

Contributors

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PROMOTING WELFARE AND SOCIAL JUSTICE THROUGH CONSTITUTIONAL MECHANISM

Dr. Ananda M Bhattarai

Abstract

An inquiry into the plight of the migrant workers and others against the rights especially the right to life, dignity, social justice and security vis-à-vis the obligation of the state outlined in the Constitution is the prime focus of the article. The article moves by drawing a contextual understanding of the social economic situation of the country. This is followed by a quick review of the notion of the welfare state and social justice embodied in the past constitutions. As concerns regarding rights and justice have global as well as local perspectives, the article tries to look at them from both global and local perspectives. It then highlights the constitutional and legal framework and also the role played by the court in calibrating these rights. In the final part, the article discusses issues relevant to the enforcement of the right to social justice and strategic options for further honing these rights. The author argues that social welfare is not a dole out but part of the right to social justice and social security. In constitutional and human rights parlance, the death of a starving migrant worker is no less devastating than the death of a political dissident. If democracy survives in constitutional government, every representative of the people acting individually or as collectivity should give equal attention to the entitlement of the most marginalized section to the survival kit. This is how the right to survival, dignity, and social justice is promoted in society.

EMERGING PRINCIPLES AND RULES OF INTERNATIONAL ENVIRONMENTAL LAW OF THE PREVENTION AND MITIGATION OF ENVIRONMENTAL HARM

Prof. Dr. Bijay Singh Sijapati

Abstract

Emergency principles, rules and traditional norms of international environmental law, as typically shown in the transfrontier pollution context, centre mainly on how to reconcile the conflicting interests of the concerned states in order to reach an equitable solution. Presumptions interest in traditional international environmental law are that the concerned states are identifiable and geographically adjacent that the effect of pollution is of limited geographical expansion; that it is relatively easy to identify causation between polluting states and victim states; and that damage can be calculated and compensated. The principles and rules have functional in an effective way to prevent or mitigation environmental harm and to provide relief through damages. However, principles and rules will prove to be ineffective in responding to global environmental change. The author in this article tries to give overall picture of emerging principles and rules of international environmental law for the prevention and mitigation of environmental harm and to provide relieve through damages.

INTERRELATION BETWEEN FEDERAL, PROVINCIAL AND LOCAL GOVERNMENTS WITH REFERENCE TO INTERNATIONAL PRACTICE

Dr. Chandra Kant Gyawali

Abstract

The models of federal, provincial and local level jurisdiction have been operated in accordance with the spirit of shared-rule, self-rule and autonomy under the constitutional provision in the world. Hence, the interrelationship is necessary for the federal, provincial and local governments to exercise the exclusive, concurrent and residual powers to be practiced within their jurisdiction. The exercise should be based on the principles of cooperation, coordination and co-existence. It will have the opportunity to facilitate equality and easy access to government services, the need for mutual assistance, and any issues to be handled by the same level, parallel rights, some issues of equal importance to use and the same level to make and execute the laws in their respective areas.

ROLE OF UN POLICE TO COMBAT ORGANIZED CRIME IN FRAGILE STATE

Prof. Dr. Laxmi Prasad Mainali

Bishnu Prasad Soti

Abstract

This article considers peacekeeping's challenges in dealing with the security and governance risks posed by organized crime in fragile states, with a focus on the role of the UN police component both in field and at the Headquarters level. It evokes the scenario of the fragile state, where institutional arrangements embody and perhaps preserve the conditions of crisis, causes statutory institutional arrangements are vulnerable to challenges by rival institutional systems be they derived from traditional authorities, devised by communities under conditions of stress that see little of the state or be they derived from warlords or other non-state power brokers. In this condition, UN peace operations, peacekeeping, and special political missions are increasingly deployed in complex conflict environments. These contexts are marked by ongoing armed conflict, with an active presence of several non-state armed groups opposed to the government and the international presence in the country.

