak Kumar Karki and Justice Tanka Bahadur Moktan.
[617] (2018) NKP 2075, Vol. 9, DN. 10090, at ¶ 5.
[618] Kul Bahadur Karki v. GoN (2019) (NKP 2076, Vol. 4, DN. 10244).
[619] Justice Dipak Kumar Karki and Justice Hari Prasad Phuyal.
[620] (2019) NKP 2076, Vol. 4, DN. 10244, at ¶ 8.
[621] GoN v. Bishnu Kumar Yakhkha Rai (2019) (NKP 2076, Vol. 4, DN. 10246).
[622] Justice Mira Khadka and Justice Tej Bahadur K.C.

divided events and incidents, the court cannot punish anyone on suspicion by forcibly connecting evidences against the principles of evidence law in criminal law and justice."[623]

25. In the case of *Raju Lal Rajbhandari* (2020),[624] the Division Bench[625] of the Supreme Court explained that "If there is an absence of consistency between the act done by a person and the nature of the act defined as crime by statute, it would be contrary to the prevailing principles of criminal law to hold the person criminally liable of such act."[626]
26. In the case of *Anjan K.C.* (2020),[627] the Division Bench[628] of the Supreme Court held that "Unless the law has clearly defined and considered an act as a crime and unless it is proven that such a law has been violated, a legal provision made for a different purpose cannot be interpreted in an expansive manner to establish a crime (*nullum crime sine lege*) and to punish (*nullum poena sine lege*). The human rights law follows a liberal and inclusive interpretation principle and if there is a question of whether there is a right or not, the court interprets in the direction to establish rights as much as possible to protect human rights. Whereas, since criminal law curtails personal liberty and its arbitrary use fosters tyranny, it should be interpreted strictly; When an issue arises whether the legal provision [of criminal law] is applicable or not, the interpretation should be directed towards inapplicability. Such an interpretation would be compatible with the concept of democracy, rule of law and limited government."[629]
27. In the case of *Keshav Giri* (2020),[630] the Division Bench[631] of the Supreme Court explained that "Where the law under the Chapter of Incest [Muluki Ain] does not explicitly state that [the relation between] the daughter of the maternal uncle and the son of the paternal aunt is incest, and where the defendant has already been convicted and sentenced for the crime of rape, it would be incompatible with the

[623] (2019) NKP 2076, Vol. 4, DN. 10246, at ¶ 16.
[624] GoN v. Raju Lal Rajbhandari (2020) (NKP 2077, Vol. 5, DN. 10490).
[625] Justice Sharada Prasad Ghimire and Justice Tej Bahadur K.C.
[626] (2020) NKP 2077, Vol. 5, DN. 10490, at ¶ 4.
[627] GoN v. Anjan K.C. (2020) (NKP 2077, Vol. 6, DN. 10523).
[628] Justice Dr. Ananda Bhattarai and Justice Bom Kumar Shrestha.
[629] (2020) NKP 2077, Vol. 6, DN. 10523, at ¶ 11.
[630] GoN v. Keshav Giri (2020) (NKP 2077, Vol. 8, DN. 10565).
[631] Justice Prakash Man Singh Raut and Justice Hari Prasad Phuyal.

prevailing laws and general principles of criminal justice to convict and punish the defendant for the crime of incest based on the chargesheet filed under the provision that is not applicable [against the defendant], on the assumption that the law might have envisioned such interpretation."[632]

28. In the case of *Muna Magar Meche* (2020),[633] the Division Bench[634] of the Supreme Court held that it is only justified to hold each person criminally liable to the extent of their crime and involvement, expounding the principle that "In criminal cases, imposing heavier sentence through forceful interpretation is contrary to the spirit of criminal justice."[635].
29. In the case of *Bashu Chaudhary* (2021),[636] the Division Bench[637] of the Supreme Court held that "The court cannot punish anyone by forcibly adding evidences."[638] by which the Court confirmed that it could not go beyond the principles of evidence in criminal law and justice.
30. In the case of *Rajesh Tamang* (2021),[639] the Full Bench[640] of the Supreme Court affirmed that "The court does not interpret the clear provisions of the law in a manner which renders it ineffective or gives the law another meaning; the court only interprets the law in a manner by which the intent and purpose of the legislature come to life."[641]
31. In the case of *Amit Kumal* (2021),[642] the Division Bench[643] of the Supreme Court held that "The claim [of plea-bargain] must be presented by the public prosecutor in the chargesheet. Where the chargesheet does not submit the claim as per the provisions under the MCC and MCPC, the court cannot rely on presumption to grant exemption or reduction of sentence."[644]. Thus, the Court ruled that the exemptions

[632] (2020) NKP 2077, Vol. 8, DN. 10565, at ¶ 4.
[633] GoN v. Muna Magar Meche (2020) (NKP 2077, Vol. 10, DN. 10596).
[634] Justice Tej Bahadur K.C. and Justice Purushottam Bhandari.
[635] (2020) NKP 2077, Vol. 10, DN. 10596, at ¶ 7.
[636] GoN v. Bashu Chaudhary (2021) (NKP 2078, Vol. 9, DN. 10736).
[637] Justice Mira Khadka and Justice Kumar Regmi.
[638] (2021) NKP 2078, Vol. 9, DN. 10736, at ¶ 13.
[639] GoN v. Rajesh Tamang (2021) (NKP 2078, Vol. 11, DN. 10770).
[640] Justice Mira Khadka, Justice Prakash Man Singh Raut and Justice Hari Prasad Phuyal.
[641] (2021) NKP 2078, Vol. 11, DN. 10770, at ¶ 13.
[642] Amit Kumal v. GoN (2021) (NKP 2078, Vol. 11, DN. 10774).
[643] Justice Mira Khadka and Justice Hari Prasad Phuyal.
[644] (2021) NKP 2078, Vol. 11, DN. 10774, at ¶ 5.

under plea-bargaining can be granted only if it is a claim is submitted as per Section 47 of the MCC.

6.3.2 Writs Interpreting Limitations of the Court in Criminal Cases

The Supreme Court has interpreted the limitations of court in criminal cases in a total of 11 writs. These cases have been presented in a chronological manner with a brief synopsis as below:

1. In the case of *Trijugi Narayan Mishra* (2026),[645] the Division Bench[646] of the Supreme Court has propounded that the courts must administer justice within the limits of the authority provided by the law. In this case, the Court read the provisions under Section 19(2) of the Prevention of Corruption Act, 2017 (1960) and No. 118 (20) of the Muluki Ain, Chapter on Court Management, and ruled the detention of the applicant as illegal as the proceeding under Section 19(2) of the Act does not provide for detention for failure to pay the bail amount. It stated that "The provision under No. 118 of the Muluki Ain, Chapter on Court Management does not, in the instance where it is suspected the person would abscond during investigation and [the prosecuting party] would fail to present the person during the filing of the case, empower the court to order bail and, on failure to pay the bail, detain the person … Since the detention of a person for failure to pay the bail is illegal, the Court issues the writ of habeas corpus for the release of the petitioner Trijugi Narayan Mishra."[647]
2. In the case of *Sharmila Parajuli* (2004),[648] the Division Bench[649] of the Supreme Court held that sexual abuse has been defined in detail through PIL. It includes acts of physical abuse, verbal abuse, sexual harassment, and sexual harassment in the workplace. The Court, however, refused to entertain the writ for mandamus to criminalize these acts stating that "The Court does not legislate the law but

[645] Choti Chauwain on the behalf of Trijugi Narayan Mishra v. Zonal Officer, Lumbini Zonal Office (1969) (NKP 2026, Vol. 1, DN. 513).
[646] Justice Nayan Bahadur Khatri Chhetri and Justice Dhanendra Bahadur Singh.
[647] (1969) NKP 2026, Vol. 1, DN. 513, at ¶ 7.
[648] Sharmila Parajuli v. HMG, OPMCM (2004) (NKP 2061, Vol. 10, DN. 7449).
[649] Justice Dilip Kumar Poudel and Justice Khilraj Regmi.

interprets it."[650]. Instead, the Court issued a directive order in the name of the defendants to make necessary arrangements and take initiatives for the enactment of appropriate laws.[651]

3. In the case of *Adv. Ratna Bahadur Bagchand* (2005), [652] the Special Bench[653] of the Supreme Court explained the limitation of court in criminal law in detail. This is a landmark decision from the Supreme Court on the limitation of interpretation in criminal law.

   In this case, the writ petitioner claimed that the penalty for the offence of discriminatory treatment based on untouchability is inadequate thus, the petitioner claimed for an order of mandamus to increase such penalty. The Court affirmed that it is not the matter of the court to criminalize an act or define the penalty for such acts stating that "The acts of people to be criminalized and the amount of punishment for specific crime is subject to changes as per the time and circumstances of the society. It is not only contrary to legal jurisprudence but also a violation of the Constitutional separation of power and check and balance for the Court, by means of interpretation, to declare new offences and to decide whether the punishment provided by the legislature is adequate or not. Until the Parliament enacts a law relating to the abolition of untouchability, the court cannot issue an order relating to the crime of untouchability and cannot direct the legislature to extend of the punishment."[654] Furthermore, the Court ruled that "The court cannot direct the legislature regarding the nature of the punishment or the extent of the punishment for the offence of discriminatory treatment based on untouchability."[655]

4. In the case of *Adv. Om Prakash Aryal* (2008),[656] the Special Bench[657] of the Supreme Court held that "The court does not have the authority to declare or not to declare an act a crime or amend the law to increase or decrease the existing sentence

[650] (2004) NKP 2061, Vol. 10, DN. 7449, at ¶ 32.
[651] *Id.* at ¶ 33.
[652] Adv. Ratna Bahadur Bagchand v. HMG, OPMCM (2005) (NKP 2062, Vol. 2, DN. 7491).
[653] Justice Min Bahadur Rayamajhi, Justice Khilraj Regmi and Justice Balram K.C.
[654] (2005) NKP 2062, Vol. 2, DN. 7491, at ¶ 17.
[655] *Id*. at ¶ 20.
[656] Adv. Om Prakash Aryal v. GoN, OPMCM (2008) (NKP 2065, Vol. 9, DN. 8009).
[657] Justice Anupraj Sharma, Justice Balram K.C. and Justice Ram Kumar Prasad Shah.

for the crime."[658]. The Court declared that doing so would be a violation of the principle of separation of powers.[659]

In this case, the writ petition stated that since Nepal is a secular state, the provision for death penalty for the crime of cow slaughter under No. 4 of Muluki Ain, Chapter on Quadrupted is arbitrary and in violation of Article 12(1) of the Constitution and [the provision] refutes the secularism of Nepal as it provides severe penalties to absolutely prohibit the act of cow slaughter against the customs of certain ethnic or religious community. The Court held that since "It is a subject of the discretion of the legislature as to what punishment is to be provided for which offence, the legislature can determine the punishment on basis of the nature of the offence and increase or reduce the punishment in relative to the time."[660], the court does not have a standing on such matters.

5. In the case of *Adv. Achyut Prasad Kharel* (2009),[661] the Special Bench[662] of the Supreme Court can be found to have declared that the Court did not have the standing to challenge the legislative standard for declaration of punishment of specific crimes, based on argument that the level of punishment statutorily prescribed for violence against women is in violation of the Constitution. The Court reaffirmed its limitations in interpreting the law explaining that "The court cannot interpret the legal provisions as discriminatory or provisions that encourage violence against women simply on the ground that a lesser degree of punishment is prescribed for such offences."[663] and further stated that such matters of determination of punishment fall within the domain of legislative wisdom.[664]
6. In the case of *Aarati Shrestha* (2009),[665] the Special Bench[666] of the Supreme Court attempted to interpret the issue of determination of punishment in a different way,

[658] (2008) NKP 2065, Vol. 9, DN. 8009, at ¶ 5.
[659] *Id.*
[660] *Id.*
[661] Adv. Achyut Prasad Kharel v. Ministry of Law, Justice and Parliamentary Affairs, Kathmandu (2009) (NKP 2066, Vol. 5, DN. 8138).
[662] Chief Justice Min Bahadur Rayamjhi, Justice Anup Raj Sharma and Justice Aawdesh Kumar Yadav.
[663] (2009) NKP 2066, Vol. 5, DN. 8138, at ¶ 4.
[664] *Id.* at ¶ 5.
[665] Aarati Shrestha v. GoN, OPMCM (2009) (NKP 2066, Vol. 9, DN. 8215).
[666] Justice Anup Raj Sharma, Justice Rana Bahadur Bom and Justice Aawdesh Kumar Yadav.

however, due to the court's limitation, it could not do so. In this case, the writ petition was filed to declare as unconstitutional and void the provisions under No. 118 of Muluki Ain, Chapter on Court Management and No. 38, 53 and 11(a) etc. of the Chapter on Punishment that provide for imprisonment for failure to pay amount set by the court, for such provisions are discriminatory based on economic status. The Court issued directive order to find ways of improving these provisions as the Court understood its limitations to comprehend the impact of the vacuum that would ensue if these provisions of punishment would be removed and what are the alternatives for such punishments. The Court added, explaining criminal law, "The court is limited to hearing charges brough before it in accordance with the existing criminal law, to determining sentences for those convicted with evidence in accordance with the prevailing penal code, and to examining the constitutionality of such laws via judicial review."[667]. Hence, explaining the limitations of the court, it held that "It would not be reasonable to issue an order according to the petition."[668]

7. In the case of *Adv. Jyoti Poudel* (2009),[669] the Division Bench[670] of the Supreme Court, while realizing the need for law reform as per the writ, has accepted that the Court did not have authority to bring a person under the scope of criminal law or reduce or maximize the punishment. The Court opined that "The matter of criminalizing the act of acid attack or increasing the punishment is the discretionary matter of legislative policy and it is not appropriate for the court to intervene in such matters though extraordinary jurisdiction."[671]
8. In the case of *Adv. Surya Bahadur Pandey* (2014),[672] the Special Bench[673] of the Supreme Court interpreted the legislative provisions regarding the burden of proof in theft cases. "The burden of proof to be placed on the plaintiff or the defendant is to be determined on the basis of the subject matter and since it is a matter of

[667] (2009) NKP 2066, Vol. 9, DN. 8215, at ¶ 5.
[668] *Id*. at ¶ 36.
[669] Adv. Jyoti Poudel v. GoN, OPMCM (2009) (NKP 2066, Vol. 11, DN. 8282).
[670] Justice Balram K.C. and Justice Aawdesh Kumar Yadav.
[671] (2009) NKP 2066, Vol. 11, DN. 8282, at ¶ 20.
[672] Adv. Surya Bahadur Pandey v. GoN, OPMCM (2014) (NKP 2071, Vol. 11, DN. 9276).
[673] Justice Ram Kumar Prasad Shah, Justice Grish Chandra Lal and Justice Gyanendra Bahadur Karki.

legislative policy, the court cannot interfere with it unless there is a clear violation of the Constitution."[674]

9. In the case of *Shashikanta Tiwari* (2017),[675], the Larger Full Bench[676] of Supreme Court, when interpreting the facility provided under No.194 of Muluki Ain, Chapter on Court Management, it explained the limitations of the court in criminal law as well. The Court held that "When the legislature legislates legal facility to the parties of the case, the court cannot limit such facilities by misinterpreting the sentence or phrase. Since it is also a general rule of interpretation, it is not appropriate for the court to interpret the legal provisions relying only on a term."[677]
10. In the case of *Lekhnath Prasad Yadav (alias Chulwa)* (2017),[678] the Division Bench[679] of the Supreme Court explained that "It is the legislative authority to determine the punishment in relation to the crime, the court cannot interfere in it."[680]. In the present case, the Court issued the order of habeas corpus, holding that where the defendant has already served the maximum sentence for a crime, it would be unlawful to impose a sentence in excess of the maximum term of imprisonment for the crime through the right of appeal in a manner by which it would be unjust towards the petitioner and the right of appeal would lose its purpose.[681]
11. In the case of *Adv. Tikaram Bhattarai, Rapporteur: Supreme Court Writ Division* (2020),[682], the Larger Full Bench[683] ruled that the lockdown period required due to the extraordinary circumstances, need and relevance presented by the COVID-19 pandemic would be considered as zero period in relation to statute of limitation and

[674] (2014) NKP 2071, Vol. 11, DN. 9276, at ¶ 3.
[675] Shashikanta Tiwari v. Armed Police Police, Base Camp Pipara (2017) (NKP 2074, Vol. 7, DN. 9834).
[676] Chief Justice Gopal Parajuli, Justice Dipak Raj Joshi, Justice Om Prakash Mishra, Justice Cholendra Shamsher Ja.Ba. Ra., Justice Dipak Kumar Karki, Justice Kedar Prasad Chalise and Justice Sharada Prasad Ghimire.
[677] (2017) NKP 2074, Vol. 7, DN. 9834, at ¶ 13.
[678] Lekhnath Prasad Yadav (alias Chulwa) v. District Police Office, Siraha (2017) (NKP 2074, Vol. 12, DN. 9905).
[679] Justice Gopal Parajuli and Justice Cholendra Shamsher Ja.Ba.Ra.
[680] (2017) NKP 2074, Vol. 12, DN. 9905, at ¶ 2.
[681] *Id.* at ¶ 6.
[682] Adv. Tikaram Bhattarai, Rapporteur: Supreme Court Writ Division (2020) (NKP 2077, Vol. 2, DN. 10429).
[683] Chief Justice Cholendra Shamsher Ja.Ba.Ra., Justice Dipak Kumar Karki, Justice Mira Khadka, Justice Hari Krishna Karki, Justice Bishambhar Prasad Shrestha, Justice Ishwor Prasad Khatiwada, Justice Dr. Ananda Mohan Bhattarai, Justice Anil Kumar Sinha, Justice Prakash Man Singh Raut, Justice Sapana Pradhan Malla, Justice Tej Bahadur K.C., Justice Purushottam Bhandari, Justice Bom Kumar Shrestha, Justice Tanka Bahadur Moktan, Justice Prakash Kumar Dhungana, Justice Sushmalata Mathema, Justice Kumar Regmi, Justice Hari Prasad Phuyal and Justice Dr. Manoj Kumar Sharma.

held that the statute of limitation during the lockdown period would not be lapsed.[684] Thus, even when the Court exercised *suo motu* judicial activism to decide on a wider concept (of statute of limitation), it explained the wider concept of a competent judiciary "without contradicting the provisions of the Constitution."[685]

6.3.3 General Cases Interpreting Limitations of the Court in Criminal Cases

The Supreme Court has interpreted the limitations of court in criminal cases in a total of 5 general cases. These cases have been presented in a chronological manner with a brief synopsis as below:

1. In the case of *Kanchha Prajapati* (1991),[686] the Seven-membered Larger Full Bench[687] of the Supreme Court declared that the term 'sons' in Sub-section (1) of Section 26 of the Land Act, 2021 (1964) also include adopted sons and that the Act does not curtail such interpretation.[688] Additionally, the Court held that "If the meaning or interpretation of the terms used in the laws of Nepal is provided in the Interpretation of Laws Act, 2010 (1953), the terms must have the meaning or interpretation as per the Act. According to the principles of interpretation, if the law is clear and there is no dilemma, then the law should be applied in its ordinary meaning, [the court] should not attempt to forcibly interpreted [the law] to give unusual or different meaning. When interpreting the term 'son' in Section 26(1) of the Land Reform Act, there is no reason or justification to interpret the term in a different manner where the Interpretation of Laws Act provides for its ordinary meaning."[689]
2. In the case of *Indra Bahadur Gurung* (1993),[690] while explaining the limitation of the court in criminal cases, the Supreme Court remarked on the principle of *causa*

[684] (2020) NKP 2077, Vol. 2, DN. 10429, at ¶ 25(a).
[685] *Id.* at ¶ 17.
[686] Kanchha Prajapati v. Nutchhe Kumar Prajapati (1991) (NKP 2048, Vol. 9/10, DN. 4350).
[687] Chief Justice Bishwanath Upaddhya, Justice Trilok Pratap Rana, Justice Gajendra Kesari Bastola, Justice Om Bhakta Shrestha, Justice Mohan Prasad Sharma, Justice Keshav Prasad Upaddhaya and Justice Kedarnath Upaddhya.
[688] (1991) NKP 2048, Vol. 9/10, DN. 4350, at ¶ 16.
[689] *Id.* at ¶ 13.
[690] Indra Bahadur Gurung v. Revenue Tribunal, Kathmandu (1993) (NKP 2050(a), Vol. 2, DN. 4697).

omissus for the first time.[691] The Division Bench[692] of the Court spoke loud and clear about the limitations of the courts in interpretating the criminal law. The Court held that the court does not legislate the law, amends the law and repeals the law and it is not the function of the court to render the law ineffective but to abide the law.[693] Anything supposed as missing in the law cannot be filled or refined by the law.[694] And when the issue is of interpreting penal law arise, it should be strictly construed as the law is.[695]

3. In the case of *Lok Bhakta Shamsher Ja. Ba. Ra.* (1998),[696] the Special Bench[697] of the Supreme Court held that "When the law is interpreted emotionally, it is not an interpretation of the law but rather amendment or creation of a new law, which does not fall within the ambit of the court's authority."[698] Here, No. 18 of Muluki Ain, Chapter on Forgery provides that a claim cannot be entertained if it is not files within 2 years of the occurrence of the act of forgery. However, in this case, the forged document was dated 2032/05/01 (1975) but the plaint was filed about 6 years later on 2038/10/06 (1981).[699] The court does not have the authority to interpret the statute of limitation where the law explicitly states the limitation starts from the date of action itself.[700] In this regards, the judgment reads "It is the duty of the legislature to amend or modify the law when the statute or provisions of law is insufficient, inadequate, erroneous and cannot achieve the purpose of the statute. When the coherent laws or statute constructed by the legislature are interpreted emotionally based on social awareness or behavioural dynamics between the people and other such logic, it is not an interpretation of the law but rather amendment or creation of a new law, which does not fall within the ambit of the court's authority."[701]

---

[691] *Id*. at ¶ 2.
[692] Justice Gajendra Keshari Bastola and Justice Mohan Prasad Sharma.
[693] (1993) NKP 2050(A), Vol. 2, DN. 4697, at ¶ 1.
[694] *Id.* at ¶ 4.
[695] *Id.* at ¶ 2.
[696] Lok Bhakta Shamsher Ja. Ba. Ra. v. Ramadevi Rajbhandari (1998) (NKP 2055, Vol. 11, DN. 6625).
[697] Justice Krishna Kumar Verma, Justice Narendra Bahadur Neupane and Justice Bhairav Prasad Lamsal.
[698] (1998) NKP 2055, Vol. 11, DN. 6625, at ¶ 26.
[699] The Bagmati Regional Court had upheld the initial decision that the plaint was not filed within the statute of limitation which was overruled by the Division Bench of the Supreme Court. Upon judicial revision the special bench of the Court upheld the decision of the regional court stating that the decision of the Division Bench was not consistent with the interpretation of the law.
[700] (1998) NKP 2055, Vol. 11, DN. 6625, at ¶ 24.
[701] *Id*. at ¶ 26.

4. In the case of *Hari Prasad Kharel* (2005),[702] the Full Bench[703] of the Supreme Court has explained that "When [the courts] add a word that does not exist in the law, it is not the interpretation of the law rather an amendment of the law."[704] In this case, the Court affirmed that since the provision on the statute of limitation under no. 18 of the Muluki Ain, Chapter on Forgery was amended from 'the date of occurrence' to 'the date of knowledge' only in 2058 B.S. (2001), in forgery cases prior to 2058 B.S. (2001) the courts cannot replace the provision of 'the date of occurrence' with 'the date of knowledge'.[705]
5. In the case of *Rabindra Shrestha* (2016),[706] the Special Bench[707] of the Supreme Court explained that the laws made by the legislature are generally presumed to be in compliance with the Constitution. The Court, clarifying that the claim that the law is in conflict with the Constitution must be clear and easily understood by a layperson, held that "If the layperson cannot understand that the law in in conflict with the Constitution, the court cannot forcefully interpret the law to in conflict [with the Constitution]. The court does not function to justify or draft the laws and opine on how the laws would be better."[708]. It added that "The Court has the authority to void the law, but not to amend the law. The court cannot draft laws and it is not established for [legislative] purpose. The court must uphold the rule of law; thus, it cannot go beyond the limits of separation of power."[709]

6.4 CASES ASSIMILATING LIMITATIONS OF COURT

6.4.1 Criminal Cases Assimilating Limitations of the Court

Among the numerous criminal cases where the Court assimilated limitations in the interpretation of penal statutes, a major 37 cases have been selected which serve as

[702] Hari Prasad Kharel v. Bhadra Prasad Kharel (2005) (NKP 2062, Vol. 1, DN. 7480).
[703] Justice Anupraj Sharma, Justice Arjun Prasad Singh and Justice Rajendra Kumar Bhandari.
[704] (2005) NKP 2062, Vol. 1, DN. 7480, at ¶ 24.
[705] *Id.* at ¶ 25.
[706] Rabindra Shrestha v. GoN, Ministry of Health and Population (2016) (NKP 2073, Vol. 2, DN. 9538).
[707] Justice Sushila Karki, Justice Govind Kumar Upadhyaya and Justice Jagdish Sharma Paudel.
[708] (2016) NKP 2073, Vol. 2, DN. 9538, at ¶ 12.
[709] *Id.* at ¶ 15.

precedents where the court's limitations in interpreting criminal laws have been assimilated. These cases have been presented in a chronological manner with a brief synopsis as below:

1. In the case of *Jay Prasad* (1958),[710] the Full Bench[711] of Supreme Court held that "Since the law does not allow for mediation in cases of grievous hurt, the law should be executed accordingly."[712]
2. In the case of *Padam Sundar* (1958),[713] the Division Bench[714] of Supreme Court affirmed its interpretational limitation when interpreting the written statement of the defendant, holding that "When interpreting document, if the text is clear and unambiguous, it should be interpreted as its literal meaning. It is not justifiable to give a different meaning to a clear and unambiguous document. The person making the statements may have a different meaning in mind, however, if the statement does not provide such meaning literally, the court cannot infer such meaning."[715]
3. In the case of *Kameshwor Jha Maithali Brahman* (1959),[716] the Division Bench[717] of Supreme Court held that "It is a complete violation of the principles of justice and a contradiction of legal doctrines to first, prosecute and charge and further, convict and sentence a person for a crime such as dacoit by considering suspicion or rumor as evidence."[718]
4. In the case of *Megh Bahadur Pakha Rai* (1961),[719] the Division Bench[720] of Supreme Court declared that "It is inappropriate to establish a severely punishable crime of homicide merely on the assumption that [a person] could have been assaulted, beaten."[721] and further declared that "One cannot be held guilty for the offence for merely attempting to catch an adulterer."[722]

[710] Jay Prasad v. Tek Bahadur (1958) (NKP 2015, Vol. 2, DN. 5).
[711] Chief Justice Aniruddha Prasad Singh, Justice Siddhi Bahadur Malla and Justice Sher Shankar.
[712] (1958) NKP 2015, Vol. 2, DN. 5, at ¶ 1.
[713] Padam Sundar v. HMG (1958) (NKP 2015, Vol. 2, DN. 10).
[714] Justice Siddhi Bahadur Malla and Justice Tilak Shamsher Thapa Chhetri.
[715] (1958) NKP 2015, Vol. 2, DN. 10, at ¶ 21.
[716] Kameshwor Jha Maithali Brahman v. Akshya Lal Raut (1959) (NKP 2016, Vol. 4, DN. 18).
[717] Chief Justice Aniruddha Prasad Singh and Justice Ballav Shamsher Ja.Ba.Ra.
[718] (1959) NKP 2016, Vol. 4, DN. 18, at ¶ 15.
[719] Megh Bahadur Pakha Rai v. HMG (1961) (NKP 2018, Vol. 7, DN. 156).
[720] Chief Justice Hari Prasad Pradhan and Justice Bhagwati Prasad Singh.
[721] (1961) NKP 2018, Vol. 7, DN. 156, at ¶ 9.
[722] *Id.*

5. In the case of *Gopal Prasad Upadhayay* (1962),[723] the Full Bench[724] of Supreme Court explained that in the absence of direct evidences proving that the non-gazatted officer Gopal Prasad Upadhayay increased his wealth, beyond his income capability, through graft and bribes, a decision cannot be reached based solely on speculation of the same.[725] In this case, where the defendant counter-claimed that he added his wealth through his earnings from gambling, in the absence of evidence, the court cannot assume that the wealth was added through bribery.[726]
6. In the *Keshav Chandra Gautam* (1965),[727] the Division Bench[728] of Supreme Court, while interpreting Section 6(2) of the *Rajkaj* (Crime and Punishment) Act, 2019 (1962), held that the Act provides the right to healthy criticism of the HMG. In this context, the Court explained that "When the court interprets any law, it should pay attention to not only the semantics but also to the intention of the lawmakers when constructing the Act- the problems it wants to address and the purpose for which it is constructing that law. The preamble is a good tool to understand the purpose of the Act. It reflects which problem the legislature intends to address and what the purpose of the Act is. Hence, if anyone expresses disdain, hostility or criticism towards the HMG, without having malicious intention or incitement to disrupt the peace, spread disorder or incite violence towards the government, then such act cannot be declared to be criminalized under the Act."[729]
7. In the case of *Hira Pasi* (1971),[730] the Division Bench[731] of Supreme Court held that "The confession of the accused taken in the custody of the police who represents one of the parties to the case cannot be given significance as evidence for a justice perspective."[732]

[723] HMG v. Gopal Prasad Upadhayay (1962) (NKP 2019, Vol. 10, DN. 163).
[724] Chief Justice Hari Prasad Pradhan, Justice Nayan Bahadur Khatri Chhetri and Justice Ishwori Raj Mishra.
[725] (1962) NKP 2019, Vol. 10, DN. 163, at ¶ 37.
[726] *Id.*
[727] Keshav Chandra Gautam v. HMG (1965) (NKP 2022, Vol. 1, DN. 279).
[728] Justice Ratna Bahadur Bishta and Justice Dhanendra Bahadur Singh.
[729] (1965) NKP 2022, Vol. 1, DN. 279, at ¶ 21.
[730] Hira Pasi v. HMG (1971) (NKP 2028, Vol. 1, DN. 612).
[731] Justice Bishownath Upadhayay and Justice Brahmadatta Tiwari.
[732] (1971) NKP 2028, Vol. 1, DN. 612, at ¶ 13.

8. In the case of *Top Bahadur Khadka Chhetri* (1973),[733] the Division Bench[734] of Supreme Court has accepted the procedural limitations in criminal cases. "The notice published on 2015/06/13 in the Nepal gazette states that the complaint regarding corruption should be made to the ward officer, hence, where the investigation was done by the DIG after a complaint was presented before him, such investigation cannot be said to have been performed in accordance with the law."[735]
9. In the case of *Ram Chandra Rauniyar* (1975),[736] the Division Bench[737] of Supreme Court explained that "It is unlawful for the acting DSP to prosecute a case where [the law provides] the police inspector is the authorized officer."[738]
10. In the case of *Reshami Malahini* (1978),[739] the Division Bench[740] of Supreme Court held that the accused cannot be held guilty based on the statement made before the police when the investigation found bloodstains behind the defendant's house but failed to investigate into the when the blood was smeared and whose blood it is.[741]
11. In the case of *Ratna Prasad Shakya* (1978),[742] the Division Bench[743] of Supreme Court held that it would be unjust to impose the penalty on the appellant under No. 24 of the Muluki Ain, Chapter on Theft, in the absence of existence of the circumstances that invokes that provision.[744]
12. In the case of *Krishna Bahadur Magar* (1978),[745] the Division Bench[746] of Supreme Court held that the punishment under No. 13 of the Muluki Ain, Chapter on Theft cannot be imposed for the third time until the accused has been tried and held guilty under this provision twice previously.[747]

[733] Top Bahadur Khadka Chhetri v. HMG (1973) (NKP 2030, Vol. 1, DN. 776).
[734] Justice Basudev Sharma and Justice Babbar Prasad Singh.
[735] (1973) NKP 2030, Vol. 1, DN. 776, at ¶ 15.
[736] Ram Chandra Rauniyar v. HMG (1975) (NKP 2032, Vol. 1, DN. 949).
[737] Justice Basudev Sharma and Justice Bishownath Upadhayay.
[738] (1975) NKP 2032, Vol. 1, DN. 949, at ¶ 16.
[739] HMG v. Reshami Malahini (1978) (NKP 2035, Vol. 1, DN. 1211).
[740] Justice Heramba Raj and Justice Babbar Prasad Singh.
[741] (1978) NKP 2035, Vol. 1, DN. 1211, at ¶ 20.
[742] Ratna Prasad Shakya v. HMG (1978) (NKP 2035, Vol. 1, DN. 1167).
[743] Justice Basudev Sharma and Justice Bishownath Upadhyaya.
[744] (1978) NKP 2035, Vol. 1, DN. 1167, at ¶ 16.
[745] HMG v. Krishna Bahadur Magar (1978) (NKP 2035, Vol. 1, DN. 1158).
[746] Chief Justice Nayan Bahadur Khatri and Justice Basudev Sharma.
[747] (1978) NKP 2035, Vol. 1, DN. 1158, at ¶ 19.

13. In the case of *Subash Newang* (1979),[748] the Full Bench[749] of Supreme Court explained that the law clearly states that where the verdict is challenged by means of appeal, the Court can, if needed, reverse the judgment in cases of the person who did not file an appeal.[750]
14. In the case of *Kamaleshwor Upadhyay* (1984),[751] the Division Bench[752] of Supreme Court held that the claim of the plaintiff that they were cheated of redeeming their gold that they had mortgaged without a receipt of mortgage in lieu of trust, such an act is not defined as cheating under No. 1 of the Muluki Ain, Chapter on Cheating. where the person is not allowed to the court cannot establish the case as cheating under the definition of No.1 of Chapter on Cheating.[753]
15. In the case of *Krishna Gopal Mali* (1989),[754] the Division Bench[755] of Supreme Court upheld that "A sentence cannot be imposed under two laws for the same incident."[756].
16. In the case of *Kali Bahadur Adhikari* (1992),[757] the Division Bench[758] of Supreme Court upheld the law of procedure stating that where the law clearly requires the presence of at least two local witnesses to ascertain the authenticity of the search and seizure report, investigation concluded with only one witness does not suffice the intention of the law.[759]
17. In the case of *Shree Lal Adhikari Danuwar* (1997),[760] the Division Bench[761] of Supreme Court questioned the legality of the search and seizure report. In this case, where the police reported the seizure of the gun after the case was registered in court

[748] Subash Newang v. HMG (1979) (NKP 2036, Vol. 1, DN. 1312).
[749] Justice Bishownath Upadhayay, Justice Surendra Prasad Singh and Justice Trailokya Raj Aryal.
[750] (1979) NKP 2036, Vol. 1, DN. 1312, at ¶ 27.
[751] Kamaleshwor Upadhayay v. Ambika Devi Brahmani (1984) (NKP 2041, Vol. 11, DN. 2194).
[752] Justice Dhanendra Bahadur Singh and Justice Har Govind Singh Pradhan.
[753] (1984) NKP 2041, Vol. 11, DN. 2194, at ¶ 11.
[754] HMG v. Krishna Gopal Mali (1989) (NKP 2046, Vol. 2, DN. 3734).
[755] Justice Babbar Prasad Singh and Justice Rudra Bahadur Singh.
[756] (1989) NKP 2046, Vol. 2, DN. 3734, at ¶ 16.
[757] Kali Bahadur Adhikari v. HMG, Revenue Investigation Division (1992) (NKP 2049, Vol. 3, DN. 4489).
[758] Justice Surendra Prasad Singh and Govinda Bahadur Shrestha.
[759] (1992) NKP 2049, Vol. 3, DN. 4489, at ¶ 24.
[760] HMG v. Shree Lal Adhikari Danuwar (1997) (NKP 2054, Vol. 2, DN. 6321).
[761] Justice Laxman Prasad Aryal and Justice Krishna Kumar Verma.

and formed the search and seizure report of the same and presented it without the permission of the court, the court held that such reports are not legally valid.[762]

18. In the case of *Gagan Singh Pun* (1998),[763] the Division Bench[764] of Supreme Court held that "Where there are different reports containing different work completion status, the court cannot convict a person on the charge of corruption when the prosecution has failed to ascertain the basis for the amount of *bigo* in the chargesheet."[765]
19. In the case of *Kailash Mahato* (2000),[766] the Full Bench[767] of Supreme Court explained that since the principles of criminal justice provide that instead of one innocent being convicted it is favorable for some criminals to go free, the benefit of doubt goes to the accused, hence, the court cannot use judicial discretion to establish *corpus delicti* for a crime.[768]
20. In the case of *Tiger Tops Pvt. Ltd.* (2000),[769] the Full Bench[770] of Supreme Court held "Since the order of the Chief Justice on 2053/10/11 did not follow the procedure of the law, there is no need to enter into the facts and answer to the issues raised by the appellant"[771] and stated that since the basis and reason to present the case before the Full Bench are not disclosed in the order, the Court does not have a standing to enter into the facts of such case.
21. In the case of *Rajesh Lama (alias Raghu)* (2005),[772] the Division Bench[773] of Supreme Court explained that in cases where the age of a person is disputed and even the expert has declared that it is impossible to determine the exact age by scientific examination, and where the prosecuting party has failed to provide other educational legal evidences that can certify that the defendant is 16 years old, it

[762] (1997) NKP 2054, Vol. 2, DN. 6321, at ¶ 33.
[763] Gagan Singh Pun v. HMG (1998) (NKP 2055, Vol. 2, DN. 6514).
[764] Justice Govinda Bahadur Shrestha and Justice Indra Raj Pandey.
[765] (1998) NKP 2055, Vol. 2, DN. 6514, at ¶ 18.
[766] HMG v. Kailash Mahato (2000) (NKP 2057, Vol. 4, DN. 6883).
[767] Justice Krishna Jung Rayamajhi, Justice Kedar Nath Acharya and Justice Bhairav Prasad Lamsal.
[768] (2000) NKP 2057, Vol. 4, DN. 6883, at ¶ 43.
[769] Tiger Tops Pvt. Ltd. Director A.V. Jim Edwards v. HMG, Ministry of Finance, Revenue Investigation Division (2000) (NKP 2057, Vol. 5, DN. 6900).
[770] Justice Bhairav Prasad Lamsal, Justice Dilip Kumar Poudel and Justice Gopal Prasad Khatri.
[771] (2000) NKP 2057, Vol. 5, DN. 6900, at ¶ 28.
[772] HMG v. Rajesh Lama (alias Raghu) (2005) (NKP 2062, Vol. 4, DN. 7525).
[773] Justice Chandra Prasad Parajuli and Justice Balram K.C.

would be contrary to the principle of criminal justice to disregard the age provided by the defendant and rather accept the defendant as a 16 year old and hold him/her criminally liable.[774]

22. In the case of *Narayan Poudel Khatri (alias Ravin* (2011),[775] the Division Bench[776] of Supreme Court explained that the Evidence Act clearly allows the court to re-examine the witness only in situations where the court needs the witness to clarify on matters spoken previously and only to the extent of the matters already stated by that witness. The Court held that it is, however, unlawful to interpret this provision to mean that the court can re-examine the witness whenever and in regards to facts already established.[777]
23. In the case of *Nanda Devi Joshi* (2012),[778] the Division Bench[779] of Supreme Court declared that "If the courts encourage the reliance on speculations as irrefutable evidence to establish guilt in heinous crime such as homicide rather than relying on objective evidences, then justice would be sacrificed at the altar of inadequate investigation. The court cannot play a part in encouraging the trend of investigating and prosecuting based on publicity, sensationalism or popular demand rather than on the basis of concrete and objective evidences."[780]
24. In the case of *Lila Raj Gautam* (2012),[781] the Division Bench[782] of Supreme Court held that if privately kept diaries which cannot be subjected to examination are admitted as irrefutable evidence, it may lead to the wrong trend of creation and fabrication of evidence. Thus, the court should not adopt practices that can encourage such creation and fabrication of evidence."[783]
25. In the case of *Lok Bahadur Bishwa (alias Bikash)* (2013),[784] the Division Bench[785] of Supreme Court explained that where both the woman and man have reached the

[774] (2005) NKP 2062, Vol. 4, DN. 7525, at ¶ 21.
[775] GoN v. Narayan Poudel Khatri (alias Ravin) (2011) (NKP 2068, Vol. 2, DN. 8564).
[776] Justice Prem Sharma and Justice Rana Bahadur Bom.
[777] (2011) NKP 2068, Vol. 2, DN. 8564, at ¶ 9.
[778] Nanda Devi Joshi v. GoN (2012) (NKP 2069, Vol. 1, DN. 8760).
[779] Justice Prem Sharma and Justice Kamal Narayan Das.
[780] (2012) NKP 2069, Vol. 1, DN. 8760, at ¶ 14.
[781] Lila Raj Gautam v. GoN (2012) (NKP 2069, Vol. 1, DN. 8770).
[782] Justice Kalyan Shrestha and Kamal Narayan Das.
[783] (2012) NKP 2069, Vol. 1, DN. 8770, at ¶ 27.
[784] GoN v. Lok Bahadur Bishwa (alias Bikash) (2013) (NKP 2070, Vol. 11, DN. 9075).
[785] Acting Chief Justice Damodar Prasad Sharma and Justice Tarka Raj Bhatta.

age of consent, sexual intercourse between the two with mutual consent cannot be considered as an unlawful act under No. 1 of the Muluki Ain, Chapter on Rape. As such, where the law itself does not consider an act as unlawful, the law itself bars the penalizing of mutual sexual relations between a woman and a man who have reached the age of consent.[786]

26. In the case of *Rubi Joshi* (2016),[787] the Division Bench[788] of Supreme Court held that when the factual situation of the case and the laws applied for the charges are mutually exclusive, the court cannot establish criminal liability relaying on an inapplicable law. In this case, the chargesheet was filed under the Banking Offences and Punishment Act, 2064 claiming that the loan disbursement was against the Nepal Rastra Bank Directives, 2067. The Court held that act contrary to the Directives, 2067 is neither a criminal offence nor does it invoke Banking Offences and Punishment Act, 2064.[789]
27. In the case of *Prem Bahadur Kunwar* (2016),[790] the Division Bench[791] of Supreme Court held that the matter at hand is that the institution issuing the educational certificates are not accredited/ recognized. The Court declared that would be unjust to convict a person for corruption on the assumption that since the institution issuing the certificates is not accredited, the certificates presented by the defendant must be fake.[792]
28. In the case of *Indra Raj Humagain* (2016),[793] the Division Bench[794] of Supreme Court explained that when the institution filing the FIR has already corresponded its decision stating that the matters of the case does not fall within the scope of the banking offences, it would be unreasonable and unjust to hold that the act is a banking offence as per the chargesheet.[795] Public officials must always be mindful to avoid the violation of a person's legal rights and privileges through incorrect or