The 1st section deals with the introduction of the fragile state, conflict-affected state or the failure state, UN Missions, and the working arrangements of the UN police components in the missions with varying mandates. It will also reflect the complex working situations with the different types of armed groups. It further deals with the multidimensional peacekeeping operations which are deployed to states that have undergone armed conflict intending to consolidate the peace and help to create the conditions that would prevent a recurrence of armed violence. It will also deal with the organized criminal activities that involve political actors and violence are perhaps of most immediate concern for peace operations. Organized crime, which often has both local and transnational dimensions, thrives in conflict-affected environments due to state institutions, weak enforcement of laws and control of borders, disruption of the legitimate economy, and the lack of economic opportunities. In the most severe cases, organized crime exists in symbiosis with a captured state public sector and political sphere.

The 2nd section deals with the problem; specifically, the recent scenario of the nature, scope, and effects of organized crime and its relationship to the evolution of armed conflict and peacekeeping interventions in the conflicted affected state or more specific in a fragile state. It evokes the complexity of a conflict with the steady proliferation of new

non-state armed groups, including terrorists, rebels, militias, criminal groups or gangs, and violent extremist groups that may fight each other and the state at different times. It also answers the application or non-application of the international humanitarian law and its proliferation of armed groups and its dealing within law and practice. It reveals that actors involved in organized crime may deal with illicit goods of the black economy.

The 3rd section scrutinizes the being done scenario by different UN missions to discourse the encounter of organized crime, concentrating on mandates and the role of the police component as the leading actor in developing institutionalized responses to organized crime in countries affected by, or emerging from, armed conflict. It mentions about the multidimensional peacekeeping operations which are deployed to states that have undergone armed conflict with the aim of consolidating the peace and helping to create the conditions that would prevent a recurrence of armed violence, where lives have been lost, people displaced from homes and communities, and physical infrastructure destroyed.

The 4th section replicates the analysis of the efforts that have so far been sufficient or insufficient to deal effectively with the challenges posed by organized crime. This section introduces organized crime as a highly complex phenomenon that often has both domestic and transnational dimensions; it presents throughout the cycle of conflict; and requires and fosters corruption in the public administration, often in contexts where patronage networks and 'big man' dynamics exist. Those involved in organized crime are not universally viewed as criminals in areas of limited or no state presence, they may exert political control and enjoy legitimacy in the eyes of local communities by providing some measure of governance, whether in the form of security, conflict mediation, contract enforcement or patronage resources. It shows the impact of peace operations on violence, serious and organized crime, and state-building which establish the positive effects of peacekeepers.

The 5th section positions how the UN response to the challenges posed by organized crime could be improved. Also, this chapter forestalls some commendations and the way forwards to discourse the challenges of organized crime in such a situation. It also demands the countries' collective will to confront them Organized crime and corrupt institutions. The Collective efforts needed to be redoubled to ensure the effective implementation of the United Nations Convention against Transnational Organized Crime and its three Protocols. The international community's efforts should be to use the different techniques and tools that may be necessary for effective management of the risks these criminal networks pose. Finally, it draws some conclusions.

ROLE OF UNITED NATIONS FOR BIO-DIVERSITY CONSERVATION: GLOBAL PERSPECTIVE

Prof. Dr. Tara Prasad Sapkota

Abstract

Biodiversity is the major component of the environment and it includes soil, water, flora, fauna, and micro-organism. Biodiversity provides habitats for flora, fauna and micro-organism. Biodiversity is being treated as a global resource and this resource is not evenly distributed. Scientists have estimated that the Earth is a home of one trillion species, of these 25 percent species are already lost and 60 percent species are being threatened and 60% of the Earth's ecosystems have reduced their capacity to deliver the vital ecosystem services on which we all depend. If the present trends continue then the life support system of this earth will be finished. Taking into consideration the ground reality, the international community is aware of it and adopting several measures for the conservation of biodiversity resources. Conservation of biodiversity is not possible by a single person, a local body, a national government, a regional association, and an international agency. At present peoples and all level's governmental and non-governmental agencies are involving in the conservation of biodiversity resources. The United Nations is the Apex agency of the international community and it has adopted several measures for the conservation of the biodiversity resource. The author in this paper has endeavored to explore and analyze the measures adopted by the United Nations for the conservation of biodiversity and has suggested some measures at national governments for the effective implementation of the global measures.

LIQUIDATION OF THE BANK AND FINANCIAL INSTITUTIONS IN NEPALESE PERSPECTIVE: AN OVERVIEW

Prof. Dr. Shambhu Prasad Khanal

Abstract

Liquidation or winding up of the Bank and financial institutions cannot be neglected as a simple matter rather it is a very complex one. So, within the periphery of this issue, the author, in this article aims to discuss and analyze the liquidation procedures and impact of liquidation that is particularly applicable to the Bank and financial institutions registered in Nepal. The Bank and financial institutions also fall under one of the categories of the company. As we know that a company is an artificial person in the eyes of law. thus, the company created by law is accepted as the birth of an artificial company whereas the demise or winding up of a company is the liquidation. The incorporation of a company, in accordance with law, is compulsory or inevitable for any corporate body including a finance company to commence its business. In other words, each institution needs to be incorporated through the law but all of them may not go to liquidation.

As an incorporation of a finance company is provisioned by law and liquidation also must be in accordance with law concerned. This means to say that, all of the companies duly created or registered as per the law shall have to be duly expunged or removed after the completion of the procedures to be followed with regards to liquidation of the Company. Likewise, the will or interest of its shareholders or members also may not be fulfilled without following the due process of law. Obviously, liquidation is the last stage of a company's life after which it ceases to exist in the eye of law and records of the authority. As a company engages with other parties during its lifetime and liabilities may have created for or against it, the process of liquidation is much complex and sensitive than its incorporation.

FEDERALISM: CHALLENGES AND OPPORTUNITIES IN NEPALESE CONTEXT

Krishna Prasad Bashyal

Abstract

Federalism is a form of government in which there is a division of powers between different levels of government which are of equal status. It ensures a constitutional division of powers between a federal government and its federating units in such a way that these two sets of government function in exclusive political domains for the achievement of shared goals. Federalism is well-suited for a country having a large area, population, and regional identities because it guarantees a considerable degree of autonomy and exclusive political domain for the federating units. Federalism indeed has a lot of opportunities for a country like Nepal which has a long history of the unitary system of government and failures of the process of decentralization leading a huge gap of inequality. However, with the newly introduced system where people and authority are still struggling over its complex aspects, there are also a lot of challenges to address the diversity of Nepal. This article explores the nature, opportunities, and challenges of adopting a federal system of government in the context of Nepal.

ENSURING RIGHTS OF CITIZENS: ROLE OF THE SUPREME COURT DURING COVID-19 PANDEMIC

Rabi Narayan Khanal

Abstract

COVID-19 pandemic has inflicted serious damage on the health, social and economic well-being of citizens worldwide. The Supreme Court of Nepal, through its judicial activism, has done an impressive job by safeguarding a number of citizen's rights during the time of pandemic. In the absence of legislation, the Supreme Court has an extra obligation to ensure the right to health for all citizens. It should not pass the baton of responsibility to the government and leave it to the government's discretion. Duty of the court is also to constantly try and work with the administration to tackle the fallout of crisis situations without compromising the basic rights and liberties of the citizen. The Supreme Court of Nepal has played a proactive role by delivering a number of judgments in response to several writ petitions. This paper tries to analyze the role of the Supreme Court during pandemic through discourse on its various judgments.

APPLICATION OF INTERNATIONAL LAW: AN OVERVIEW

Dr. Diwakar Bhatta

Abstract

The author adopts that the application of international law actually determines the relationship between international law and domestic law and also emphasizes how international law is reflected in the domestic plane. Reflecting from the canvas of theories on international law, there exists a conflict whether international law has the primacy over the national law or two laws are separate branches of different legal systems. In this relation, the author reckons his theoretical expositions on theories of international law with the jurisprudential concepts developed by Hans Kelson, Hersch Lauterpacht and Fitzmaurice. And, he urges that international law and municipal law have their distinct tasks to perform and values they are embedded with. Therefore, the debate on the superiority of a particular law over another is mere intellectual reasoning.