[786] (2013) NKP 2070, Vol. 11, DN. 9075, at ¶ 8.
[787] GoN v. Rubi Joshi (2016) (NKP 2073, Vol. 5, DN. 9608).
[788] Justice Devendra Gopal Shrestha and Justice Jagadish Sharma Poudel.
[789] (2016) NKP 2073, Vol. 5, DN. 9608, at ¶ 5.
[790] GoN v. Prem Bahadur Kunwar (2016) (NKP 2073, Vol. 7, DN. 9632).
[791] Justice Vaidhya Nath Upadhayay and Justice Devendra Gopal Shrestha.
[792] (2016) NKP 2073, Vol. 7, DN. 9632, at ¶ 5.
[793] GoN v. Indra Raj Humaigain (2016) (NKP 2073, Vol. 7, DN. 9645).
[794] Justice Anil Kumar Sinha and Justice Sapana Pradhan Malla.
[795] (2016) NKP 2073, Vol. 7, DN. 9645, at ¶ 5.

negligent use of the law and legal authority. Those in positions of public accountability must adhere to and implement provisions of the law in a fair and equal manner, ensuring proper and uniform enforcement.[796]

29. In the case of *Lakpa Sherpa* (2016),[797] the Division Bench[798] of Supreme Court held that the act of forcible intercourse by a woman artificial sex organ falls within the purview of rape.[799] The Court declared that "It is essential for the court to consider the changes in the nature of the crime when interpreting the law. As such, it would be unjust to acquit a person by concluding that a woman cannot forcibly perform sexual intercourse against another woman by using artificial sex organ."[800]
30. In the case of *Raju Thapa* (2016),[801] the Full Bench[802] of Supreme Court, while explaining that the purpose of criminal justice is not only to punish those who commit acts declared as crimes by the law, it is also to deter criminal activities in the society, stated that "Criminal law must be applied as the law is. A person cannot be exempted from criminal liability due to the circumstances or the anger, forgiveness or tolerance of the complainant or victim. Such exceptions would undermine the implementation of criminal law and justice which is not permitted by law."[803]
31. In the case of *Suman Shahi* (2017),[804] the Division Bench[805] of Supreme Court explained that "When interpreting the law, judges should remain earnest as their interpretation can have unintended consequences. The judges should remain attentive to the fact that justice could be denied due to the consequences generated by mechanical interpretation of the law. In the absence of harmony between the law and justice, the defendant cannot be brought to justice. Thus, the judge must administer justice with utmost seriousness on this subject. Where the purpose of

[796] *Id*. at ¶ 8.
[797] Lakpa Sherpa v. GoN (2016) (NKP 2073, Vol. 9, DN. 9684).
[798] Justice Bishambhar Prasad Shrestha and Justice Sapana Pradhan Malla.
[799] In this context, as mentioned in No.1 of Chapter on Rape, as the phrase is used to say someone to a woman, it seems that the victim could be anyone.
[800] (2016) NKP 2073, Vol. 9, DN. 9684, at ¶ 13.
[801] GoN v. Raju Thapa (2016) (NKP 2073, Vol. 11, DN. 9707).
[802] Chief Justice Kalyan Shrestha, Justice Govinda Kumar Upadhayay and Justice Jagadish Sharma Poudel.
[803] (2016) NKP 2073, Vol. 11, DN. 9707, at ¶ 7.
[804] Suman Shahi v. GoN (2017) (NKP 2074, Vol. 4, DN. 9792).
[805] Justice Om Prakash Mishra and Justice Kedar Prasad Chalise.

justice is voided by punishing an established drug addict for the crime of narcotics sale, there should be no dilemma as to the duty of the judge use prudence to administer justice."[806]

32. In the case of *Sunny Maharjan* (2018),[807] the Full Bench[808] of Supreme Court explained that in the term 'knowingly' used in Section 161(2) of the Motor Vehicles and Transport Management Act, 2049 (1992), does not mean the knowledge with intention stipulated under Section 161(1) but it means reckless conduct, i.e., the acting carelessly with knowledge of possible consequence, thus, the term 'intentionally with knowledge' under Section 161(1) and the term 'knowingly' used for reckless conduct under Section 161(2) should be interpreted differently.[809]
33. In the case of *Shova Badi* (2019),[810] the Division Bench[811] of Supreme Court held that "Convicting the accused simply because they did not appear before the court is a miscarriage of justice or gross injustice. It is illogical, unlawful and arbitrary to convict a person by considering their non-appearance in court as conclusive evidence."[812] Thus, the court should adhere to the principles of justice within the framework of prevailing laws rather than pronouncing guilt based solely on the absence of the accused in the criminal proceedings.
34. In the case of *Harendra Narayan Dev* (2019),[813] the Full Bench[814] of Supreme Court assimilated the legal provision related to the constituent element of a rape and declared that "In cases of rape, even if there is only partial penetration of the vagina, it is deemed as a sufficient element to constitute the offense. In this case, the defendant is 36 years old whereas the victim is 10 years old. The clarification under No. 1 (c) of the Muluki Ain, Chapter on Rape provides that even partial penetration of the vagina is enough to constitute the offence of rape, thus, penetration by penis

[806] (2017) NKP 2074, Vol. 4, DN. 9792, at ¶ 6.
[807] GoN v. Sanni Maharjan (2018) (NKP 2075, Vol. 7, DN. 10043).
[808] Justice Dr. Ananda Mohan Bhattarai, Justice Anil Kumar Sinha and Justice Tanka Bahadur Moktan.
[809] (2018) NKP 2075, Vol. 7, DN. 10043, at ¶ 4.
[810] GoN v. Shova Badi (2019) (NKP 2076, Vol. 5, DN. 10274).
[811] Justice Ishwor Prasad Khatiwada and Justice Hari Prasad Phuyal.
[812] (2019) NKP 2076, Vol. 5, DN. 10274, at ¶ 7.
[813] Harendra Narayan Dev v. GoN (2019) (NKP 2076, Vol. 6, DN. 10279).
[814] Justice Om Prakash Mishra, Justice Kedar Prasad Chalise and Justice Purushottam Bhandari.

on the Labia Majora, the outer part of the vagina and Labia Minora, the inner part of the vagina should be considered as partial penetration of the vagina."[815]

35. In the case of *Upendra Mukhiya Bin* (2021),[816] the Division Bench[817] of Supreme Court explained that the forceful unnatural sexual intercourse of the 8-year-old minor male victim does not fall within the scope of the definition of rape under No. 3 (a) of the Muluki Ain, Chapter on Rape as this provision specifically focus only on female victim.[818] Thus, the convicted person can be punished up to 10 years under No. 3 (1) and as the victim is a minor, an additional punishment of 1 year imprisonment under No. 9 (a) is applicable.[819]
36. In the case of *Kenneth Joseph Coombs* (2021),[820] the Division Bench[821] of Supreme Court explained that the clarification in Section 226(1) of the MCC provides the term 'children', and Section 226(3) of the Code provides for punishment under Section 219 for crime of unnatural intercourse with children, thus, punishment under Section 219(2) (c) is applicable for crime under Section 226(3).[822] The Court assimilated its limitation clarifying that Section 226 does not state that the minor victim of the crime of unnatural intercourse must be a female child.
37. In the case of *Bhawani Rajbanshi* (2021),[823] the Division Bench[824] of Supreme Court held that "When applying criminal law, the sentence must be determined as per the punishment provided for that particular act by the law. It is against the principles of criminal justice to convict and punish a person for a serious crime under the assumption and suspicion that the person would commit such crime."[825]

[815] (2019) NKP 2076, Vol. 6, DN. 10279, at ¶ 6.
[816] GoN v. Upendra Mukhiya Bin (2021) (NKP 2078, Vol. 7, DN. 10701).
[817] Justice Bishambhar Prasad Shrestha and Justice Sushmalata Mathema.
[818] (2021) NKP 2078, Vol. 7, DN. 10701, at ¶ 6.
[819] *Id.* at ¶ 5.
[820] Kenneth Joseph Coombs v. GoN (2021) (NKP 2078, Vol. 11, DN. 10772).
[821] Justice Dipak Kumar Karki and Justice Kumar Regmi.
[822] (2021) NKP 2078, Vol. 11, DN. 10772, at ¶ 10.
[823] Bhawani Rajbanshi v. GoN (2021) (NKP 2078, Vol. 12, DN. 10797).
[824] Justice Ishwor Prasad Khatiwada and Justice Tanka Bahadur Moktan.
[825] (2021) NKP 2078, Vol. 12, DN. 10797, at ¶ 4.

6.4.2 Writs Assimilating Limitations of the Court in Criminal Cases

The Supreme Court has assimilated the limitations court on interpretation of criminal laws in a total of 18 writs which were sued in the subject of criminal law and justice. These writs have assimilated the limitation principle in various manners presented in a chronological manner as outlined below:

1. In the case of *Chiranjibi Lal Marwadi* (1958),[826] the Division Bench[827] of the Supreme Court declared that "[The Court] understood that the intention of the special police department was due to the apprehension that there might be harm to the government or the monetary punishment amount might not be recovered. However, as the Section 19 of the Prevention of Corruption Act, 2017 (1960) provides that the government officer shall not exercise powers not provided by the Act, and [the special police department] failed to show such conferred powers, their actions are clearly beyond the power granted by the Act, which must be rectified."[828]. In this case, the special police department has gone beyond the scope of power within Section 19 to bar the transactions of goods and the daily work of the traders was stopped by seizure of real accounts.
2. In the case of *Gajendra Raj Devkota* (1960),[829] the single bench[830] of the Supreme Court decided that Sections 4, 5 and 14 of the Prevention of Corruption Act, 2017 (1960) can be invoked only where the bribe giver has the intention to bribe the public servant, but it is not applicable where the intention is to catch the public servant who take bribes.[831]
3. In the case of *Sangaratna Tuladhar* (1965),[832] the Full Bench[833] of the Supreme Court explained, while holding that it is not acceptable for the special police department to hold a person in custody indefinitely when the department can only hold a person in custody for up to 3 months with court order, that "If the Prevention

[826] Chiranjibi Lal Marwadi v. SP Tek Bahadur Rayamajhi (1958) (NKP 2015, Vol. 2, DN. 9).
[827] Justice Min Bahadur Thapa Chhetri and Justice Heramba Raj.
[828] (1958) NKP 2015, Vol. 2, DN. 9, at ¶ 18.
[829] Gajendra Raj Devkota v. SP Tek Bahadur Rayamajhi (1960) (NKP 2017, Vol. 7, DN. 112).
[830] Acting Chief Justice Bhagwati Prasad Singh.
[831] (1960) NKP 2017, Vol. 7, DN. 112, at ¶ 4.
[832] Sangaratna Tuladhar v. HMG, Special Police Department (1965) (NKP 2022, Vol. 1, DN. 300).
[833] Justice Bhagwati Prasad Singh, Justice Dhanendra Bahadur Singh and Justice Heramba Raj.

of Corruption Act, 2017 (1960) is compatible with the Constitution if interpreted in one way and it is unconstitutional when interpreted in another way, the court should adopt the first way."[834]

4. In the case of *Shree Krishna Shrestha* (1971),[835] the Division Bench[836] of the Supreme Court held that as the provision under No. 19 of the Muluki Ain, Chapter on Court Management state that in case of the accused who has not appeared before the court or has not been found yet, it is mandatory to wait for 6 years and stated that "It does not seem to have provided an optional right to wait or not wait for 6 years."[837]
5. In the case of *Omkar Prasad Shrestha* (1971),[838] the Division Bench[839] of the Supreme Court held that the tribunal formed under the Prevention of Subversive Activities and Suppression of Subversives Act does not have the jurisdiction to try cases under the *Rajkaj* (Offences and Punishment) Act.[840] It stated that "On issues of jurisdiction two different provisions under two different laws cannot be interpreted together as one."[841]
6. In the case of *Rishi Dangol* (1974),[842] the Full Bench[843] of the Supreme Court issued the order of habeas corpus, explaining that No. 17 of the Muluki Ain, Chapter on Forgery is not applicable under the scope of punishment under Section 7(1) of the Prevention of Corruption Act, 2017 (1960).[844]
7. In the case of *Pashupati Giri* (1975),[845] the Division Bench[846] of the Supreme Court affirmed that "There is no provision in the law that allows to order the detention of a person due to anticipation of future case. The right to permit [detention] without claim report cannot be created."[847]

---

[834] (1965) NKP 2022, Vol. 1, DN. 300, at ¶ 7.
[835] Shree Krishna Shrestha v. Zonal Office Bagmati (1971) (NKP 2028, Vol. 1, DN. 599).
[836] Justice Nayan Bahadur Khatri and Justice Basudev Sharma.
[837] (1971) NKP 2028, Vol. 1, DN. 599, at ¶ 11.
[838] Omkar Prasad Shrestha v. Jailor, Central Jail Office, Kathmandu (1971) (NKP 2028, Vol. 1, DN. 606).
[839] Justice Nayan Bahadur Khatri and Justice Bishownath Upadhyaya.
[840] (1971) NKP 2028, Vol. 1, DN. 606, at ¶ 13.
[841] *Id*.
[842] Rishi Dangol v. Jailor, Central Jail Office, Kathmandu (1974) (NKP 2031, Vol. 1, DN. 838).
[843] Chief Justice Ratna Bahadur Bishta, Justice Bishwanath Upadhayay and Justice Ishwori Raj Mishra.
[844] (1974) NKP 2031, Vol. 1, DN. 838, at ¶ 12.
[845] Pashupati Giri v. Central Regional Court (1975) (NKP 2032, Vol. 1, DN. 916).
[846] Justice Basudev Sharma and Justice Jhapat Singh Raut.
[847] (1975) NKP 2032, Vol. 1, DN. 916, at ¶ 7.

8. In the case of *Rita Dahal on the behalf of Sujan Mendij* (1983),[848] the Division Bench[849] of the Supreme Court held that "Since the HMG appears to have the jurisdiction over the trial, hearing and punishment of the case, the order to detain by the district court without jurisdiction is illegal."[850]
9. In the case of *Rajaram Basnet (alias Lok Bahadur)* (1990),[851] the Division Bench[852] of the Supreme Court deliberated that "In relation to recidivism in theft, the provision under No.11 of Chapter on Theft does not allow for the merging of two different acts of theft in order to punish for re-offending."[853] further stating that if the act of burglary is to be considered as re-offending of the previous convicted act of simple theft, the defendant would be additionally punished for a crime he/she has not re-committed. Thus, the Court held that it is unjust to merge the acts of simple theft with burglary to claim additional punishment for re-offending.[854]
10. In the case of *Bajrang Chaitanya Bramhachari* (1991),[855] the Division Bench[856] of the Supreme Court held that "Under the Constitution of the Kingdom of Nepal, 2047, a person who has been arrested must be presented before the court within 24 hours, except the time taken to reach the court, and if the person is detained for more than 24 hours without the order of the authority to hear the case, such detention is illegal."[857] and stated that "If the previous illegal detention is recognised as valid after the bail hearing order of court, then the fundamental right to liberty guaranteed by the Constitution will be rendered void and squandered."[858]
11. In the case of *Jit Kumari Pangeni (Neupane)* (2008),[859] the Special Bench[860] of the Supreme Court declared that while, by principle, the quantum of punishment should not be more severe in the additional sentencing provision than the actual provisions,

[848] Rita Dahal on the behalf of Sujan Mendij v. District Office Lalitpur (1983) (NKP 2040, Vol. 6, DN. 1678).
[849] Justice Basudev Sharma and Justice Trilok Pratap Rana.
[850] (1983) NKP 2040, Vol. 6, DN. 1678, at ¶ 14.
[851] Rajaram Basnet (alias Lok Bahadur) v. Saptari District Court (1990) (NKP 2047, Vol. 2, DN. 4075).
[852] Justice Trilok Pratap Rana and Justice Prithvi Pratap Rana.
[853] (1990) NKP 2047, Vol. 2, DN. 4075, at ¶ 8.
[854] *Id.*
[855] Bajrang Chaitnaya Bramhachari v. HMG, District Police Office, Dhanusha (1991) (NKP 2048, Vol. 2,3,4, DN. 4258).
[856] Justice Dhanendra Bahadur Singh and Justice Trilok Pratap Rana.
[857] (1991) NKP 2048, Vol. 2,3,4, DN. 4258, at ¶ 10.
[858] *Id.* at ¶ 12.
[859] Jit Kumari Pangeni (Neupane) v. OPMCM (2008) (NKP 2065, Vol. 6, DN. 7973).
[860] Chief Justice Kedar Prasad Giri, Justice Anupraj Sharma and Justice Balram K.C.

as thus, the sentencing provision of No. 3 (6) of the Muluki Ain, Chapter on Rape cannot be considered justified[861], the Court upheld the limitation principle stating that "The court cannot nullify or void the law even if the penal provision is contrary to the principle of equality."[862] The Court, hence, issued a directive order in the name of the Ministry of Law, Justice and Parliamentary Affairs to take necessary steps to bring uniformity in the sentences related to marital and non-marital rape.[863]

12. In the case of *Rameshwor Neupane on the behalf of Pradip Thapa* (2008),[864] the Division Bench[865] of the Supreme Court held that "Since there is no legal provision that allows to detain a juvenile in child reform home for the purpose of trial hearing in the event of failure to pay the bail amount, it is illegal to detain the petitioner."[866]
13. In the case of *Arjun Thapa* (2010),[867] the Full Bench[868] of the Supreme Court has explained that "In cases where both sentences of imprisonment and fine is applicable, where the law has provided the upper ceiling for maximum imprisonment sentence in lieu of fine, it is unlawful to imprison a person over the limit set by the law."[869]. The Court reiterated that "The act of imprisoning and imposing fine contrary to the clear provisions of the law cannot be accepted as lawful."[870]
14. In this case of *Rolash Thapa* (2013),[871] the Division Bench[872] of the Supreme Court has held that "Where the chargesheet for the crime of dacoit was filed under No. 14 (4) and No. 10 (3) of Muluki Ain, Chapter on Theft and the decision and conviction is also based on these provisions, instead of No. 27 of the same, [the Court] cannot rely on the provision of No. 27 under which the chargesheet has not presented any claims."[873]

---

[861] (2008) NKP 2065, Vol. 6, DN. 7973, at ¶ 6.
[862] *Id.* at ¶ 7.
[863] *Id.* at ¶ 8.
[864] Rameshwor Thapa on the behalf of Pradip Thapa (11 years of age) v. District Administration Office, Kathmandu (2008) (NKP 2065, Vol. 9, DN. 8015).
[865] Justice Khilraj Regmi and Justice Kalyan Shrestha.
[866] (2008) NKP 2065, Vol. 9, DN. 8015, at ¶ 3.
[867] Arjun Thapa v. Kathmandu District Court (2010) (NKP 2067, Vol. 12, DN. 8516).
[868] Justice Tap Bahadur Magar, Justice Ram Kumar Prasad Shah and Justice Bharat Raj Upreti
[869] (2010) NKP 2067, Vol. 12, DN. 8516, at ¶ 6.
[870] *Id.* at ¶ 7.
[871] Rolash Thapa v. Kathmandu District Court (2013) (NKP 2070, Vol. 6, DN. 9019).
[872] Justice Kalyan Shrestha, Justice Baidhnath Upadhayay.
[873] (2013) NKP 2070, Vol. 6, DN. 9019, at ¶ 3.

15. In the case of *Adv. Raju Prasad Chapagain* (2016),[874] the Division Bench[875] of the Supreme Court declared the matter of determination of statute of limitation is a matter of legislative wisdom, thus, the Court cannot interfere and declare what would be an appropriate statute of limitation.[876]
16. In the case of *Arun Shrestha* (2020),[877] the Division Bench[878] of the Supreme Court held that "When the law itself limited the upper ceiling to imprison fine defaulter by stating states that a fine defaulter should not be sentenced to more than 4 years in prison, it is contradictory to the provision under No. 38 of the Muluki Ain, Chapter on Punishment to resort to interpretation to impose a sentence of 4 years each for fine default in two separate cases amounting to a total of 8 years imprisonment."[879]
17. In the case of *Adv. Kamal Prasad Bhusal on behalf of Mahesh Thapa* (2021),[880] the Division Bench[881] of the Supreme Court explained that the privilege under Section 155 of the Muluki Criminal Procedure Code, 2074 (2017) does not limit its applicability to only those who appeared before the court or those who are in prison by order of the court and prohibit the invocation by those defendants who did not appear before the court within the stipulated time limit. Unless the law clearly prohibits such application, it is in violation of the principle of equality before the law to deny the facility under this section to pay an amount against the imprisonment order. The Court, thus, held that "Unless the legislature expressly prohibits something, it should not be assumed that it has been prohibited."[882]
18. In the case of *Prem Bahadur Pandey* (2021),[883] the Full Bench[884] of the Supreme Court has clearly articulated that a person can only be held liable for the acts they perform, not for the act of other. Arguing to make a person responsible for the act

[874] Adv. Raju Prasad Chapagain v. GoN, OPMCM (2016) (NKP 2073, Vol. 2, DN. 9547).
[875] Justice Gopal Parajuli and Cholendra Shamsher Ja.Ba.Ra.
[876] (2016) NKP 2073, Vol. 2, DN. 9547, at ¶ 9.
[877] Arun Shrestha v. Kathmandu District Court (2020) (NKP 2077, Vol. 3, DN. 10465).
[878] Justice Sapana Pradhan Malla and Justice Bom Kumar Shrestha.
[879] (2020) NKP 2077, Vol. 3, DN. 10465, at ¶ 10.
[880] Adv. Kamal Prasad Bhusal on behalf of Mahesh Thapa v. Rupandehi District Court (2021) (NKP 2078, Vol. 10, DN. 10752).
[881] Justice Mira Khadka and Justice Sapana Pradhan Malla.
[882] (2021) NKP 2078, Vol. 10, DN. 10752, at ¶ 9.
[883] Prem Bahadur Pandey v. Bhaktapur District Court (2021) (NKP 2078, Vol. 10, DN. 10767).
[884] Justice Dipak Kumar Karki, Justice Bishambhar Prasad Shrestha and Justice Dr. Kumar Chudal.

of other agencies or the authority under those agencies may not meet the standard of judicial justice system.[885]

6.4.3 General Cases Assimilating Limitations of the Court in Criminal Cases

The Supreme Court has assimilated the limitations of court in criminal cases in a total of 3 general cases. These cases have been presented in a chronological manner with a brief synopsis as below:

1. In the case of *Kamala Hamal* (2007),[886] Division Bench[887] of the Supreme Court has accepted the limitation of the Court in interpreting the criminal law. Section 12 of the Special Court Act, 2059 (2002) states that for the matters not mentioned in the Act, in relation to the trial and decision of a case, the Court may exercise the power and procedure equivalent to the district court. Under No.65 (5) of the Muluki Ain, Chapter on Court Management, the provision holds that the time-limit or date fixed for being present at the court can be held and extended on the grounds of closure of the route due to flood, landslide or snow or non-operation of means of transport. Hence, where the Special Court Act does not have a provision to facilitate such extension of the date to be present in the court "The court cannot narrow down the scope [of the law] through a contracted interpretation."[888] by denying the application for extension under the procedure of the Muluki Ain and "It is not just to interpret [the law] to deny the facility."[889]
2. In the case of *Sharada Ghimire* (2013),[890] the Division Bench[891] of the Supreme Court decided that the court cannot go beyond the scope of the provision in the law. As fraud is a crime committed by one person through the use of illegal documents against another person with the intention to cause gain for the self and loss to other, the criminal act of committing fraud and the criminal intent must be established to prove the occurrence of the crime. No action is in itself fraud. It is not enough to

[885] (2021) NKP 2078, Vol. 10, DN. 10767, at ¶ 5.
[886] Kamala Hamal v. Land Reform Office Gulariya (2007) (NKP 2064, Vol. 10, DN. 7890).
[887] Justice Ram Prasad Shrestha and Justice Rajendra Prasad Koirala.
[888] (2007) NKP 2064, Vol. 10, DN. 7890, at ¶ 12.
[889] *Id.*
[890] Sharada Ghimire v. Bhagwati Phuyal (2013) (NKP 2070, Vol. 3, DN. 8985).
[891] Justice Prakash Osti and Justice Gyanendra Bahadur Karki.

claim that the selling of a partionable property affected the partition shares. In relation the claim of the plaintiff that the crime of fraud occurred because the coparcener (defendant) sold a portion of land beyond their limit for use without the permission of the plaintiff, the court ruled that it cannot go beyond the scope of No. 3 of Muluki Ain, Chapter on Forgery.[892]

3. In the case of *Shivam Cement Limited* (2019),[893] the Division Bench[894] of the Supreme Court affirmed the principle of non-retroactive application of law by holding that "If there is a conflict between the laws created by the legislature or there are differing provisions on the same subject creating a dilemma as to which law is applicable, then the law is applied as per the order of priority clearly defined by the legislature. In the absence of such an order, the law created later (the latest intention of the legislature) is considered as applicable under the accepted principle of the law of interpretation."[895]. The Court, thus, held that "The decisions made in accordance with the law by the authorized bodies are not effective before the decision date thus the tax rates cannot be collected in a retroactive manner."[896]

6.5 CASES VIOLATING LIMITATIONS OF COURT

6.5.1 Criminal Cases Violating Limitations of the Court

The Supreme Court can be found to have violated the limitations of the court while construing the criminal law in a total of 21 criminal cases. These cases have been presented in a chronological manner with a brief synopsis as below:

1. In the case of *Purna Kumar Ji Shrestha* (1981),[897] the Division Bench[898] of the Supreme Court dismissed the case holding that "While the charge-sheet is filed only for forgery of government seal and signature of the chief, the nature of the case also shows that the appellant attempted to acquire land through such an act. Since the case

[892] (2013) NKP 2070, Vol. 3, DN. 8985, at ¶ 4.
[893] Shivam Cement Limited v. Nepal Electricity Authority (2019) (NKP 2073, Vol. 4, DN. 10232).
[894] Chief Justice Om Prakash Mishra and Justice Kedar Prasad Chalise.
[895] (2019) NKP 2073, Vol. 4, DN. 10232, at ¶ 2.
[896] *Id.* at ¶ 4.
[897] Purna Kumar Ji Shrestha v. HMG (1981) (NKP 2038, Vol. 4, DN. 1461).
[898] Justice Basudev Sharma and Justice Heramba Raj.

as such should have been filed by the special police department under the Prevention of Corruption Act, 2017, it seems that the department has not filed such case."[899]. Here, the Court has violated its limitations by diverting the itself from the issue of forgery and deciding on an unrelated matter.

2. In the case of *Dinu Ram Wali Magarni* (1987),[900] the Division Bench[901] of the Supreme Court held that the relation between the deceased and the defendant and previous issues that could cause the defendant to intentionally kill the deceased has not been revealed in the case. The Court declared "It appears that the death occurred due to a blow to the head [by the appellant] as she tried to save her chastity which was threatened as the deceased attempted to rape her at night."[902] and considering the facts it concluded that "The death occurred due to the injury left in an attempt to protect one's chastity."[903]. The Court held the incident an offense under No.13 (3) of the Muluki Ain, Chapter on Homicide and it applied No.188 of Chapter on Court Management to sentence the defendant to 5 years' imprisonment. Thus, the Court went beyond the provision of the law since No. 8 of Chapter on Rape provides the defence of chastity in case the person dies by the injury left by the defendant in an attempt protect her chastity.[904]
3. In the *Chandra Vijay Shah* (1988),[905] the Full Bench[906] of the Supreme Court declared that the criminalization of an act and punishment provided by the later Act would be in accordance with the prevailing Article 11(1), 17(1)(2) of the Constitution stating that "Since the punishment of an act that occurred prior to the promulgation of the Act criminalizing the act is not affected by the Constitution and the provision under Section 11(2) of the Subversion Offences (Special Control and Punishment) Act, 2042 (1985), the prosecution and sentencing under the Act is complimentary to

[899] 1981)NKP 2038, Vol. 4, DN. 1461, at ¶ 11.
[900] HMG v. Dinu Ram Wali Magarni (1987) (NKP 2044, Vol. 9, DN. 3205).
[901] Justice Gajendra Keshari Bastola and Justice Har Govinda Singh Pradhan.
[902] (1987) NKP 2044, Vol. 9, DN. 3205, at ¶ 26.
[903] *Id.*
[904] In the similar rape case of HMG v. Dhanamaya Chhetrini (1974) (NKP 2031, Vol. 1, DN. 819), it is held that she will not be liable for the punishment if he is found dead within one hour of the incident happened out of the anger of rape (at ¶ 17).
[905] HMG v. Chandra Vijay Shah (1988) (NKP 2045, Vol. 10, DN. 3603).
[906] Justice Surendra Prasad Singh, Prithvi Bahadur Singh and Mahesh Ram Bhakta Mathema.

the Constitution and the law."[907] This decision is in clear violation of the principle prohibits the retrospective application of criminal laws.[908]

4. In the case of *Wangchen Lama* (1990),[909] the Division Bench[910] of the Supreme Court held, while holding the defendant guilty, that "The defendant has not been able to show the factual reason as to why the victim and the complainant would file a false complaint against him."[911]. Here, the Court focused the onus of proof on the defendant to provide an answer against the FIR rather than focusing on the evidential basis for the conviction, which is a violation of the provisions under Section 25 of the Evidence Act, 2031 (1974) and the principle that the burden of proof lies on the prosecuting party.[912]
5. In the case of *Shesh Abdul Hadi* (2005)[913] the Full Bench[914] of the Supreme Court has interpreted the law in contradiction of the principle of double jeopardy in criminal law which holds that the same person cannot be tried for the same issues in the same court more than once.[915] The Court annulled the decision of a competent court to dismiss the case based on issues of jurisdiction and ordered the district court to re-decide the case.[916]

---

[907] (1988) NKP 2045, Vol. 10, DN. 3603, at ¶ 202.
[908] In another case of the same subject in which plaintiff and defendant are same (1989) (NKP 2046, Vol. 2, DN. 3727), the same bench of the same judge repeated the same interpretation.
[909] Wangchen Lama v. HMG (1990) (NKP 2047, Vol. 7, DN. 4178).
[910] Justice Babbar Prasad Singh and Rudra Bahadur Singh.
[911] (1990) NKP 2047, Vol. 7, DN. 4178, at ¶ 14.
[912] In the embezzlement and fraud case of GoN v. Rishi Ram Sharma (2014) (NKP 2071, Vol. 12, DN. 9310), it is not enough to prosecute anyone, it must be proven. It is held that according to § 25 of the Evidence Act, 2031 (1974) (Nep.), the burden of proving the guilt of the accused in a criminal case is on the prosecution side. (Para. 4.) and in the human trafficking and transportation case of GoN v. Sanu Maya Rai (Shrestha) (2018) (NKP 2075, Vol. 1, DN. 9935) the Division Bench holds that "in the case where the prosecution is unable to prove the guilt, it is found that the burden of proof on the defendant or on the basis of the legal provision that the plaintiff has not fulfilled the obligation that the defendant should fulfill is meaningless." (¶ 7).
[913] Shesh Abdul Hadi v. HMG (2005) (NKP 2062, Vol. 12, DN. 7630).
[914] Justice Min Bahadur Rayamajhi, Justice Ramnagina Singh and Justice Sharada Shrestha.
[915] In the present case, the Special Police Officer filed a case with Sarlahi District Court on 2053/06/21 claiming § 13 of the Prevention of Corruption Act, 2059 (2002) (Nep.). On the other hand, the Commission for the Investigation of Abuse of Authority, with effect from the date 2053/06/20, has decided to file a case in the Court of Appeal through the Public Prosecutor's Office after the Chief District Officer conducted an investigation in the case of other than three districts of the valley in the case of a case of such nature. The Supreme Court sent it to the District Court, Sarlahi, upholding the decision made by the Appellate Court Janakpur to decide on the same matter again. In so sending, the decision of the Commission was interpreted to be viewable by the District Court till that date as the notice was published only on the date 2054/11/18. In this way, the situation of limiting the principle of double jeopardy remained.
[916] (2005) NKP 2062, Vol. 12, DN. 7630, at ¶ 41.

6. In the case of *Bishnu Adhikari* (2006),[917] the Division Bench[918] of the Supreme Court held that "If it is held that there is no crime of rape until the penis enters the vagina, then the defendant may be exempted from the liability of sexual crime committed against a physically weak woman"[919], an explanation which is contrary to the provision mentioned under No.1(c) of the Muluki Ain, Chapter on Rape which holds that 'even if there is partial penetration by a penis in the vagina, the offense under No.1 (c) is deemed to have been committed.'
7. In the case of *Bhim Bahadur Pokhrel* (2006),[920] the Division Bench[921] of the Supreme Court held that "Normal friction between the penis and the outer part of the vagina will be sufficient"[922], whereby the Court expanded the scope of criminalization under No.1(c) of Chapter on Rape.
8. In the case of *Niyamul Banjara Musalman* (2007),[923] the Division Bench[924] of the Supreme Court explained that "No.6 of Muluki Ain, Chapter on Theft states the elements of dacoit to be theft committed by a group of more than 4 persons with use of force or with use of weapons to commit. Considering the nature of the incident [in this case] and the number of accused present during the incident, where the incident of dacoit has been established, even less than 4 accused can be sentenced for the crime of dacoit."[925]. By such decisions, the Court has openly reconstructed the elements of the dacoit.
9. In the *Suk Bahadur Kumal* (2008),[926] the Division Bench[927] of the Supreme Court held that the act of bringing the penis near the vagina or rubbing around the vagina is regarded as complete offense under No.1 of Chapter on Rape, which violates the scope under No.1 (c) of Chapter on Rape.[928]

[917] Bishnu Adhikari v. GoN (2006) (NKP 2063, Vol. 2, DN. 7652).
[918] Justice Anup Raj Sharma and Justice Sharada Prasad Pandit.
[919] (2006) NKP 2063, Vol. 2, DN. 7652, at ¶ 17.
[920] Bhim Bahadur Pokhrel v. HMG (2006) (NKP 2063, Vol. 4, DN. 7682).
[921] Justice Min Bahadur Rayamajhi and Justice Gauri Dhakal.
[922] (2006) NKP 2063, Vol. 4, DN. 7682, at ¶ 34.
[923] Niyamul Banjara Musalman v. GoN (2007) (NKP 2064, Vol. 11, DN. 7893).
[924] Justice Sharada Prasad Pandit and Justice Rajendra Prasad Koirala.
[925] (2007) NKP 2064, Vol. 11, DN. 7893, at ¶ 7.
[926] Suk Bahadur Kumal v. GoN (2008) (NKP 2065, Vol. 5, DN. 7968).
[927] Justice Khil Raj Regmi and Justice Tahir Ali Ansari.
[928] (2008) NKP 2065, Vol. 5, DN. 7968, at ¶ 7.

10. In the case of *Tek Bahadur Chhetri* (2009),[929] the Division Bench[930] held that "The non-penetration of the penis inside the vagina cannot be a basis for reducing the seriousness of the crime"[931], which can be understood as the expansion of the element of attempt to rape and transforming it into the crime of rape by interpretation.
11. In the case of *Badri Khatri* (2014),[932] the Division Bench[933] of the Supreme Court held that "If the verdict in all cases is held under attempt solely on the basis of non-penetration of the vagina, the intention and purpose of the legislature will perish."[934]. It further subjectively interpreted the provision under No. 1 (c) of the Muluki Ain, Chapter on Rape stating the act of gaining sexual gratification cannot be held under attempt just because there is no penetration.
12. In the case of *Tasi B.K.* (2016),[935] the Full Bench[936] of the Supreme Court held that in the crime of rape, there are three basic elements: the intention to commit forcible sexual intercourse, the act of forcible sexual intercourse and the lack of consent of the victim. On the one hand, the act of rape has been mentioned as an element.[937] On the other hand, regarding what act constitutes forcible sexual intercourse, at least minimum penetration is provided under No. 1(c) of Chapter on Rape, the Court interpreted the element of minimum penetration to include at least rubbing, citing the customary understanding of the crime of rape. Criminalization based on the 'developed concept of what constitutes crime', by narrowing or expanding the elements of crime provided by the legislature is a fallacious decision.
13. In the case of *Ganesh Bahadur Karki* (2016),[938] the Full Bench[939] of the Supreme Court has criminalized and punished by choosing the legal provisions by itself, holding that "The defendant cannot be acquitted on the ground that there is no claim in the chargesheet."[940] In this case, the defendant was not involved in the crime of

[929] GoN v. Tek Bahadur Chhetri (2009) (NKP 2066, Vol. 5, DN. 8142).
[930] Acting Chief Justice Anup Raj Sharma and Justice Kalyan Shrestha.
[931] (2009) NKP 2066, Vol. 5, DN. 8142, at ¶ 3.
[932] Badri Khatri v. GoN (2014) (NKP 2071, Vol. 6, DN. 9186).
[933] Justice Tarka Raj Bhatta and Justice Dr. Bharat Bahadur Karki.
[934] (2014) NKP 2071, Vol. 6, DN. 9186, at ¶ 8.
[935] GoN v. Tasi B.K. (2016) (NKP 2073, Vol. 1, DN. 9519).
[936] Chief Justice Kalyan Shrestha, Justice Om Prakash Mishra and Justice Jagadish Sharma Poudel.
[937] (2016) NKP 2073, Vol. 1, DN. 9519, at ¶ 4.
[938] GoN v. Ganesh Bahadur Karki (2016) (NKP 2073, Vol. 3, DN. 9552).
[939] Justice Girish Chandra Lal, Justice Sushila Karki and Justice Vaidya Nath Upadhyaya.
[940] (2016) NKP 2073, Vol. 3, DN. 9552, at ¶ 15.

theft but the act of buying stolen goods. The defendant was prosecuted under No. 1 and 12 of the Muluki Ain, Chapter on Theft but the Court decided that the defendant's act invoked the provisions under No.23 and 24 of Chapter on Theft and punished the defendant accordingly.

14. In the case of *Shree Ram Tripathi* (2016),[941] the Division Bench[942] of the Supreme Court held that "The victim's hymen is torn. It is true that the hymen can tear due to many reasons. However, it is not true that the hymen tears from normal activities. The defendant should claim and produce proof regarding the unusual activities which led the hymen of the victim to tear."[943], holding the defendant guilty in contradiction of Section 25 of the Evidence Act, 2031 (1974).
15. In the case of *Prakash Ojha* (2016),[944] the Division Bench[945] of the Supreme Court has sentenced the defendant to five years imprisonment under Section 8(4) of Human Trafficking (Control) Act, 2043 (1986), on the basis speculation against the actual act that occurred and beyond the scope of the law. In this case, the lower court had acquitted the defendant holding that the defendant's act of taking nude photographs and keeping such photos with him does not fall within the scope of the *actus reas* of human trafficking. The Court overturned the decisions, stating that "The decision of the lower court to acquit based on the absence of law has not felt the pain of the victim."[946] Justice Govind Kumar Upadhyay delivered the opinion that "The argument presented in the chargesheet that since such photos cannot be kept for personal use, it is to conclude the intention of the defendant to make and sell pornographic films using the photos taken with him, to make physical contact with the victim under undue influence and to gain financial benefits by filming and displaying the sexual organs of the female sex and such acts should be considered as prostitution, is logical."[947] In this way, the conviction was established based on speculative arguments.

[941] Shree Ram Tripathi v. GoN (2016) (NKP 2073, Vol. 6, DN. 9619).
[942] Justice Govinda Kumar Upadhyaya and Justice Cholendra Shamsher Ja.Ba.Ra.
[943] (2016) NKP 2073, Vol. 6, DN. 9619, at ¶ 8.
[944] GoN v. Prakash Ojha (2016) (NKP 2073, Vol. 6, DN. 9621).
[945] Justice Govinda Kumar Upadhyaya and Justice Jagadish Sharma Poudel.
[946] (2016) NKP 2073, Vol. 6, DN. 9621, at ¶ 25.
[947] *Id.*

16. In the case of *Suman Pahari* (2017),[948] the Division Bench[949] of the Supreme Court cited the case of *Tasi B.K.*, and further elaborated that the act of "touching the vagina with the penis"[950] is not an act of rape attempt, but a crime of rape. Thus, it has further expanded the No.1(c) provision of Chapter on Rape.
17. In the case of *Ishwori Rishi Dev* (2017),[951] the Division Bench[952] of the Supreme Court held that "If the act of appellant-defendant is not interpreted within the scope of the definition of rape, solely because he did not penetrate the vagina of the child victim, then such inhuman actions will be exempted."[953]. The Court held that establishing the action of fulfilling sexual gratification by ejaculating on the vagina of the child victim as attempt to rape would be against the intention of the law relating to rape.
18. In the case of *Soharat Kha Pathan* (2018),[954] the Division Bench[955] of the Supreme Court held that "It would be unjust to the victim and contrary to the intention of the legislature to convict under attempt to rape merely on account of failure to penetrate, regardless of whether penetration was possible or not, or the act of ejaculation occurred or not."[956].
19. In the case of *Ashok Shrestha* (2019),[957] the Division Bench[958] of the Supreme Court interpreted the element 'inside the vagina' to include outside/ around the vagina as well stating that "Ejaculating by rubbing the penis outside the vagina of a child is rape, not attempt to rape."[959].
20. In the case of *Dipak Gurung* (2020),[960] the Division Bench[961] of the Supreme Court seem to be of the opinion that the act of sexual penetration is satisfied by only

[948] Suman Pahari v. GoN (2017) (NKP 2074, Vol. 4, DN. 9801).
[949] Justice Anil Kumar Sinha and Justice Sapana Pradhan Malla.
[950] (2017) NKP 2074, Vol. 4, DN. 9801, at ¶ 5.
[951] Ishwori Rishi Dev v. GoN (2017) (NKP 2074, Vol. 6, DN. 9826).
[952] Justice Gopal Parajuli and Justice Devendra Gopal Shrestha.
[953] (2017) NKP 2074, Vol. 6, DN. 9826, at ¶ 8.
[954] GoN v. Soharat Kha Pathan (2018) (NKP 2075, Vol. 7, DN. 10049).
[955] Justice Cholendra Shamsher Ja.Ba.Ra. and Justice Prakash Man Singh Raut.
[956] (2018) NKP 2075, Vol. 7, DN. 10049, at ¶ 4.
[957] GoN v. Ashok Shrestha (2019) (NKP 2076, Vol. 1, DN. 10165).
[958] Chief Justice Gopal Parajuli and Justice Mira Khadka.
[959] (2019) NKP 2076, Vol. 1, DN. 10165, at ¶ 4.
[960] GoN v. Dipak Gurung (2020) (NKP 2077, Vol. 2, DN. 10443).
[961] Justice Sapana Pradhan Malla and Justice Dambar Bahadur Shahi.

touching as it held that "Whether the victim's vagina is touched by the penis or by other parts of the body is a secondary issue in the rape jurisprudence."[962].