As for reflection of international law on domestic jurisdictions, the author states that methods such as monism and dualism have often been prescribed for a particular legal system in the world. However, within the method of monism and dualism, he argues that there have been developed other approaches of applying international law into domestic law, such as sector monism and moderate dualism that have relevance with the French and Italian practices respectively. More importantly, the author opines that it will not be very wise to say that a particular legal system follows monism or dualism because of diverse practices exist in the countries of continental and common law system.

Viewing Nepal's approach of domesticating international treaties, the author says that it is unique in it. An issue is still unanswered whether Nepal follows monism or dualism. In Nepal, Section 9(1) of Treaty Act, 1990 (2047) underscores that the treaty shall be applied as good as the ordinary law of Nepal and have preponderance on domestic legislation in case if a conflict exists between the two. Despite it, the SC of Nepal viewed that it does not have jurisdiction to examine an issue of conflict between a treaty with domestic law. An issue is still answered who will determine the conflict on the superiority between treaty over domestic law? On the one hand, Section 9(1) of the Treaty Act, 1990 (2047) seems similar to the French practice of Sector Monism. And, Section 9(2) of the Treaty Act requires separate legislation for a treaty to be implemented in Nepal that seems close to dualism in the other. For the same token, the Supreme Court's judgments in various cases have set diverse practices, for example, in some cases, it has equated the provision of the CEDAW with Constitutional provisions and thus declared the inconsistent

legislations with the treaty, null and void and in some cases, it has directed the legislature or government to enact necessary law to implement treaty provisions. Viewing so, the author concludes that Nepal lacks a clear approach to the application of the treaty in domestic law due to the absence of constitutional policy consideration, clear law and uniform judicial interpretations on the application of international law in Nepal. Making an in-depth and critical observation on the law and practices of foreign and domestic jurisdictions, the author lastly suggests that the concerned machinery of State needs to seriously think to make clear, coherent and uniform Constitutional and legal provisions on the application of international law in Nepal.

RIGHT TO EQUALITY: CONCEPT, CONSTITUTIONAL PROVISION AND COURT PRACTICE

Binod Bashyal

Abstract

This article discusses the jurisprudence of equality. In this aspect, the author has focused on the meaning and concept of equality, its type, Nepalese constitutional history regarding the right to equality and some judicial decisions. The author has clearly described the concept of formal and substantive equality which is based on equality before the law and equal protection of the law. Protective discrimination which is taken as a concept and falls under substantive equality is another important subject focused by the author. He also emphasizes the role of our Supreme Court to maintain equality among all on grounds of origin, caste, tribe, sex, economic condition, language, region, ideology etc. by including some major interpretations of the Supreme Court. Apart from the judicial decisions of our Supreme Court, the author has also described judicial decisions from US Supreme Court.

ROLE OF SUPREME COURT ON LEGAL PROFESSION OF NEPAL

Bijaya Prasad Mishra

Abstract

This article highlights the role of the Supreme Court of Nepal for the legal profession based on its decisions specifically published in Nepal Kanoon Patrika from April, 2014 - September, 2019 (2071 BS to 2076 B.S. Asoj). It also inquires upon a few other case decisions cited on the case decisions being analyzed herewith. Based on the study of decisions made in the cases, it concludes that case decisions discussed herein have a diverse impact on the legal profession. Some of the decisions have painted a rosy picture whereas some have followed an unexpected path that is not useful for the profession. The article does not consider the theoretical and historical part of the legal profession of Nepal in depth. Its scope is hence confined to the study of the case decisions of the Supreme Court delivered during the afore stated period.

AN ANALYSIS ON REGULATION OF HATE SPEECH IN NEPAL

Dr. D. N. Parajuli

Abstract

Free speech is the most important right among all fundamental rights. It is closely associated with other fundamental rights and it has various modes of expression. Human being made such much progress because free speech made them equip to share and what they felt true. Not Every Speech is free and State has the capacity to regulate and ban certain speech.

Nepal has a special case in hate speech because discriminatory language, symbol and signals are used based on caste, religion, sex, profession or particular community but it is not prosecuted under hate speech law rather it is looked under the right to equality and social cohesion. There are perhaps two general kinds of harm caused by hate speech. The first kind of harm is that suffered by the members of a racial, or other, target group (the group that is both the subject and audience of the hate speech). This form of harm includes fear, intimidation, insult, and emotional trauma.

Under international human rights standards, the right to freedom of expression is not absolute, and may exceptionally be subject to restrictions provided that those meet a strict three-part test, according to Article 19 (3) of the ICCPR.

Maintaining public order is another social value that the government may balance against speakers' rights. Responses to 'hate speech' be premised on three complementary areas of action: States must create an enabling environment for the exercise of the right to freedom of expression and protect the right to equality and non-discrimination; States must enact a range of positive policy measures to promote freedom of expression and equality; Other stakeholders, including civil society, the media and private businesses, should be encouraged to undertake voluntary initiatives to tackle the root causes of prejudice and intolerance, to contest and challenge "hate speech."

Public officials, including politicians, have a key role to play in recognizing and promptly speaking out against intolerance and discrimination, including instances of "hate speech." Nepal being a small democratic country in South Asia, Its constitutional foundation of hate speech is so strong. All the elements of hate speech is protected on the basis of public order, sovereignty, national integrity, individual autonomy, dignity and mutual respect. Nepal is active member states of almost all international human rights instruments; hence Nepal is addressing and ensuring the right to freedom of expression and dignity of the individual as per the international standards trough the national law regime.

IMPACT OF BANKING CRIME IN THE FINANCIAL SYSTEM

Dr. Awatar Neupane

Abstract

The banking institutions are dealing with their money with public money and in which the general public have reposed faith and confidence. Banks and financial institutions are dealing with public money and hence it is imperative that employees should exercise due care and diligence in handling the transactions in banks. A strong system of internal control is the most effective way of crime prevention. The banks should increase their efforts to raise the level of security awareness in their organizations to combat crimes. Banking crime leads to the loss of money belonging either to the bank or customers. Banking crime is a threat to an organization's status and its interactions with outside stakeholders. Banking crime can result in huge financial damages and losses. The effect of banking crime has a chain reaction on society as a whole because the banking industry constitutes a vital position in society. Bank and financial industry's success or failure goes a long way to determine the success of society. Banking crime is a major cause of bank failure.

MUGHAL INFLUENCE IN LEGAL SYSTEM OF NEPAL

Rabindra Bhattarai

Abstract

Nepali is Nepal's official language and lingua franca in Nepal. Nepali, descended from Sanskrit, being a medium state operation, contains of terms of abroad origins the Arabic, Persian and Turkish. Why and how terms borrowed from abroad exist as legal registers? Was there any systemic influence? This writing seeks the answer. Mughal Empire ruled India in medieval while Nepal was developing a state system as well as Nepali language was taking in charge of the official state language. The modern legal and judicial system of Nepal has been influenced by the Mughal system and the perception that Nepal's legal system was fully run by Hindu laws is incorrect. Nepal's legal and justice system is not made by the blending of Hindu law and French and English legal systems. There was a strong conceptual and linguistic influence of law and language of the Mughal system in the framing of Muluki Ain in 1910 BS and is continued to date.

LEGAL REGIME ON FOREIGN DIRECT INVESTMENT IN NEPAL: A BIRD'S EYE VIEW

Laxmi Sharma

Amrit Kharel

Abstract

Foreign Direct Investment (FDI) and rule of law are strongly interrelated in multiple ways to achieve sustainable development in any nation in a deprived situation. The advancement of rule of law is crucial to achieving long term investment which is imperative to foster inclusive economic growth and to fully utilize the available resources in the economically underprivileged country while the global investment has been exposed to an abrupt slowdown due to an outbreak of corona virus pandemic. The main objective of the study is to analyse selected legal texts from the perspective of FDI to observe their role in supporting the economic development of Nepal. The selected provisions in the constitution and major legislations having their role in enabling FDI are critically analysed in this study to find out the barriers in the legal framework. As drawn from the overall analysis of the legal instruments, authors come to the conclusion that the legal framework in Nepal needs a wide reform to make it enabling rather than discouraging the confidence of foreign investors.