21. In the case of *Abhisekh Koirala* (2020),[963] the Division Bench[964] of the Supreme Court decided contrary to the principle of criminal capacity and the general principle of justice by holding that "The person who claims mental incapacity to realize one's actions has the burden of proof to establish their claim, only then can the claim for defence of insanity to be accepted."[965]

6.5.2 Writs Violating Limitations of the Court in Criminal Cases

There were 4 writs in the subject of criminal law where violation of the limitations can be observed. These cases have been presented in a chronological manner with a brief synopsis as below:

1. In the case of *Mukti Sharma* (1960),[966] the Full Bench[967] of the Supreme Court has clearly explained the duty of the court to observe due process by dispensing its functions according to the law and in the processes specified by the law with minimal use of discretion.[968] However, it validated the decision made in violation of due process and thus, interpreted the law contrary to the doctrine of the fruit of the poisonous tree.

   It held that "Although a part of the investigation was performed illegally, the HMG does not decide to prosecute or not prosecute on the basis of the investigation, rather the facts collected from such investigation is provided to the special police department, who in turn continues the investigation and, if needed, seeks permission from the HMG who can recommend for the filing of charges. Thus, the investigation

[962] (2020) NKP 2077, Vol. 2, DN. 10443, at ¶ 2.
[963] Abhisekh Koirala v. GoN (2020) (NKP 2077, Vol. 12, DN. 10614).
[964] Justice Mira Khadka and Justice Kumar Regmi.
[965] (2020) NKP 2077, Vol. 12, DN. 10614, at ¶ 72.
[966] Mukti Sharma v. SP Tek Bahadur Rayamajhi Special Police Department (1960) (NKP 2017, Vol. 6, DN. 108).
[967] Acting Chief Justice Bhagwati Prasad Singh, Justice Ratna Bahadur Bista, Justice Nayan Bahadur Khatri Chhetri and Justice Kali Prasad Upadhyaya.
[968] (1960) NKP 2017, Vol. 6, DN. 108, at ¶ 7.

process cannot be considered illegal and void the entire investigation on the ground that a part of the investigation was performed wrongfully."[969]

2. In the case of *Rishikesh Shah* (1969),[970] the Full Bench[971] of the Supreme Court delivered its decision in violation of the basic principle of natural justice - no person shall be held in preventive detention without cause.

   It held that "Even if the court can consider whether there is sufficient ground for preventive detention, since the competent authority has observed satisfactory grounds and ordered for preventive detention, the court cannot declare and decide upon whether the grounds held satisfactory by the competent authority is adequate or not. And, there is no constitutional and legal provision that mandates that the detainee must be given information on reasons for their detention, hence, not informing the detainee does not mean that the detention is without reason or cause."[972]

3. In the case of *Rameshman Sthapit* (1992),[973] the Full Bench[974] of the Supreme Court explained the nature of the writ of habeas corpus. The purpose of the writ is to issue an order to release those who are detained without a valid reason for arrest[975] and it is treated as the panacea for all forms of illegal detention.[976] However, the Court violated its own interpretation on the application of the writ.

   It held that "Even if the defendant was arrested and detained illegally, at the moment when the writ petition is heard, a case against him has been lawfully filed and he is placed in prison by court order. Hence, based on previous illegality of detention, the

[969] *Id*. at ¶ 15.
[970] Siddhanta Rajyalaxmi Shah on the behalf of Rishikesh Shah v. Bagmati Zonal Office, Kathmandu (1969) (NKP 2026, Vol. 1, DN. 526).
[971] Chief Justice Bhagwati Prasad Singh, Justice Ranganath Upreti, Justice Lokraj Joshi, Justice Babbar Prasad Singh and JusticePrakash Bahadur K.C.
[972] (1969) NKP 2026, Vol. 1, DN. 526, at ¶ 18.
[973] Rameshman Sthapit v. Tribhuwan International Airport, Security Guard Department (1992) (NKP 2049, Vol. 1, DN. 4450).
[974] Chief Justice Bishwanath Upadhyaya, Justice Har Govinda Singh Pradhan, Justice Mohan Prasad Sharma, Justice Keshav Prasad Upadhyaya and Justice Laxmi Prasad Aryal.
[975] (1992) NKP 2049, Vol. 1, DN. 4450, at ¶ 18.
[976] *Id*. at ¶ 19.

Court cannot issue an order of habeas corpus in a manner which would have either a favourable or unfavourable effect on the case *sub judice* in the lower court."[977]

4. In the case of *Brish Bahadur Rai* (2010),[978] the Division Bench[979] of the Supreme Court has declared that the punishment for the crime of homicide does not fall within the scope of criminal offense of moral turpitude. The Court defined moral turpitude as "the crimes that, in the perception of person with ordinary prudence, would degrade and tarnish or stains the moral behaviour and person character of a person"[980] but diverted away from its own interpretation holding that in the situation where "a quarrel between two party leads to the death of one"[981] and a case is filed under homicide, such a case of homicide does not fall within the scope of offences of moral turpitude.

6.5.3 General Cases Violating Limitations of the Court in Criminal Cases

Whereas, there was only one general case found violating limitations of the court in criminal cases, synopsized as below:

1. In the case of *Sheshnath Prasad Kurmi* (1989),[982] the large Full Bench[983] of the Supreme Court observed that, when interpreting the word 'son' used in Section 26(1) of the Land Act, 2021 (1964), it is not mandatory to interpret the word in accordance with Section 2(m) of the Law of Interpretation Act, 2010 (1953).[984] The Court further held that the Law of Interpretation Act is a general act that helps to interpret general laws, however, it cannot override the provisions under the special provisions of the special law.[985]

---

[977] *Id*. at ¶ 20.
[978] Brish Bahadur Rai v. GoN, Ministry of Education and Sports, School Education Branch, Kathmandu (2010) (NKP 2067, Vol. 10, DN. 8481).
[979] Justice Damodar Prasad Sharma and Justice Ram Kumar Prasad Shah.
[980] (2010) NKP 2067, Vol. 10, DN. 8481, at ¶ 5.
[981] *Id*.
[982] Sheshnath Prasad Kurmi v. Maqbool Ahmed Kurmi (1989) (NKP 2046, Vol. 2, DN. 3719).
[983] Justice Babar Prasad Singh, Justice Mahesh Ram Bhakta Mathema, Justice Prachandaraj Anil, Justice Hiranyeshwarman Pradhan and Justice Rudra Bahadur Singh.
[984] (1989) NKP 2046, Vol. 2, DN. 3719, at ¶ 13.
[985] *Id*. at ¶ 14.

6.6 CASES RELATING TO GENERAL INTERPRETATION OF STATUTES

6.6.1 Criminal Cases Relating to General Interpretation of Statutes

The Supreme Court has elaborated regarding the general interpretations of statutes in a total of 15 criminal cases. These cases have been presented in a chronological manner with a brief synopsis as below:

1. In the case of *Suresh Lama* (2005),[986] the Division Bench[987] of the Supreme Court held that "The interpretation of Act made for the protection of the rights of women should reflect the letter and spirit of the laws."[988]
2. In the case of *Tika Giri (alias Suntale)* (2005),[989] the Division Bench[990] of the Supreme Court held that "Where, in the present case, the convicted person was already punished for burglary previously and the court must determine the sentence of the convicted for burglary for the second time, [The Court] cannot concur with the interpretation there is no provision in the law for additional sentencing."[991] It held that No. 11, 12, 13 and 14 of the Muluki Ain, Chapter on Theft should be read in totality and interpreted harmoniously.
3. In the case of *Gita Bahadur Thapa* (2007),[992] the Full Bench[993] of the Supreme Court affirmed that "If the legal provisions provide a clear and complete meaning, then they should be interpreted and applied in the same way"[994] and when making, amending or voiding the laws the legislature considers the need, relevancy and effectiveness of the laws, hence, the Court cannot that every disputed subject must be decided by the court.[995]

[986] Suresh Lama v. HMG (2005) (NKP 2062, Vol. 7, DN. 7571).
[987] Justice Ram Prasad Shrestha and Justice Balram K.C.
[988] (2005) NKP 2062, Vol. 7, DN. 7571, at ¶ 20.
[989] HMG v. Tika Giri (alias Suntale) (2005) (NKP 2062, Vol. 11, DN. 7623).
[990] Justice Arjun Prasad Singh and Justice Kalyan Shrestha.
[991] (2005) NKP 2062, Vol. 11, DN. 7623, at ¶ 21.
[992] GoN v. Gita Bahadur Thapa (2007) (NKP 2064, Vol. 8, DN. 7868).
[993] Justice Anup Raj Sharma, Justice Gauri Dhakal and Justice Tahir Ali Ansari.
[994] (2007) NKP 2064, Vol. 8, DN. 7868, at ¶ 25.
[995] *Id*.

4. In the case of *Kumar Thapaliya* (2007),[996] the Division Bench[997] of the Supreme Court reaffirmed that "Every citizen should follow the letters of the law. When the words and language used in the laws are clear, there is no room interpret them as otherwise."[998]
5. In the case of *Ravi Krishna Joshi* (2010),[999] the Full Bench[1000] of the Supreme Court held that "When interpretating substantive or procedural law, it is not prudent to interpret the laws in a manner whereby they provide contradictory meanings or in a manner which the one legal provision causes the other to be defeated or become ineffectual. The objectives of administration of justice can only be achieved by the coordinated and harmonious interpretation."[1001]
6. In the case of *Bel Bahadur Thapa Magar* (2011),[1002] the Full Bench[1003] of the Supreme Court held that "It is the general principle of interpretation of law that the general meaning of the terms and phrases used in the law should be accepted as long as such meaning is clear, practical, reasonable and just. However, if the literal interpretation of the law does not provide a logical, rational, practical and just meaning, then it is not appropriate to follow the rules of literal interpretation."[1004]
7. In the case of *Pramila Rai (Shrestha)* (2011),[1005] the Full Bench[1006] of the Supreme Court held that "Section 24A of the Prevention of Corruption Act, 2017 (1960) does not provide a clear provision to ascertain the exact date of commencement of the investigation. In this situation, the date of commencement should be interpreted logically and mindful of the purpose of the Act, thus, the meaning or interpretation of the phrase [under Section 24A] must be construed in harmony of all provisions relating to the investigation ."[1007]

[996] GoN v. Kumar Thapaliya (2007) (NKP 2064, Vol. 9, DN. 7884).
[997] Justice Gauri Dhakal and Justice Tahir Ali Ansari.
[998] (2007) NKP 2064, Vol. 9, DN. 7884, at ¶ 23.
[999] GoN v. Ravi Krishna Joshi (2010) (NKP 2067, Vol. 8, DN. 8428).
[1000] Justice Khilraj Regmi, Justice Tap Bahadur Magar and Justice Ram Kumar Prasad Shah.
[1001] (2010) NKP 2067, Vol. 8, DN. 8428, at ¶ 6.
[1002] GoN v. Bel Bahadur Thapa Magar (2011) (NKP 2068, Vol. 6, DN. 8629).
[1003] Justice Sushila Karki, Justice Tarka Raj Bhatta and Justice Gyanendra Bahadur Karki.
[1004] (2011) NKP 2068, Vol. 6, DN. 8629, at ¶ 11.
[1005] Pramila Rai (Shrestha) v. GoN (2011) (NKP 2068, Vol. 10, DN. 8697).
[1006] Justice Tahir Ali Ansari, Justice Tarka Raj Bhatta and Justice Kamal Narayan Das.
[1007] (2011) NKP 2068, Vol. 10, DN. 8697, at ¶ 13.

8. In the case of *Durga Bahadur Basnet* (2012),[1008] the Division Bench[1009] of the Supreme Court explained the principle of ejusdem generis whereby if a specific word is mentioned first and is followed by ordinary words, the ordinary words should be interpreted in manner following the meaning of the specific word.[1010] The Court explains "In an Act, if specific words are mentioned at the beginning followed by general words ending with 'etc.', then it should be taken to mean that the legislative intention was to cover other subjects of similar properties, nature and character (Analogy) of the specific terms."[1011]
9. In the case of *Shankar Bishwokarma* (2012),[1012] the Division Bench[1013] of the Supreme Court discussed the principle of finality of decision, stating that "A judgment cannot be prepared contrary to the opinion expressed in the opinion book. Preparation of a written judgment expressing an opinion different from that expressed in the opinion book would hamper the principle of stability of the judgment or finality of the judgment."[1014]
10. In the case of *Tarun Kumar Gupta* (2017),[1015] the Full Bench[1016] of the Supreme Court explained that "The court should interpret the laws keeping in mind the intention of the legislature rather than interfere with the authority of the legislature and interpret what would be the appropriate law. While interpreting the words and sentences used in the law, it should be done according to the rules of law interpretation. If the literal interpretation of the law gives a logical, rational, practical and just meaning to the law, then the law should be interpreted literally. But if the literal interpretation of the law does not give a rational, just and practical meaning to the law, the golden rule of interpretation of the law should be adhered to and the law should be interpreted in coherence with the other provisions of the statute."[1017]

[1008] Durga Bahadur Basnet v. GoN (2012) (NKP 2069, Vol. 6, DN. 8839).
[1009] Chief Justice Khilraj Regmi and Justice Kamal Narayan Das.
[1010] (2012) NKP 2069, Vol. 6, DN. 8839, at ¶ 24.
[1011] *Id.*
[1012] GoN v. Shankar Bishwokarma (2012) (NKP 2069, Vol. 6, DN. 8844).
[1013] Justice Kalyan Shrestha and Justice Girish Chandra Lal.
[1014] (2012) NKP 2069, Vol. 6, DN. 8844, at ¶ 2.
[1015] GoN v. Tarun Kumar Gupta (2017) (NKP 2074, Vol. 10, DN. 9884).
[1016] Justice Jagdish Sharma Poudel, Justice Dipak Kumar Karki and Justice Mira Khadka.
[1017] (2017) NKP 2074, Vol. 10, DN. 9884, at ¶ 5.

11. In the case of *Bom Bahadur Khatri* (2018),[1018] the Division Bench[1019] of the Supreme Court explained that "Where the law does not refer to a female child or a male child, it should be understood to mean child of either sex, and the unnatural sexual assault of children is considered as unnatural intercourse."[1020]
12. In the case of *Tara Bahadur Basnet* (2018),[1021] the Division Bench[1022] of the Supreme Court held that "It is not acceptable to state that the Human Trafficking and Trafficking Prevention (Control) Act, 2064, which has a more victim-friendly provisions relating to compensation than the previous law, does not apply and, where the Act was promulgated before the FIR as well as the chargesheet were filed, it is against the principles under victim-friendly criminal legal jurisprudence to deny compensation under the Act on the basis that the law in force when the offence occurred did not provide for compensation to the victim."[1023]
13. In the case of *Sonu Halwai* (2018),[1024] the Division Bench[1025] of the Supreme Court discussed the single transaction principle and held that "It is not valid to argue that a case cannot be filed in Nepal solely because the body of the deceased was found in India as the acts of kidnapping, taking, selling and spending property and killing by the defendant are the stages of a single transaction. If this is to be held valid, then cases can only be filed if the crimes of kidnapping and murder committed within Nepal and not if the hostage is taken to a foreign country and then murdered. Such conclusion is against the principles of law and justice."[1026]
14. In the case of *Gulab Miya (alias Munna Miya Ansari)* (2019),[1027] the Division Bench[1028] of the Supreme Court held that "The Children's Act, 2048 is a special act which provides exemption in punishment for crimes committed by juveniles compared to those committed by adults. However, it would be an absurd

[1018] Bom Bahadur Khatri v. GoN (2018) (NKP 2075, Vol. 5, DN. 10019)
[1019] Justice Tej Bahadur K.C. and Purushottam Bhandari
[1020] (2018) NKP 2075, Vol. 5, DN. 10019, at ¶ 9.
[1021] Tara Bahadur Basnet v. GoN (2018) (NKP 2075, Vol. 6, DN. 10025).
[1022] Justice Om Prakash Mishra and Justice Purushottam Bhandari.
[1023] (2018) NKP 2075, Vol. 6, DN. 10025, at ¶ 12.
[1024] Sonu Halwai v. GoN (2018) (NKP 2075, Vol. 6, DN. 10028).
[1025] Justice Kedar Prasad Chalise and Justice Dr. Ananda Mohan Bhattarai.
[1026] (2018) NKP 2075, Vol. 6, DN. 10028, at ¶ 4.
[1027] GoN v. Gulab Miya (alias Munna Miya Ansari) (2019) (NKP 2076, Vol. 9, DN. 10361).
[1028] Justice Sapana Pradhan Malla and Justice Hari Prasad Phuyal.

interpretation of the Act to state that the Act exempts the juvenile from the liability of compensation."[1029]

15. In the case of *Raj Kumar Murau* (2020),[1030] the Full Bench[1031] of the Supreme Court asserted that "It is improper to apply the same law in a manner which discriminates between the parties and treats the parties differently. If the literal meaning of the words in the law create further complication, inconvenience and inconsistency, it is preferable to interpret the law in the manner that avoids such situations. The provision for appeal under Section 9(1)(b) of the Administration of Justice Act, 2048 (1991), contains the phrase 'cases in which punishment of ten years or more has been imposed' and this provision cannot be interpreted or applied only to the defendant who has been sentence to imprisonment for more than ten years."[1032]

6.6.2 Writs Relating to General Interpretation of Statutes

The Supreme Court has discussed about general interpretation of statutes in 8 writs on various subjects. These decisions relating to the general interpretation of statutes are presented in a chronological manner with a brief synopsis as outlined below:

1. In the case of *Charitra Jogi* (1965),[1033] the Division Bench[1034] of the Supreme Court explained that under Section 19 of the Law of Interpretation Act, 2010 (1953), the ward chief does not have the right to apply Public Security Act, thus use of the Act by the Assistant of Saptari Goshwara, Balkrishna Shrestha to detain (preventive) is contrary to the law.
2. In the case of *Adv. Gajendra Bahadur Pradhananaga* (1965),[1035] the Full Bench[1036] of the Supreme Court held that under section 2(h) of the Interpretation of Laws Act,

[1029] (2019) NKP 2076, Vol. 9, DN. 10361, at ¶ 4.
[1030] GoN v. Raj Kumar Murau (2020) (NKP 2077, Vol. 9, DN. 10566).
[1031] Justice Mira Khadka, Justice Bom Kumar Shrestha and Justice Hari Prasad Phuyal.
[1032] (2020) NKP 2077, Vol. 9, DN. 10566, at ¶ 4.
[1033] Umakanta Lal Kayasta on the behalf of Charitra Jogi v. Saptari Goshwara Assistant Section Officer Balkrishna Shrestha (1965) (NKP 2022, Vol. 1, DN. 281).
[1034] Justice Nayan Bahadur Khatri Chhetri and Justice Dhanendra Bahadur Singh.
[1035] Mrigendra Bahadur Pradhananga on the behalf of Adv. Gajendra Bahadur Pradhananga v. Kathmandu Magistrate Balram Pyakurel (1965) (NKP 2022, Vol. 1, DN. 295).
[1036] Justice Bhagawati Prasad Singh, Justice Ratna Bahadur Bishta Chhetri, Justice Basudev Sharma, Heramba Raj and Justice Surendra Bahadur Basnet.

2010 (1953), "good faith is defined as the work done honestly and in good faith regardless of whether it was done with negligence or not"[1037], and stated that if an officer utilizes the right given by an Act in an honest manner, then it should mean to have been used with good intention.

3. In the case of *Ram Bahadur Khadka* (1970),[1038] the Division Bench[1039] of the Supreme Court characterized the general law of interpretation stating that "When the Act provisions for 'specific words' and 'general words', and if the 'specific words' is removed by subsequent amendment of the Act, the remaining 'general words' cannot qualify as those 'specific words' which are already removed, even if the 'general words' seem similar to the 'specific words'.[1040]
4. In the case of *Parshuram Banjade* (1970),[1041] the Division Bench[1042] of the Supreme Court explained the rationale for providing definitions in every Act. The definition is provided in law in order to avoid frequent repetition of the same word, to clarify the word having dichotomous meaning, and to include or to exclude certain meaning within the word construction.[1043]
5. In the case of *Bhairav Khanal* (1977),[1044] the Full Bench[1045] of the Supreme Court explained that "When interpreting any clause within a section, such interpretation must be done in coherence with other clauses and sub-subsections and the various sections within a chapter must be interpreted within contextual relation."[1046]
6. In the case of *Ram Prasad Sitaula* (2007),[1047] the Division Bench[1048] of the Supreme Court differentiated between criminal prosecution and departmental inquiry and disciplinary. A criminal prosecution is an action by a court of law that results in

[1037] (1965) NKP 2022, Vol. 1, DN. 295, at ¶ 35.
[1038] Ram Bahadur Khadka v. DSP Office (1970) (NKP 2027, Vol. 1, DN. 545).
[1039] Justice Basudev Sharma and Justice Dhanendra Bahadur Singh.
[1040] (1970) NKP 2027, Vol. 1, DN. 545, at ¶ 20.
[1041] Parshuram Banjade v. Durga Das Shrestha, Bagmati Special Court, Kathmandu (1970) (NKP 2027, Vol. 1, DN. 547).
[1042] Justice Nayan Bahadur Khatri and Justice Ranganath Upreti.
[1043] (1970) NKP 2027, Vol. 1, DN. 547, at ¶ 17.
[1044] Bhairav Khanal v. HMG, Special Police Department (1977) (NKP 2034, Vol. 1, DN. 1057).
[1045] Chief Justice Nayan Bahadur Khatri, Justice Basudev Sharma and Justice Hermba Raj.
[1046] (1977) NKP 2034, Vol. 1, DN. 1057, at ¶ 12.
[1047] Ram Prasad Sitaula v. Timber Cooperation of Nepal, Babarmahal (2007) (NKP 2064, Vol. 2, DN. 7816).
[1048] Justice Min Bahadur Rayamajhi and Justice Balram K.C.

imprisonment or a fine for violating the penal laws of the State, whereas a departmental action is a non-criminal action.[1049]

7. In the case of *Sarita Basnet* (2008),[1050] the Division Bench[1051] of the Supreme Court explained that "If the person accused of the crime dies, then the person cannot be sentenced to imprisonment or fine as per the crime, nor can the person who continues the case on the deceased's behalf can be convicted for the crime. However, the civil liability created by the commission of the crime cannot be escaped under the principle that the crime dies along with the criminal.[1052]
8. In the case of *Balkrishna K.C.* (2010),[1053] the Division Bench[1054] of the Supreme Court, explain the principle of double jeopardy, held that once a dispute has been resolved by a competent court, the government cannot initiate investigation proceedings on the same issue arguing that the settled case was against a person (person v. person).[1055]

6.6.3 General Cases Relating to Interpretation of Statutes

There were 30 judgments from the Supreme Court regarding the interpretation of the law in the cases other than criminal cases and writs related to criminal cases. Out of these, 7 cases were decided by the Full Bench,[1056] 4 cases were decided by the Special Bench[1057] and the remaining 19 cases from the Division Bench.[1058]

[1049] (2007) NKP 2064, Vol. 2, DN. 7816, at ¶ 22.
[1050] Sarita Nepal v. Shahi Nepal Airlines Cooperation (2008) (NKP 2065, Vol. 2, DN. 7937).
[1051] Justice Gauri Dhakal and Justice Tahir Ali Ansari.
[1052] (2008) NKP 2065, Vol. 2, DN. 7937, at ¶ 3.
[1053] Balkrishna K.C. v. District Police Office Dailekh (2010) (NKP 2067, Vol. 9, DN. 8459).
[1054] Justice Khilraj Regmi and Justice Gauri Dhakal.
[1055] (2010) NKP 2067, Vol. 9, DN. 8459, at ¶ 6.
[1056] Keshar Bahadur Mahat Chhetri v. Shyam Putwar on behalf of Man Kumari (1961) (NKP 2018, Vol. 6, DN. 148); Lakshmi Devi Shrestha v. Land Administration Office Bara (1977) (NKP 2034, Vol. 1, DN. 1119); Raj Kishore Singh v. HMG., Ministry of Law & Justice (1985) (NKP 2042, Vol. 9, DN. 2475); Pradip Pratap Bam Mall v. OPMCM (2006) (NKP 2063, Vol. 8, DN. 7744); GoN Ministry of Finance v. Surya Tobacco Company Pvt. Ltd. (2009) (NKP 2066, Vol. 9, DN. 8214); Jageshwar Rai Yadav's successor Arjun Rai v. Dinesh Singh Bhumihar (2009) (NKP 2066, Vol. 10, DN. 8236); Sumitra Hada v. Public Service Commission (2010) (NKP 2067, Vol. 5, DN. 8363).
[1057] Biltu Shah v. HMG, OPMCM (1998) (NKP 2055, Vol. 8, DN. 6578); Adv. Achyut Prasad Kharel v. OPMCM (2008) (NKP 2065, Vol. 2, DN. 7926); Adv. Anil Kumar Sinha v. OPMCM (2009) (NKP 2066, Vol. 3, DN. 8092); Adv. Prakash Mani Sharma v. OPMCM (2010) (NKP 2067, Vol. 6, DN. 8386).
[1058] The details of all these cases have been listed in Appendix-3.

In 9 out of these 30 cases, the court's limitations on the interpretation of statutes in general have been absorbed. These cases have been presented in a chronological manner with a brief synopsis as outlined below:

1. In the case of *Keshar Bahadur Mahat Chhetri* (1961),[1059] the Full Bench[1060] of the Supreme Court clarified on the powers conferred to the Court by Section 10 of the Supreme Court Act, 2013 (1956). It held that the Act should clearly define the jurisdiction of the Court rather than in an ambiguous manner. The Court rejected the expansion of its jurisdiction through interpretation of phrase "[the Court] shall have other types of jurisdictions as well" stating that it can only have powers authorized by the prevailing laws.
2. In the case of *Ramashish Prasad Shah* (1984),[1061] the Division Bench[1062] of the Supreme Court affirmed that the interpretation of the Act should be done according to the words written in the Act. It would be contrary to the intention of the Act and the legislature to interpret the law by means of addition of clause not provided by the law.[1063]
3. In the case of *Ram Prasad Adhikari* (1994),[1064] the Division Bench[1065] of the Supreme Court held that the principles of interpretation of the Constitution is different from the interpretation of other laws and stated "When interpreting the Constitution, harmonious and purposeful interpretation is more appropriate than literal interpretation."[1066]
4. In the case of *Kaushal Gyawali* (2004),[1067] a Division Bench[1068] of the Supreme Court held that "When interpreting and applying the law, the legal provisions should be interpreted in a practical and meaningful manner as far as possible, and unless otherwise provided in the law itself, the meaning and interpretation of one

[1059] Keshar Bahadur Mahat Chhteri v. Shyam Kumar Putwar on the behalf of Man Kumari (1961) (NKP 2018, Vol. 6, DN. 148).
[1060] Chief Justice Hari Prasad Pradhan and Justice Ishwori Raj Mishra and Justice Bashudev Sharma.
[1061] Ramashish Prasad Shah v. HMG, OPMCM (1984) (NKP 2041, Vol. 1, DN. 1885).
[1062] Justice Babbar Prasad Singh and Justice Trilok Pratap Rana.
[1063] (1984) NKP 2041, Vol. 1, DN. 1885, at ¶ 14.
[1064] Ram Prasad Adhikari v. Judicial Council (1994) (NKP 2051, Vol. 1, DN. 4852).
[1065] Justice Mohan Prasad Sharma and Justice Laxman Prasad Aryal.
[1066] (1994) NKP 2051, Vol. 1, DN. 4852, at ¶ 8.
[1067] Kaushal Gyawali v. Nepal Industry Development Cooperation (2004) (NKP 2061, Vol. 5, DN. 7378).
[1068] Justice Govinda Bhadaur Shrestha and Justice Khilraj Regmi.

legal provision should not be interpreted in such a way that the other legal provision becomes meaningless."[1069]

5. In the case of *Pradip Pratap Bom Malla* (2006),[1070] the Full Bench[1071] of the Supreme Court held that "The words used in the law must be given purposive interpretation. No word can be interpreted as useless."[1072]
6. In the case of *Kamala Rani Yadav* (2009),[1073] the Division Bench[1074] of the Supreme Court explained that "The provisions of the law cannot be diluted by providing an unfavourable interpretation where the law provides a clear meaning. The law of interpretation also does not allow for such interpretation."[1075]
7. In the case of the *Surya Tobacco Company Limited* (2009),[1076] the Full Bench[1077] of the Supreme Court has held that "Where the law itself is unclear, [the court] cannot arbitrarily determine the ratio of and create responsibility through interpretation."[1078]. It affirmed that when interpretating legal provisions, the powers provided to the Auditor General by the Constitution should not be curtailed.[1079]
8. In the case of *Jageshwar Rai Yadav* (2009),[1080] the Full Bench[1081] of the Supreme Court held that "Where the issue arises on the constitutionality of the law made by the legislature, until the law is declared invalid by due process of the competent authority or the legislature amends or voids the law, the binding power of the law remains. The court interprets and observes the law. The Supreme Court cannot deny the relevance or authority of such law by interpretation."[1082]

[1069] (2004) NKP 2061, Vol. 5, DN. 7378, at ¶ 8.
[1070] Pradip Pratap Bom Malla v. OPMCM (2006) (NKP 2063, Vol. 8, DN. 7744).
[1071] Justice Sharada Shrestha, Justice Rajendra Kumar Bhandari and Justice Tahir Ali Ansar.
[1072] (2006) NKP 2063, Vol. 8, DN. 7744, at ¶ 21.
[1073] Kamala Rani Yadav v. Janakpur Cigarette Factory Limited (2009) (NKP 2066, Vol. 3, DN. 8106).
[1074] Justice Tahir Ali Ansari and Aawdesh Kumar Yadav.
[1075] (2009) NKP 2066, Vol. 3, DN. 8106, at ¶ 4.
[1076] GoN, Ministry of Finance v. Surya Tobacco Company Limited (2009) (NKP 2066, Vol. 9, DN. 8214).
[1077] Justice Anup Raj Sharma, Justice Balram K.C. and Justice Gauri Dhakal.
[1078](2009) NKP 2066, Vol. 9, DN. 8214, at ¶ 6.
[1079] *Id*. at ¶ 3.
[1080] Arjun Raya on the behalf of Jageshwor Rai Yadav v. Dinesh Singh Bhumihar (2009) (NKP 2066, Vol. 10, DN. 8236).
[1081] Justice Ram Prasad Shrestha, Justice Tahir Ali Ansari and Justice Rajendra Prasad Koirala.
[1082] (2009) NKP 2066, Vol. 10, DN. 8236, at ¶ 6.

9. In the case of *Adv. Prakash Mani Sharma* (2010),[1083] the Special Bench[1084] of the Supreme Court explained "If the provision made in the Constitution is interpreted as an absolute right, then it gives the effect of amending the Constitution, which the principle of interpretation of law does not allow it. The judiciary should not expand its authority to that extent."[1085]

[1083] Adv. Prakash Mani Sharma v. OPMCM (2010) (NKP 2067, Vol. 6, DN. 8386).
[1084] Justice Balram K.C., Justice Prem Sharma and Justice Bharat Raj Upreti.
[1085] (2010) NKP 2067, Vol. 6, DN. 8386, at ¶ 3.

CHAPTER VII

DATA ANALYSIS

This chapter focuses on the quantitative analysis of data, which is presented both in tabular form and through charts. It thoroughly examines the data related to principles and provisions, international judicial decisions, as well as the analysis of decisions made by the Supreme Court of Nepal. Additionally, it includes comparative analyses.

7.1 THE PRINCIPLES AND PROVISIONS

7.1.1 Analysis of the Principles Studied

The study explored into 13 principles of criminal law and justice, which serve as guiding principles for limiting the court's authority to criminalize through judicial construction while ensuring maximum certainty in criminalization. Each principle is systematically presented, providing an overview, delineating its basic substance, and offering concluding remarks. By examining these principles, which include foundational concepts such as the principle of legality and the principle of double jeopardy, the study underscores the overarching objective of criminal justice: to safeguard individual rights and liberties against arbitrary or subjective criminalization.

The analysis sheds light on the critical role these principles play in maintaining a fair and transparent criminal justice system. By setting clear boundaries on the court's discretion in interpreting criminal laws and ensuring predictability in the application of criminal statutes, these principles contribute to the protection of fundamental rights and the prevention of unjust prosecutions.

Furthermore, the study highlights the interplay between these principles and the broader objectives of criminal justice, such as deterrence, rehabilitation, and the promotion of public safety. By upholding principles such as proportionality and legality, the criminal justice system can strike a balance between punishing wrongdoing and safeguarding individual freedoms.

In this way, the examination of these principles underscores their significance in shaping the contours of criminal law and justice. By emphasizing the need for legal certainty and the protection of individual rights, the study contributes to a deeper understanding of the foundational principles that underpin the criminal justice system and their implications for ensuring fairness and equity in legal proceedings.

Table 7.1: Total number of principles studied; relating to interpretational limitations of court

	Principles	**Crux**
1.	Principle of legality	*Nullum crimen sine lege, nulla poena sine lege,* i.e. only the law can criminalize and penalize.
2.	Non-retroactivity principle	A criminal law cannot be interpreted to be applied retrospectively.
3.	Strict rule of construction	A criminal law is interpreted strictly, i.e. it cannot be enlarged by implication.
4.	Casus omissus	A matter which has left over by the legislature cannot be supplied to criminalize .
5.	Presumption of innocence	Only the legislated law can convict guilty, otherwise a person is validly presumed innocence.
6.	The principle of certainty	*Nullum crimen sine lege certa,* i.e. law must amount the conduct as crime with certainty.
7.	The interdiction of analogy	*Nullum crimen sine lege stricta,* i.e. law must criminalize with its strict and explicit terms, not by analogy.
8.	Principle of individual autonomy	A man is free to his actions without interference beyond the law by the state.
9.	The principle of fair labelling	Restricting laws must be clearly articulated to restrict freeman's acts.
10.	The causation principle	The actions of the defendant and the resulting harm requires the clear line of connection.

11.	The transaction principle	A series of acts committed as a course of conduct constitutes a single transaction, which prevents defendant from facing duplicative criminalization.
12.	One transaction rule	Multiple offenses occurring within a single transaction bear punishment concurrently rather than consecutively.
13.	Principle of double jeopardy	*ne bis in idem*, i.e. a person cannot be tried twice for the same conduct.
	Total Principles Reviewed	***13***

These principles can be categorized into five thematic groups. This thematic groups reveals the compounding relations of interpretational limitations issue with the overall individual's liberty and fair trial. While each category contributes to the overarching principles guiding legal interpretation and application, the highest proportion lies in the Interpretation and Construction category, followed closely by Individual Rights and Protections and Causation and Transaction.

Table 7.2: Principles categorized in thematic groups

1)	Legality and Retroactivity	Principle of legality
		Non-retroactivity principle
2)	Interpretation and Construction	Strict rule of construction
		Casus omissus
		The interdiction of analogy
		Principle of fair labeling
3)	Presumption and Certainty	Presumption of innocence
		The principle of certainty
4)	Individual Rights and Protections	Principle of individual autonomy
		Principle of double jeopardy
5)	Causation and Transaction	The causation principle
		The transaction principle
		One transaction rule

It indicates that Interpretation and Construction have the highest representation among the thematic groups, followed by Causation and Transaction. Additionally, the data disseminates the core message concerning the value of judicial limitations on interpretation of criminal statutes in safeguards of the person's rights against the overcriminalization and individual subjectivism.

1) Within the theme of Legality and Retroactivity, two fundamental principles guide the interpretation and application of criminal laws: The Principle of Legality and the Non-Retroactivity Principle. The first one asserts that only laws duly enacted by legitimate authorities can define crimes and prescribe penalties. This principle underscores the necessity for clear, explicit laws to criminalize conduct and impose sanctions, ensuring legal certainty and protecting individuals from arbitrary prosecution or punishment. Complementing this principle is the Non-retroactivity principle, which prohibits the retroactive interpretation and application of criminal laws. In essence, this principle dictates that individuals cannot be held criminally liable for actions that were not prohibited by law at the time they were committed. Together, these principles form a vital framework for the just and equitable application of criminal laws, promoting accountability while construing penal statutes.
2) Within the theme of Interpretation and Construction, four principles govern the interpretation and application of criminal laws. The Strict rule of construction stresses that criminal laws be interpreted narrowly and strictly, without expanding their scope through implication. This principle ensures that individuals are only held accountable for conduct explicitly prohibited by law, promoting legal certainty and preventing overreach by judicial authorities. Similarly, the principle of Casus omissus dictates that matters omitted by the legislature cannot be inferred or supplied to criminalize behavior. This principle underscores the importance of legislative intent and the limitations of judicial interpretation in filling gaps within the law. Furthermore, the Interdiction of analogy asserts that criminal offenses must be defined explicitly by law and cannot be extended by analogy. This principle emphasizes the need for precision and specificity in criminal statutes, safeguarding individuals against arbitrary application of the law. Lastly, the principle of Fair

labelling requires that restricting laws be clearly articulated to inform individuals of prohibited actions. This principle promotes transparency and ensures that individuals understand the boundaries of permissible behavior, thereby upholding the principles of fairness and justice within the legal system. Collectively, these principles guide in the subject of interpretation of criminal laws, with clarity and precision for the protection of individual rights and freedoms against subjective criminalization.

3) Under the theme of Presumption and Certainty, two fundamental principles shape legal proceedings. Firstly, the Presumption of innocence dictates that individuals are considered innocent until proven guilty, placing the burden of proof on the prosecution. This principle serves as a crucial safeguard against wrongful convictions, ensuring that individuals are not unjustly deprived of their freedom or rights. Secondly, the Certainty principle asserts that the law must clearly define what constitutes a crime with certainty. This principle emphasizes the necessity of precise and unambiguous legal standards to guide both individuals and legal authorities, promoting predictability within the legal system. Together, these principles uphold the foundation of just criminalization, safeguarding individual rights and ensuring that justice is administered equitably and only under scope of law.
4) Under the theme of Individual Rights and Protections, two fundamental principles play a significant role in shaping legal frameworks. Firstly, the principle of Individual autonomy asserts the inherent freedom of individuals to act within the confines of the law without unwarranted interference from the state. This principle emphasizes personal liberty and self-determination, safeguarding against arbitrary government intrusion into private matters. Secondly, the principle of Double jeopardy ensures that individuals cannot be subjected to multiple legal proceedings or punishments for the same offense. This principle serves as a crucial safeguard against unjust prosecution and protects individuals from the threat of repeated punishment for the same conduct. Together, these principles uphold the fundamental rights of personal autonomy and procedural fairness within penal systems, ensuring that individuals are protected from undue and arbitrary legal proceedings.
5) Within the realm of Causation and Transaction, three pivotal principles guide legal proceedings. Firstly, the Causation principle underscores the necessity of

establishing a clear connection between the defendant's actions and the resulting harm. This principle ensures that individuals are held accountable only for the direct consequences of their conduct, safeguarding against unjustified criminalization. Secondly, the Transaction principle dictates that a series of acts forming a course of conduct should be treated as a single transaction, preventing defendants from facing multiple charges for related offenses. By avoiding duplicative criminalization, this principle enhances efficiency and fairness in legal proceedings. Lastly, the one transaction rule mandates that multiple offenses arising from a single transaction should be punished concurrently rather than consecutively. This rule promotes proportionality in sentencing and prevents excessive punishment for interconnected offenses. Together, these principles contribute to the equitable administration of justice, balancing accountability with the protection of defendants' rights within the legal system.

In this way, each of the five theme addresses the base of the principles of criminal justice underlying into interpretation and construction of statutes so as to protect individual rights against undue, arbitrary and subjective criminalization by judicial construction. These thematic groups collectively contribute to the overarching goal of maintaining a just, equitable, and transparent parameters of judicial interpretations of criminal laws. By upholding principles of legality, fairness, and procedural certainty, these principles ensure that legal processes are conducted with integrity, accountability, and respect for individual rights; safeguarding life and liberty of individuals within society from the overcriminalization through subjective construction of criminal laws. Most importantly, these principles advise about the limits of judicial discretion in interpreting criminal laws with the aim to establish harmonization with the international standards.

7.1.2 Analysis of the Provisions Studied

A. Demographic Analysis of the Provisions

The thesis provides a comprehensive analysis of both national and international legal frameworks to explore the limitations faced by courts in interpreting criminal laws. By reviewing a total of 16 laws, including international laws and provisions from Nepalese

legal documents such as the Constitution and the MCC, the study elucidates the challenges encountered in applying these laws within the Nepalese judicial system.

A significant aspect of the analysis is the examination of treaty obligations under the Vienna Convention on the Law of Treaties (VCLT) and the Nepal Treaty Act. By scrutinizing the provisions of these legal instruments, the study demonstrates how international laws are integrated into domestic legal frameworks, particularly in countries like Nepal. This analysis provides valuable insights into the mechanisms through which international legal standards are incorporated into national legislation and applied by domestic courts.

Furthermore, the thesis evaluates the minimum standards expected of criminal justice systems in post-conflict countries, using the Model Criminal Code as a benchmark. By analyzing the provisions of this model code, the study assesses the extent to which Nepalese criminal law aligns with international best practices and expectations. This comparative analysis sheds light on areas where the Nepalese legal system may need to be strengthened or improved to meet global standards of fairness and effectiveness in criminal justice.

Overall, the analysis offers a deeper understanding of the legislative and treaty-based frameworks that govern judicial interpretations of penal statutes in Nepal. By highlighting both the challenges and opportunities presented by these legal instruments, the thesis provides valuable insights for policymakers, legal practitioners, and scholars working to enhance the effectiveness and fairness of the Nepalese legal system.

Table 7.3: Total number of laws studied relating to interpretational limitations of court

Genre	**Name of Laws**	**Articles/Sections**	**No. of Laws**
International laws	1. Universal Declaration of Human Rights (UDHR), 1948	11(2)	11

	2. International Covenant on Civil and Political Rights (ICCPR), 1966	Article 15(1)(2)	
	3. European Convention on Human Rights (ECHR), 1950	Article 7	
	4. Charter of Fundamental Rights of the European Union (CFREU), 2000	Article 49	
	5. The Rome Statute, 2002	Article 22 & 24	
	6. African Charter on Human and Peoples' Rights (ACHPR), 1981	Article 7(2)	
	7. Arab Charter on Human Rights (ArCHR), 2004	Article 15	
	8. Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention), 1949	Article 99	
	9. Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 1949	Article 65 & 67	
	10. American Convention on Human Rights (ACHR), 1978	Article 9	
	11. Convention on the Rights of the Child (CRC), 1989	Article 40(2)(a)	

Nepalese legal provisions	12. Muluki Criminal Code, 2074 (2017)	Section 6 and 7	2
	13. Constitution of Nepal, 2072 (2015)	Article 20 (4) & 126(1)	
Treaty obligation	14. Vienna Convention on the Law of Treaties (VCLT), 1969	Articles 26, 27 & 46	2
	15. Nepal Treaty Act, 2047 (1990)	Section 9	
Model codes for post-conflict criminal justice	16. Model Criminal Code, 2007	Article 3(1) & (4)	1
Total Laws Reviewed			***16***

Thus, the total number of laws studied relating to interpretational limitations of the court in criminal cases amounts to 16. Of them-

a) International laws: 11 laws were studied, including the UDHR, ICCPR, ECHR and others. These laws collectively contribute to interpretational limitations penal statutes.
b) Nepalese legal provisions: 2 laws were examined, namely the MCC and the Constitution of Nepal. These laws provide insights into the interpretational constraints applicable within the domestic legal system of Nepal.
c) Treaty obligations: 2 laws were reviewed, comprising the VCLT and the Nepal Treaty Act. These laws offer guidance on abidance of international laws in interpretational limitations in domestic arena and nature of compliance in the land of the law.
d) Model codes for post-conflict criminal justice: 1 law was studied, the Model Criminal Code, which provides a framework for minimum standard of criminal law and justice, contributing to the understanding of interpretational limitations as a minimum standard across the globe.

B. The Specific Provisions Analysed

These data of legal provisions can be analysed under the following three thematic groups. For the purpose of data analysis, the total 16 laws have been categorized into further three thematic variables: x_0, y_0, and z_0, representing the level of articulation from simple to strong.

The variable x_0 representing data of provisions relating to compliance of the principles of criminal justice, y_0 representing data of provisions relating to judicial limitations in general, and z_0 representing data of provision relating to express mention of interpretational limitations:

1) **Variable x_0: Data of Provisions Relating to Compliance of the Principles of Criminal Justice**

   Within the category of "Data of Provisions Relating to Compliance of the Principles of Criminal Justice," provisions are delineated in both international and national laws. Internationally, Article 15 of the ICCPR, Article 7 of the ECHR and Article 49 of the CFREU underscore the importance of abiding by general principles of law recognized globally when determining criminality and administering punishment. These provisions ensure that individuals cannot evade trial and punishment for acts or omissions that were considered criminal according to prevailing international norms at the time of their commission. This emphasizes the universality and enduring nature of certain legal principles across nations.

   Similarly, within the realm of national laws, Articles 20(4), 126(1) of the Constitution of Nepal mandates that powers related to justice in Nepal must be exercised by courts and other judicial institutions in alignment with the Constitution, other pertinent laws, and recognized principles of justice. This provision highlights the imperative of harmonizing domestic legal practices with established principles of justice, thereby promoting consistency and fairness within the Nepalese legal system.

2) Variable y_0: Data of Provisions Relating to Judicial Limitations in General

Under the category of 'Data of Provisions Relating to Judicial Limitations in General,' there is a comprehensive array of international laws, national statutes, and model codes aimed at ensuring fairness and proportionality within legal systems. International laws, including the UDHR, Third Geneva Convention, and others, articulate stringent prohibitions against retroactive laws and excessive penalties. For instance, the UDHR's Article 11(2) expressly prohibits holding individuals accountable for acts that were not offenses at the time of their commission, echoing sentiments echoed in similar provisions across international treaties. Moreover, national laws such as Article 7 of the MCC reinforce these principles at the domestic level, emphasizing the importance of legal consistency and proportionality in criminal justice proceedings.

Furthermore, the analysis extends to treaty obligations, particularly under the Vienna Convention on the Law of Treaties, 1969 (VCLT), and the Nepal Treaty Act, 2047 (1990). The VCLT's Article 26 emphasizes the binding nature of treaties and the requirement for parties to adhere to them in good faith. Meanwhile, Article 46 addresses the interaction between internal law and treaty consent, outlining conditions under which violations of internal law may affect treaty validity. In a domestic context, Section 9 of the Nepal Treaty Act, 2047 (1990) outlines procedures for treaty enforcement within Nepal, ensuring that inconsistent provisions of domestic law are voided in favour of treaty provisions upon ratification, accession, acceptance, or approval by the Parliament. This intricate web of legal provisions reflects a global commitment to upholding fundamental principles of justice, non-retroactivity, and legal consistency across international and domestic legal frameworks.

3) Variable z_0: Data of Provision Relating to Express Mention of Interpretational Limitations

Under the category of 'Data of Provision Relating to Express Mention of Interpretational Limitations,' three key international laws explicitly outline

principles aimed at constraining the interpretation of criminal offenses. These provisions, found within The Rome Statute, Fourth Geneva Conventions, and Model Criminal Code, emphasize the importance of clarity and strict interpretation in legal proceedings. Within The Rome Statute of the ICC, Article 22(2) expressly states the principle of limitation, asserting that the definition of a crime must be strictly construed and cannot be extended through analogy. In cases of ambiguity, the interpretation should favour the person under investigation, prosecution, or conviction.

Similarly, Article 67 of the Fourth Geneva Convention addresses the limitation principle within the context of courts, stipulating that only provisions of law applicable prior to the offense, and in accordance with general principles of law—particularly the principle of proportionate penalties—shall be applied. Additionally, courts must consider factors such as the accused not being a national of the Occupying Power. Furthermore, Article 3(4) of the Model Criminal Code reinforces the necessity of strict interpretation by prohibiting the use of analogy in defining criminal offenses. This provision underscores the importance of clear legal definitions and avoids potential expansions of criminal liability through loose interpretation practices.

Table 7.4: Distribution of Provisions into x_0, y_0, z_0 Thematic Variables

	Variable x_0		**Variable y_0**			**Variable z_0**	
Provisions Under 16 Laws	International Laws	3	International Laws		6	International Laws	2
	National Laws	1	National Laws		1	Model Criminal Code	1
			Treaty Obligations	Int. Law	1		
				National Law	1		
Total		***4***			***9***		***3***

a) Variable x_0, focusing on provisions relating to compliance with the principles of criminal justice, encompasses a total of 4 provisions across international and national laws. These provisions emphasize the importance of adhering to general principles of law recognized globally and domestically, ensuring individuals cannot evade trial and punishment for acts deemed criminal at the time of commission.
b) Variable y_0, concerning provisions relating to judicial limitations in general, comprises 9 provisions distributed across international and national laws. These provisions aim to ensure fairness and proportionality within legal systems, prohibiting retroactive laws and excessive penalties. They underscore the necessity of clear legal prescriptions for criminal offenses and penalties to prevent arbitrary or retrospective application of the law.
c) Variable z_0, covering provisions relating to the express mention of interpretational limitations, includes 3 provisions found within key international laws. These provisions emphasize the importance of clarity and strict interpretation in legal proceedings, particularly in defining criminal offenses and avoiding potential expansions of criminal liability through loose interpretation practices.

The analysis of provisions under the three thematic variables, x_0, y_0, and z_0, reveals distinct patterns in the distribution of legal provisions across international and national legal frameworks. Variable y_0, which deals with judicial limitations in general, stands out with 16 provisions, indicating a significant emphasis on delineating legal boundaries and ensuring fairness within legal systems. Variable x_0, focusing on compliance with principles of criminal justice, comprises 4 provisions, highlighting the importance of upholding fundamental principles of criminal justice within both international and national contexts. Variable z_0, addressing express mention of interpretational limitations, includes 3 provisions, playing a crucial role in constraining the interpretation of criminal offenses and emphasizing clarity and precision in legal proceedings.

Below are the specific provisions under these variables:

1) Variable x_0 Provisions

International Laws	Article 15 of the ICCPR: (1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby. (2) Nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.
	Article 7 of the ECHR: (1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. (2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.

	Article 49 of the CFREU: (1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable. (2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognized by the community of nations.
National Laws	Constitution of Nepal: Article 20(4). No person shall be liable for punishment for an act which was not punishable by the law in force when the act was committed nor shall any person be subjected to a punishment greater than that prescribed by the law in force at the time of the commission of the offence. Article 126(1). Powers relating to justice in Nepal shall be exercised by courts and other judicial institutions in accordance with this Constitution, other laws and recognized principles of justice.

2) Variable y_0 Provisions

International Laws	Article 11(2) of the UDHR: No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

	Article 7(2) of the ACHPR: No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.
	Article 15 of the ArCHR: No crime and no penalty can be established without a prior provision of the law. In all circumstances, the law most favourable to the defendant shall be applied.
	Article 99 of the Third Geneva Convention: No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by international law, in force at the time the said act was committed.
	Article 9 of the ACHR: No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.
	Article 40 (2) (a) of the CRC: No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed.
National Laws	Article 7 of the MCC: No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under the law. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.
Treaty Obligations	Article 26 and 46 of the VCLT: Article 26. *'Pacta Sunt Servanda'*

	Every treaty in force is binding upon the parties to it and must be performed by them in good faith. Article 46. Provisions of Internal Law Regarding Competence to Conclude Treaties 1) A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2) A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.
	Section 9 of the Nepal Treaty Act: 1) In case of the provisions of a treaty, to which Nepal or GoN is a party upon its ratification accession, acceptance or approval by the Parliament, inconsistent with the provisions of prevailing laws, the inconsistent provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws. 2) Any treaty which has not been ratified, accede to, accepted or approved by the Parliament, though to which Nepal or GoN is a party, imposes any additional obligation or burden upon Nepal, or GoN, and in case legal arrangements need to be made for its enforcement, GoN shall initiate action as soon as possible to enact laws for its enforcement.

3) Variable z_0 Provisions

International Laws	Article 22 of the Rome Statute: (1) A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court. (2) The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.
	Fourth Geneva Convention: Article 65. The penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language. The effect of these penal provisions shall not be retroactive. Article 67. The Courts shall apply only those provisions of law which were applicable prior to the offence, and which are in accordance with general principles of law, in particular the principle that the penalty shall be proportioned to the offence. They shall take into consideration the fact that the accused is not a national of the Occupying Power.

Model Criminal Code	Model Criminal Code: Article 3. (1) Criminal offenses and penalties must be prescribed only by law. (2) No penalty may be imposed upon any person for committing a criminal offense that did not constitute a criminal offense prior to it being committed and for which a penalty was not prescribed by law. (3) Paragraphs 1 and 2 do not prejudice the trial and punishment of any person for any act or omission that, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations. (4) The definition of the *criminal offense* must be strictly construed, and the use of analogy in the interpretation of a criminal offense is prohibited.

Overall, the provisions across international laws, national laws, and the model code concerning judicial limitations, it is evident that there is a shared commitment to upholding fundamental principles of fairness, proportionality, and legal consistency within legal systems. Across all categories, there is a resounding affirmation of the importance of constraining the interpretation of penal statutes to ensure clarity and prevent arbitrary or retrospective application of the law. International laws, such as the UDHR, ICCPR and ECHR, establish stringent prohibitions against retroactive laws and excessive penalties, while national laws, exemplified by the MCC and the Constitution of Nepal, reinforce these principles domestically. Additionally, both international and national legal frameworks underscore the necessity of adhering to recognized principles of justice when determining criminality and administering punishment, as demonstrated by provisions in the Vienna Convention on the Law of Treaties and Article 126(1) of the Constitution of Nepal. Moreover, the model code further emphasizes the importance of strict interpretation in legal proceedings to prevent the expansion of criminal liability. In essence, while there may be

variations in specific provisions and contexts, there is a clear consensus on the overarching principles guiding judicial limitations and compliance with established legal norms across international and domestic legal frameworks.

7.2 INTERNATIONAL JUDICIAL DECISIONS

While the thesis offers a comprehensive examination of interpretational limitations in criminal cases, it is not without limitations. The selection of international judicial decisions, comprising 16 cases, was based on specific criteria, potentially overlooking other pertinent cases. Moreover, the concentration of cases from common law jurisdictions like the UK, USA, and India may introduce bias and limit the applicability of findings to other legal systems. Additionally, the reliance on a small number of international court decisions, despite efforts to include cases from bodies like the ICC and I.C.J., may restrict the breadth of analysis. Future research should aim to broaden the scope of case selection to encompass diverse legal traditions and jurisdictions, thereby enhancing the robustness and relevance of insights into interpretational challenges faced by courts in criminal cases.

International Court Decisions		**Number of Decisions**	
Decisions of International Court	ICC	1	4
	I.C.J.	1	
	ECtHR	2	
Foreign Supreme Court Decisions	UK		4
	USA		4
	INDIA		4
Total			***16***

7.2.1 The Crux of the Limitations Explained in the Decisions

the crux of the limitations explained in the decisions is synopsized below in the table. It encapsulates the intricate legal interpretations and limitations applied by various courts across international jurisdictions.

Table 7.5: The Crux of the Limitations Explained in the Decisions Synopsized

S.N.	Case	Crux	Court
1.	Prosecutor v. Thomas Lubanga Dyilo (2012)[1086]	Principle of legality applies against retroactive application of the statute and not against the argument that the person did not have the knowledge that his actions were criminal offences and punishable under the law. The defendant should be found guilty when the elements of the crime are satisfied beyond a reasonable doubt.	ICC
2.	India v. Pakistan (2019)[1087]	Art. 36 of the Vienna Convention on Consular Relations cannot be interpreted to reach the conclusion that the Convention excludes from its scope persons accused of espionage, as it is neither expressed in the provision of the Convention, nor in the *travaux préparatoires*. The I.C.J.'s jurisdiction has limited jurisdiction and it cannot extend its jurisdiction the conviction and sentencing done by domestic courts of sovereign nations.	I.C.J.
3.	Streletz, Kessler and Krenz v. Germany (2001)[1088]	The Court does not have the jurisdiction to review the interpretation and application of domestic laws by domestic courts.	ECtHR

[1086] Judgment, ICC-01/04-01/06, 14 March 2012 (ICC).
[1087] Judgments, I.C.J. Reports 2019.
[1088] Applications nos. 34044/96, 35532/97 and 44801/98, 22 March 2001 [GC].

4.	Kokkinakis v. Greece (1993)[1089]	The Court ruled that it could not interfere in the authority of the domestic courts to interpret and apply domestic laws. The principle of non-retroactive application of law embodies the principle of legality and thus, offences must be clearly defined by the law. The Court explained that this principle will not be breached where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him liable.	ECtHR
5.	Knuller v. DPP (1973)**[1090]**	The principle of certainty requires the Courts to recognise precedents, regardless of their correctness, until the legislation provides otherwise.	UK
6.	Regina v. Rimmington and Goldstein (2005)[1091]	Cases should be prosecuted under the specific law which regulates the offence. Only the Parliament, after a careful consideration, declare a previously criminal act as not a crime. Existing offences under the law cannot be extended, by interpretation or analogy, to cover facts which did not previously constitute a criminal offence.	UK

[1089] Application no. 14307/88, Judgment, 25 May 1993.
[1090] *Knuller, supra* note 103 (UKHL).
[1091] *Rimmington, supra* note 134 (UKHL).

7.	Regina v. Jones (2006)[1092]	Unless the domestic statute clearly expresses that a crime is inclusive of crimes under customary international law, the statute must be interpreted to mean statutory crimes only. The Court cannot create new offences.	UK
8.	Thet v. DPP (2006)[1093]	The Courts cannot extend the ambit of criminal offences and liabilities by interpretation.	UK
9.	Connally v. General Construction Co. (1926)[1094]	Vague statutes violate due process of law as it requires the Court to interpret and apply the provisions by guessing at its meaning.	USA
10.	USA v. Wiltberger (1820)[1095]	If the words of the penal laws are clear without ambiguity, no construction can be applied. Only the legislature can define the crime and punishment, not the judiciary.	USA
11.	State of Louisiana v. Freddie Daniels (1958)[1096]	Where the legislature specifically defines the intention within the scope of the crime, the Court cannot, by interpretation, expand or limit such intent. The burden of proof falls on the prosecuting party to prove the defendant had the specific intent defined by the statute.	USA
12.	Abuelhawa v. United States (2009)[1097]	Penal law is interpreted strictly, keeping in mind the intention of the legislation. Where	USA

[1092] *Jones, supra* note 137 (UKHL).
[1093] *Thet, supra* note 495.
[1094] *Connally, supra* note 275 (USA).
[1095] *Wiltberger, supra* note 502 (USA).
[1096] *Daniels, supra* note 505 (USA).
[1097] *Abuelhawa, supra* note 507 (USA).

		the legislation provides different punishment according to the degree of liability, the Court cannot impose a higher punishment in a manner as to ineffectuate the intention of the legislative provisions.	
13.	Motibhai Fulabhai Patel & Co v. M/S. R. Prasad and Ors (1969)[1098]	The application of penal laws and sentences should be within the scope of the words provided in the legal provisions. The scope cannot be extended by means of interpretation.	India
14.	Subash Parbat Sonvane v. State of Gujarat (2002)[1099]	The penal provisions are interpreted strictly. Where the legislative body has used specific words and omitted specific words in the penal provision, those specific words cannot be construed to include the omitted words as well.	India
15.	M. Narsinga Rao v. State of Andhra Pradesh (2001)[1100]	The law provides the Courts with the discretion to draw legal presumptions from certain fact or facts of the case. However, such discretion should be used with prudence, and only as directed by the statute.	India
16.	State of Rajisthan v. Vinod Kumar (2012)[1101]	Proviso is an exception that the legislature desired to exclude from the general rule. Interpretation that would defeat the purpose of the proviso should be avoided. Thus, the Court must adhere to the mandatory conditions of the proviso, else,	India

[1098] *Patel, supra* note 511 (India).
[1099] *Sonvane, supra* note 513 (India).
[1100] *Narsinga Rao, supra* note 518 (India).
[1101] *Vinod Kumar, supra* note 523 (India).

		it would defeat the intent of the legislation and make a mockery of the criminal justice system.	

In this manner, both international and foreign courts have analysed and integrated the interpretational boundaries of the judiciary.

7.2.2 The Limitations Explained in the Decisions Analysed

For the purpose of data analysis, the total 16 international cases have been categorized into further three thematic variables: x, y, and z, representing limitation by jurisdiction/burden of proof, limitation within the language of law, and express mention of interpretational limitation by the court, respectively.

1) Variable x encompasses decisions where courts have interpreted the limitations on their jurisdiction. Among the international cases, *Jadhav* (2019),[1102] *Krenz* (2001),[1103] and *Kokkinakis* (1993)[1104] stand out, where the courts uniformly abstained from intervening in domestic courts' authority to interpret and apply domestic laws. These international courts affirmed that their jurisdiction is confined to interpreting specific conventions, thereby precluding review or revision of sovereign state domestic court decisions. In *Knuller* (1973),[1105] the House of Lords assimilated interpretational limitations within its jurisdiction. Despite disagreeing with the decision, it acknowledged a precedent to uphold the principle of certainty in the criminal justice system.
2) Variable y encompasses cases where international and foreign courts have strictly interpreted provisions of statutes. In *Thomas Lubanga Dyilo* (2012),[1106] the court delineated between 'mistake of law' and the 'principle of legality,' emphasizing that the latter precludes retroactive application of statutes, regardless of the defendant's claim of ignorance regarding the criminal nature of their actions. In the US cases

[1102] *Jadhav*, *supra* note 436 (I.C.J.).
[1103] *Krenz*, *supra* note 460 (ECtHR).
[1104] *Kokkinakis*, *supra* note 282 (ECtHR).
[1105] *Knuller*, *supra* note 103 (UKHL).
[1106] *Dyilo*, *supra* note 415 (ICC).

Freddie Daniels (1958)[1107] and *Abuelhawa* (2009),[1108] courts interpreted limitations on extending or restricting the scope of penal provisions. *Freddie Daniels* established that when legislation specifies intent, the prosecution must prove it, while *Abuelhawa* affirmed that differing degrees of liability in legislation necessitate corresponding charges against the defendant. In Indian cases *M. Narsinga Rao* (2001)[1109] and *Vinod Kumar* (2012),[1110] decisions underscore the rule of law, with courts bound by statutory provisions even when exercising discretion.

3) Variable z encompasses cases where international and foreign courts have embodied the limitations of court in express way. In three cases from the UK, namely *Rimmington* (2005),[1111] *Jones* (2006),[1112] and *Thet* (2006),[1113] the House of Lords interpreted their judicial limitations by affirming that courts cannot create new offenses or alter the scope of penal provisions; only Parliament holds such authority. Similarly, in US cases such as *Wiltberger* (1820),[1114] and *Connally* (1926),[1115] the courts upheld the principle that only legislative bodies can criminalize acts, not the judiciary. *Connally* further assimilated interpretational limitations, noting that vague penal laws violate due process by forcing courts to interpret them discretionarily. In two cases from India, *Motibhai Fulabhai Patel* (1969)[1116] and *Subash Parbat Sonvane* (2002),[1117] the courts reaffirmed their limitation by asserting that they lack jurisdiction to expand or restrict the scope of penal provisions through interpretation.

[1107] *Daniels, supra* note 505 (USA).
[1108] *Abuelhawa, supra* note 507 (USA).
[1109] *Narsinga Rao, supra* note 518 (India).
[1110] *Vinod Kumar, supra* note 523 (India).
[1111] *Rimmington, supra* note 134 (UKHL).
[1112] *Jones, supra* note 137 (UKHL).
[1113] *Thet, supra* note 495 (UKHL).
[1114] *Wiltberger, supra* note 502 (USA).
[1115] *Connally, supra* note 275 (USA).
[1116] *Patel, supra* note 511 (India).
[1117] *Sonvane, supra* note 513 (India).

Table 7.6: Limitations Explained in the Decisions Categorized into x, y, z Thematic Variables

International Decisions	**Variable x**		**Variable y**		**Variable z**	
	International courts	3	International courts	1	International courts	-
	UK	1	UK	-	UK	3
	USA	-	USA	2	USA	2
	India	-	India	2	India	2
Total		***4***		***5***		***7***

The data in the table demonstrates varying degrees of judicial interpretation across the variables, with a predominant focus on embodying legal principles and strict adherence to statutory provisions.

Among the international court's decisions, Variable x accounts for 3 cases, indicating instances where jurisdictional limitations play a significant role. Variable y represents 1 case, suggesting limitations within the language of law. In contrast, the UK courts exhibit a greater focus on express mention of interpretational limitations by court authority, with Variable z comprising 3 cases, while Variable x has 1 case. The USA courts show a more balanced distribution, with 2 cases each for Variables y and z. Similarly, Indian courts demonstrate parity between Variables y and z, each having 2 cases. Overall, Variable z has the highest frequency across all courts, with a total of 7 cases, underscoring the importance of interpretational limitations of the court in criminal cases.

When comparing the number of cases across the variables, Variable z has the highest count with 7 cases, followed closely by Variable y with 5 cases, and Variable x with 4 cases. This suggests a significant emphasis by international and foreign courts on embodying judicial limitations on the interpretation of criminal statutes in their decisions. Variable y indicates a notable focus on court limitations within the language of law, while Variable x signifies a comparatively lower emphasis on cases involving issues of jurisdiction and due process.

7.3 DECISIONS OF SUPREME COURT OF NEPAL

7.3.1 Population Demographics Analysis

The population data indicates a total of 9842 reported cases. Among these, 1729 pertain to criminal cases (precisely denoted by a symbol as BLACK), 182 are writs related to criminal cases (precisely denoted by a symbol as RED), and 39 are general cases concerning the interpretation of statutes (precisely denoted by a symbol as BLUE).

Table 7.7: Population

Total Reported Cases: 9842		
Total Reported Criminal Cases (BLACK)	Total Writs Relating to Criminal Cases (RED)	Total General Cases Relating to Interpretation of Statutes (BLUE)
1729	182	39

This distribution illustrates the relative prevalence of criminal cases compared to writs and general cases related to statutory interpretation within the reported cases dataset.

7.3.2 Sample Selection Analysis

Out of the pool of 1729 criminal cases, 104 cases were chosen for further examination (precisely denoted by a symbol as Black). Similarly, from the subset of 182 writs relating to criminal cases, 41 cases were selected (precisely denoted by a symbol as Red). Additionally, all 39 cases from the general cases concerning the interpretation of statutes were selected (precisely denoted by a symbol as Blue). The cases selected were specifically chosen to align with the scope of the study. Each case was carefully considered to ensure relevance and applicability to the objectives. This meticulous selection process captures a comprehensive sample that contributes meaningfully to the objectives of the study.

Table 7.8: Sample Selected

Criminal Cases Relating to Interpretation of Statutes (Black)	Writs Relating Interpretation of Statutes (Red)	General Cases Relating to Interpretation of statutes (Blue)
104	41	39

The 104 criminal cases, 41 writs, and 39 general cases selected underwent further organization into four thematic groups, defining the scope of the data study. In Theme A, titled 'Cases Interpreting Limitations of Court,' the focus lies on legal cases that delve into the interpretation and application of court limitations. Theme B, named 'Cases Assimilating Limitations of Court,' encompasses cases that adapt and incorporate court limitations into their legal arguments and decisions. Conversely, Theme C, titled 'Cases Violating Limitations of Court,' explores instances where legal proceedings breach or disregard established court limitations. Finally, Theme D, designated as 'Cases Relating to General Interpretation of Statutes,' encompasses cases that involve the broader interpretation of statutes beyond specific court limitations.

These thematic clusters allow for a deeper analysis and categorization of the selected cases based on their interpretations and interactions with the limitations of the court. Each theme provides valuable insights into how legal proceedings navigate and adhere to, or deviate from, established judicial limitations, contributing to the overarching objectives of the study.

Table 7.9: Sample Distributed According to Themes

Subject/Themes:	**THEME A:** Cases Interpreting Limitations of Court	**THEME B:** Cases Assimilating Limitations of Court	**THEME C:** Cases Violating Limitations of Court	**THEME D:** Cases Relating to General Interpretation of Statutes	***Total***

Criminal Cases Relating to Interpretation of Statutes (Black)	31	37	21	15	104
Writs Relating Interpretation of Statutes (Red)	11	18	4	8	41
General Cases Relating to Interpretation of Statutes (Blue)	5	3	1	30	39
Total	***47***	***58***	***26***	***53***	***184***

The table illustrates that the Theme A, concerning cases interpreting court limitations, had 47 cases. Theme B, involving cases assimilating court limitations, totalled 58 cases. Theme C, addressing cases violating court limitations, encompassed 26 cases. Lastly, Theme D, covering cases on the general interpretation of statutes, consisted of 53 cases. In total, there were 184 cases across all themes.

1) Among the 47 cases in Theme A which represents about a quarter of the total sample, 31 criminal cases interpreting limitations of the court accounted for the majority at nearly two-thirds, while 11 writs interpreting limitations of the court constituted roughly a quarter, and 5 general cases interpreting limitations of the court made up the remainder of the identified cases in Theme A. This breakdown highlights the diverse range of legal proceedings wherein the interpretation of court limitations plays a significant role. It underscores the importance of understanding and applying these limitations within various legal contexts to ensure the proper administration of justice. Specifically, the Supreme Court of Nepal has interpreted limitations of court in criminal statutes altogether in 47 cases, with criminal cases accounting for the majority of interpretations. This demonstrates the significance of court limitations in guiding legal proceedings and ensuring the fairness and effectiveness of the judicial system.

2) In Theme B, dedicated to cases assimilating court limitations, a total of 58 cases were identified, making up a significant portion of the total sample. Within this theme, the majority consisted of 37 criminal cases relating to the interpretation of statutes, followed by 18 writs and 3 general cases also relating to statute interpretation. This theme encompasses the highest number of cases among all themes, indicating a substantial emphasis on understanding and incorporating court limitations across criminal, writs, and general cases related to the interpretation of statutes. The prominence of assimilation highlights its awareness in interpreting penal statutes.
3) In Theme C, which deals with cases violating court limitations, 26 cases were identified, representing a significant portion of the total sample. Within this theme, the majority consisted of 21 criminal cases relating to the interpretation of statutes, followed by 4 writs and 1 general case also relating to statute interpretation. In terms of number, the instances of cases violating the limitations are relatively low than interpreting and assimilating. However, the existence of cases violating the principle of criminal law itself is a significant concern. The number could potentially increase with unreported cases, although they are not measured. Thus, it indicates that despite the Court's detailed interpretation and assimilation of the limitation principle in numerous cases, instances of violation persist.
4) In Theme D, which examines cases related to the general interpretation of statutes, 53 cases were identified, making up a considerable portion of the total sample. Among these cases, 15 criminal cases accounted for a significant share, followed by 8 writs and 30 general cases, all relating to statute interpretation. This thematic category encompasses a broad spectrum of legal interpretations concerning statutes, reflecting the complexity and diversity of legal challenges encountered within this area. As the subject of the study is under the main stream of judicial limitations on interpretation of criminal statutes; the data found on the theme of general interpretation of statutes (Theme D) were grouped together to see the overall mind-set of the judiciary of Nepal in the interpretational domain, thus they are not analyzed hereafter.

7.4 COMPARATIVE ANALYSIS

7.4.1 Comparative Analysis of the Decisions of Supreme Court of Nepal

The comparative analysis of Supreme Court cases from Nepal across four themes—Cases Interpreting Limitations of Court (Theme A), Cases Assimilating Limitations of Court (Theme B), Cases Violating Limitations of Court (Theme C), and Cases Relating to General Interpretation of Statutes (Theme D)—reveals intriguing insights. Theme B, focusing on cases assimilating court limitations, notably boasts the highest number of cases, totalling 58 in the sample. Close behind is Theme D, which deals with general interpretation of statutes and accounts for 53 cases. Theme A, centering on cases interpreting court limitations, and Theme C, addressing cases violating court limitations, present comparatively lower figures, with 47 and 26 cases respectively. This distribution highlights the diverse nature of legal proceedings undertaken by the Supreme Court, with certain themes garnering more attention than others. These findings underscore the extensive efforts made by the Supreme Court to interpret and assimilate limitations of court in criminal cases, with violations being relatively rare, emphasizing the court's commitment to upholding legal principles and ensuring justice within the legal system.

A. Analysing Data Under Theme A

Considering the specific focus of the study on the Supreme Court's pronouncements regarding judicial limitations on the interpretation of criminal statutes, the level of articulation in the decisions regarding judicial limitations has been analysed. For this purpose, the 47 cases interpreting limitations of the court recorded under Theme A have been categorized into three thematic variables: X, Y, and Z. These variables denote the level of articulation in the decisions regarding judicial limitations on the interpretation of criminal statutes, ranging from simple to strong writing. The categorization is as follows:

1) Variable X: Represents cases with a simple articulation regarding judicial limitations on the interpretation of criminal statutes. In this category, the type of cases upholding Court's limitations within the claims of the charge-sheet/burden of proof are kept.

2) Variable Y: Represents cases with a moderate level of articulation regarding judicial limitations on the interpretation of criminal statutes. In this category, the cases upholding Court's limitations within the language of the law/ no forceful interpretation are kept.
3) Variable Z: Represents cases with a strong articulation regarding judicial limitations on the interpretation of criminal statutes. In this category, the cases clearly articulating Court cannot criminalize by interpretation/no criminalization by judicial legislation are kept.

Table 7.10: Cases Interpreting Limitations of Court into X, Y, Z Thematic Variables

Theme A	**Variable X**	**Variable Y**	**Variable Z**	
Criminal Cases Relating to Interpretation of Statutes	10	13	8	*31*
Writs Relating Interpretation of Statutes	1	7	3	*11*
General Cases Relating to Interpretation of Statutes	1	3	1	*5*
Total	***12***	***23***	***12***	***47***

This table represents the distribution of cases among the thematic variables X, Y, and Z for criminal cases, writs, and general cases related to the interpretation of statutes under Theme A.

Across the three variables X, Y, and Z, the distribution of cases varies among criminal cases, writs, and general cases. Variable X, representing cases with a simple articulation, includes 10 criminal cases, 1 writ, and 1 general case. Variable Y, indicating a moderate level of articulation, comprises 13 criminal cases, 7 writs, and 3 general cases. Variable Z, denoting a strong articulation, encompasses 8 criminal cases, 3 writs, and 1 general case. In total, there are 12 cases categorized under Variable X, 23 cases under Variable Y, and 12 cases under Variable Z.

Thus, the Variable Y emerges with the highest proportion of the total cases analysed. This indicates a predominant presence of cases with a moderate level of articulation in decisions regarding judicial limitations on the interpretation of criminal statutes. Conversely, both Variable X and Variable Z share an approximately equal number. This implies that both Variable X and Z exhibit a comparable representation, each comprising a quarter of the total cases.

So, it elucidates the varying proportions of articulation levels within the dataset, with a notable prominence of moderate articulation represented by Variable Y.

Below are the names of the cases under the variables:

1) Variable X Cases

X Variable Criminal Cases	Hem Bahadur Malla Thakuri (1993)[1118], Raju Basnet (2006)[1119], Kedar Chandra Khanal (2006)[1120], Rajendra Maharjan (2006)[1121], Yagya Bahadur Thapa (2012)[1122], Durga Karki (2015)[1123], Prashuram Pokhrel (2017)[1124], Mahendra Gautam (2017)[1125], Kul Bahadur Karki (2019)[1126], Amit Kumal (2021)[1127]
X Variable Writs	Adv. Surya Bahadur Pandey (2014)[1128],
X Variable General Cases	Hari Prasad Kharel (2005)[1129]

[1118] HMG v. Hem Bahadur Malla Thakuri (1993) (NKP 2050, Vol. 7, DN. 4767).
[1119] Raju Basnet v. GoN (2006) (NKP 2063, Vol. 3, DN. 7666).
[1120] HMG v. Kedar Chandra Khanal (2006) (NKP 2063, Vol. 6, DN. 7712).
[1121] Rajendra Maharjan v. GoN (2006) (NKP 2063, Vol. 11, DN. 7788).
[1122] GoN v. Yagya Bahadur Thapa (2012) (NKP 2069, Vol. 2, DN. 8764).
[1123] GoN v. Durga Karki (2015) (NKP 2072, Vol. 8, DN. 9452).
[1124] GoN v. Prashu Ram Pokhrel (2017) (NKP 2074, Vol. 1, DN. 9750).
[1125] GoN v. Mahendra Gautam (2017) (NKP 2074, Vol. 1, DN. 9751).
[1126] Kul Bahadur Karki v. GoN (2019) (NKP 2076, Vol. 4, DN. 10244).
[1127] Amit Kumal v. GoN (2021) (NKP 2078, Vol. 11, DN. 10774).
[1128] Adv. Surya Bahadur Pandey v. GoN, OPMCM (2014) (NKP 2071, Vol. 11, DN. 9276).
[1129] Hari Prasad Kharel v. Bhadra Prasad Kharel (2005) (NKP 2062, Vol. 1, DN. 7480).

2) Variable Y Cases

Y Variable Criminal Cases	Lok Man Singh Karki (1999)[1130], Kirti Bahadur Chand (alias Dambar Bahadur) (2002)[1131], Uttam Lama (2004)[1132], Yadav Dawadi (2009)[1133], Indra Bahadur Nepali (2012)[1134], Raju Lama (2014)[1135], Pushpa Tamang (2016)[1136], Trilok Kumar Yadav (2018)[1137], Thag Bahadur Sunar (2018)[1138], Bishnu Kumar Yakhkha Rai (2019)[1139], Keshav Giri (2020)[1140], Bashu Chaudhary (2021)[1141], Rajesh Tamang (2021)[1142]
Y Variable Writs	Trijugi Narayan Mishra (1969)[1143], Sharmila Parajuli (2004)[1144], Aarati Shrestha (2009)[1145], Adv. Jyoti Poudel (2009)[1146], Shashikanta Tiwari (2017)[1147], Lekhnath Prasad Yadav (alias Chulwa) (2017)[1148], Adv. Tikaram Bhattarai, Rapporteur: Supreme Court Writ Division (2020)[1149]
Y Variable General Cases	Kanchha Prajapati (1991)[1150], Lok Bhakta Shamsher Ja. Ba. Ra. (1998)[1151], Rabindra Shrestha (2016)[1152]

[1130] HMG v. Lok Man Singh Karki (1999) (NKP 2056, Vol. 8, DN. 6764).
[1131] HMG v. Kirti Bahadur Chand (alias Dambar Bahadur) (2002) (NKP 2059, Vol. 3/4, DN. 7070).
[1132] Uttam Lama v. HMG (2004) (NKP 2061, Vol. 9, DN. 7432).
[1133] GoN v. Yadav Dawadi (2009) (NKP 2066, Vol. 6, DN. 8178).
[1134] GoN v. Indra Bahadur Nepali (2012) (NKP 2069, Vol. 5, DN. 8826).
[1135] GoN v. Raju Lama (2014) (NKP 2071, Vol. 5, DN. 9164).
[1136] GoN v. Pushpa Tamang (2016) (NKP 2073, Vol. 7, DN. 9643).
[1137] GoN v. Trilok Kumar Yadav (2018) (NKP 2075, Vol. 7, DN. 10060).
[1138] GoN v. Thag Bahadur Sunar (2018) (NKP 2075, Vol. 9, DN. 10090).
[1139] GoN v. Bishnu Kumar Yakhkha Rai (2019) (NKP 2076, Vol. 4, DN. 10246).
[1140] GoN v. Keshav Giri (2020) (NKP 2077, Vol. 8, DN. 10565).
[1141] GoN v. Bashu Chaudhary (2021) (NKP 2078, Vol. 9, DN. 10736).
[1142] GoN v. Rajesh Tamang (2021) (NKP 2078, Vol. 11, DN. 10770).
[1143] Choti Chauwain on the behalf of Trijugi Narayan Mishra v. Zonal Officer, Lumbini Zonal Office (1969) (NKP 2026, Vol. 1, DN. 513).
[1144] Sharmila Parajuli v. HMG, OPMCM (2004) (NKP 2061, Vol. 10, DN. 7449).
[1145] Aarati Shrestha v. GoN, OPMCM (2009) (NKP 2066, Vol. 9, DN. 8215).
[1146] Adv. Jyoti Poudel v. GoN, OPMCM (2009) (NKP 2066, Vol. 11, DN. 8282).
[1147] Shashikanta Tiwari v. Armed Police Police, Base Camp Pipara (2017) (NKP 2074, Vol. 7, DN. 9834).
[1148] Lekhnath Prasad Yadav (alias Chulwa) v. District Police Office, Siraha (2017) (NKP 2074, Vol. 12, DN. 9905).
[1149] Adv. Tikaram Bhattarai, Rapporteur: Supreme Court Writ Division (2020) (NKP 2077, Vol. 2, DN. 10429).
[1150] Kanchha Prajapati v. Nutchhe Kumar Prajapati (1991) (NKP 2048, Vol. 9/10, DN. 4350).
[1151] Lok Bhakta Shamsher Ja. Ba. Ra. v. Ramadevi Rajbhandari (1998) (NKP 2055, Vol. 11, DN. 6625).
[1152] Rabindra Shrestha v. GoN, Ministry of Health and Population (2016) (NKP 2073, Vol. 2, DN. 9538).

3) Variable Z Cases

Z Variable Criminal Cases	Ram Prasad Rai (1995)[1153], Tara Prasad Devkota (2009)[1154], Molhuysen Hendrik Otto (2012)[1155], Rameshwor Shrestha (2017)[1156], Chatra Bahadur Bhandari (2017)[1157], Raju Lal Rajbhandari (2020)[1158], Anjan K.C. (2020)[1159], Muna Magar Meche (2020)[1160]
Z Variable Writs	Adv. Ratna Bahadur Bagchand (2005)[1161], Adv. Om Prakash Aryal (2008)[1162], Adv. Achyut Prasad Kharel (2009)[1163]
Z Variable General Cases	Indra Bahadur Gurung (1993)[1164]

B. Analysing Data Under Theme B

Under Theme B, the total of 58 cases assimilating limitations of the court have been recorded. They comprised of 37 criminal cases, 18 writs and 3 general cases. In order to analyze the level of assimilation on the limitations of court in criminal cases, the data has been stratified into three thematic variables: X_1, Y_1 and Z_1. These variables delineate the degree of assimilation regarding judicial limitations on criminal statute interpretation.

1) Variable X_1: Represents cases simply assimilating judicial limitations on the interpretation of criminal statutes. In this category, the type of cases upholding Court's limitations within the burden of proof/presumption innocence have been kept.

[1153] Ram Prasad Rai v. Mil Bahadur Rai (1995) (NKP 2052, Vol. 3, DN. 5077).
[1154] GoN v. Tara Prasad Devkota (2009) (NKP 2066, Vol. 10, DN. 8254).
[1155] Molhuysen Hendrik Otto v. GoN (2012) (NKP 2069, Vol. 7, DN. 8860).
[1156] Rameshwor Shrestha v. GoN (2017) (NKP 2074, Vol. 2, DN. 9765).
[1157] GoN v. Chatra Bahadur Bhandari (2017) (NKP 2074, Vol. 5, DN. 9810).
[1158] GoN v. Raju Lal Rajbhandari (2020) (NKP 2077, Vol. 5, DN. 10490).
[1159] GoN v. Anjan K.C. (2020) (NKP 2077, Vol. 6, DN. 10523).
[1160] GoN v. Muna Magar Meche (2020) (NKP 2077, Vol. 10, DN. 10596).
[1161] Adv. Ratna Bahadur Bagchand v. HMG, OPMCM (2005) (NKP 2062, Vol. 2, DN. 7491).
[1162] Adv. Om Prakash Aryal v. GoN, OPMCM (2008) (NKP 2065, Vol. 9, DN. 8009).
[1163] Adv. Achyut Prasad Kharel v. Ministry of Law, Justice and Parliamentary Affairs, Kathmandu (2009) (NKP 2066, Vol. 5, DN. 8138).
[1164] Indra Bahadur Gurung v. Revenue Tribunal, Kathmandu (1993) (NKP 2050(a), Vol. 2, DN. 4697).

2) Variable Y^1: Represents cases moderately assimilating judicial limitations on the interpretation of criminal statutes. In this category, the cases upholding Court's limitations within the language of the law/no more than law/due process have been kept.
3) Variable Z_1: Represents cases strongly assimilating judicial limitations on the interpretation of criminal statutes. In this category, the cases assimilating of the articulation of Court's limitation in express way are kept.

Table 7.11: Cases Assimilating Limitations of Court into X_1, Y_1, Z_1 Thematic Variables

Theme B	**Variable X_1**	**Variable Y_1**	**Variable Z_1**	
Criminal Cases Relating to Interpretation of Statutes	9	21	7	*37*
Writs Relating Interpretation of Statutes	4	9	5	*18*
General Cases Relating to Interpretation of Statutes	1	1	1	*3*
Total	***14***	***31***	***13***	***58***

This table represents the distribution of cases among the thematic variables X_1, Y_1 and Z_1 for criminal cases, writs, and general cases assimilating limitations of courts, recorded under Theme B.

Across the three variables X_1, Y_1 and Z_1, the distribution of cases varies among criminal cases, writs, and general cases. Variable X_1, representing cases simply assimilating, includes 9 criminal cases, 4 writs, and 1 general case. Variable Y_1, indicating moderately assimilating comprises 21 criminal cases, 9 writs, and 1 general case. Variable Z_1, denoting strongly assimilating encompasses of 7 criminal cases, 5 writs, and 1 general case. In total, there are 14 cases categorized under Variable X_1, 31 cases under Variable Y_1, and 13 cases under Variable Z_1.

Thus, Variable Y_1 emerges as the most predominant of the total cases analysed under Theme B. This signifies a notable prevalence of cases demonstrating a moderate level of

assimilation regarding judicial limitations on the interpretation of criminal statutes. In comparison, Variable X_1 accounts a substantial but lesser proportion and Variable Z_1 even slightly lower.

This distribution underscores the prevalence of cases exhibiting moderate assimilation levels, suggesting a balanced approach in interpreting and assimilating court limitations across various legal contexts.

Below are the names of the cases under the variables:

1) Variable X_1 Cases

X_1 Variable Criminal Cases	Kameshwor Jha Maithali Bramhan (1959)[1165], Megh Bahadur Pakha Rai (1961)[1166], Gopal Prasad Upadhayay (1962)[1167], Reshami Malahini (1978)[1168], Gagan Singh Pun (1998)[1169], Kailash Mahato (2000)[1170], Rajesh Lama (alias Raghu) (2005)[1171], Prem Bahadur Kunwar (2016)[1172], Shova Badi (2019)[1173]
X_1 Variable Writs	(1960)[1174], Pashupati Giri (1975)[1175], Rolash Thapa (2013)[1176], Adv. Kamal Prasad Bhusal on behalf of Mahesh Thapa (2021)[1177]
X_1 Variable General Cases	Sharada Ghimire (2013)[1178]

[1165] Kameshwor Jha Maithali Brahman v. Akshya Lal Raut (1959) (NKP 2016, Vol. 4, DN. 18).
[1166] Megh Bahadur Pakha Rai v. HMG (1961) (NKP 2018, Vol. 7, DN. 156).
[1167] HMG v. Gopal Prasad Upadhayay (1962) (NKP 2019, Vol. 10, DN. 163).
[1168] HMG v. Reshami Malahini (1978) (NKP 2035, Vol. 1, DN. 1211).
[1169] Gagan Singh Pun v. HMG (1998) (NKP 2055, Vol. 2, DN. 6514).
[1170] HMG v. Kailash Mahato (2000) (NKP 2057, Vol. 4, DN. 6883).
[1171] HMG v. Rajesh Lama (alias Raghu) (2005) (NKP 2062, Vol. 4, DN. 7525).
[1172] GoN v. Prem Bahadur Kunwar (2016) (NKP 2073, Vol. 7, DN. 9632).
[1173] GoN v. Shova Badi (2019) (NKP 2076, Vol. 5, DN. 10274).
[1174] Gajendra Raj Devkota v. SP Tek Bahadur Rayamajhi (1960) (NKP 2017, Vol. 7, DN. 112).
[1175] Pashupati Giri v. Central Regional Court (1975) (NKP 2032, Vol. 1, DN. 916).
[1176] Rolash Thapa v. Kathmandu District Court (2013) (NKP 2070, Vol. 6, DN. 9019).
[1177] Adv. Kamal Prasad Bhusal on behalf of Mahesh Thapa v. Rupandehi District Court (2021) (NKP 2078, Vol. 10, DN. 10752).
[1178] Sharada Ghimire v. Bhagwati Phuyal (2013) (NKP 2070, Vol. 3, DN. 8985).

2) Variable Y_1 Cases

Y_1 Variable Criminal Cases	Jay Prasad (1958)[1179], Hira Pasi (1971)[1180], Top Bahadur Khadka Chhetri (1973)[1181], Ram Chandra Rauniyar (1975)[1182], Ratna Prasad Shakya (1978)[1183], Krishna Bahadur Magar (1978)[1184], Subash Newang (1979)[1185], Kamaleshwor Upadhyay (1984)[1186], Krishna Gopal Mali (1989)[1187], Kali Bahadur Adhikari (1992)[1188], Shree Lal Adhikari Danuwar (1997)[1189], Tiger Tops Pvt. Ltd. (2000)[1190], Narayan Poudel Khatri (alias Ravin) (2011)[1191], Lila Raj Gautam (2012)[1192], Lok Bahadur Bishwa (alias Bikash) (2013)[1193], Indra Raj Humagain (2016)[1194], Lakpa Sherpa (2016)[1195], Sunny Maharjan (2018)[1196], Harendra Narayan Dev (2019)[1197], Upendra Mukhiya Bin (2021)[1198], Kenneth Joseph Coombs (2021)[1199]
Y_1 Variable Writs	Chiranjibi Lal Marwadi (1958)[1200], Omkar Prasad Shrestha (1971)[1201], Rishi Dangol (1974)[1202], Rita Dahal on the behalf of Sujan Mendij (1983)[1203], Rajaram Basnet (alias Lok Bahadur)

[1179] Jay Prasad v. Tek Bahadur (1958) (NKP 2015, Vol. 2, DN. 5).
[1180] Hira Pasi v. HMG (1971) (NKP 2028, Vol. 1, DN. 612).
[1181] Top Bahadur Khadka Chhetri v. HMG (1973) (NKP 2030, Vol. 1, DN. 776).
[1182] Ram Chandra Rauniyar v. HMG (1975) (NKP 2032, Vol. 1, DN. 949).
[1183] Ratna Prasad Shakya v. HMG (1978) (NKP 2035, Vol. 1, DN. 1167).
[1184] HMG v. Krishna Bahadur Magar (1978) (NKP 2035, Vol. 1, DN. 1158).
[1185] Subash Newang v. HMG (1979) (NKP 2036, Vol. 1, DN. 1312).
[1186] Kamaleshwor Upadhayay v. Ambika Devi Brahmani (1984) (NKP 2041, Vol. 11, DN. 2194).
[1187] HMG v. Krishna Gopal Mali (1989) (NKP 2046, Vol. 2, DN. 3734).
[1188] Kali Bahadur Adhikari v. HMG, Revenue Investigation Division (1992) (NKP 2049, Vol. 3, DN. 4489).
[1189] HMG v. Shree Lal Adhikari Danuwar (1997) (NKP 2054, Vol. 2, DN. 6321).
[1190] Tiger Tops Pvt. Ltd. Director A.V. Jim Edwards v. HMG, Ministry of Finance, Revenue Investigation Division (2000) (NKP 2057, Vol. 5, DN. 6900).
[1191] GoN v. Narayan Poudel Khatri (alias Ravin) (2011) (NKP 2068, Vol. 2, DN. 8564).
[1192] Lila Raj Gautam v. GoN (2012) (NKP 2069, Vol. 1, DN. 8770).
[1193] GoN v. Lok Bahadur Bishwa (alias Bikash) (2013) (NKP 2070, Vol. 11, DN. 9075).
[1194] GoN v. Indra Raj Humaigain (2016) (NKP 2073, Vol. 7, DN. 9645).
[1195] Lakpa Sherpa v. GoN (2016) (NKP 2073, Vol. 9, DN. 9684).
[1196] GoN v. Sanni Maharjan (2018) (NKP 2075, Vol. 7, DN. 10043).
[1197] Harendra Narayan Dev v. GoN (2019) (NKP 2076, Vol. 6, DN. 10279).
[1198] GoN v. Upendra Mukhiya Bin (2021) (NKP 2078, Vol. 7, DN. 10701).
[1199] Kenneth Joseph Coombs v. GoN (2021) (NKP 2078, Vol. 11, DN. 10772).
[1200] Chiranjibi Lal Marwadi v. SP Tek Bahadur Rayamajhi (1958) (NKP 2015, Vol. 2, DN. 9).
[1201] Omkar Prasad Shrestha v. Jailor, Central Jail Office, Kathmandu (1971) (NKP 2028, Vol. 1, DN. 606).
[1202] Rishi Dangol v. Jailor, Central Jail Office, Kathmandu (1974) (NKP 2031, Vol. 1, DN. 838).
[1203] Rita Dahal on the behalf of Sujan Mendij v. District Office Lalitpur (1983) (NKP 2040, Vol. 6, DN. 1678).

	(1990)[1204], Bajrang Chaitanya Bramhachari (1991)[1205], Rameshwor Neupane on the behalf of Pradip Thapa (2008)[1206], Arjun Thapa (2010)[1207] Prem Bahadur Pandey (2021)[1208]
Y_1 Variable General Cases	Shivam Cement Limited (2019)[1209]

3) Variable Z_1 Cases

Z_1 Variable Criminal Cases	Padam Sundar (1958)[1210], Keshav Chandra Gautam (1965)[1211], Nanda Devi Joshi (2012)[1212], Rubi Joshi (2016)[1213], Raju Thapa (2016)[1214], Suman Shahi (2017)[1215], Bhawani Rajbanshi (2021)[1216]
Z_1 Variable Writs	Sangaratna Tuladhar (1965)[1217], Shree Krishna Shrestha (1971)[1218], Jit Kumari Pangeni (Neupane) (2008)[1219], Adv. Raju Prasad Chapagain (2016)[1220], Arun Shrestha (2020)[1221]
Z_1 Variable General Cases	Kamala Hamal (2007)[1222]

[1204] Rajaram Basnet (alias Lok Bahadur) v. Saptari District Court (1990) (NKP 2047, Vol. 2, DN. 4075).
[1205] Bajrang Chaitnaya Bramhachari v. HMG, District Police Office Dhanusha (1991) (NKP 2048, Vol. 2,3,4, DN. 4258).
[1206] Rameshwor Thapa on the behalf of Pradip Thapa (11 years of age) v. District Administration Office, Kathmandu (2008) (NKP 2065, Vol. 9, DN. 8015).
[1207] Arjun Thapa v. Kathmandu District Court (2010) (NKP 2067, Vol. 12, DN. 8516).
[1208] Prem Bahadur Pandey v. Bhaktapur District Court (2021) (NKP 2078, Vol. 10, DN. 10769).
[1209] Shivam Cement Limited v. Nepal Electricity Authority (2019) (NKP 2073, Vol. 4, DN. 10232).
[1210] Padam Sundar v. HMG (1958) (NKP 2015, Vol. 2, DN. 10).
[1211] Keshav Chandra Gautam v. HMG (1965) (NKP 2022, Vol. 1, DN. 279).
[1212] Nanda Devi Joshi v. GoN (2012) (NKP 2069, Vol. 1, DN. 8760).
[1213] GoN v. Rubi Joshi (2016) (NKP 2073, Vol. 5, DN. 9608).
[1214] GoN v. Raju Thapa (2016) (NKP 2073, Vol. 11, DN. 9707).
[1215] Suman Shahi v. GoN (2017) (NKP 2074, Vol. 4, DN. 9792).
[1216] Bhawani Rajbanshi v. GoN (2021) (NKP 2078, Vol. 12, DN. 10797).
[1217] Sangaratna Tuladhar v. HMG, Special Police Department (1965) (NKP 2022, Vol. 1, DN. 300).
[1218] Shree Krishna Shrestha v. Zonal Office Bagmati (1971) (NKP 2028, Vol. 1, DN. 599).
[1219] Jit Kumari Pangeni (Neupane) v. OPMCM (2008) (NKP 2065, Vol. 6, DN. 7973).
[1220] Adv. Raju Prasad Chapagain v. GoN, OPMCM (2016) (NKP 2073, Vol. 2, DN. 9547).
[1221] Arun Shrestha v. Kathmandu District Court (2020) (NKP 2077, Vol. 3, DN. 10465).
[1222] Kamala Hamal v. Land Reform Office Gulariya (2007) (NKP 2064, Vol. 10, DN. 7890).

C. Analysing Data Under Theme C

Analysing the data of violation based on cases under Theme C, the total of 26 cases violating limitations of the court have been recorded; comprised of 21 criminal cases, 4 writs and 1 general case. In order to analyze the level of articulation while violating limitations of court in criminal cases, the data has been stratified into three thematic variables: U, V and W. These variables delineate the level of articulation while violating limitations of court.

1) Variable U: Represents cases simply violating judicial limitations on the interpretation of criminal statutes. In this category, the type of cases simply violating Court's limitations by adding the claim on the charge-sheet/burden of proof are kept.
2) Variable V: Represents cases moderately violating judicial limitations on the interpretation of criminal statutes. In this category, the cases moderately violating Court's limitations by liberal interpretation of the law/ forceful interpretation are kept.
3) Variable W: Represents cases strongly violating judicial limitations on the interpretation of criminal statutes. In this category, the cases loudly violating Court cannot by expanding the scope of *actus reus* are kept.

Table 7.12: Cases Violating Limitations of Court into U, V, W Thematic Variables

Theme C	**Variable U**	**Variable V**	**Variable W**	
Criminal Cases Relating to Interpretation of Statutes	6	3	12	21
Writs Relating Interpretation of Statutes	1	2	1	4
General Cases Relating to Interpretation of Statutes	**	1	**	1
Total	***7***	***6***	***13***	***26***

The distribution of cases of Theme C among the variables U, V and W reveals variations across criminal cases, writs, and general cases. Variable U signifies cases of simple

violation, encompassing 6 criminal cases and 1 writ. Variable V represents moderate violations, with 3 criminal cases, 2 writs, and 1 general case.

On the other hand, Variable W denotes strong violations, including 12 criminal cases and 1 writ. Out of 12 criminal cases, 1 case *Niyamul Banjara Musalman* (2007)[1223] is Dacoit in which the constituent element of crime (group of 4 persons) is categorically reduced (group of less than 4 persons) to criminalize the offender, rest all 11 cases are offences against women, particularly Rape case. Having the frequent expansion of *actus reus* in Rape case has set it as precedent. The 1 writ is the case of *Rameshman Sthapit* (1992)[1224] in which the court has acknowledged his illegal detention however has allowed for the judicial custody.

In total, there are 7 cases categorized under Variable U, 6 cases under Variable V, and 13 cases under Variable W. Consequently, Variable W emerges as the most predominant category, representing the highest number of cases among the three variables.

The analysis of variables U, V and W reveals distinctive patterns in the distribution of cases regarding violations of court limitations under Theme C. The Variable U comprises the lowest number of cases, representing simple violations, with 7 cases. In contrast, the Variable V exhibits a moderate level of violations with 6 cases. However, the Variable W stands out prominently, encompassing the highest number of cases at 13. This indicates a prevalence of strong violations of court limitations across the dataset.

Below are the names of the cases under the variables:

1) Variable U Cases

U Variable Criminal Cases	Purna Kumar Ji Shrestha (1981)[1225], Wangchen Lama (1990)[1226], Shesh Abdul Hadi (2005)[1227], Ganesh Bahadur

[1223] Niyamul Banjara Musalman v. GoN (2007) (NKP 2064, Vol. 11, DN. 7893).
[1224] Rameshman Sthapit v. Tribhuwan International Airport, Security Guard Department (1992) (NKP 2049, Vol. 1, DN. 4450).
[1225] Purna Kumar Ji Shrestha v. HMG (1981) (NKP 2038, Vol. 4, DN. 1461).
[1226] Wangchen Lama v. HMG (1990) (NKP 2047, Vol. 7, DN. 4178).
[1227] Shesh Abdul Hadi v. HMG (2005) (NKP 2062, Vol. 12, DN. 7630).

	Karki (2016)[1228], Shree Ram Tripathi (2016)[1229], Abhisekh Koirala (2020)[1230]
U Variable Writs	Mukti Sharma (1960)[1231]
U Variable General Cases	**

2) Variable V Cases

V Variable Criminal Cases	Dinu Ram Wali Magarni (1987)[1232], Chandra Vijay Shah (1988)[1233], Prakash Ojha (2016)[1234]
V Variable Writs	Rishikesh Shah (1969)[1235], Brish Bahadur Rai (2010)[1236]
V Variable General Cases	Sheshnath Prasad Kurmi (1989)[1237]

3) Variable W Cases

W Variable Criminal Cases	Bishnu Adhikari (2006)[1238], Bhim Bahadur Pokhrel (2006)[1239], Niyamul Banjara Musalman (2007)[1240], Suk Bahadur Kumal (2008)[1241], Tek Bahadur Chhetri (2009)[1242], Badri Khatri (2014)[1243], Tasi B.K. (2016)[1244], Suman Pahari (2017)[1245],

[1228] GoN v. Ganesh Bahadur Karki (2016) (NKP 2073, Vol. 3, DN. 9552).
[1229] Shree Ram Tripathi v. GoN (2016) (NKP 2073, Vol. 6, DN. 9619).
[1230] Abhisekh Koirala v. GoN (2020) (NKP 2077, Vol. 12, DN. 10614).
[1231] Mukti Sharma v. SP Tek Bahadur Rayamajhi Special Police Department (1960) (NKP 2017, Vol. 6, DN. 108).
[1232] HMG v. Dinu Ram Wali Magarni (1987) (NKP 2044, Vol. 9, DN. 3205).
[1233] HMG v. Chandra Vijay Shah (1988) (NKP 2045, Vol. 10, DN. 3603).
[1234] GoN v. Prakash Ojha (2016) (NKP 2073, Vol. 6, DN. 9621).
[1235] Siddhanta Rajyalaxmi Shah on the behalf of Rishikesh Shah v. Bagmati Zonal Office, Kathmandu (1969) (NKP 2026, Vol. 1, DN. 526).
[1236] Brish Bahadur Rai v. GoN, Ministry of Education and Sports, School Education Branch, Kathmandu (2010) (NKP 2067, Vol. 10, DN. 8481).
[1237] Sheshnath Prasad Kurmi v. Maqbool Ahmed Kurmi (1989) (NKP 2046, Vol. 2, DN. 3719).
[1238] Bishnu Adhikari v. GoN (2006) (NKP 2063, Vol. 2, DN. 7652).
[1239] Bhim Bahadur Pokhrel v. HMG (2006) (NKP 2063, Vol. 4, DN. 7682).
[1240] Niyamul Banjara Musalman v. GoN (2007) (NKP 2064, Vol. 11, DN. 7893).
[1241] Suk Bahadur Kumal v. GoN (2008) (NKP 2065, Vol. 5, DN. 7968).
[1242] GoN v. Tek Bahadur Chhetri (2009) (NKP 2066, Vol. 5, DN. 8142).
[1243] Badri Khatri v. GoN (2014) (NKP 2071, Vol. 6, DN. 9186).
[1244] GoN v. Tasi B.K. (2016) (NKP 2073, Vol. 1, DN. 9519).
[1245] Suman Pahari v. GoN (2017) (NKP 2074, Vol. 4, DN. 9801).

	Ishwori Rishi Dev (2017)[1246], Soharat Kha Pathan (2018)[1247], Ashok Shrestha (2019)[1248], Dipak Gurung (2020)[1249]
W Variable Writs	Rameshman Sthapit (1992)[1250]
W Variable General Cases	**

D. Comparing Theme A, B and C

The comparative analysis across three variables: X, Y, and Z for Theme A; X_1, Y_1 and Z_1 for Theme B; and U, V and W for Theme C illustrates the ratio of interpretation, assimilation, and violation as below:

a) In Theme A, Variable Z has the highest count, indicating strong interpretation regarding judicial limitations on the interpretation of criminal statutes. This is followed by Variable Y and Variable X.
b) In Theme B, Variable Y_1 has the highest count, representing cases moderately assimilating judicial limitations, followed by Variable X_1 and Variable Z_1.
c) In Theme C, Variable W has the highest count, representing cases strongly violating judicial limitations, followed by Variable V and Variable U.

With the above facts of data, the calculate ratios of interpretation, assimilation to violation results as below:

a) For Theme A, the total strong interpretation cases under Variable Z are 12, and the total strong violation cases under Variable W are 13. So, the ratio of clear articulation of interpretational limitations compared to violation is approximately 0.92 (12/13).
b) For Theme B, the strong assimilation cases Z_1 (13) and strong violation cases W (13) have equal number and thus equal ratio. However, as the highest assimilation

[1246] Ishwori Rishi Dev v. GoN (2017) (NKP 2074, Vol. 6, DN. 9826).
[1247] GoN v. Soharat Kha Pathan (2018) (NKP 2075, Vol. 7, DN. 10049).
[1248] GoN v. Ashok Shrestha (2019) (NKP 2076, Vol. 1, DN. 10165).
[1249] GoN v. Dipak Gurung (2020) (NKP 2077, Vol. 2, DN. 10443).
[1250] Rameshman Sthapit v. Tribhuwan International Airport, Security Guard Department (1992) (NKP 2049, Vol. 1, DN. 4450).

cases stand under Variable Y_1 (31), and the highest violation cases stand under Variable W (13). So, this ratio of assimilation to violation is approximately 2.38 (31/13).

c) For Theme C, with a total of 26 cases (U+V+W), compared to Theme A with 47 cases (X+Y+Z) and Theme B with 58 cases (X_1+Y_1+Z_1), the ratio of interpretation to violation (number) shows a significant discrepancy between the themes. The combined total of interpretation cases in Theme A and Theme B is 105, contrasting with the total of 26 violation cases in Theme C. This results in a ratio of approximately 4.038 (105/26).

List of Judges: Interpreting, Assimilating and Violating

Theme	**Interpreting**	**Assimilating**	**Violating**
No. of Judges	65	73	51

List of Highest Violated and Interpreted Cases

S.N.	**Cases**	**No. of Violating Cases**	**No. of Interpreting Cases**
1.	Rape	12	5
2.	Certiorari	3	7
3.	Murder	2	4
4.	Human Trafficking	2	4
5.	Habeas corpus	2	3
6.	Corruption	1	4
7.	Forgery of public documents	1	1

7.4.2 Comparing the Decisions of Supreme Court of Nepal with the Principles, Provisions and International Practices

The foundation for interpretational limitations of the court in criminal cases is established through a comprehensive examination of principles, provisions, and international judicial decisions. Thirteen fundamental principles were scrutinized, including the Principle of Legality, Non-retroactivity Principle, and Principle of Certainty highlighting the boundaries within which criminal laws are to be interpreted and applied. Additionally, a review of eleven international laws, two Nepalese legal provisions, treaty obligations under the Vienna Convention and Nepal Treaty Act, and the Model Criminal Code for post-conflict criminal justice, totalling sixteen laws, further elucidated the legal framework governing interpretational limitations. Furthermore, sixteen international judicial decisions, comprising rulings from the ICC, I.C.J., ECtHR, as well as foreign Supreme Courts including the UK, USA, and India, provided jurisprudential insights into the application of interpretational limitations in various jurisdictions while construing criminal laws.

While comparing the decisions of the Supreme Court of Nepal with the principles, provisions, and international practices reveals several key insights:

A. Comparing the Decisions of Supreme Court of Nepal with the Principles

The data regarding decisions of the Supreme Court of Nepal, categorized basically into Themes A, B, and C, can be compared with the principles studied in the research. The principles studied focus on guiding principles for limiting the court's authority to criminalize through judicial construction while ensuring maximum certainty in criminalization. These principles encompass foundational concepts such as the principle of legality, non-retroactivity principle, strict rule of construction, presumption of innocence, and others.

Comparing the data with the principles studied reveals several intersections and implications:

1) Principle of Legality and Retroactivity: The data under Theme A, which includes cases interpreting limitations of court, can be aligned with this principle. The

breakdown of cases into thematic variables X, Y, and Z reflects the court's adherence to the principle of legality, ensuring that only the law can criminalize and penalize.

2) Interpretation and Construction: The Data of Theme A and B, which involve cases interpreting and assimilating limitations of court, may relate to the principles of interpretation and construction. The stratification of cases into variables X, Y, and Z indicates the court's approach to interpreting criminal statutes and applying limitations to ensure adherence to legal principles. And, the variables X_1, Y_1 and Z_1 corroborates with the principles in practices.
3) Presumption and Certainty: The data under Theme C, addressing cases violating limitations of court, intersects with the principles of presumption of innocence and certainty. The breakdown of cases into thematic variables U, V and W reflects instances where the court has violated established legal boundaries, potentially compromising the presumption of innocence and legal certainty.
4) Individual Rights and Protections: Certain cases within Themes A, B, and C may also implicate principles related to individual rights and protections, such as the principle of fair labeling and principle of double jeopardy. These principles emphasize the importance of protecting individual freedoms and ensuring fair treatment within the legal system.

Overall, comparing the data with the principles studied offers insights into how the Supreme Court of Nepal interpreted and applied limitations within the legal framework, ensuring adherence to foundational principles of criminal justice and safeguarding individual rights and liberties.

B. Comparing the Decisions of Supreme Court of Nepal with the Provisions

Comparing the decisions of the Supreme Court of Nepal with the provisions studied reveals several insights into the alignment between judicial decisions and legal principles. Here's a comparative analysis:

1) Thematic Alignment: The provisions studied, categorized into thematic variables x_0, y_0, and z_0, also cover a wide range of legal principles related to compliance with criminal justice principles, judicial limitations in general, and express mention of

interpretational limitations. These thematic variables provide a structured framework for analyzing legal provisions within international laws, Nepalese legal provisions, treaty obligations, and model codes. The provisions studied into thematic variables x_0, y_0, and z_0 align with the data of decisions of the Supreme Court of Nepal X, Y, Z, and X_1, Y_1, Z_1 under Theme A and B.

2) Correspondence with Theme A and Variables: Theme A, focusing on cases interpreting limitations of the court in variables X, Y and Z, aligns closely with thematic variables x_0 and z_0, which pertain to compliance with criminal justice principles and express mention of interpretational limitations, respectively. This indicates that judicial decisions within this theme may involve considerations of both general principles of criminal justice and specific interpretational constraints.
3) Correspondence with Theme B and Variables: Theme B, addressing cases assimilating limitations of the court in variables X_1, Y_1 and Z_1, may relate predominantly to thematic variable y_0, which concerns judicial limitations in general. These cases likely involve the application of established legal principles to ensure fairness and proportionality in legal proceedings.
4) Thematic Dissonance: with Theme C and Variables: Theme C, involving cases violating limitations of the court in variables U, V and W, intersects with all three thematic variables (x_0, y_0, and z_0), indicating potential breaches of compliance with criminal justice principles, judicial limitations, and express mention of interpretational constraints. These cases may highlight instances where the court's decisions deviate from established legal norms.

Overall, comparing the decisions of the Supreme Court of Nepal with the provisions studied enhances understanding of the intersection between judicial decisions and legal principles, contributing to the broader discourse on criminal justice and legal interpretation.

C. Comparing the Decisions of Supreme Court of Nepal with the International Judicial Decisions

Comparing the decisions of the Supreme Court of Nepal with international judicial decisions reveals several key insights into the alignment between judicial interpretations and legal principles:

1) Thematic Alignment: The decisions of the Supreme Court of Nepal under Themes A and B with their variables X, Y, Z and X_1, Y_1, Z_1 thematically align with the international judicial decisions, categorized into thematic variables x, y, z. These x, y and z gene of cases either of national and international both cover a wide range of legal principles related to jurisdictional limitations, strict interpretation of statutes, and express mention of interpretational limitations. These variables have thematic correlations.
2) Correspondence with Theme A and Variables: Theme A of the decisions of the Supreme Court of Nepal focusing on interpreting limitations of the court variables X, Y and Z aligns closely with thematic variable y and z of international judicial decisions, which pertains express mention of interpretational limitations. This indicates that judicial decisions within this theme is strongly compatible with international practices.
3) Correspondence with Theme B and Variables: Theme B, addressing cases assimilating limitations of the court variables X_1, Y_1 and Z_1 corresponds to all thematic variables x, y and z international judicial decisions. These cases meet the standard of the application of established legal principles to ensure consistency and fairness in legal proceedings.
4) Thematic Dissonance: Theme C, involving cases violating limitations of the court in variables U, V and W, intersects with thematic variables x, y and z of international judicial decisions, indicating potential breaches of jurisdictional limitations and express mention of interpretational constraints. These cases may highlight instances where the court's decisions deviate from established legal norms and principles.

Overall, comparing the decisions of the Supreme Court of Nepal with international judicial decisions enhances understanding of the intersection between judicial interpretations and legal principles, contributing to the broader discourse on criminal justice and legal interpretation.

CHAPTER VIII

INFERENTIAL STATISTICS AND HYPOTHESIS TESTING

This chapter presents the analysis of quantified qualitative data, meticulously examined and illustrated through percentages and numerical scores. Employing statistical methodologies, it provides a comprehensive approach to conducting in-depth analytical description and interpretation, thereby facilitating effective correlation and hypothesis testing.

8.1 INFERENTIAL STATISTICS

This section calculates key statistical measures such as Mean, Median, and Standard Deviation to understand the distribution of a variable's values. The Mean represents the average value, while the Median indicates the middle value, both serving as measures of central tendency. The Standard Deviation, a measure of dispersion, shows the degree of variability around the Mean; a high Standard Deviation suggests that data points are widely dispersed, whereas a low Standard Deviation indicates that data points are closely clustered around the Mean. Mode is not calculated due to the lack of frequent data repetition. These statistics provide insights into the distribution, patterns, trends, and anomalies within the data, aiding in more informed decision-making. The procedure of calculating the Mean, Median, and Standard Deviation is provided in Appendix-4.

8.1.1 Quantitative Analysis of x_0, y_0, and z_0 Thematic Variables

Table 8.1 below illustrates the data of legal provisions analysed under the three variables: Variable x_0 (referring to provisions relating to compliance of the principles of criminal justice), Variable y_0 (referring to provisions relating to judicial limitations in general), and Variable z_0 (referring provisions relating to the express mention of interpretational limitations) representing altogether the level of articulation from simple to strong towards judicial limitations on interpretation of criminal statutes; and, the data is shown in percentage:

Table 8.1: x_0, y_0, z_0 Thematic Variables Count in Percentage

Theme	**Variable x_0**	**Variable y_0**	**Variable z_0**	***Total***
International Laws	3	6	2	*11*
	27.27%	54.55%	18.18%	*100%*
National Laws	1	1		*2*
	50.00%	50.00%	0.00%	*100%*
Model Criminal Code			1	*1*
	0.00%	0.00%	100.00%	*100%*
Treaty Obligations		2		*2*
	0.00%	100.00%	0.00%	*100%*
Total	***4***	***9***	***3***	***16***
	25.00%	56.25%	18.75%	100%

With an emphasis on International Laws, National laws, Model Criminal Code, and Treaty Obligations, the table breaks out how legal provisions are distributed among the various categories.

When it comes to International Laws, the bulk (54.55%) belong to variable y_0, while 27.27% are assigned to variable x_0 and 18.18% to variable z_0. This suggests that laws governing International contacts are given a great deal of weight, indicating a global approach to legal matters. When it comes to National Laws, the distribution is more evenly distributed, with 50% going to variable x_0 and 50% going to variable y_0. This situation does not apply to variable z_0, indicating a need for a stronger emphasis on national legal systems. It is strongly constructed in Model Criminal Code under z_0 variable. The significance of standardizing criminal offense law frameworks to ensure uniformity and equity in their implementation across jurisdictions is shown by this balanced distribution. Treaty Obligations, in the end, come under variable y_0, demonstrating a dedication to upholding international accords.

The Inferential Statistics is shown in the table below:

Table 8.2: Inferential Statistics of x_0, y_0, z_0

Theme	Mean	Median	Standard Deviation
Variable x_0	2	2	1
Variable y_0	3	2	2.160246899
Variable z_0	1.5	1.5	0.5

Mean, Median and Standard Deviation is shown in the figure below:

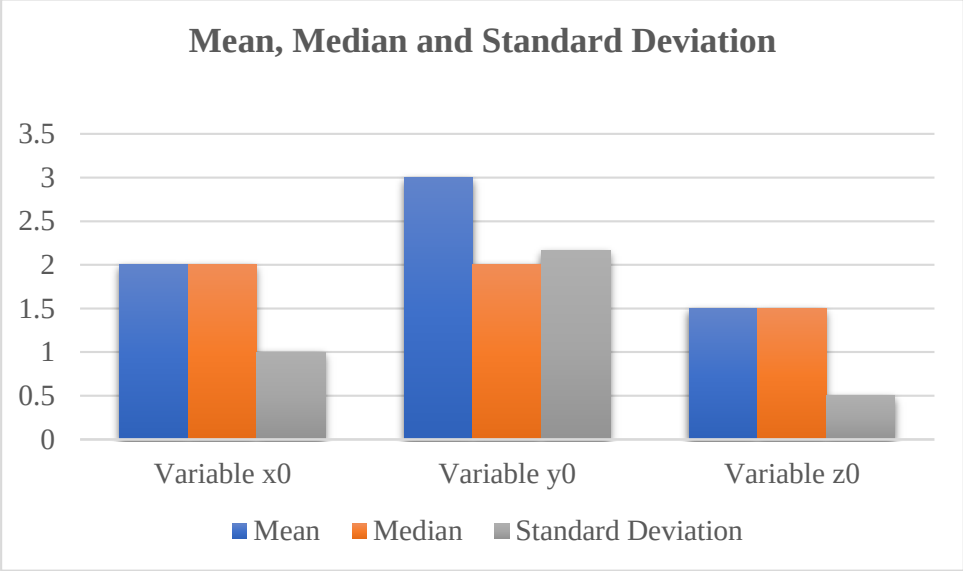


Figure 8.1: Mean, Median, and Standard Deviation

The three variables' Mean, Median, and Standard Deviation are displayed in the table along with statistical metrics for each: x_0, y_0, and z_0. Each variable's distribution and key tendency are revealed by these measures. With variable x_0, it can be seen that the distribution around this number is reasonably balanced because the Mean and Median are both 2. A dataset with modest variability is suggested by a Standard Deviation of 1. Variable y_0, on the other hand, has a larger Mean of 3, which suggests a more scattered distribution that is inclined towards higher values. The Median of 2, however, raises the possibility that certain values are pushing the distribution in the direction of the lower end. With a somewhat bigger Standard Deviation of 2.160246899, the dataset is considerably more variable than variable x_0,

suggesting a wider range of values. The distribution of variable z_0 is centered around 1.5 and has a Mean and Median of the same value. In comparison to the other variables, the low Standard Deviation of 0.5 indicates less unpredictability and a more uniform distribution of values around the Mean.

8.1.2 Quantitative Analysis of x, y, and z Thematic Variables

The following Table 8.3 provides an overview of the constraints that were addressed in the international judicial decisions that were divided into three thematic variables: x, y and z; where Variable x represents 'data of international judicial decisions representing limitation by jurisdiction/burden of proof.' Variable y encompasses 'data of international judicial decisions representing limitation within the language of law.' Variable z encompasses 'data of international judicial decisions representing express mention of interpretational limitation by the court.' The data representing altogether the level of articulation from simple to strong as shown below in percentage.

Table 8.3: x, y, z Thematic Variables Count in Percentage

Theme	Variable x	Variable y	Variable z	*Total*
International Courts	3	1		*4*
	75.00%	25.00%	0.00%	*100%*
UK	1		3	*4*
	25.00%	0.00%	75.00%	*100%*
USA		2	2	*4*
	0.00%	50.00%	50.00%	*100%*
India		2	2	*4*
	0.00%	50.00%	50.00%	*100%*
Total	***4***	***5***	***7***	***16***
	25.00%	31.25%	43.75%	*100%*

Under international court's decisions, Variable x accounts for 75%, Variable y accounts for 25% of limitations, and Variable z accounts for none. The distribution is different in the UK, where variable z accounts for 75% of limits, variable x accounts for 25%, and variable

y accounts for none. This suggests that Variable z's factors have a significant impact on the UK's restrictions. The distributions in the USA and India are the same, with equal shares of Variables y and z (50%) and no restrictions accounted for by Variable x. This indicates that variables y and z, rather than variable x, have a balanced impact on the constraints in both the USA and India.

Among the three variables in international judicial decisions, variable z stands with the most representation (43.75%), variable y coming in second (31.25%), and variable x third (25%). This suggests that Variable z has the greatest average impact on sounding clear articulation of the limitations of court while interpreting criminal cases.

The Inferential Statistics is shown in the table below:

Table 8.4: Inferential Statistics of x, y, z

Theme	Mean	Median	Standard Deviation
Variable x	2	2	1
Variable y	1.666667	2	0.471405
Variable z	2.333333	2	0.471405

Mean, Median, and Standard Deviation is shown in the figure below:

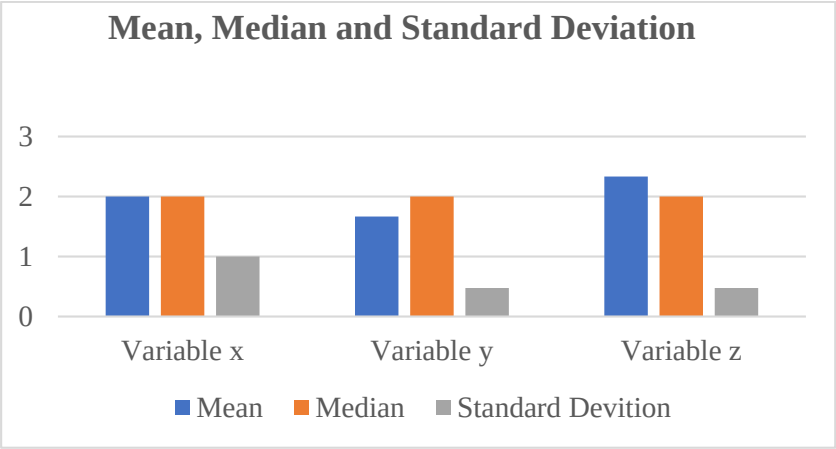


Figure 8.2: Mean, Median, and Standard Deviation

The distributions and properties of variables x, y and z can be understood by statistical analysis.

With a Mean and Median of 2, variable x indicates that the dataset's average and middle values are both 2. On the other hand, the very high Standard Deviation of 1 indicates that the data points are widely distributed around this center value. This variability suggests that the dataset's values could deviate significantly from the Mean. The Mean of variable y is roughly 1.67, marginally less than the Mean of variable x. A similar central tendency is suggested by the Median, which stays at 2. However variable y stands out due to its lower Standard Deviation, which is 0.47. Compared to variable x, this small spread suggests that the dataset's values cluster more tightly around the Mean, suggesting lower overall variability. Compared to variable x, variable z has a somewhat stronger central tendency, with a Mean of about 2.33. Its Median is 2, just as y's. Notably, variable z has a Standard Deviation of 0.47, the same as variable y. This suggests that variable z has a comparable level of variability to y, with values clustering around its Mean, although having a larger Mean than x and y.

8.1.3 Quantitative Analysis of X, Y, and Z Thematic Variables

The table below illustrates the data of Supreme Court cases of Nepal interpreting judicial limitations into three thematic variables X, Y and Z grouped together from distinct categories of cases synopsized as Criminal Cases (Black), Writs (Red) and General Cases (Blue). Here, Variable X refers to the data of SCN decisions representing a simple articulation regarding judicial limitations on the interpretation of criminal statutes. Variable Y refers to the data of SCN decisions representing a moderate level of articulation regarding judicial limitations on the interpretation of criminal statutes. Variable Z refers to the data of SCN decisions representing a strong articulation regarding judicial limitations on the interpretation of criminal statutes.

Altogether the data illustrate the level of articulation from simple to strong as shown below in percentage.

Table 8.5: X, Y, Z Thematic Variables Count in Percentage

Theme	**Variable X**	**Variable Y**	**Variable Z**	***Total***
Criminal Cases Relating to Interpretation of Statutes (Black)	10	13	8	*31*
	32.26%	41.94%	25.81%	*100%*
Writs Relating to Interpretation of Statutes (Red)	1	7	3	*11*
	9.09%	63.64%	27.27%	*100%*
General Cases Relating to Interpretation of Statutes (Blue)	1	3	1	*5*
	20.00%	60.00%	20.00%	*100%*
Total	***12***	***23***	***12***	***47***
	25.53%	48.94%	25.53%	*100%*

There are 31 cases under Criminal Cases (Black), in which 8 cases (25.81%) fall under Variable Z, 13 cases (41.94%) under Variable Y, and 10 cases (32.26%) under Variable X. This suggests that, although the variables are fairly well distributed, Variable Y is marginally more common in criminal instances. There are a total of 11 cases in the context of Writs (Red), with a focus on Variable Y, where 7 cases (63.64%) are included. Variable X has the least impact with only 1 case (9.09%), whereas Variable Z is represented by 3 cases (27.27%). This implies that the variables represented by Variable Y have a special bearing on how statutes are interpreted in circumstances involving writs. There are a total of 5 instances for the general category (Blue), with Variable Y once again having the highest representation with 3 cases (60.00%). With one case (20.00%) for each of the variable's X and Z, the pattern is similar to that of writs, where Variable Y is the predominant component.

Ultimately, there are 47 cases in total, of which nearly half (23 cases, 48.94%) fall under Variable Y. This indicates that Variable Y is the most important consideration for evaluating the limitations of court. With 12 cases each, variables X and Z are equally represented (25.53%). Although variable Y is the most prevalent component across all case categories, according to the overall distribution, variables X and Z are also significant and account for 25% of the instances each.

The Inferential Statistics is shown in the table below:

Table 8.6: Inferential Statistics of X, Y, Z

Theme	Mean	Median	Standard Deviation
Variable X	4	1	4.242640687
Variable Y	7.666667	7	4.109609335
Variable Z	4	3	2.943920289

Mean, Median, and Standard Deviation is shown in the figure below:

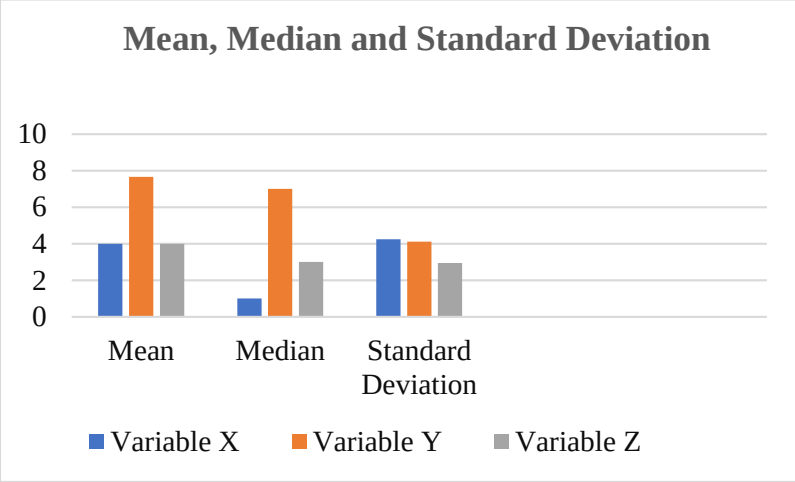


Figure 8.3: Mean, Median and Standard Deviation

A comparison of the central tendency and variability of each of the three theme variables (X, Y, and Z) in the statistical data presented for cases interpreting judicial limitations is evident.

With a Mean of 4, a Median of 1, and a Standard Deviation (a measure of spread) of roughly 4.24, variable X exhibits a skewed distribution, with certain high-value outliers driving the Mean upward, as indicated by the significant difference between the Mean and Median. Since the Standard Deviation is rather large, there is a significant amount of variability in the number of cases, indicating that the values for Variable X are dispersed across a greater range. However, variable Y has a higher Mean of almost 7.67 cases, a Median of about 7, a

Standard Deviation of about 4.11. A more symmetric distribution of cases around the core value is suggested by the proximity of the Mean and Median. Although Variable Y's Standard Deviation is marginally lower than Variable X's, it still indicates that the variable's cases are fairly dispersed. The variable Z exhibits a Mean of 4 cases, a Median of 3, and a minimum Standard Deviation of roughly 2.94. Compared to Variable X, the Mean and Median are closer together, suggesting a less skewed distribution. Variable Z's cases appear to be less variable, as indicated by a closer clustering around the Mean, as indicated by the lower Standard Deviation when compared to Variables X and Y.

With a modest amount of variety, Variable Y is generally the one that is addressed the most in judicial interpretations. The variable with the highest fluctuation, Variable X, is less commonly addressed but has a wide range of possible applications. Although Variable Z is used in circumstances with greater regularity than Variable X, it is addressed more frequently overall.

8.1.4 Quantitative Analysis of X_1, Y_1, Z_1 Thematic Variables

The table below shows the data of Supreme Court of Nepal's cases assimilating limitations of the court under three thematic variables X_1, Y_1 and Z_1 grouped together from distinct categories of cases synopsized as Criminal Cases (Black), Writs (Red) and General Cases (Blue).

Here, Variable X_1 stands for the data of SCN decisions representing cases simply assimilating judicial limitations on the interpretation of criminal statutes, Variable Y_1 stands for the data of SCN decisions representing cases moderately assimilating judicial limitations on the interpretation of criminal statutes and Variable Z_1 stands for the data of SCN decisions representing cases strongly assimilating judicial limitations on the interpretation of criminal statutes.

Altogether the data illustrate the level of articulation from simple to strong as shown below in percentage.

Table 8.7: X_1, Y_1, Z_1 Thematic Variables Count in Percentage

Theme	**Variable X_1**	**Variable Y_1**	**Variable Z_1**	***Total***
Black	9	21	7	*37*
	24.32%	56.76%	18.92%	*100%*
Red	4	9	5	*18*
	22.22%	50.00%	27.78%	*100%*
Blue	1	1	1	*3*
	33.33%	33.33%	33.33%	*100%*
Total	***14***	***31***	***13***	***58***
	24.14%	53.45%	22.41%	*100%*

The data shows that the Black theme dominates the dataset, accounting for 63.79% of the total data, with a strong emphasis on Variable Y_1, which comprises 56.76% of the Black theme's data. The Red theme, though smaller, also focuses heavily on Variable Y_1, with 50% of its data in this category, making Y_1 the most prominent variable across all themes. The Blue theme is minimally represented, with only 5.17% of the total data, and it has an equal distribution across all three variables. Overall, Variable Y_1 stands out as the most significant, representing 53.45% of the entire dataset, suggesting a strong association with this variable across all themes. The data indicates a clear focus on the Black theme and Variable Y_1, which could imply a need for further exploration or balance in other themes or variables.

The Inferential Statistics is shown in the table below:

Table 8.8: Inferential Statistics of X_1, Y_1, Z_1

Theme	**Mean**	**Median**	**Standard Deviation**
Variable X_1	4.666667	4	3.299831646
Variable Y_1	10.33333	9	8.219218671
Variable Z_1	4.333333	5	3.055050463

Mean, Median, and Standard Deviation is shown in the figure below:

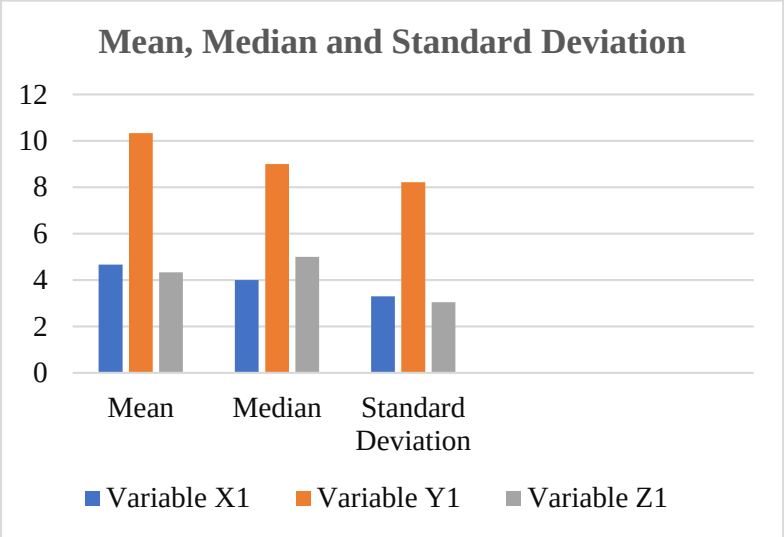


Figure 8.4: Mean, Median and Standard Deviation

The data offers insights into the distribution and spread of three variables (X_1, Y_1, Z_1) across a dataset. Variable X_1 has a Mean of 4.67, a Median of 4, and a Standard Deviation of approximately 3.30, indicating that while the data is centred around 4, there is some variability within the dataset. Variable Y_1 has a higher Mean of 10.33 and a Median of 9, with a relatively large Standard Deviation of about 8.22, suggesting greater variability and a wider range of values. This indicates that the data for Y_1 is more spread out compared to the other variables. Variable Z_1 has a Mean of 4.33 and a Median of 5, with a Standard Deviation of about 3.06, indicating that its data points are clustered around 4 or 5 with moderate variability. Overall, these statistics suggest that Variable Y_1 is not only higher on average but also more variable. The values for Z_1 are relatively close to those of X_1, but with a slightly lower Mean and a slightly higher Median, suggesting a more symmetric distribution of data points around the central tendency.

8.1.5 Quantitative Analysis of U, V, W Thematic Variables

The table below shows the data of Supreme Court's cases violating limitations of the court under three thematic variables under U, V and W; collected from distinct categories of cases from Criminal Cases (Black), Writs (Red) and General Cases (Blue). Here, Variable U signifies the data of SCN Decisions representing cases simply violating judicial limitations on the interpretation of criminal statutes, Variable V signifies data of SCN decisions

representing cases moderately violating judicial limitations on the interpretation of criminal statutes, and Variable W signifies data of SCN decisions representing cases strongly violating judicial limitations on the interpretation of criminal statutes. Altogether the data illustrate the level of articulation from simple to strong as shown below in percentage.

Table 8.9: U, V, W Thematic Variables Count in Percentage

Theme	**Variable U**	**Variable V**	**Variable W**	***Total***
Black	6	3	12	*21*
	28.57%	14.29%	57.14%	*100%*
Red	1	2	1	*4*
	25.00%	50.00%	25.00%	*100%*
Blue		1		*1*
	0.00%	100.00%	0.00%	*100%*
Total	***7***	***6***	***13***	***26***
	26.92%	23.08%	50.00%	*100%*

There are 21 instances in total for the Black theme, of which 6 (28.57%) are accounted for by Variable U, 3 (14.29%) by Variable V, and 12 (57.14%) by Variable W representing the majority. According to this, Variable W is most frequently linked to situations in which the court's limitations have been violated in criminal cases. Significantly fewer cases—a total of 4—are found in the Red theme. There are two cases (50.00%) in Variable V, one case (25.00%) in Variable U, and one case (25.00%) in Variable W. As opposed to the Black motif, Variable V is more prevalent here, suggesting a distinct pattern of transgression. There is just one instance of the Blue theme, and it completely fits under Variable V (100.00%). This means that any infractions related to the Blue theme are linked to Variable V. There are 26 cases when the totals for all themes are taken into consideration. Variable V has six cases (23.08%), Variable U has seven cases (26.92%), and Variable W has the most cases—13 (50.00%). All things considered, Variable W is the most common variable for breaches across all themes, accounting for half of the occurrences.

The Inferential Statistics is shown in the table below:

Table 8.10: Inferential Statistics of U, V, W

Theme	Mean	Median	Standard Deviation
Variable U	3.5	3.5	2.5
Variable V	2	2	0.816496581
Variable W	6.5	6.5	5.5

Mean, Median, and Standard Deviation is shown in the figure below:

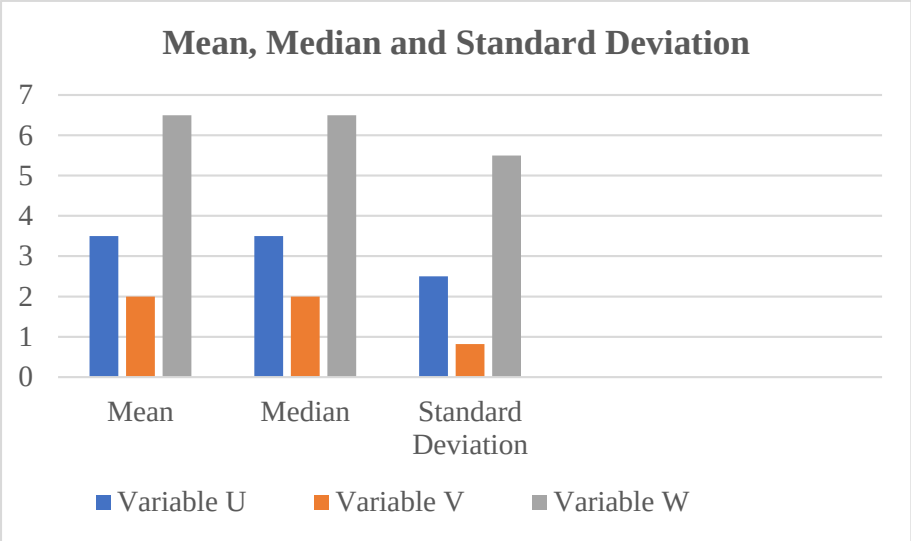


Figure 8.5: Mean, Median, and Standard Deviation

The data presents the Mean, Median, and Standard Deviation for three variables (U, V, W). Variable U, with both a Mean and Median of 3.5, indicates a balanced distribution around this central tendency, though its Standard Deviation of 2.5 suggests substantial variability in the data. Variable V, with a consistent Mean and Median of 2, shows little variation, as reflected by its low Standard Deviation of 0.82. Variable W, with both a Mean and Median of 6.5, indicates a higher average frequency of cases compared to Variables U and V, but this variable also exhibits significant variability, as evidenced by its Standard Deviation of 5.5. Comparing these variables, Variable W has the highest Mean and Median, suggesting it represents a higher average frequency of cases, while Variable V has the lowest Mean and Median, indicating a lower average frequency and the least variability among the three variables.

8.2 CORRELATION ANALYSIS BETWEEN VARIABLES

To measure the degree and direction of the linear relationship between the variables and ascertain the correlation coefficients, the correlation is calculated with the help of **Excel.** The variables x_o, y_o, z_o are compared with the variables x, y, z and X, Y, Z. Then the core theme carrying the data under X, Y, Z are compared with data X_1, Y_1, Z_1 and U, V, W. Furthermore, the data Z representing strong interpreting cases are compared with data W representing strong violating cases as they represent strong opposition. And, it is finally verified in hypothesis testing. The method of correlation coefficient analysis is provided in Appendix-5

8.2.1 Correlation of Variable (x_0, y_0, z_0) and Variable (x, y, z)

Correlation Coefficient of Variable (x_0 ,y_0 ,z_0) and Variable (x, y, z)	1

The correlation coefficient of 1 between the variables (x_0, y_0, z_0) and (x, y, z) shows a perfect strong positive linear relationship. This means that as one set of variables increases, the other set also increases proportionally, indicating a significant dependency between them.

8.2.2 Correlation of Variable (x_0, y_0, z_0) and Variable (X, Y, Z)

Correlation Coefficient of Variable (x_o, y_o, z_o) and (X,Y,Z)	0.845158

The correlation coefficient of 0.845158 between the variables (x_o, y_o, z_o) and (X, Y, Z) indicates a strong positive association. This suggests that as one set of variables increases, the other set tends to increase as well, and vice versa. The high correlation implies that both sets of variables are closely related and likely influenced by similar underlying factors.

8.2.3 Correlation of Variable (X, Y, Z) and Variable (X_1, Y_1, Z_1)

Correlation Coefficient of Variable (X, Y, Z) and (X_1, Y_1, Z_1)	0.901445

The correlation coefficient of 0.901445 between the variables (X, Y, Z) and (X_1, Y_1, Z_1) reveals equally strong relationship. This indicates that changes in one set of variables are

closely mirrored by changes in the other set. For example, an increase in X likely corresponds to an increase in X_1, and a decrease in Y is likely to be matched by a decrease in Y_1. This strong correlation suggests that the variables are closely related and may be measuring similar underlying phenomena or concepts.

8.2.4 Correlation of Variable (X, Y, Z) and Variable (U, V, W)

Correlation Coefficient of Variable X, Y, Z and U , V, W	0.463573

The correlation coefficient of 0.463572975 between the variables X, Y, Z and U, V, W indicates a moderate positive correlation between these sets of variables. In simpler terms, it suggests that there is a tendency for cases that interpret limitations of the court (X, Y, Z) to be associated with cases that violate those limitations (U, V, W). Though, the strength of this relationship is not extremely high, but it is dangerously noticeable.

8.2.5 Correlation of Variable Z and Variable W:

Correlation Coefficient of Variable Z and Variable W	1

The magnitude and direction of the linear relationship between variables Z and W are described by this statistic. A complete positive correlation has a value of 1. An elevated positive correlation coefficient of 1 signifies that an increase in one variable is likely to result in a rise in another. This relationship could have implications for the system or family of variables as a whole, possibly exposing a relationship that should not have.

8.3 HYPOTHESIS TESTING

IBM Statistics Ver.29 SS software was used to perform a Chi-Square Test to assess the significant association between variables. The software compares two variables at a time to determine if a significant relationship exists. The test uses a significance level of 0.01 (99% confidence interval) and applies the likelihood ratio chi-square test to evaluate how well two models fit the data.

This involves comparing the probability of the data under a more complex model (alternative hypothesis) versus a simpler model (null hypothesis). The test statistic, derived from the difference in log-likelihoods between the models, is compared to a chi-square distribution to determine statistical significance.

The analysis is based on 10,000 sampled tables. A significant result indicates that the more complex model fits the data much better than the simpler model. Phi and Cramer's V are used as measures for nominal data, with a main focus on strong associations. The process of Chi-square test performed is provided in Appendix-6.

8.3.1 Chi-Square Tests between Variable (x_0, y_0, z_0) and Variable (x, y, z)

Chi-Square Tests between Variable (x_0, y_0, z_0) and Variable (x, y, z)						
	Value	df	Asymptotic Significance (2-sided)	Monte Carlo Sig. (2-sided)		
				Significance	99% Confidence Interval	
					Lower Bound	Upper Bound
Pearson Chi-Square	18.000[a]	9	0.035	.053[b]	0.047	0.058
Likelihood Ratio	14.909	9	0.093	.053[b]	0.047	0.058
Fisher-Freeman-Halton Exact Test	13.319			.053[b]	0.047	0.058
N of Valid Cases	6					

According to the results of these chi-square tests, there is a substantial relationship between the variables under investigation. P-values for the Fisher-Freeman-Halton Exact Test, Likelihood Ratio, and Pearson Chi-Square test are 0.053, 0.035, and 0.093, respectively. This indicates that the variables have a strong relationship and that the observed frequencies are unlikely to be the result of chance. Furthermore, at a p-value of 0.053, the more cautious Monte Carlo significance test concurs with it. Since the significance's confidence interval lies between 0.047 and 0.058, this range is expected to contain genuine significance.

8.3.2 Chi-Square Tests between Variable (x_0, y_0, z_0) and Variable (X, Y, Z)

Chi-Square Tests between Variable (xo, yo, zo) and Variable (X, Y, Z)						
	Value	df	Asymptotic Significance (2-sided)	Monte Carlo Sig. (2-sided)		
				Significance	99% Confidence Interval	
					Lower Bound	Upper Bound
Pearson Chi-Square	14.000[a]	9	0.122	.204[b]	0.193	0.214
Likelihood Ratio	12.137	9	0.206	.406[b]	0.394	0.419
Fisher-Freeman-Halton Exact Test	11.069			.406[b]	0.394	0.419
N of Valid Cases	6					

First, the two nominal variables have a significant correlation, as indicated by the findings of three chi-square tests. Given that the Pearson Chi-Square test value is 14.000 (p=0.122), it seems improbable that the observed frequencies are the result of random chance. Nonetheless, we can also assert that there is a statistically significant relationship between them for assurance purposes, given the likelihood ratio test value of 12.137 and the p-value of 0.206. A substantial correlation is also suggested (p = 0.406) by the Fisher-Freeman-Halton Exact Test, another non-parametric test. Furthermore, it is possible to be positive that the population impact size is between 19.3% and 21.4% using the 99% Confidence Interval. As these results demonstrate, it can be generally concluded that these two variables are associated.

8.3.3 Chi-Square Tests between Variable (X, Y, Z) and Variable (X_1, Y_1, Z1)

Chi-Square Tests between Variable (X,Y,Z) and Variable (X_1,Y_1,Z_1)						
	Value	df	Asymptotic Significance (2-sided)	Monte Carlo Sig. (2-sided)		
				Significance	99% Confidence Interval	
					Lower Bound	Upper Bound
Pearson Chi-Square	18.000[a]	12	0.116	.133[b]	0.125	0.142
Likelihood Ratio	15.956	12	0.193	.133[b]	0.125	0.142
Fisher-Freeman-Halton Exact Test	14.750			.133[b]	0.125	0.142
N of Valid Cases	6					

There is a statistically significant correlation between the category variables, according to the chi-square tests. According to the Pearson Chi-Square test statistic of 18.000, which is significant at the p-value of 0.116, the observed frequencies are likewise unlikely to be the result of chance. Furthermore, at the level of 0.193 (p-value), the Likelihood Ratio test statistic of 15.956 is still statistically significant. The Fisher-Freeman-Halton Exact Test, another non-parametric test, has likewise revealed a significant correlation at the level of 0.133 (p-value). The range in which the genuine population effect size is expected to lie, from 12.5% to 14.2%, comprises its value with a confidence interval of almost 99%. All things considered, these results show evidence in favour of statistical significance when it comes to both the consideration of variables as associated or not by chance alone.

8.3.4 Chi-Square Tests between Variable (X, Y, Z) and Variable (U, V, W)

Chi-Square Tests between Variable (X,Y,Z) and Variable (U,V,W)						
	Value	df	Asymptotic Significance (2-sided)	Monte Carlo Sig. (2-sided)		
				Significance	99% Confidence Interval	
					Lower Bound	Upper Bound
Pearson Chi-Square	18.000[a]	12	.116	.204[b]	.194	.214
Likelihood Ratio	14.909	12	.246	.204[b]	.194	.214
Fisher-Freeman-Halton Exact Test	15.090			.204[b]	.194	.214
N of Valid Cases	6					

There may be a statistically significant correlation between the category variables, according to the findings of the chi-square tests. The observed frequencies are unlikely to occur by random, as indicated by the Pearson Chi-Square test statistic of 18.000, which is significant at the 0.116 level (p-value). Additional proof of a statistically significant correlation is provided by the Likelihood Ratio test statistic of 14.909, which is similarly significant at the 0.246 level (p-value). A significant correlation is also suggested at the 0.204 level (p-value) using the non-parametric Fisher-Freeman-Halton Exact Test. With a range of values provided by the 99% Confidence Interval, it may be inferred that the true population effect size is most likely to fall between 19.4% and 21.4%. All things considered; the findings show that the factors have a statistically significant relationship.

8.3.5 Chi-Square Tests between Variable Z and Variable W

Chi-Square Tests between Variable Z and Variable W						
	Value	df	Asymptotic Significance (2-sided)	Monte Carlo Sig. (2-sided)		
				Significance	99% Confidence Interval	
					Lower Bound	Upper Bound
Pearson Chi-Square	18.000[a]	12	0.116	.208[b]	0.197	0.218
Likelihood Ratio	14.909	12	0.246	.208[b]	0.197	0.218
Fisher-Freeman-Halton Exact Test	15.090			.208[b]	0.197	0.218
N of Valid Cases	6					

The results of the chi-square tests suggest that there may be a statistically significant association between the category variables. According to the Pearson Chi-Square test statistic of 18.000, which is significant at the 0.116 level (p-value), the observed frequencies are unlikely to occur by chance. The Likelihood Ratio test statistic of 14.909, which is also significant at the 0.246 level (p-value), offers more evidence of a statistically significant link. The non-parametric Fisher-Freeman-Halton Exact Test likewise indicates a significant connection at the 0.208 level (p-value). Based on the 99% Confidence Interval's range of values, it can be deduced that the true population effect size is most likely to be between 19.4% and 21.4%. When everything is taken into account, the results demonstrate a statistically significant link between the variables.

8.4 RESULT

The hypothesis was tested using a chi-square test to explore associations between variables. The testing mechanism utilized IBM Statistics Ver.29, examining the association, correlation, and potential causal relationships between variables. The results of the correlation analysis and chi-square tests between various pairs of variables indicated the following levels of correlation association:

8.4.1 Correlation Existed:

a) A moderately positive thematic relationship was observed between variables (x_0, y_0, z_0), variables (x, y, z), variables (X, Y, Z) and variables (X_1, Y_1 and Z_1) indicating a smooth connection. This suggests a tendency for one set of variables having thematic link with correlation coefficients approaching 1.
b) The correlation coefficient of 0.463573 between the variables (X, Y, Z) and (U, V, W) indicates a moderate positive correlation in totality. However, a correlation coefficient of 1 between variables Z and W indicate a perfect positive relationship.

8.4.2 Hypothesis Accepted:

a) Significant associations were identified between variables (x_0, y_0, z_0), variables (x, y, z), variables (X, Y, Z) and variables (X_1, Y_1 and Z_1), supporting the hypothesis.
b) However, the variables (X, Y, Z) also exhibited weighty associations with the variables (U, V, W), supporting the hypothesis.

Thus, the result supports the hypothesis that the criminal law cannot be construed liberally to criminalize individuals through the expansion of constituent elements of a crime, termed now onwards as the doctrine of 'limitation principle' in judicial interpretation of criminal statutes- a theory formed. In the case of the Supreme Court of Nepal, it has interpreted the judicial constraint in criminal statutes and has adequately assimilated it in the line of standard principles and provisions. Similarly, there is some evidence supporting the notion that the Supreme Court of Nepal occasionally diverges from its principle of avoiding liberal interpretation of criminal law to criminalize individuals.

CHAPTER IX

FINDINGS, CONCLUSIONS AND SUGGESTIONS

9.1 FINDINGS:

The findings underscore the existence of interpretational limitations within criminal cases, framed through both theoretical and practical lenses from national and international jurisdictions. These limitations are shaped by standard legal principles and provisions, serving as benchmarks for judicial interpretation. While international courts and major common law jurisdictions widely recognize these limitations, the decisions of the Supreme Court of Nepal exhibit variability. In certain cases, the Court adheres to established legal principles, whereas in others, there are deviations from these standards. The major five findings are as follows:

1) Judicial Adherence to Principles Limiting Interpretational Flexibility in Criminal Law

It is the general perception that Court does interpret the law according to the judge's mind of judicial discretion, and it is their choice practiced elsewhere. However, the study revealed the fact that the court has accepted its limitation in the interpretation of penal statutes in various jurisdiction. A review of 16 significant cases from different legal systems illustrates that the judiciary has consistently followed principles that constrain their interpretational flexibility.

For instance, the ICC in Thomas Lubanga Dyilo (2012)[1251] upheld the principle that retroactive application of statutes is not permissible, and guilt must be established based on clear statutory definitions. Similarly, the International Court of Justice (I.C.J.) in *Jadhav* (2019)[1252] clarified that Article 36 of the Vienna Convention on Consular Relations does not exclude espionage and affirmed that its jurisdiction does not extend to reviewing domestic court decisions. The ECtHR in cases such as

[1251] *Dyilo*, *supra* note 415 (ICC).
[1252] *Jadhav*, *supra* note 436 (I.C.J.).

Krenz (2001)[1253] and *Kokkinakis* (1993)[1254] reinforced that it lacks the authority to interfere in domestic court interpretations and emphasized that criminal laws must be clearly defined.

In the United Kingdom, judicial decisions such as *Knuller* (1973)[1255] and *Rimmington* (2005)[1256] have confirmed that criminal laws should not be expanded by interpretation beyond their clear terms. The court's ruling in *Jones* (2006)[1257] also emphasized that statutes are limited to statutory crimes unless explicitly stated otherwise. The United States has similarly upheld the strict application of penal laws. Cases like *Connally* (1926)[1258] and *Wiltberger* (1820)[1259] demonstrate that vague statutes violate due process, and only clear legislative definitions are valid.

Indian courts have also reinforced these principles. In *Motibhai* (1969)[1260] and *Sonvane* (2002)[1261], the courts have stressed that penal laws and their application must adhere strictly to legislative provisions, rejecting any judicial extension or constriction of the law's scope.

These judicial practices are underpinned by 13 fundamental principles that shape the application and interpretation of criminal laws. These principles include the principle of legality, which dictates that only the law can criminalize and impose penalties; the non-retroactivity principle, which prohibits the application of laws to past actions; and the strict rule of construction, which demands that criminal laws be interpreted narrowly. Other principles such as the interdiction of analogy, which requires that laws be applied according to their explicit terms, and the principle of certainty, which ensures that laws define criminal conduct clearly, further support these restrictive practices.

[1253] *Krenz, supra* note 460 (ECtHR).
[1254] *Kokkinakis, supra* note 282 (ECtHR).
[1255] *Knuller, supra* note 103 (UKHL).
[1256] *Rimmington, supra* note 134 (UKHL).
[1257] *Jones, supra* note 137 (UKHL).
[1258] *Connally, supra* note 275 (USA).
[1259] *Wiltberger, supra* note 502 (USA).
[1260] *Patel, supra* note 511 (India).
[1261] *Sonvane, supra* note 513 (India).

Thus, the findings highlight that despite the perception of judicial discretion, courts globally adhere to a set of well-established principles that limit their interpretational flexibility in criminal law, ensuring a consistent and predictable application of legal standards.

2) Judicial Limitations on the Interpretation of Criminal Statutes in Nepal and International Legal Obligations

Contrary to the general understanding of judicial discretion as the judge's discretion in applying the law, this research reveals clear judicial limitations in the interpretation of criminal statutes. These limitations are explicitly legislated in international legal frameworks and are binding upon Nepal through its treaty obligations. A total of 11 international legal instruments underscore the principle that criminal offenses and penalties must be clearly prescribed by law, leaving little room for broad judicial interpretation.

Key international instruments highlighting these limitations include:

a) Universal Declaration of Human Rights (UDHR), 1948 – Article 11(2)
b) International Covenant on Civil and Political Rights (ICCPR), 1966 – Articles 15(1) & (2)
c) European Convention on Human Rights (ECHR), 1950 – Article 7
d) Charter of Fundamental Rights of the European Union (CFREU), 2000 – Article 49
e) Rome Statute of the International Criminal Court, 2002 – Articles 22 & 24
f) African Charter on Human and Peoples' Rights (ACHPR), 1981 – Article 7(2)
g) Arab Charter on Human Rights (ArCHR), 2004 – Article 15
h) Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 1949 – Article 99
i) Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 1949 – Articles 65 & 67
j) American Convention on Human Rights (ACHR), 1978 – Article 9

k) Convention on the Rights of the Child (CRC), 1989 – Article 40(2)(a)

These instruments highlight that criminal statutes should be strictly construed, with no allowance for analogy or interpretational flexibility. Regional frameworks like the ACHR and ACHPR reinforce this principle, emphasizing that criminal offenses must be explicitly defined in accordance with the doctrine of legality.

Additionally, the Model Penal Code echoes these limitations by stating in Article 3(1) that criminal offenses and penalties must be prescribed only by law. It further mandates, in Article 3(4), that the definition of criminal offenses must be strictly construed, and the use of analogy in interpretation is strictly prohibited.

Nepal's domestic legal framework aligns with these international standards through the provisions of the Muluki Criminal Code, 2074 (2017) and the Constitution of Nepal, 2072 (2015), which uphold the need for strict interpretation of criminal statutes. Furthermore, Nepal's Treaty Act, 2047 (1990) and the Vienna Convention on the Law of Treaties, 1969 compel the country to adhere to these international legal obligations, thus limiting the discretion of the judiciary in criminal cases.

This finding underscores that judicial interpretation of criminal laws in Nepal is bound by both domestic and international provisions, which mandate precise and strict construction without interpretational deviations.

3) Variability in Practice to Interpretational Limitations in Nepalese Supreme Court Cases

An examination of the Supreme Court of Nepal's reported cases reveals a significant variance in the adherence to judicial limitations on the interpretation of criminal statutes. Out of a total of 184 cases across four distinct thematic categories relating to the interpretation of statutes, the following distribution was observed, particularly in two critical categories: ‘cases interpreting limitations’ and ‘cases violating limitations’:

- 47 cases adhered strictly to the judicial limitations set on the interpretation of criminal statutes.
- 26 cases deviated from these limitations, violating the principles of constrained judicial interpretation.

This means that for approximately every two cases that adhered to interpretational limitations, there was one case where these limitations were not followed. In percentage terms, 26 out of 47 cases represent a 55.3% deviation from the standard of adhering to judicial limitations.

Thus, while a notable number of cases adhered to the interpretational limitations, a significant proportion deviated from these established standards. This disparity underscores a need for greater consistency in the application of interpretational constraints by the Supreme Court of Nepal.

4) Variations in Judicial Interpretation in Terms of Case Basis

An analysis of the Supreme Court of Nepal's decisions reveals notable patterns in terms of case basis that how they have been interpreted, assimilated, and violated judicial limitations on the interpretation of criminal statutes.

Certain case categories were more prone to both violations and interpretations. Rape cases had the highest frequency, with 12 violations and 5 interpretations. Certiorari cases followed with 3 violations and 7 interpretations. Other categories, such as Murder (2 violations, 4 interpretations), Human Trafficking (2 violations, 4 interpretations), and Habeas Corpus (2 violations, 3 interpretations), also showed significant variations. This pattern highlights the areas of criminal law where judicial discretion has been most frequently exercised, both in alignment with and in violation of statutory limitations.

The following figure depicts the picture of same case with the frequency of highest violated and interpreted.

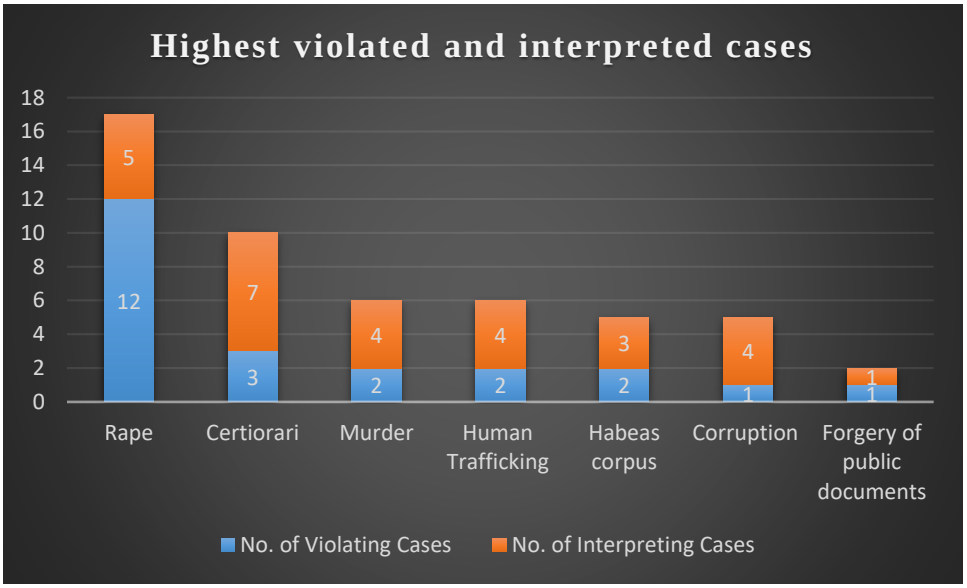


Figure 9.4: Frequency of Highest Violated and Interpreted Cases

These findings underline the complex dynamics of judicial decision-making, where judges often interpret and at times violate limitations, particularly in sensitive case categories.

5) Findings from the Analysis of Relationships Through Chi-Square Tests

To reach into conclusive findings, the analysis began with examining the data's Mean, Median, and Standard Deviation. Subsequently, the Correlation Coefficients of Variables were assessed using Excel. A Chi-Square Test was then conducted with IBM Statistics Ver.29 to evaluate significant associations between the variables.

The Chi-Square Test results indicate that the Supreme Court of Nepal generally adheres to the principle of avoiding liberal interpretation of criminal statutes. However, deviations from this principle do occur. The analysis revealed the following correlation patterns:

a) A moderately positive thematic relationship was observed between variables (x_0, y_0, z_0), variables (x, y, z), variables (X, Y, Z) and variables (X_1, Y_1 and Z_1) indicating a smooth connection. This suggests a tendency for one set of variables having thematic link with correlation coefficients approaching 1.

b) The correlation coefficient of 0.463573 between the variables (X, Y, Z) and (U, V, W) indicates a moderate positive correlation in totality. However, a correlation coefficient of 1 between variables Z and W indicate a perfect positive relationship.

The correlation pattern justified the hypothesis

a) Significant associations were identified between variables (x_0, y_0, z_0), variables (x, y, z), variables (X, Y, Z) and variables (X_1, Y_1 and Z_1), supporting the hypothesis.
b) However, the variables (X, Y, Z) also exhibited weighty associations with the variables (U, V, W), supporting the hypothesis.

Thus, it is found that the Supreme Court of Nepal has effectively interpreted judicial constraints in the interpretation of criminal statutes in line with standard principles and provisions, albeit with very notable deviations from it.

9.2 CONCLUSIONS:

Based on the findings, it is evident that the interpretation of criminal statutes within the judicial system adheres to fundamental principles and legal provisions, both domestically and internationally. The identification of 13 key principles underscores the importance of maintaining fairness and consistency in legal proceedings. The examination of 16 laws and international cases highlights the role of interpretational limitations in ensuring judicial boundaries and legislative intent. Analysis of reported cases from the Supreme Court of Nepal reveals both adherence to and deviations from these judicial constraints. Additionally, chi-square tests show that while the Supreme Court generally interprets judicial constraints effectively, deviations from the principle of avoiding liberal interpretations do occur.

While examining these deviations, among a total thematic sample of 184 cases, 47 cases were found purely interpreting limitations of Court, while 26 were found in deviation from the established norms outlined in national and international laws. Within these 26 cases, 13 cases were identified as significantly contravening the limitations by expanding the scope

of actus reus of the crime, documented under Variable W. Among these, 12 were criminal cases and 1 was a writ.

Among the 12 criminal cases, one instance involved *Niyamul Banjara Musalman* (2064),[1262] where the constituent element of the crime (a group of 4 persons) was notably reduced (to a group of less than 4 persons) to criminalize the offender for Dacoit. Additionally, one writ was filed by *Rameshman Sthapit* (2049), [1263] wherein the court acknowledged his illegal detention but allowed for judicial custody. The rest all 11 cases were offences against women, particularly rape cases. Having such frequent expansion of *actus reus* in Rape case has set it as precedent, and even cited in cases then.

So, the issue of violation of the limitation of court while interpreting criminal statutes that is worthiest of discussion are the interpretations made by the Supreme Court in the rape case where it has expanded the scope of the *actus reus* and rendered verdicts. The then No.1(c) of the Muluki Ain, Chapter on Rape; and, existing Sec. 219 of the MCC require 'at least minimum penetration' as *actus reus* for the crime of rape to be complete. The law has not differentiated the *actus reus* based on the age of the victim in the past and even in its new Code law. Only the punishment varies according to the victim's age – the younger the age, the higher the punishment.

However, the Court has shadowed the legislative construction of 'at least minimum penetration' as the requirement of the *actus reus* of the complete offence of Rape. In the following cases, the requirement of 'at least minimum penetration' has been flexibly interpreted to establish the offence as a complete crime; as outlined below:

Case	**Interpretation**	**Requirement of Law**
Bishnu Adhikari (2063)[1264]	It cannot be held in every case that there is no crime of rape until the penis enters the vagina	'at least minimum penetration'

[1262] Niyamul Banjara Musalman v. GoN (2007) (NKP 2064, Vol. 11, DN. 7893).
[1263] Rameshman Sthapit v. Tribhuwan International Airport, Security Guard Department (1992) (NKP 2049, Vol. 1, DN. 4450).
[1264] Bishnu Adhikari v. GoN (2006) (NKP 2063, Vol. 2, DN. 7652).

Bhim Bahadur Pokhrel (2063)[1265]	Normal friction between penis and vagina is sufficient.	'at least minimum penetration'
Suk Bahadur Kumal (2065)[1266]	If there is friction around the vagina, it is sufficient.	'at least minimum penetration'
Tek Bahadur Chhetri (2066)[1267]	Malice to rape is enough, penetration is not the issue.	'at least minimum penetration'
Badri Khatri (2071)[1268]	Sexual gratification by ejaculation is sufficient.	'at least minimum penetration'
Tasi B.K. (2073)[1269]	Friction is enough.	'at least minimum penetration'
Suman Pahari (2074)[1270]	Touching of vagina by penis is sufficient.	'at least minimum penetration'
Ishwori Rishi Dev (2074)[1271]	Ejaculation of the semen on the vagina is sufficient.	'at least minimum penetration'
Soharat Kha Pathan (2075)[1272]	Penetrate or ejaculation is not the issue	'at least minimum penetration'

[1265] Bhim Bahadur Pokhrel v. HMG (2006) (NKP 2063, Vol. 4, DN. 7682).
[1266] Suk Bahadur Kumal v. GoN (2008) (NKP 2065, Vol. 5, DN. 7968).
[1267] GoN v. Tek Bahadur Chhetri (2009) (NKP 2066, Vol. 5, DN. 8142).
[1268] Badri Khatri v. GoN (2014) (NKP 2071, Vol. 6, DN. 9186).
[1269] GoN v. Tasi B.K. (2016) (NKP 2073, Vol. 1, DN. 9519)
[1270] Suman Pahari v. GoN (2017) (NKP 2074, Vol. 4, DN. 9801).
[1271] Ishwori Rishi Dev v. GoN (2017) (NKP 2074, Vol. 6, DN. 9826).
[1272] GoN v. Soharat Kha Pathan (2018) (NKP 2075, Vol. 7, DN. 10049).

Ashok Shrestha (2076)[1273]	Rubbing the penis outside the vagina is sufficient.	'at least minimum penetration'
Dipak Gurung (2077)[1274]	Touching of vagina is sufficient.	'at least minimum penetration'

Here, it's important to recognize that when the court expands the constituent elements of rape, a consistent trend becomes apparent. The most prevalent tendency in violating the limitations of court while interpreting criminal statutes appears to stem from judges considering their social roles and responsibilities rather than by gaffe.

Conversely, it has been strongly articulated by the Supreme Court in 12 cases recorded under Variable Z that it is not court's domain to expand the scope of the *actus reus* of crime. These 12 cases have categorically voiced loud and clear that court cannot criminalize, only law made by parliament can criminalize. Court cannot expand the constituent element of crime through interpretation.[1275]

Indeed, there is a high degree of relationship between the variables x_0, y_0, z_0 and x, y, z and X, Y, Z and x_0, y_0, z_0 and X, Y, Z and X_1, Y_1, Z_1. However, the existence of the thematically contrasting data of variable Z and variable W in a strong positive relationship suggests a direct causal relationship between these two contrasting variables. The nature of this connection, given the contrasting themes of the variables, could have profound implications. It might uncover previously unknown or concealed relationships within the system or the

[1273] GoN v. Ashok Shrestha (2019) (NKP 2076, Vol. 1, DN. 10165).
[1274] GoN v. Dipak Gurung (2020) (NKP 2077, Vol. 2, DN. 10443).
[1275] Z Variable Cases: Ram Prasad Rai v. Mil Bahadur Rai (1995) (2052, Vol. 3, DN. 5077), GoN v. Tara Prasad Devkota (2009) (NKP 2066, Vol. 10, DN. 8254), Molhuysen Hendrik Otto v. GoN (2012) (NKP 2069, Vol. 7, DN. 8860), Rameshwor Shrestha v. GoN (2017) (NKP 2074, Vol. 2, DN. 9765), GoN v. Chatra Bahadur Bhandari (2017) (NKP 2074, Vol. 5, DN. 9810), GoN v. Raju Lal Rajbhandari (2020) (NKP 2077, Vol. 5, DN. 10490), GoN v. Anjan K.C. (2020) (NKP 2077, Vol. 6, DN. 10523), GoN v. Muna Magar Meche (2020) (NKP 2077, Vol. 10, DN. 10596), Adv. Ratna Bahadur Bagchand v. HMG, OPMCM (2005) (NKP 2062, Vol. 2, DN. 7491), Adv. Om Prakash Aryal v. GoN, OPMCM (2008) (NKP 2065, Vol. 9, DN. 8009), Adv. Achyut Prasad Kharel v. Ministry of Law, Justice and Parliamentary Affairs, Kathmandu (2009) (NKP 2066, Vol. 5, DN. 8138), and Indra Bahadur Gurung v. Revenue Tribunal, Kathmandu (1993) (NKP 2050(a), Vol. 2, DN. 4697).

broader context, which could be considered 'dangerous' due to their potential to disrupt or challenge existing understandings or frameworks.

To sum up, the following five conclusions can be drawn:

1) Presence of Judicial Constraints in the Interpretation of Criminal Statutes

The study establishes that there are judicial constraints in interpretation of criminal statutes. The concept of 'judicial discretion' is not the same to the concept of 'judge's discretion' in all the context. The first referring semantically and pragmatically to the context based on objective factual circumstances; whereas the second referring to subjectivism and judicial construction to the situation based on the application and interpretation of penal statutes obviously to the context based on objective factual circumstances. The study found that when applying criminal law by the court, there is interpretational limitations, not subjective freedom to criminalize or decriminalize the person. The 13 principles, 16 international and national laws, and 16 judgmentally selected international judicial decisions adhere the interpretational limitations of the court in criminal cases. These principles, provisions and practices ensure that criminal laws are applied and interpreted within their clear legislative scope, thereby maintaining consistency in legal standards; justifying the title 'Judicial Limitations on Interpretation of Criminal Statutes'.

2) Variations in Judicial Practices of the Supreme Court of Nepal

The study uncovers notable variations in judicial practices within the Supreme Court of Nepal. While many judges consistently adhere to established interpretational limitations, there are instances where deviations occur. This dichotomy reveals that although a general adherence to interpretational principles is evident, judge's discretion sometimes leads to inconsistencies. An analysis of 184 cases related to the interpretation of statutes demonstrates this variability: of them, 47 cases show clear adherence to interpretational limitations, while 26 reflect deviations. This pattern highlights the coexistence of adherence and deviation in the Court’s judicial

practices, impacting the overall consistency and resulting into overcriminalization, with the potential threat of decriminalization as well.

3) Case Basis Patterns and Case Categories

Examining case categories reveals notable patterns in the interpretation and violation of judicial limitations within a sample of 184 cases. The specific case categories exhibit significant variations: Rape cases showed 12 violations and 5 interpretations, Certiorari cases had 3 violations and 7 interpretations, while categories like Murder, Human Trafficking, and Habeas Corpus also displayed notable deviations. These patterns underscore the inconsistency in judicial decision-making within the Supreme Court of Nepal while applying penal statutes.

4) Need for Consistency in Judicial Interpretation

When a judge explains that court cannot expand the constituent element of crime in order to criminalize the offender, and the same judge expands so and criminalize the offender in next cases, it demands consistency in judicial interpretation.[1276] To achieve fair and just outcomes in criminal justice, it is imperative for judges to adhere strictly to established legal principles when interpreting penal statutes. Consistent application of these principles ensures that judicial decisions remain within the bounds of legal constraints, thereby upholding the integrity of the judicial process. Emphasizing adherence to legal norms and uniformity in interpretation not only promotes fairness but also enhances the predictability and reliability of legal outcomes. This consistency is essential for maintaining public trust in the judicial system and ensuring that justice is administered equitably. However, this requirement of consistency is found fluctuating within same judge over same period of time and in similar case category.

[1276] For instance, Justice Anupraj Sharma violated limitations in a Rape case (2006) (NKP 2063, Vol. 2, DN. 7652) and interpreted them in another Rape case (2006) (NKP 2063, Vol. 3, DN. 7666). Similarly, Justice Mira Khadka violated limitations in a Murder case (2020) (NKP 2077, Vol. 12, DN. 10614) and interpreted them in another Murder case (2019) (NKP 2076, Vol. 4, DN. 10246).

5) Correlation Patterns and Hypothesis Validation

The Chi-Square Test analysis and correlation patterns suggest that the Supreme Court of Nepal generally adheres to the principle of not liberally construing criminal statutes but occasionally deviates from this principle. Correlation analysis shows significant associations and moderate to perfect positive relationships among variables, supporting the hypothesis that the Court effectively interprets judicial constraints in line with standard principles, despite occasional deviations from avoiding liberal interpretations.

Overall, these conclusions illustrate the complexity of judicial interpretation within the Supreme Court of Nepal, underscoring both adherence to and deviations from established principles.

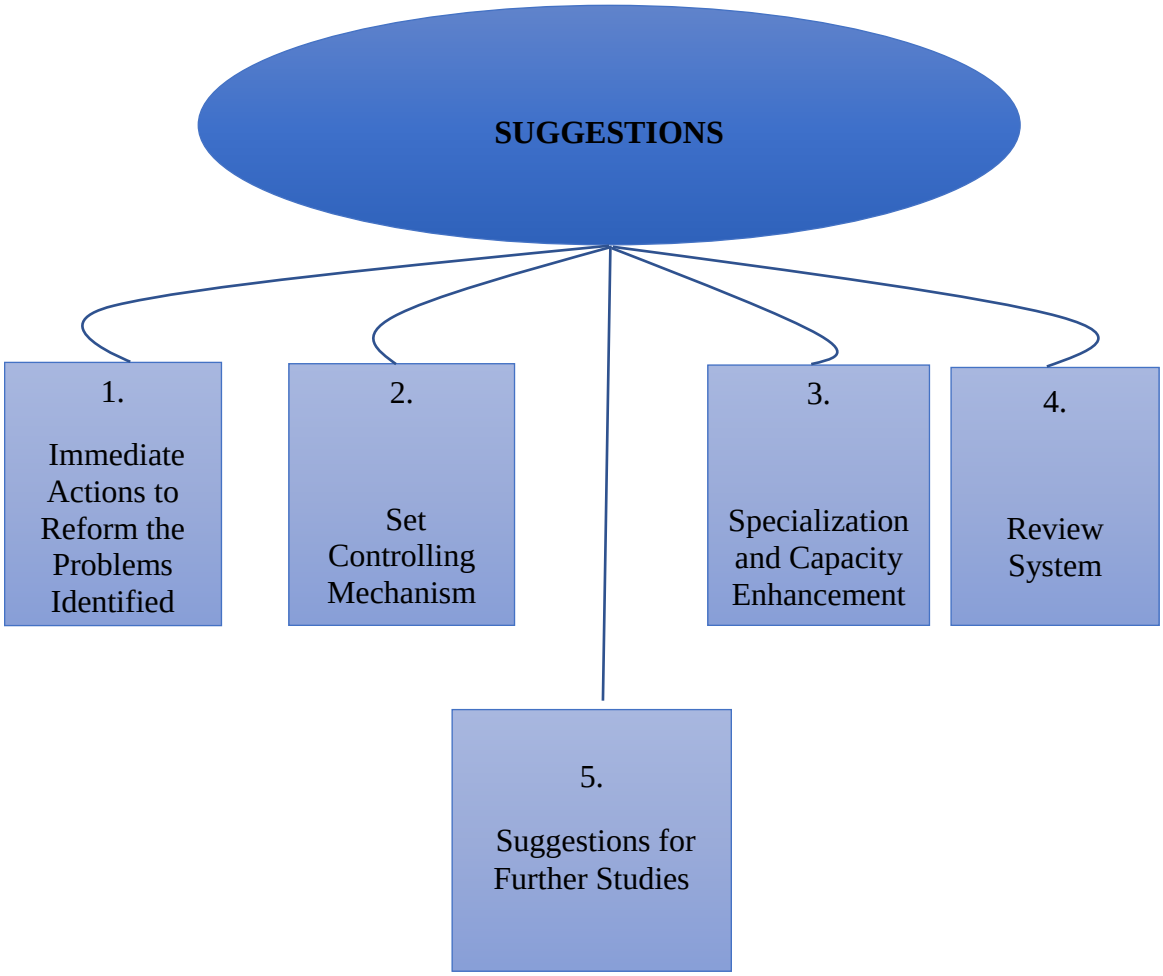
Consequently, this highlights the need for further research, as suggested in the suggestions: Should the Court defer matters it deems necessary for criminalization to Parliament for proper legislation or amendments? Alternatively, should legislation permit the progressive development of actus reus at the discretion of judges?

9.3 SUGGESTIONS:

The data studied revealed two facts:

a) First, there are interpretational limitations of the court in criminal cases. This premise is supported by the study of international provisions, principles and practices across various jurisdictions. This adherence is further proven in the context of Nepal, as the Supreme Court of Nepal has clearly interpreted its limitations while construing criminal statutes in at least 47 cases.
b) Second, despite this adherence, there are instances where the Court has deviated from these established standards in 26 cases, indicating a significant problem in maintaining consistent judicial practices.

Thus, a problem is evident. To address this issue, the following five categories of constructive advices are recommended:



1) Immediate Actions to Reform the Problems Identified

The study has reached at the conclusion that there are standard deviations in the decisions of the Supreme Court of Nepal while reviewing the reported cases from 2015 B.S. to 2078 B.S. (1958 A.D. to 2021 A.D.). This finding alerts there might be the existence of such occurrences in the unreported cases as well. To solve this problem, the following actions are recommended in an urgent basis:

a) Suggestion to the Supreme Court of Nepal: Form a Special Task Force Committee

The Chief Justice of the Supreme Court of Nepal should decide forming a Special Task Force Committee allocating a specified time frame, having the power to form various thematic committees under it, as an urgent measure.[1277] This committee, chaired by the most senior Justice and including law professors and legal experts, would be tasked with identifying inconsistencies and deviations in both reported and unreported court decisions. By comparing these decisions against the accepted principles of the criminal justice system, the committee would gather crucial data to highlight the areas where the Court's rulings have not fully aligned with established legal standards.

The committee would prepare a comprehensive report detailing its findings, and be submitted to the Full Court. With the approval of the Full Court, the report then be filed to a Larger Full Bench of all sitting Justices via the daily cause list. The goal is to address these inconsistencies, overrule the deviations and advance appropriate remedies, thereby reinforcing the Court's commitment to upholding justice and maintaining consistency in its rulings.

A similar action has once been taken by the Supreme Court but in different cause during the Covid 19 in the case no. 076-RE-0392,[1278] by all the sitting Justices of the Supreme Court in the subject of 'seeking resolution of the confusion regarding statute of limitations, time-limit, date for appearance etc. during the period of lockdown' decided on 28th May, 2020.

b) Suggestion to the Judicial Council for Implementing Public Access Software for Judges' Orders and Decisions

Given the concerning trend of Justices' interpreting and potentially violating the interpretational limitations of court in criminal cases, as evidenced by reported cases, it is plausible that there are numerous unreported instances involving the

[1277] Supreme Court Rules, 2074 (2017), rule 120 (Nep.).
[1278] (2020) NKP 2077, Vol. 2, DN. 10429.

same judge and possibly others. This problem might be extended beyond the decisions to include the orders of the Court as well.

Therefore, it is recommended that the Judicial Council urgently implement a comprehensive software system that ensures every Justice's orders and decisions are accessible to the public throughout their entire career, similar to the availability of reported cases. Such transparency would promote self-regulation among Justices while enabling the Judicial Council and other stakeholders to identify and address any transgressions promptly and effectively. Additionally, this system could be expanded to include all judges across the country, covering all tiers of courts, further enhancing accountability and fostering trust in the judiciary.

2) Set Controlling Mechanism

One of the identical quality of the decisions under common law system is the predictability of the judicial pronouncement. It helps in the consistencies of the decisions, promotes transparency, and controls subjective biasness. However, the findings of the study got a room of inconsistencies and deviations even in the decisions of the same Justice and also in similar case category. Thus, there requires some controlling mechanism to avoid these mischiefs and advance the remedy everlastingly:

a) Enactments of Clear Guidelines for the Uniformity in the Decisions

The Full Court of the Supreme Court has to develop a comprehensive guideline[1279] that outline standard practices for the Court to minimize subjective discretion effective from the very date of enactments. The guideline should incorporate the following clarity with the maximum certainty:

(i) The Justice should not provide reasons for a decision that contradict its prior decisions on similar issues. If the Justice determines that the prior

[1279] Supreme Court Rules, *supra* note 1277, at rule 109 (Nep.).

reasoning needs to be changed, they should refer the case to the Full Bench, specifying the grounds and indicating the contradiction in the ratio decidendi.[1280]

(ii) When the bench comes across the varying ratios in the similar case category or similar issue decided by other Justices, it should not be reluctant to settle the problem. Rather the bench should strictly abide the rule to refer the case to Full Bench or Larger Full Bench to settle the inconsistencies and overrule, and to set the standard ratio as the future guide.[1281]

(iii) A clear standard of a restrictive measure should be provided in the guideline counting the accountability of the Justice, of which intentional violation might knock the Justice into a deprivation from sitting into the bench for a term of one month for the first time, six months for second time, and an issue of impeachment then after. For this, Article 153 of the Constitution has to be amended accordingly.

b) Legislative Reforms

Article 129(2) of the Constitution provisions about the appointment of Chief Justice on recommendation of the Constitutional Council, and other Judges on recommendation of the Judicial Council. Similarly, Sub-Art (3) provisions that any person who has served as a Judge of the Supreme Court for at least three years is qualified as Chief Justice. Thus, the issue is in the gene of the selection, which is related to the formation of Judicial Council.[1282] Among the five members in the Judicial Council, the two members – one legal expert nominated by President on recommendation of the Prime Minister, and the next one an advocate or senior advocate appointed by the president on the recommendation of Nepal Bar- have added the political color in the Council, adding to another member of Council who is Federal Law Minister.

[1280] *Id*. at rules 22, 23.
[1281] *Id.*
[1282] CONST. OF NEPAL, *supra* note 13, at art. 153.

The Judges or the Chief Justice recommended have to go through Parliamentary Hearings,[1283] composed of fifteen-members joint committee of both Houses of the Federal Parliament- tallying with the same political colour. The Rule 26 of the Federal Parliament Joint Sitting and Joint Committee (Conduct of Business) Rules, 2080 (2023)[1284] sets the procedure for the Parliamentary hearings in which it is given the time frame of 45 days to complete the procedure, either to reject by two third of its member or it validates for the nomination. However, it has once failed to nominate when the 45 days' time frame had crossed without the hearing, and the Judges recommended were victimized.[1285]

Thus, to ensure the nomination of qualified judges and the delivery of quality decisions, there should be legislative reform along with the amendments in the Constitution to correct the mischiefs from the very beginning of the appointment, parliamentary hearing system and impeachment:

(i) **Appointment System.** The formation of the Judicial Council should be reformed with an amendment into the Article 153(1)(d) and (e). Among the five members in the Judicial Council, the two members – one legal expert nominated by President on recommendation of the Prime Minister, and the next one an advocate or senior advocate appointed by the president on the recommendation of Nepal Bar- have added the political color in the Council, adding to another member of Council who is Federal Law Minister. As there is already a Law Minister in the Council, the provision of (d) 'on the recommendation of Prime Minister', and of (e) 'on the recommendation of Nepal Bar Association' should be replaced in both with 'on the recommendation of Full Court.' For this, Supreme Court Rules, 2074 (2017) has to be amended accordingly.

[1283] *Id.* at art. 292.
[1284] Enforced under the scope of CONST. OF NEPAL, *supra* note 13, at art. 104(2).
[1285] The Judicial Council had recommended three Judges Nita Ditkshit Thungana, Binod Sharma and DN Parajuli on 2079/05/21 (Sept. 24, 2024).

(ii) **Parliamentary Hearing System**. Rule 26 of the Federal Parliament Joint Sitting and Joint Committee (Conduct of Business) Rules, 2080 (2023) has to be amended, adding two sub-rules:

a. The performance audit of the Judge being recommended should be attached along with his personal details. Such performance audit shall be thoroughly reviewed by the committee during the hearing process. How far the Judge has been deviated from standard in his previous decisions, how much compatible his decisions are with the standard principles and how much consistencies are there in his decisions shall be reviewed through the data attached in his performance audit report.

b. In case the Parliamentary committee fails to complete the hearing process within 45 days, those members whose unreasonable absence delayed the hearing should be black-listed in election commission within three days. And, the new Parliamentary hearing committee should be formed within 24 hours, which shall complete the hearing procedure by seven days of its oath of office.

(iii) **Impeachment System**. The provision of Impeachment under Article 101(2) enlists various reasons for impeachment. For this it has to go through a process. At first, at least three members of the House of Representatives should certify and submit a petition.[1286] Then, it goes to the 'impeachment recommendation committee' set in the House of Representatives of eleven members,[1287] which should make a recommendation to the House of Representatives for the impeachment proceedings.[1288] Then, one fourth of the total number of the House of Representatives may move a motion of impeachment,[1289] and after the commencement of impeachment proceedings, the Judge of Supreme

[1286] CONST. OF NEPAL, *supra* note 13, at art. 101(5).
[1287] *Id.* at art. 101(3)(4).
[1288] *Id.* at art. 101(5).
[1289] *Id.* at art. 101(1)(2).

Court or member of Judicial Council is not allowed to discharge the duties of his office pending the settlement of such proceedings, having no definite time to complete it.[1290] Thus, the following three amendments are required in the Article 101

a. Article 101(5) should be amended stating the duty of 'impeachment recommendation committee' to recommend or not to recommend the petition 'within fifteen-days from the date of submission by the three members of the House of Representatives.' For this, Rule 166(4) of House of Representatives Rules, 2079 (2022) has to be amended accordingly, now it provisions the time frame of three months.
b. Article 101(6) should be amended stating the time frame that how long the Judge of Supreme Court or member of Judicial Council is not allowed to discharge the duties of his office pending the settlement of such proceedings. One-month time frame should be provided for the the settlement impeachment proceedings. For this, Rule 169 (9) of House of Representatives Rules, 2079 (2022) has to be amended accordingly, now it provisions the time frame of 5 months for the House of Representatives to complete the impeachment proceedings
c. Article 101 should be added with Sub-Article (11) with the provision 'if the impeachment recommendation committee fails to recommend the petition within stipulated time or the House of Representatives fail to settle the impeachment proceedings within stipulated time, each member in the committee or in the House where it is pending shall be penalized as per the Election Law.' For this, the election law has to be amended accordingly.

(iv) **Restricting on Pleading Before the Bench**. Among the five members of the Judicial Council under Article 153(1), two are nominated from the

[1290] For instance, the impeachment motions against Chief Justices Shushila Karki and Cholendra Rana only restricted them from discharging their duties. However, Shushila Karki received a stay order against the impeachment motion, allowing her to resume her duties.

legal fraternity, and the next one the Law Minister, may also belong to the same profession.[1291] After completing their tenure, these members often return to legal practice and may appear before judges whom they had recommended for appointment, leading to a conflict of interest that adversely affects the interpretational integrity of cases. To address this issue, an amendment to the Code of Conduct for Legal Practitioners, 2079 (2022) is recommended by adding a sub-rule (3) under Rule 5: 'No member of the Judicial Council, after their tenure, shall be permitted to plead or provide legal services before any judge recommended by them. However, they may continue to offer legal services before judges not appointed on their recommendation.'

3) Specialized Courts and Capacity Enhancement

Establishing specialized courts and implementing a comprehensive capacity enhancement program are key to achieving a more effective judicial delivery. This involves creating separate Specialized Courts for criminal and civil matters and targeted training, as below:

a) Specialized Courts

Global precedents show that countries like the United States, the United Kingdom, India, Canada, Australia and Germany have improved judicial efficiency by establishing separate courts for criminal and civil cases. Nepal, by adopting this model, could similarly enhance judicial specialization. However, constitutional barriers exist, particularly in Articles 127 and 152. While Article 127 establishes three tiers of regular courts, Article 152 governs Specialized Courts, which handle specific cases not covered by Article 127. This framework hinders the establishment of separate civil and criminal courts, necessitating amendments to the Constitution:

[1291] The then Law Minister Agni Kharel, who was also the member of Judicil Council returned to law practice. And, other members of the Council are practicing in the Court on regular basis till their choice including Upedra Keshari Niupane.

(i) The Constitution of Nepal, Part II (Judiciary), Article 127, should be amended to include Sub-Article (3), establishing permanent, separate Specialized Regular Courts for civil and criminal matters.

(ii) This new Sub-Article should also create permanent Specialized Appellate Benches within the High Court and Supreme Court to hear appeals in civil and criminal cases.

(iii) The lottery system for daily cause list formation contradicts the concept of bench specialization, as it may assign criminal cases to civil judges and vice versa. Therefore, it should be discontinued.

b) Capacity Enhancement

The Justice of the Supreme Court is often believed to possess complete knowledge of all good and bad, but this is merely folklore. It contradicts the proven fact that no individual is perfect, regardless of their position or strength. Therefore, regular capacity enhancement sessions, interactions, paper presentations, feedback collection, and mandatory trainings are essential to equip Justices with updated knowledge and encourage mutual knowledge sharing. Incorporating a provision in the Rule to mandate these practices compulsory would be a vital step forward:[1292]

(i) Continuous Legal Education (CLE): Regular seminars and workshops on new laws, legal precedents, and emerging issues in various legal fields, such as technology, international law, and human rights.

(ii) Judicial Ethics and Integrity Training: Programs focusing on reinforcing ethical standards, impartiality, and integrity in the judiciary to help Justices navigate complex moral dilemmas.

(iii) Case Management and Procedural Efficiency Workshops: Training on modern case management techniques, courtroom technology, and improving procedural efficiency to handle cases effectively.

[1292] Supreme Court Act, 2048 (1991), § 11 (Nep.): The Supreme Court of Nepal can make the rules under this provision.

(iv) Human Rights and Gender Sensitivity Training: Sessions to enhance awareness of human rights issues, gender equity, and vulnerable groups, ensuring fairer judicial outcomes.

(v) International Exposure Programs: Exchange programs or short-term fellowships with foreign judicial bodies to understand global best practices and comparative legal systems.

(vi) Advanced Legal Research and Writing Courses: Workshops to improve legal writing, reasoning, and research skills, focusing on crafting clear and well-reasoned judgments.

(vii) Technology and Cyber Law Training: Training on legal issues related to digitalization, cybersecurity, and emerging technologies, which are becoming increasingly relevant in judicial proceedings.

(viii) Mediation and Alternative Dispute Resolution (ADR) Training: Programs to enhance skills in alternative dispute resolution methods, promoting efficient and cost-effective legal outcomes.

(ix) Subject-Based Training and Presentations: Compulsory training sessions focused on enhancing judicial skills in specific legal areas such as criminal law, civil law, constitutional law, and procedural law, ensuring Justices stay current with their evolving legal environment.

(x) Mental Health and Stress Management Sessions: Programs to support Justices in handling the stress and psychological pressures that come with judicial responsibilities.

4) Review System

To ensure accountability and improve the quality of judicial decisions, some robust mechanisms need to be established with an additional provision in the Rule, to regularly review the decisions of the Supreme Court:[1293]

[1293] *Id.*

a) Decision Review Body

There should be a formal dedicated review body specifically tasked with the responsibility. This body, comprising senior legal scholars, retired Justices, and legal experts, would systematically evaluate the Court's judgments. It would focus on aspects such as legal soundness, consistency in interpretation, and alignment with standard principles. This body would provide quarterly reports to the Full Court, highlighting areas of strength and suggesting improvements.

b) Performance Audit

A formal performance audit mechanism should be introduced to assess the overall functioning of the judiciary and performance of the particular Justice. This audit would evaluate case processing efficiency, transparency of proceedings, and responsiveness to public and legal challenges. Conducted by a body of experts including law professors, retired Justices, member of Judicial Council and expert at the subject, the audit would provide insights into the strengths and weaknesses of the judiciary, enabling timely interventions and reforms.

c) Research and Monitoring

Investing in research and monitoring initiatives is essential to track interpretational practices and identify emerging trends or challenges. Continuous monitoring allows for the timely detection of inconsistencies or deviations in judicial rulings, ensuring that legal interpretations remain aligned with evolving societal values and legal standards. A dedicated research unit within the judiciary could study how statutes and constitutional provisions are interpreted, identifying areas for reform to enhance the clarity and consistency of judgments. Collaborations with academic institutions and think-tank could further deepen the understanding of judicial practices and provide data-driven insights to inform future improvements, creating a more adaptive and accountable judiciary.

5) Suggestions for Further Studies

The study, focused exclusively on reported cases from the Supreme Court, revealed a significant inconsistency even within similar case categories and by the same Justice. Such discrepancies may be even more pronounced in unreported cases, indicating a need for further investigation to enhance judicial effectiveness and trustworthiness. To address these issues, the following suggestions are proposed:

a) For Urgent Further Inquiry

Within the reported cases, the contrasting trends in interpretations of criminal statutes, particularly regarding the expansion of constituent elements of rape in practice (W variable), and the Supreme Court's assertion of Parliament's exclusive authority to criminalize actions (Z variable), prompts an urgent further inquiry: Should the Court defer matters it deems necessary for criminalization to Parliament for proper legislation or amendments? Alternatively, should legislation permit the progressive development of *actus reus* at the discretion of judges?

b) For Continuous Further Studies

Among the Supreme Court decisions, a significant portion remain unreported. Given the variability observed in reported cases, there's a compelling need to explore whether similar interpretational challenges exist in unreported decisions. Therefore, it is recommended to undertake further research focusing on the judicial limitations on interpretation of criminal statutes, specifically analysing unreported decisions across different categories of criminal cases.

To sum up, by implementing these suggestions, the Supreme Court of Nepal could effectively address the identified inconsistencies in judicial decisions and enhance the judiciary's overall effectiveness. Establishing a special task force committee, introducing transparent public access software system, and developing clear guidelines for decision uniformity are essential for mitigating deviations and reinforcing the consistency of rulings.

Legislative reforms, the creation of specialized courts, and capacity enhancement programs are crucial for improving judicial efficiency and accountability. Furthermore, a regular review system and continued research into unreported cases would help to refine judicial practices and address emerging challenges. Collectively, these measures would strengthen the judiciary, uphold justice more effectively, and foster greater public trust in Nepal's legal system.

BIBLIOGRAPHY

1. PRIMARY SOURCES

1.1 Constitution

Constitution of India, 1950.

Constitution of Islamic Republic of Pakistan, 1973.

Constitution of Kingdom of Nepal, 2015 (1959).

Constitution of the Kingdom of Nepal, 2047 (1990).

Constitution of Maryland, 1776.

Constitution of Nepal, 2019 (1960)

Constitution of Nepal, 2072 (2015).

Constitution of Sri Lanka, 1978.

Constitution of the Russian Federation of 1993.

Constitution of the United States of America, 1787.

GoN Act, 2004 (1998).

Interim Constitution of Nepal, 2063 (2007).

Interim GoN Act, 2007 (1951).

1.2 Acts, Codes, Ordinances and Rules

a) United States of America

Act for the Punishment of Certain Crimes Against the United States, 1790.

Crimes and Criminal Procedure, 1948.

Criminal Justice Act, 1964.

b) United Kingdom

Asylum and Immigration (Treatment of Claimants, etc.) Act, 2004.

Crime and Disorder Act, 1998.

Crime and Security Act, 2001.

Criminal Law Act, 1967.

Malicious Communications Act, 1988.

Protection from Harassment Act, 1997.

Sexual Offences Act, 1967.

c) India

Official Secrets Act, 1923.

Prevention of Corruption Act, 1988.

The Criminal Procedure Code, 1973.

The Indian Penal Code, 1860.

The Probation of Offenders Act, 1958.

d) Pakistan

The Penal Code, 1860.

The Probation of Offenders Ordinance, 1960.

e) *Nepal*

Acids and Other Lethal Chemicals (Regulation) Act, 2079 (2022).

Administration of Justice Act, 2073 (2016).

Bank and Financial Institutions Act, 2073 (2016).

Commission for the Investigation of Abuse of Authority Act, 2049 (1992).

Commission for the Investigation of Abuse of Authority Rules, 2059 (2002).

Criminal Code, 2074 (2017).

Criminal Offences (Sentencing and Prosecution) Act, 2074 (2017).

Criminal Procedure Code, 2074 (2017).

District Court Rules, 2075 (2018).

Evidence Act, 2031 (1974).

Government Cases Act, 2017 (1960).

Government Cases Act, 2049 (1992).

High Court Rules, 2073 (2016).

Human Trafficking and Transportation (Control) Act, 2064 (2007).

Interpretation of Laws Act, 2010 (1954).

Money Laundering Prevention Act, 2064 (2007).

Motor Vehicles and Transport Management Act, 2049 (1992).

Muluki Ain, 2020 (1963).

Nepal Rastra Bank Directives, 2067 (2010).

Nepal Treaty Act, 2047 (1990).

Prevention of Corruption Act, 2059 (2002).

Prevention of Organized Crime Act, 2070 (2013).

Prison Act, 2079 (2022).

Special Court Act, 2059 (2002).

Subversion Offences (Special Control and Punishment) Act, 2042 (1985).

Supreme Court Act, 2048 (1991).

Supreme Court Rules, 2074 (2017).

The Compensation Relating to Torture Act, 2053 (1996).

The Government Attorney Rules, 2055 (1998).

The Human Rights Commission Act, 2053 (1997).

The Legal Aid Act, 2054 (1998).

The Narcotic Drugs (Control) Act, 2033 (1976).

The Procedural Guidelines to Maintain Confidentiality of the Parties for Special Types of Cases, 2064 (2007).

The Sexual Harassment at Workplace (Prevention) Act, 2071 (2014).

1.3 International Instruments

African Charter on Human and People's Rights, 1981.

American Convention on Human Rights, 1978.

Arab Charter on Human Rights, 2004.

Charter of Fundamental Rights of the European Union, 2000.

European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.

Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949.

Geneva Convention Relative to the Treatment of Prisoners of War, 1949.

International Convention on the Rights of the Child, 1989.

International Covenant on Civil and Political Rights, 1966.

Rome Statute of the International Criminal Court, 2002.

The Basic Principles of the Use of Restorative Justice Programs in Criminal Matters, 2000.

The Body of Principles for the Protection of All Persons Under Any Form of Detention of Imprisonment, 1988.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

The Declaration of Basic Principles on the Use of Restorative Justice Programs in Criminal Matters, 2002.

The United Nations Standard Minimum Rules for Non-Custodial Measures, 1990.

The United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955.

The Universal Declaration of Human Rights, 1948.

U.N. Convention on the Rights of the Child, 1989.

Vienna Convention on the Laws of Treaties, 1969.

1.4 Dictionaries and Glossary

Black, H.C. (1993). *Black's Law Dictionary with Pronunciations* (6th ed.).West Publishing Co.

Garner, B.A. (2004). *Black's Law Dictionary* (8th ed.).Thomson West.

Hornby, A.S. (1989). *Oxford Advanced Learner's Dictionary of Current English* (4th ed.). Oxford University Press.

Shrestha, S.K. (2004). *Dictionary of Law and Justice* (English - English - Nepali). Pairavi Prakashan.

Lakshmanan, A.R. (2010). *Wharton's Concise Law Dictionary with Exhaustive Reference of Indian Case Law* (15th ed.). Universal Law Publishing Co. Pvt. Ltd.

2. SECONDARY SOURCES

2.1 Books

Acharya, B. (2012). *Dhammapada*. Neptune 3C.

Acharya, S. (2023). *Criminal Law: Principles and Practices* (2nd ed.). Pairavi Prakashan.

Allen, M. J. & Edwards, I. (2019). *Criminal Law* (15th ed.). Oxford University Press.

Aryal, M. P. (2005). *Niti (Vidhur, Chanakya and Bhrithhari)*. National Printing Service.

Ashworth, A. (2005). *Sentencing and Criminal Justice* (4th ed.). Cambridge University Press.

Ashworth, A. (2009). *Principles of Criminal Law* (6th ed.). Oxford University Press.

Baker, D. F. (2011). *The Right not to be Criminalized: Demarcating Criminal Law's Authority*. Routledge.

Bakshi, P.M. (2016). *Interpretation of Statutes* (2nd ed.). Thomson Reuters.

Beaston, J., Burrows, A. & Cartwright, J. (2010). *Anson's Law of Contract* (29th ed.). Oxford University Press.

Berger, R. J. (2011). *White-Collar Crime: The Abuse of Corporate and Government Power* (Indian ed. 2020). Lynne Rienner Publishers.

Bhat, P. I. (2004). *Fundamental Rights: A Study of their Interrelationship*. Eastern Law House.

Blackstone, W. (1893). Of Property, in General. In George Sharswood (ed.,) *Commentaries on the Laws of England in Four Books* (Book 2, Chapter 2). Philadelphia: J.B. Lippincott Co.

Clark, Erik & Krolikowski, Michal. (2008). The Limits of Legality in Criminal Law. In Erik Claes, Wouter Devroe & Bert Keirsbilck (Eds.). *Facing the Limits of the Law* (pp. 89-108). Springer.

Clarkson, CMV, Keating, HM & Cunningham SR. (2007). *Clarkson and Keating Criminal Law: Text and Materials* (6th ed.). Sweet & Maxwell.

Dalio, R. (2017). *Principles.* Simon & Schuster.

Dhanda, A. (2017). *N S Bindra's Interpretation of Statutes* (12th ed.). Lexis Nexis.

Dias, RWM. (1994). *Jurisprudence.* LexisNexis.

Diwan, P. (2011). *Modern Hindu Law* (20th ed.). Allahabad Law Agency.

Doren, C. V. (1991). *A History of Knowledge: Past, Present and Future*. Ballantine Books.

Ducat, C. R. (2009). *Constitutional Interpretation* (9th ed.). Cengage Learning.

Fisher, F. M. & Nagin, D. (1978). *On the Feasibility of Identifying the Crime Function in a Simultaneous Model of Crime Rates and Sanction Levels, in Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates* (A. Blumstein, J. Cohen & D. Naginds, Eds.). National Academy of Sciences.

Gandhi, B.M. (2016). *Hindu Law* (Sumeet Malik, ed., 4th ed.). Eastern Book Company.

Gautam, D. R. (2009). *Purviya Soch ra Srot.* Lex and Juris Publication.

Glover, R. (2017). *Murphy on Evidence* (15th ed.). Oxford University Press.

Hart, HLA. (2008). *Punishment and Responsibility* (2nd ed.). Oxford University Press.

Hennebel, L. & Tigroudja, H. (2022). *The American Convention on Human Rights: A Commentary*. Oxford University Press.

Herring, J. (2005). *Criminal Law* (4th ed.). Oxford University Press.

Horder, J. (2019). *Ashworth's Principles of Criminal Law* (9th ed.). Oxford University Press.

Husak, D. (2008). *Overcriminalization: The Limits of the Criminal Law*. Oxford University Press.

International Committee of the Red Cross. (2021). *Commentary on the Third Geneva Convention*. Cambridge University Press.

Jackson, P. & Leopold, P. (2001). *O. Hood Philips & Jackson: Constitutional and Administrative Law* (8th ed. South Asian ed. 2015). Sweet & Maxwell.

Jha, R. K. (2020). *Legal Philosophy.* Pairavi Book House Pvt. Ltd.

Joseph, S. & Castan, M. (2013). *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (3rd ed.). Oxford University Press.

K.C, M. K. (2023). *Enhancing Policing in Nepal.* Centre for Peace & Conflict Studies.

Lagan, P. St. J. (2011). *Maxwell on the Interpretation of Statutes* (12th ed.). Sweet & Maxwell.

Lagratta, E. G. & Bowen, P. (2014). *To be fair: procedural fairness in courts.* Criminal Justice Alliance.

Mckay, W. & Johnson, C. W. (2010). *Parliament & Congress: Representation & Security in the Twenty-First Century.* Oxford University Press.

Molan, M. T. (2001). *Criminal Law* (3rd ed.). Old Bailey Press.

Murray, C. (2023). *Protecting Human Rights in Constitutions*. United Nations Development Programme.

Nariman, F.S. (2018). *God Save the Hon'ble Supreme Court*. Hay House India.

Naroola, R.K. & Mukherji, U. (2020). *The Law of Prevention of Money Laundering: An Analytical Commentary on the Prevention of Money-Laundering Act, 2002.* OakBridge Publishing.

Ormerod, D. (2008). *Smith and Hogan: Criminal Law* (12th ed.). Oxford University Press.

Parpworth, N. (2012). *Constitution & Administrative Law* (7th ed.). Oxford University Press.

Posner, R. A. (2019). *How Judges Think*. Harvard University Press.

Rao, MN. & Dhanda, A. (2007). *N S Bindra's Interpretation of Statutes* (10th ed.). LexisNexis.

Raut, B., & Chaudhary, N. (2023). *Comparative Criminal Law: Cases and Materials.* Mission Legal Service Pvt.Ltd.

Sangroula, Y. (2010). *Jurisprudence: The Philosophy of Law* (1st ed.). Kathmandu School of Law.

Singh, G P. (2022). *Principles of Statutory Interpretation* (Revisor Alok Aradhe, J., 15th ed.). LexisNexis.

Singh, G. P., J. (2016). *Principles of Statutory Interpretation* (14th ed.). Reviser A. K. Patnik, J. exisNexis.

Sondhi, S. (2023). *Aspects of Dharma: Ethics Law and Action in Indian Tradition.* HAL Open Science.

Sutherland, E. H. (1983). *White Collar Crime*. Yale University Press.

Thomas, DA., (1979). *Principles of Sentencing* (2nd ed.). Heinemann Educational Books.

Tiwari, H.N. (2016). *Legal Research Methodology*. Allahabad Law Agency.

United States Institute of Peace. *Model Codes for Post-Conflict Criminal Justice* (Vivienne O'Connor & Colette Rausch with Hans-Goerg Albrecht & Goran Klemencic Eds., 2007).

Vibhute, K I. (2012). *P S A Pillai's Criminal Law* (11th ed.). LexisNexis.

Walklate, S. (2005). *The Basics: Criminology* (Indian reprt. 2009). Routledge.

Williams, G. (1983). *Textbook of Criminal Law* (2nd ed. Indian reprt. 2012). Universal Law Publishing Co.

Zawati, H. M. (2014). *Fair Labelling and the Dilemma of Prosecuting Gender-based Crimes at the International Criminal Tribunal*. Oxford University Press.

2.2 Journals

Anderson, J. M., Kling, J. R. & Stith, K. (1999). Measuring Interjudge Sentencing Disparity: Before and After the Federal Sentencing Guidelines. *Journal of Law and Economics, 42(2),* 271-307. *https://chicagounbound.uchicago.edu/jle/vol42/iss2/3.*

Ayres, I. & Donohue III, J.J. (1999). Nondiscretionary Concealed Weapons Laws: A Case Study of Statistics Standards of Proof, and Public Policy. *American Law & Economics Review, 1(1 and 2),* 436-470. *https://doi.org/10.1093/aler/1.1.436.*

Bakhadyo, L. (2019). Female Criminality in Nepal: Prevalence and Causes. *Nepal Bar Council Law Journal, XVIII,* 324-336.

Bashyal, B. (2021). Understanding the Extradition and Nepalese Legal Framework. *Nepal Bar Council Law Journal, XX,* 26-37.

Becker, G. S. (1968). Crime and Punishment: An Economic Approach. *Journal of Political Economics, 76(2),* 169-217. *https://doi.org/10.1086/259394.*

Becker, G. S., Murphy, K. M. & Crossman, M. (2006). The Market for Illegal Goods: The Case of Drugs. *Journal of Political Economics, 114(1),* 38-60. https://dx.doi.org/10.1086/498918

Bhatta, D. (2018). Private Prosecution: A Context of Supplementary Action to an Inherently Government Power and Private Enforcement of Criminal Law under the Penal Code, 2074 (2017). *Prosecution Journal, 4*, 193-202.

Bhattrai, R. & Lamichhane, B.P. (2021). Insufficiency of Punishment for Crimes of Corruption in Nepal. *Nepal Bar Council Law Journal, XX*, 275-286.

Chen, B. (2015). The Principle of Legality: Issues of Rationale and Application. *Monash University Law Review, 41(2),* 329-376.

Crovitz, L. G. (1989). How Separation of Powers Protects Individual Liberties. *Rutgers Law Review, 41*.

Dahal, G. (2017). Constitution of Nepal and Political Development: Adaptation and Challenges of Implication. *Janapriya Journal of Interdisciplinary Studies, 6*, 148–159. *https://doi.org/10.3126/jjis.v6i0.19316.*

Dennis, I. (2000). Rethinking Double Jeopardy: Justice and Finality in Criminal Process. *Criminal Law Review,* 933-951.

Easterbrook, F. H. (1983). Criminal Procedures as a Market System, *Journal of Legal Studies, 12(2),*289-332. *https://doi.org/10.1086/467725.*

Kadish, S.H. (1968). The Crisis of Overcriminalization. *American Criminal Law Quarterly, 17,* 17-34. *https://lawcat.berkeley.edu/record/1110220/files/fulltext.pdf.*

Kahan, D. M. (1996). What Do Alternative Sanction Mean? *University of Chicago Law Review, 63(2),* 591-653. *https://chicagounbound.uchicago.edu/uclrev/vol63/iss2/4*

Kessler, D. & Levitt, S. D. (1999). Using Sentence Enhancements to Distinguish Between Deterrence and Incapacitation. *Journal of Law and Economics, XLII (1, Part 2),* 343-363.

Koirala, B. R. (2018). Features and Challenges of the New Criminal Codes in Nepal. *Prosecution Journal, 4,* 111-128.

Kunwar, T. N. (2024). The Offense of Money Laundering: Initiatives and Nepal's Efforts. *Souvenir CIAA,* 48-71.

Lama, K. (2018). An Overview of Inchoate Offence under Muluki Criminal Code, 2074 (2017). *Prosecution Journal, 4,* 283-332.

Landes, W. M. & Posner, R. A. (1975). The Private Enforcement of Law. *Journal of Legal Studies, 4 (1),* 1-46.

Larkin, P. J. (2013). Public Choice Theory and Overcriminalization. *Harvard Journal of Law and Public Policy, 36(2),* 715-793.

Levitt, S. D. (1996). The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation. *Quarterly Journal of Economics, 111 (2),* 319-351.

Mainali, L. P. & Soti, B. P. (2020). Role of UN Police to Combat Organized Crime in Fragile State. *Nepal Bar Council Law Journal,* 54-66.

Meares, T. L. (2005). Everything Old is New Again: Fundamental Fairness and Legitimacy of Criminal Justice. *Ohio State Journal of Criminal Law, 3(1),* 105-123. https://hdl.handle.net/1811/72862

Meerbeeck, J. V. (2016). The Principle of Legal Certainty in the Case Law of the European Court of Justice: From Certainty to Trust. *European Law Review, 41(41),* 275-288. https://hdl.handle.net/2078.3/177694

Miron, J. A. & Zwiebel, J. (1995). The Economic Case Against Drug Prohibition. *Journal of Economic Perspective, 9(4),* 175-192. *https://doi.org/10.1257/jep.9.4.175.*

Myftari, K. & Guço, S. (2021). Prohibition of the application of criminal law by analogy within the principle of legal certainty. *Quest Journal of Research in Humanities & Social Sciences, 9(5),* 20-28. *https://www.questjournals.org/jrhss/papers/vol9-issue5/Ser-1/D09052028.pdf.*

Newman, L. (1960). Double Jeopardy and the Problem of Successive Prosecutions. *S. Cal. R., 34,* 252-267.

Parajuli, R. (2018). Forensic Science and Its Historical Development in Nepali Justice Administration. *Prosecution Journal, 4,* 259-282.

Polinsky, A. M. & Shavell, S. (1979). The Optimal Tradeoff between the Probability and Magnitude of Fines. *American Economics Review, 69(5),* 880-891.

Posner, R. A. (1985). An Economic Theory of Criminal Law. *Columbia Law Review, 85(6),* 1193-1231. *https://doi.org/10.2307/1122392.*

Raut, B. P. (2022). Implementation of Torture Law in Nepal: Case studies. *Prosecution Journal, 5(1),* 139-154.

Raz, J. (1972). Legal Principles and Limits of Law. *Yale Law Journal, 81*, 823-854.

Scalia, A. (1989). The Rule of Law as a Law of Rules. *The University of Chicago Law Review, 56(4),* 1175-1188. *https://doi.org/10.2307/1599672.*

Shavell, S. (1985). Criminal Law and Optimal Use of Nonmonetary Sanctions as a Deterrent. *Columbia Law Review, 85 (6),* 1232-1262.

Smith, A.T.H. (1984). Judicial Law Making in the Criminal Law. *Victoria University of Wellington Legal Research Papers* (2015), 5 (8), 46-76.

Smith, S. F. (2012). Overcoming Overcriminalization. *Journal of Criminal Law and Criminology, 102(3),* 537-591. *https://scholarlycommons.law.northwestern.edu/jclc/vol102/iss3/3.*

Stigler, G. J. (1970). The Optimum Enforcement of Laws. *Journal of Political Economics, 78(3),* 526-536. *https://doi.org/10.1086/259646.*

Taylor, N. (2005). England and Australia Relax the Double Jeopardy Privilege for Those Convicted of Serious Crimes. *Temple International and Comparative Law Journal, 19(1),*189-218.

Tharu, K.P. (2023). Organized Crime: Corruption and Money Laundering, Justice. *Negeo. SC,* 952-983.

2.3 Translations/Author Anonymous

(1886). *The Satakas of Bhartrihari* (B. Hale Wortham trans.). London: Trubnek & Co., Ludgate Hill.

(2016). *Dhamma Verses* (Anandajoti Bhikkhu, ed., & trans, 1st ed.). Bhikkhu Anandajoti.

2.4 Reports

Ministry of Communication and Information Technology, Department of Information and Broadcasting. (2020). *Nepal Parichaya* (8th. ed.).

Ministry of Law, Justice and Parliamentary Affairs. (2015). *Baseline Survey on Crime Report.*

Office of Attorney General & Center for Legal Research and Resource Development (CeLRRd). (2013). *Baseline Survey on Criminal Justice System of Nepal.*

Supreme Court Bar Association. (2020). *Supreme Court Bar Association's Decision Review Committee's Report.*

Supreme Court Bar Association. (2008). *The Study Committee's Report.*

2.5 International Documents

U.N. Secretary General. (2000). *Report of the Panel on United Nations Peace Operations (Brahimi Report)*. UN. Doc. A/55/305-S/2000/809.

UNSC. (1993). *Report of the Secretary-General Pursuant to Paragraph 2 of the Security Council Resolution 808.*U.N. Doc. S/25704.

2.6 Conferences, Working Papers and Proceedings

Atmadja, I. D. G. & Wirawan, K. A. (2023). Legal Principles in Legal Systems. *Proceedings of the International Conference on "Changing of Law: Business Law, Local Wisdom and Tourism Industry",* 583-590. *https://doi.org/10.2991/978-2-38476-180-7_62.*

Ginneken, E. F.J.C. V. (2016). *The pain and purpose of punishment: A subjective perspective*. The Howard League for Penal Reform Working Paper No. 22.

Grădinaru, D. (2018). The Principle of Legality. *RAIS Conference Proceedings* ,289-294. *https://doi.org/10.5281/zenodo.1572191*.

Hart, H. M. Jr. (1958). The Aims of Criminal Law, in Law and Contemporary Problems 401-441.

2.7 Legislative Testimony

The Problem of Overcriminalization, Michigan Law Review Commission (2017) (legislative testimony of Kathryn Riley, Policy Analyst, Mackinac Center for

Public Policy).

https://www.mackinac.org/archives/2017/2017TestimonialTemplate-Riley.pdf.

APPENDICES

Appendix-1

Criminal Cases Relating to Interpretation of Statutes (Black)

Subject/Themes:	Cases Interpreting Limitations of Court	Cases Assimilating Limitations of Court	Cases Violating Limitations of Court	Cases Relating to General Interpretation of Statutes	***Total***
Criminal Cases Relating to Interpretation of Statutes	31	37	21	15	***104***

I.I Cases Interpreting Limitations of Court (31)

1.	HMG v. Hem Bahadur Malla Thakuri (1993) (NKP 2050, Vol. 7, DN. 4767).
2.	Ram Prasad Rai v. Mil Bahadur Rai (1995) (NKP 2052, Vol. 3, DN. 5077).
3.	HMG v. Lok Man Singh Karki (1999) (NKP 2056, Vol. 8, DN. 6764).
4.	HMG v. Kirti Bahadur Chand (alias Dambar Bahadur) (2002) (NKP 2059, Vol. 3/4, DN. 7070).
5.	Uttam Lama v. HMG (2004) (NKP 2061, Vol. 9, DN. 7432).
6.	Raju Basnet v. GoN (2006) (NKP 2063, Vol. 3, DN. 7666).
7.	HMG v. Kedar Chandra Khanal (2006) (NKP 2063, Vol. 6, DN. 7712).
8.	Rajendra Maharjan v. GoN (2006) (NKP 2063, Vol. 11, DN. 7788).

9.	GoN v. Yadav Dawadi (2009) (NKP 2066, Vol. 6, DN. 8178).
10.	GoN v. Tara Prasad Devkota (2009) (NKP 2066, Vol. 10, DN. 8254).
11.	GoN v. Yagya Bahadur Thapa (2012) (NKP 2069, Vol. 2, DN. 8764).
12.	GoN v. Indra Bahadur Nepali (2012) (NKP 2069, Vol. 5, DN. 8826).
13.	Molhuysen Hendrik Otto v. GoN (2012) (NKP 2069, Vol. 7, DN. 8860).
14.	GoN v. Raju Lama (2014) (NKP 2071, Vol. 5, DN. 9164).
15.	GoN v. Durga Karki (2015) (NKP 2072, Vol. 8, DN. 9452).
16.	GoN v. Pushpa Tamang (2016) (NKP 2073, Vol. 7, DN. 9643).
17.	GoN v. Prashu Ram Pokhrel (2017) (NKP 2074, Vol. 1, DN. 9750).
18.	GoN v. Mahendra Gautam (2017) (NKP 2074, Vol. 1, DN. 9751).
19.	Rameshwor Shrestha v. GoN (2017) (NKP 2074, Vol. 2, DN. 9765).
20.	GoN v. Chatra Bahadur Bhandari (2017) (NKP 2074, Vol. 5, DN. 9810).
21.	GoN v. Trilok Kumar Yadav (2018) (NKP 2075, Vol. 7, DN. 10060).
22.	GoN v. Thag Bahadur Sunar (2018) (NKP 2075, Vol. 9, DN. 10090).
23.	Kul Bahadur Karki v. GoN (2019) (NKP 2076, Vol. 4, DN. 10244).
24.	GoN v. Bishnu Kumar Yakhkha Rai (2019) (NKP 2076, Vol. 4, DN. 10246).
25.	GoN v. Raju Lal Rajbhandari (2020) (NKP 2077, Vol. 5, DN. 10490).
26.	GoN v. Anjan K.C. (2020) (NKP 2077, Vol. 6, DN. 10523).

27.	GoN v. Keshav Giri (2020) (NKP 2077, Vol. 8, DN. 10565).
28.	GoN v. Muna Magar Meche (2020) (NKP 2077, Vol. 10, DN. 10596).
29.	GoN v. Bashu Chaudhary (2021) (NKP 2078, Vol. 9, DN. 10736).
30.	GoN v. Rajesh Tamang (2021) (NKP 2078, Vol. 11, DN. 10770).
31.	Amit Kumal v. GoN (2021) (NKP 2078, Vol. 11, DN. 10774).

I.II Cases Assimilating Limitations of Court (37)

1.	Jay Prasad v. Tek Bahadur (1958) (NKP 2015, Vol. 2, DN. 5).
2.	Padam Sundar v. HMG (1958) (NKP 2015, Vol. 2, DN. 10).
3.	Kameshwor Jha Maithali Brahman v. Akshyalal Raut (1959) (NKP 2016, Vol. 4, DN. 18).
4.	Megh Bahadur Pakha Rai v. HMG (1961) (NKP 2018, Vol. 7, DN. 156).
5.	HMG v. Gopal Prasad Upadhayay (1962) (NKP 2019, Vol. 10, DN. 163).
6.	Keshav Chandra Gautam v. HMG (1965) (NKP 2022, Vol. 1, DN. 279).
7.	Hira Pasi v. HMG (1971) (NKP 2028, Vol. 1, DN. 612).
8.	Top Bahadur Khadka Chhetri v. HMG (1973) (NKP 2030, Vol. 1, DN. 776).
9.	Ramchandra Rauniyar v. HMG (1975) (NKP 2032, Vol. 1, DN. 949).
10.	HMG v. Reshami Malahini (1978) (NKP 2035, Vol. 1, DN. 1211).
11.	Ratna Prasad Shakya v. HMG (1978) (NKP 2035, Vol. 1, DN. 1167).
12.	HMG v. Krishna Bahadur Magar (1978) (NKP 2035, Vol. 1, DN. 1158).

13.	Subash Newang v. HMG (1979) (NKP 2036, Vol. 1, DN. 1312).
14.	Kamaleshwor Upadhyay v. Ambika Devi Brahamani (1984) (NKP 2041, Vol. 11, DN. 2194).
15.	HMG v. Krishna Gopal Mali (1989) (NKP 2046, Vol. 2, DN. 3734).
16.	Kali Bahadur Adhikari v. HMG (1992) (NKP 2049, Vol. 3, DN. 4489).
17.	HMG v. Shree Lal Adhikari Danuwar (1997) (NKP 2054, Vol. 2, DN. 6321).
18.	Gagan Singh Pun v. HMG (1998) (NKP 2055, Vol. 2, DN. 6514).
19.	HMG v. Kailash Mahato (2000) (NKP 2057, Vol. 4, DN. 6883).
20.	Tiger Tops Pvt. Ltd. v. HMG, Finance Ministry (2000) (NKP 2057, Vol. 5, DN. 6900).
21.	HMG v. Rajesh Lama (alias Raghu) (2005) (NKP 2062, Vol. 4, DN. 7525).
22.	GoN v. Narayan Poudel Khatri (2011) (alias Ravin) (NKP 2068, Vol. 2, DN. 8564).
23.	Nanda Devi Joshi v. GoN (2012) (NKP 2069, Vol. 1, DN. 8760).
24.	Lila Raj Gautam v. GoN (2012) (NKP 2069, Vol. 2, DN. 8770).
25.	GoN v. Lok Bahadur Bishwa (alias Bikash) (2013) (NKP 2070, Vol. 11, DN. 9075).
26.	GoN v. Rubi Joshi (2016) (NKP 2073, Vol. 5, DN. 9608).
27.	GoN v. Prem Bahadur Kunwar (2016) (NKP 2073, Vol. 7, DN. 9632).
28.	GoN v. Indra Raj Humagain (2016) (NKP 2073, Vol. 7, DN. 9645).
29.	Lakpa Sherpa v. GoN (2016) (NKP 2073, Vol. 9, DN. 9684).

30.	GoN v. Raju Thapa (2016) (NKP 2073, Vol. 11, DN. 9707).
31.	Suman Shahi v. GoN (2017) (NKP 2074, Vol. 4, DN. 9792).
32.	GoN v. Sunny Maharjan (2018) (NKP 2075, Vol. 7, DN. 10043).
33.	GoN v. Shova Badi (2019) (NKP 2076, Vol. 5, DN. 10274).
34.	Harendra Narayan Dev v. GoN (2019) (NKP 2076, Vol. 6, DN. 10279).
35.	GoN v. Upendra Mukhiya Bin (2021) (NKP 2078, Vol. 7, DN. 10701).
36.	Kenneth Joseph Coombs v. GoN (2021) (NKP 2078, Vol. 11, DN. 10772).
37.	Bhawani Rajbanshi v. GoN (2021) (NKP 2078, Vol. 12, DN. 10797).

I.III Cases Violating Limitations of Court (21)

1.	Purna Kumar Ji Shrestha v. HMG (2081) (NKP 2038, Vol. 4, DN. 1461).
2.	HMG v. Dinu Ram Wali Magarni (1987) (NKP 2044, Vol. 9, DN. 3205).
3.	HMG v. Chandra Vijay Shah (1988) (NKP 2045, Vol. 10, DN. 3603).
4.	Wangchen Lama v. HMG (1990) (NKP 2047, Vol. 7, DN. 4178).
5.	Shesh Abdul Hadi v. HMG (2005) (NKP 2062, Vol. 12, DN. 7630).
6.	Bishnu Adhikari v. GoN (2006) (NKP 2063, Vol. 2, DN. 7652).
7.	Bhim Bahadur Pokhrel v. HMG (2006) (NKP 2063, Vol. 4, DN. 7682).
8.	Niyamul Banjara Musalman v. GoN (2007) (NKP 2064, Vol. 11, DN. 7893).
9.	Suk Bahadur Kumal v. GoN (2008) (NKP 2065, Vol. 5, DN. 7968).

10.	GoN v. Tek Bahadur Chhetri (2009) (NKP 2066, Vol. 5, DN. 8142).
11.	Badri Khatri v. GoN (2014) (NKP 2071, Vol. 6, DN. 9186).
12.	GoN v. Tasi B.K. (2016) (NKP 2073, Vol. 1, DN. 9519).
13.	GoN v. Ganesh Bahadur Karki (2016) (NKP 2073, Vol. 3, DN. 9552).
14.	Shree Ram Tripathi v. GoN (2016) (NKP 2073, Vol. 6, DN. 9619).
15.	GoN v. Prakash Ojha (2016) (NKP 2073, Vol. 6, DN. 9621).
16.	Suman Pahari v. GoN (2017) (NKP 2074, Vol. 4, DN. 9801).
17.	Ishwor Rishi Dev v. GoN (2017) (NKP 2074, Vol. 6, DN. 9826).
18.	GoN v. Soharat Kha Pathan (2018) (NKP 2075, Vol. 7, DN. 10049).
19.	GoN v. Ashok Shrestha (2019) (NKP 2076, Vol. 1, DN. 10165).
20.	GoN v. Dipak Gurung (2020) (NKP 2077, Vol. 2, DN. 10443).
21.	Abhisekh Koirala v. GoN (2020) (NKP 2077, Vol. 12, DN. 100614).

I.IV Cases Relating to General Interpretation of Statutes (15)

1.	Suresh Lama v. HMG (2005) (NKP 2062, Vol. 7, DN. 7571).
2.	HMG v. Tika Giri (alias Suntale) (2005) (NKP 2062, Vol. 11, DN. 7623).
3.	GoN v. Gita Bahadur Thapa (2007) (NKP 2064, Vol. 8, DN. 7868).
4.	GoN v. Kumar Thapaliya (2007) (NKP 2064, Vol. 9, DN. 7884).
5.	GoN v. Ravi Krishna Joshi (2010) (NKP 2067, Vol. 8, DN. 8428).

6.	GoN v. Bel Bahadur Thapa Magar (2011) (NKP 2068, Vol. 6, DN. 8629).
7.	Pramila Rai (Shrestha) v. GoN (2011) (NKP 2068, Vol. 10, DN. 8697).
8.	Durga Bahadur Basnet v. GoN (2012) (NKP 2069, Vol. 6, DN. 8839).
9.	GoN v. Shankar Bishwokarma (2012) (NKP 2069, Vol. 6, DN. 8844).
10.	GoN v. Tarun Kumar Gupta (2017) (NKP 2074, Vol. 10, DN. 9884).
11.	Bom Bahadur Khatri v. GoN (2018) (NKP 2075, Vol. 5, DN. 10019).
12.	Tara Bahadur Basnet v. GoN (2018) (NKP 2075, Vol. 6, DN. 10025).
13.	Sonu Halwai v. GoN (2018) (NKP 2075, Vol. 6, DN. 10028).
14.	GoN v. Gulab Miya (alias Munna Miya Ansari) (2019) (NKP 2076, Vol. 9, DN. 10361).
15.	GoN v. Raj Kumar Murau (2020) (NKP 2077, Vol. 9, DN. 10566).

Appendix-2

Writs Relating Interpretation of Statutes (Red)

Subject/Themes:	Cases Interpreting Limitations of Court	Cases Assimilating Limitations of Court	Cases Violating Limitations of Court	Cases Relating to General Interpretation of Statutes	***Total***
Writs Relating Interpretation of Statutes	11	18	4	8	***41***

II.I Cases Interpreting Limitations of Court (11)

1.	Choti Chauwain on behalf of Trijugi Narayan Mishra v. Zonal Office (1969) (NKP 2026, Vol. 1, DN. 513).
2.	Sharmila Parajuli v. HMG, OPMCM (2004) (NKP 2061, Vol. 10, DN. 7449).
3.	Adv. Ratna Bahadur Bagchand v. HMG, OPMCM (2005) (NKP 2062, Vol. 2, DN. 7491).
4.	Adv. Om Prakash Aryal v. GoN, OPMCM (2008) (NKP 2065, Vol. 9, DN. 8009).
5.	Adv. Achyut Prasad Kharel v. Ministry of Law, Justice and Parliamentary Affairs, Kathmandu (2009) (NKP 2066, Vol. 5, DN. 8138).
6.	Aarati Shrestha v. GoN, OPMCM (2009) (NKP 2066, Vol. 9, DN. 8215).
7.	Adv. Jyoti Poudel v. GoN, OPMCM (2009) (NKP 2066, Vol. 11, DN.8282).
8.	Adv. Surya Bahadur Pandey v. GoN, OPMCM (2014) (NKP 2071, Vol. 11, DN. 9276).
9.	Shashi Kanta Tiwari v. Armed Police Force Safety Base Camp (2017) (NKP 2074, Vol. 7, DN. 9834).

10	Lekhnath Prasad Yadav (alias Chulwa) v. District Police Office Siraha (2017) (NKP 2074, Vol. 12, DN. 9905).
11	Adv. Tika Ram Bhattarai, Rapporteur: Supreme Court, Cases and Writs Division (2020) (NKP 2077, Vol. 2, DN. 10429).

II.II Cases Assimilating Limitations of Court (18)

1.	Chiranjibi Lal Marwadi v. SP Tek Bahadur Rayamajhi (1958) (NKP 2015, Vol. 2, DN. 9).
2.	Gajendra Raj Devkota v. SP Tek Bahadur Rayamajhi (1960) (NKP 2017, Vol. 7, DN. 112).
3.	Sangaratna Tuladhar v. HMG, Special Police Department (1965) (NKP 2022, Vol. 1, DN. 300).
4.	Shree Krishna Shrestha v. Office of Zonal Officer Bagmati (1971) (NKP 2028, Vol. 1, DN. 599).
5.	Omkar Prasad Shrestha v. Jailer, Central Jail Office, Kathmandu (1971) (NKP 2028, Vol. 1, DN. 606).
6.	Rishi Dangol v. Jailor, Central Jail Office, Kathmandu (1974) (NKP 2031, Vol. 1, DN. 838).
7.	Pashupati Giri v. Central Regional Court (1975) (NKP 2032, Vol. 1, DN. 916).
8.	Rita Dahal on behalf of Sujan Mendij v. District Office Lalitpur (1983) (NKP 2040, Vol. 6, DN. 1678).
9.	Rajaram Basnet (alias Lok Bahadur) v. District Court Saptari (1990) (NKP 2047, Vol. 2, DN. 4075).
10	Bajrang Chaitanya Bramhachari v. HMG, District Police Office, Dhanusha (2021) (NKP 2078, Vol. 2,3,4 DN. 4258).
11	Jit Kumari Pangeni (Neupane) v. OPMCM (2008) (NKP 2065, Vol. 6, DN. 7973).
12	Rameshwor Neupane on behalf of Pradip Thapa v. District Administration Office, Kathmandu (2008) (NKP 2065, Vol.9, DN. 8015).

13	Arjun Thapa v. Kathmandu District Court (2010) (NKP 2067, Vol. 12, DN. 8516).
14	Rolash Thapa v. Kathmandu District Court (2013) (NKP 2070, Vol. 6, DN. 9019).
15	Adv. Raju Prasad Chapagain v. GoN, OPMCM (2016) (NKP 2073, Vol. 2, DN. 9547).
16	Arun Shrestha v. Kathmandu District Court (2020) (NKP 2077, Vol. 3, DN. 10465).
17	Adv. Kamal Prasad Bhusal on behalf of Mahesh Thapa v. Rupandehi District Court (2021) (NKP 2078, Vol. 10, DN. 10752).
18	Prem Bahadur Pandey v. Bhaktapur District Court (2020) (NKP 2078, Vol. 10, DN. 10767).

II.III Cases Violating Limitations of Court (4)

1.	Mukti Sharma v. SP Tek Bahadur Rayamajhi, Special Police Department (1960) (NKP 2017, Vol. 6, DN. 108).
2.	Siddhanta Rajyalaxmi Shah on the behalf of Rishikesh Shah v. Bagmati Zonal Office, Kathmandu (1969) (NKP 2026, Vol. 1, DN. 526).
3.	Rameshman Sthapit v. Tribhuwan University Security Guard Office Gaucharan (1992) (NKP 2049, Vol. 1, DN. 4450).
4.	Brish Bahadur Rai v. GoN, Ministry of Education (NKP 2067, Vol. 10, DN. 8481).

II.IV Cases Relating to General Interpretation of Statutes (8)

1.	Umakanta Lal Kayasta on behalf of Charitra Jogi v. Saptari Goshawar Assistant Section Officer Bal Krishna Shrestha (1965) (NKP 2022, Vol. 1, DN. 281).
2.	Mrigendra Bahadur Pradhananga on behalf of Adv. Gajendra Bahadur Pradhananga v. Kathmandu Magistrate Balram Pyakurel (1965) (NKP 2022, Vol. 1, DN. 295).
3.	Ram Bahadur Khadka v. DSP Office, Kathmandu (1970) (NKP 2027, Vol. 1, DN. 545).

4.	Parshuram Banjade v. Durga Das Shrestha, Bagmati Special Court, Kathmandu (1970) (NKP 2027, Vol. 1, DN. 547).
5.	Bhairav Khanal v. HMG, Special Police Department (1977) (NKP 2034, Vol. 1, DN. 1057).
6.	Ram Prasad Sitaula v. Timber Cooperation Nepal, Babarmahal (2007) (NKP 2064, Vol. 2, DN. 7816).
7.	Sarita Basnet v. Shahi Nepal Airlines Cooperation, Kathmandu (2008) (NKP 2065, Vol. 2, DN. 7937).
8.	Bal Krishna K.C. v. District Police Office, Dailekh (2010) (NKP 2067, Vol. 9, DN. 8459).

Appendix-3

General Cases Relating to Interpretation of Statutes (Blue)

Subject/Themes:	Cases Interpreting Limitations of Court	Cases Assimilating Limitations of Court	Cases Violating Limitations of Court	Cases Relating to General Interpretation of Statutes	***Total***
General Cases Relating to Interpretation of Statutes	5	3	1	30	***39***

III.I Cases Interpreting Limitations of Court (5)

1.	Kancha Prajapati v. Nutchhe Kumar Prajapati (1991) (NKP 2048, Vol. 9/10, DN. 4350).
2.	Indra Bahadur Gurung v. Revenue Tribunal, Kathmandu (1993) (NKP 2050(a), Vol. 2, DN. 4697).
3.	Lok Bhakta Shamsher Ja. Ba. Ra. v. Rama Devi Rajbhandari (1998) (NKP 2055, Vol. 11, DN. 6625).
4.	Hari Prasad Kharel v. Bhadra Prasad Kharel (2005) (NKP 2062, Vol. 1, DN. 7480).
5.	Rabindra Shrestha v. GoN, Ministry of Health and Population (2016) (NKP 2073, Vol. 2, DN. 9538).

III.II Cases Assimilating Limitations of Court (3)

1.	Kamala Hamal v. Land Reform Office, Bardiya (2007) (NKP 2064, Vol. 10, DN. 7890).
2.	Sharada Ghimire v. Bhagwati Phyual (2013) (NKP 2070, Vol. 3, DN. 8985).

3.	Shivam Cement Limited v. Nepal Electricity Authority (2019) (NKP 2076, Vol. 4, DN. 10232).

III.III Cases Violating Limitations of Court (1)

1.	Sheshnath Prasad Kurmi v. Makbul Ahamad (1989) (NKP 2046, Vol. 2, DN. 3719).

III.IV Cases Relating to General Interpretation of Statutes (30)

1.	Keshar Bahadur Mahat Chhetri v. Minor Shyam Kumar Putwar on the behalf of Man Kumari (1961) (NKP 2018, Vol. 6, DN. 148).
2.	Laxmi Devi Shrestha v. Land Administator, Office of Land Administration, Bara (1977) (NKP 2034, Vol. 1, DN. 1119).
3.	Ramashish Prasad Shah v. HMG, OPMCM (1984) (NKP 2041, Vol. 1, DN. 1885).
4.	Raj Kishor Singh v. HMG, OPMCM (1985) (NKP 2042, Vol. 9, DN. 2475).
5.	Ratna Devi Manandhar v. Prem Man Manandhar (1985) (NKP 2042, Vol. 9, DN. 2493).
6.	Ram Naresh Singh v. Public Service Commission, Kathmandu (1990) (NKP 2047, Vol. 3, DN. 4109).
7.	Bishnu Bhakta Upadhaya v. Kavrepalanchowk District Court, Dulikhel (1991) (NKP 2048, Vol. 7, DN. 4318).
8.	Ram Prasad Adhikari v. Justice Adminstration (1994) (NKP 2051, Vol. 1, DN. 4852).
9.	Biltu Shah v. HMG, OPMCM (1998) (NKP 2055, Vol. 8, DN. 6578).
10	Kumar Shrestha v. Ultimate Descent Pvt.Ltd., Kathmandu (2002) (NKP 2059, Vol. 3/4, DN. 7073).
11	Kaushal Gyawali v. Nepal Industrial Development Corporation (2004) (2061, Vol. 5, DN. 7378).

12	Girija Prasad Koirala v. Commission for the Investigation of Abuse of Authority, Kathmandu (2004) (NKP 2061, Vol. 7, DN. 7407).
13	Pradip Pratap Bom Malla v. OPMCM (2006) (NKP 2063, Vol. 8, DN. 7744).
14	Anil Kumar Pokhrel on behalf of Morang Irrigation Development Policy v. Kathmandu District Court (2007) (NKP 2064, Vol. 4, DN. 7836).
15	Shiva Kumar Basnet v. Public Service Commission, Kathmandu (2007) (NKP 2064, Vol. 10, DN. 7894).
16	Adv. Achyut Prasad Kharel v. OPMCM (2008) (NKP 2065, Vol. 2, DN. 7926).
17	Himalayan Bank Limited v. Durga Devi Dangol (2008) (NKP 2065, Vol. 2, DN. 7935).
18	Tirtha Raj Upadhayay v. Company Registrar Office Tripureshwor (2008) (NKP 2065, Vol. 6, DN. 7977).
19	Ragini Pandey v. Surendra Shah Kanu, guardian of Dhirendra Shah Kanu (2008) (NKP 2065, Vol. 11, DN. 8032).
20	Kamala Rani Yadav v. Janakpur Cigarette Factory Limited (2009) (NKP 2066, Vol. 3, DN. 8106).
21	Adv. Anil Kumar Sinha v. OPMCM (2009) (NKP 2066, Vol. 3, DN. 8092).
22	GoN, Finance Ministry v. Surya Tobacco Company Limited (2009) (NKP 2066, Vol. 9, DN. 8214).
23	Arjun Raya on behalf of Jageshwor Raya Yadav v. Dinesh Singh Bhumihar (2009) (NKP 2066, Vol. 10, DN. 8236).
24	Dr. Dinesh Bikram Shah v. Srijana K.C. (2009) (NKP 2066, Vol. 11, DN. 8262).
25	Sumitra Hada v. Public Service Commission (2010) (NKP 2067, Vol. 5, DN. 8363).
26	Adv. Prakash Mani Sharma v. OPMCM (2010) (NKP 2067, Vol. 6, DN. 8386).
27	Shanti Devi v. Majbun Sheshin (2011) (NKP 2068, Vol. 9, DN. 8681).

28	Navraj Poudel v. Public Service Commission (2018) (NKP 2075, Vol. 7, DN. 10047).
29	Narayan Prasad Ghimire et al v. GoN, Ministry of Infrastructure and Transportation, Kathmandu (2018) (NKP 2075, Vol. 11, DN. 10133).
30	Ram Thapa v. Nepal Telecom Company Limited (2018) (NKP 2075, Vol. 12, DN. 10152).

Appendix-4

Procedure of Calculating the Mean, Median and Standard Deviation

MEAN:

Mean refers to the average of all the numbers in a data set. To calculate the Mean of a dataset, it is carried out in the following steps:

1. **Sum all values**: Add together all the numbers in the dataset.
2. **Count the values**: Determine the total number of values in the dataset.
3. **Divide the sum by the count**: Divide the sum obtained in step 1 by the count from step 2.

$$Mean = \frac{Sum\ of\ variables}{Number\ of\ variables(N)}$$

MEDIAN:

Median refers to the middle value in a data set when arranged in ascending order or descending order. To calculate the Median of a dataset, it is carried out in the following steps:

1. **Order the data**: Arrange the numbers in ascending order.
2. **Count the values**: Determine the total number of values in the dataset.
3. **Identify the middle value:**

- If the number of values is odd, the Median is the middle number.

$$Median = \frac{(N+1)^{th} term}{2}\ (for\ odd)$$

- If the number of values is even, the Median is the average of the two middle numbers.

$$Median = \frac{S\ (SUM\ OF\ MIDDLE\ VARIABLES)}{2}\ (for\ even)$$

STANDARD DEVIATION:

Standard Deviation (SD) signifies a measure of how spread out the numbers in a data set are around the Mean. To calculate the SD of a dataset, it is carried out in the following steps:

1. **Calculate the Mean (Average)**
    - Add up all the values in the dataset.
    - Divide the sum by the number of variables.
2. **Subtract the Mean and Square the Result**
    - Subtract the Mean from each value in the dataset.
    - Square each result to eliminate negative values.
3. **Sum the Squared Differences**
    - Add up all the squared differences.
4. **Divide by the Number of Data Points Minus One (for a sample)**
    - For population standard deviation, divided by the total number of variables (n).
5. **Take the Square Root**
    - Take the square root of the result from step 4. This gives the Standard Deviation.

$$SD = \frac{\sqrt{\sum(x_i - \bar{x})^2}}{\sqrt{n}}$$

SD = Standard deviation

x_i =the values of x within a sample

$\bar{x}$ = the average of the values of x within a sample

n = sample variable

Appendix-5

Method of Correlation Coefficient Analysis

CORRELATION:

A statistical tool used to express how much two variables are related linearly is a correlation. To calculate the correlation of a dataset, it is carried out in the following steps:

1. **Calculate Means**: Find the average (Mean) of each set of data. These are denoted as ($\overline{x}$) for the Mean of (X) and ($\bar{y}$) for the Mean of (Y).
2. **Subtract Means**: For each value in data sets, subtract the Mean of that set. This gives the deviations from the Mean.
3. **Multiply Deviations**: Multiply the deviations of (X) and (Y) for each pair of data points.
4. **Sum the Products**: Add up all the products from the previous step. This gives the numerator of the formula.
5. **Calculate Squared Deviations**: For each set of data, square the deviations from the Mean and then sum these squared deviations. This gives two sums, one for (X) and one for (Y).
6. **Square Root of Products**: Multiply the two sums of squared deviations and take the square root of this product. This gives the denominator of the formula.
7. **Divide**: Finally, divide the sum of the products (numerator) by the square root of the product of the sums of squared deviations (denominator).

In simple terms, this method helps to see the connection between two sets of numbers. If the result is close to 1, it Means a strong positive relationship exists; if it's close to -1, it Means a strong negative relationship exists. And, if it's around 0, it Means no clear relationship does exist.

It is carried out by the following formula:

$$r_{xy}=\frac{\sum(x_i-\bar{x})(y_i-\bar{y})}{\sqrt{\sum(x_i-\bar{x})^2 * \sum(y_i-\bar{y})^2}}$$

r_{xy} = correlation coefficient between **x** and **y**

x_i = the values of **x** within a sample

y_i = the values of **y** within a sample

$\bar{x}$ = the average of the values of **x** within a sample

$\bar{y}$ = the average of the values of **y** within a sample

Appendix-6

Process of Chi-Square Test Performed

To calculate Chi-square test, it is carried out applying the **IBM SPSS VER.29 SS Software** in the following steps:

1. Open SPSS and load the dataset.
2. Navigate to the menu: Click on Analyze > Descriptive Statistics > Crosstabs.
3. Select variables.
4. Drag and drop one categorical variable into the Row(s) box.
5. Drag and drop another categorical variable into the Column(s) box.
6. Choose the Chi-Square test.
7. Click on the Statistics button.
8. Check the Chi-square option.
9. Click Continue.
10. Run the test: Click OK to run the Chi-Square test.
11. SPSS generates an output table showing the Chi-Square statistics, degrees of freedom, and the P-value (Asymptotic Significance).

The above calculation is done through the following formulas:

Chi-square test:

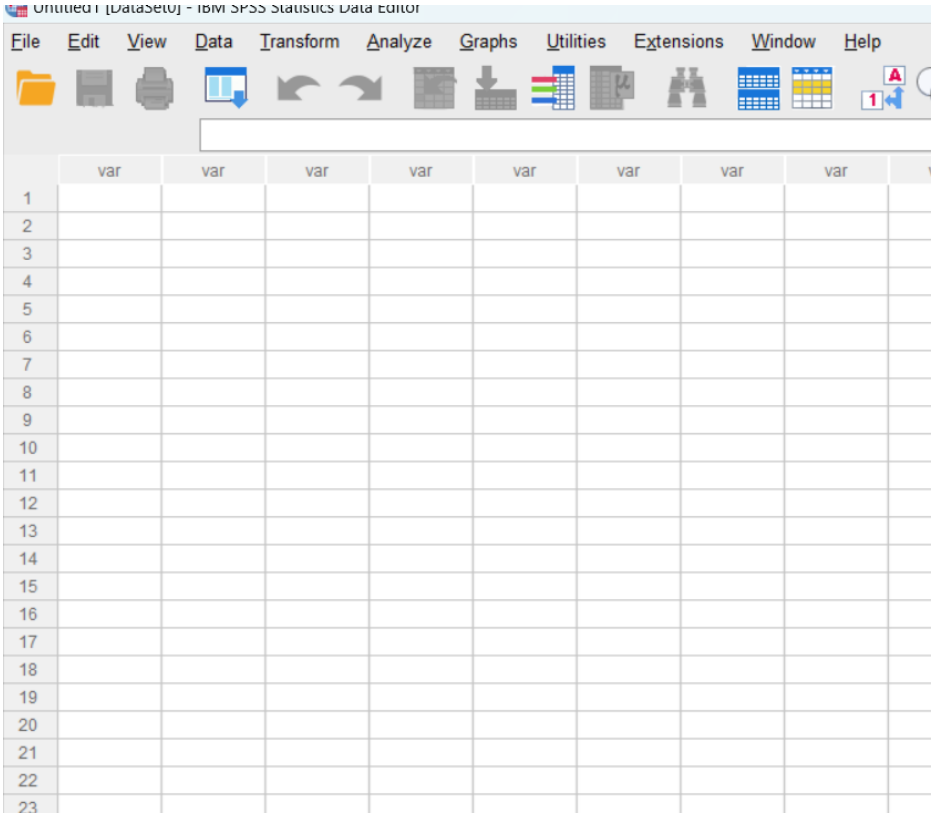
$$Excepted\ value = \frac{Total\ Row\ \times Total\ Column}{Grand\ Total}$$

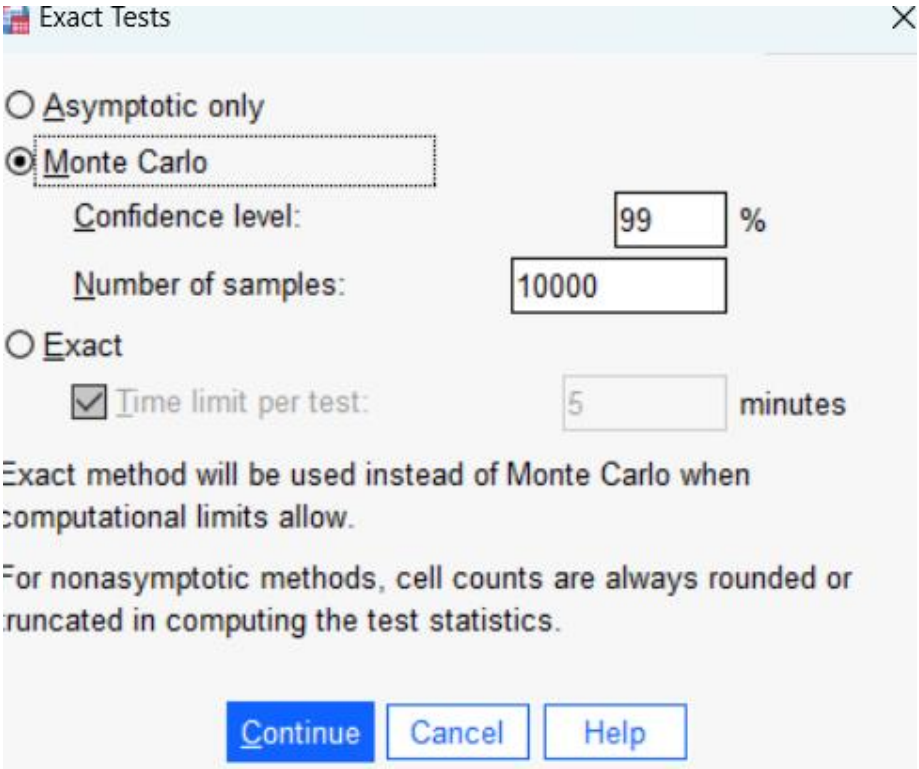
$$\chi 2 = \frac{(Observed - Excepted)^2}{Excepted}$$

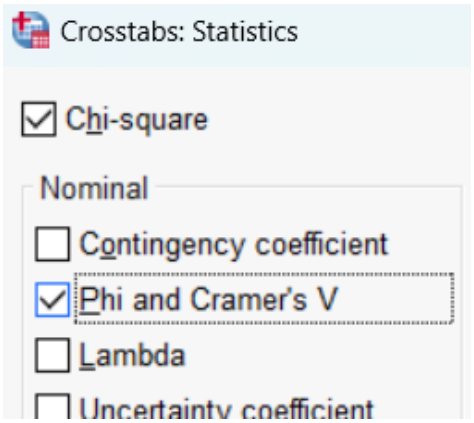
In calculation, the 'df' refers to the degree of freedom which is calculated by:

$$Df = (Row-1) \times (Column-1)$$

- Assumed significance level as 0.01 (99% confidence interval) compares the **Calculated Values** with the **Standard Values**. If the values lie below the standard value, it is significant but if it exceeds the standard value then the values generated are not significantly accepted.
- Then, Asymptotic Significance values are compared to the Asymptotic Significance standard data that must be less than 0.05; after comparing this for the Pearson Chi-square test then it is is determined whether the value is significantly associated or rejected. For the likelihood ratio, it must be between 0 to 1.
- At last calculated data of Monte Carlo Significance is compared with the Standard Data of the Pearson Chi-square test, Likehoodratio, and Fisher-Freeman-Halton Exact Test. Then if the data lies between the upper bound and lower bound it is Meant as significantly associated.
- Following are the figures generated while doing Hypothesis testing using the above steps:




Exact Tests
Asymptotic only
Monte Carlo
Confidence level:
99
%
Number of samples:
10000
Exact
Time limit per test:
5
minutes
Exact method will be used instead of Monte Carlo when
computational limits allow.
For nonasymptotic methods, cell counts are always rounded or
truncated in computing the test statistics.
Continue
Cancel
Help


Crosstabs: Statistics
Chi-square
Nominal
Contingency coefficient
Phi and Cramer's V
Lambda
Uncertainty coefficient

Standard Values of Chi-square is given below:

Degrees of freedom	Probability (alpha) that the tabulated value is exceeded			
	0.10	**0.05**	**0.01**	**0.001**
1	2.71	**3.84**	6.63	**10.83**
2	4.61	5.99	9.21	13.82
3	6.25	7.81	11.34	16.27
4	7.78	9.49	13.28	18.47
5	9.24	11.07	15.09	20.52
6	10.64	12.59	16.81	22.46
7	12.02	14.07	18.48	24.32
8	13.36	15.51	20.09	26.13
9	14.68	16.92	21.67	27.88
10	15.99	18.31	23.21	29.59
11	17.28	19.68	24.73	31.26
12	18.55	21.03	26.22	32.91
13	19.81	22.36	27.69	34.53
14	21.06	23.68	29.14	36.12
15	22.31	25.00	30.58	37.70
16	23.54	26.30	32.00	39.25
17	24.77	27.59	33.41	40.79
18	25.99	28.87	34.81	42.31
19	27.20	30.14	36.19	43.82
20	28.41	31.41	37.57	45.32