REFERENDUM IN NEPALESE CONTEXT: A VIEW

Surendra Manandhar

Abstract

Referendum is one of the political ways to resolve the political and constitutional deadlock. Different countries have been practicing different ways to overcome the constitutional crisis in the world. Mainly referendum, constitutional amendment and constitutional conventions have been using as formal tools for making the change or altering in the constitution. The author in this article searches the constitutional status, role and importance of referendum for the constitutional and political change in Nepal. Obviously, Nepal has incorporated the provision relating to the referendum for the first time in her constitutional and political history. Interestingly, she had practiced the referendum once in her history even though the then constitution had not provided the provision relating to the referendum. The basic concept of a referendum is that an opportunity should be given to the people to take the initiative themselves and put forward proposals for the constitutional amendment. Generally, the referendum has been considered as the share of the people in the process of amending the constitution is confined to approval or disapproval of a proposal initiated by the legislature.

Indeed, the Constitution of Nepal has entitled the Parliament to amend where in so ever besides the matters relating to the prejudicial to the sovereignty, territorial integrity, independence of Nepal and sovereignty vested in the people. Article 274 of the constitution has provided the provision relating to the constitutional amendment. Similarly, Article 275 states, if a decision is made by a two-thirds majority of the total number of the then members of the Federal Parliament that it is necessary to hold a referendum with respect to any matter of national importance, decision on that matter may be taken by way of referendum. Article 274(8) has clearly mentioned the requirement of two-thirds of majority for the amendment of the constitution in one hand and simultaneously in the other hand Article 275 has also mentioned the requirement of two-thirds of the majority to hold the referendum. If the referendum cannot contribute distinctly in comparison with the amendment than there is almost a big question that why to go to the expensive process of referendum applying the same process of a two-thirds majority even though there is a way to amend the constitution through the legislative by the two-thirds of majority of the legislatures? Article 274 which is related to the constitutional amendment and Article 275 which is related to the recommendation for the referendum require the

same requirements of 2/3 majority of the total number of the then members of the Federal Parliament.

It seems that there should be a clear line of demarcation regarding the requirements between the constitutional amendment and referendum. The provision mentioned for the referendum seems to need more tangible arrangements which can create hope to adhere to the provision of the referendum. There should have been a distinct requirement for the referendum which can compel to follow the referendum to take any decision on the matter of national importance. Generally while discussing the present constitutional provision, the constitutional amendment process seems comparatively easier, shorter, low cost, and better than the referendum process. In this situation, it can be easily presumed that preference may give to the constitutional amendment rather than referendum for constitutional and political change in Nepal.

HUMAN TRAFFICKING: A TRANSNATIONAL ACTIVITY OF ORGANIZED CRIME

Dr. Kunshang Lama

Abstract

The term 'human trafficking' is being used to address a wider variety of human rights violations, which are associated with recruitment, movement and sale of people into a range of "exploitative" work. In Modern-world sex trafficking, slavery, illegal organ removal, and the use of child soldiers are criminal activities known collectively as Human Trafficking. Such activities may involve the coordinated efforts of three or more individuals to achieve some common benefit, and frequently, these activities involve more than one country. As such human trafficking activity is considered to be a form of transnational organized crime. This article considers the major legal frameworks internationally and in the Nepalese context to deal with these organized criminal activities. The article also tried to explore some data concerning the extent, and nature, of human trafficking activities as a form of organized crime.

NEPALESE LEGAL HISTORY, ITS ROLE IN SHAPING CRIMINAL JUSTICE SYSTEM, AND SHIFT IN EXPECTED ROLE OF CITIZENS AFTER END OF MONARCH

Dr. Ramesh Parajuli

Abstract

{Ancient Nepalese legal system which was overwhelmingly based on Dharmashastra influenced with Manu, Yagyabalkya, Brihaspati, Narada, Gautam Smrities; started losing its indigenous character from 1850 when Rana PM Jung Bahadur visited England and introduced Muluki Ain, 1854 (1910) that imported some legal values of British legal system and Napoleon code. With the introduction of laws that adopted the adversarial model of justice and numerous donor-driven projects, we are now operating our criminal justice system through the general law of Muluki Criminal Code, 2017 (2074) and numerous other issue-wise specific scattered criminal laws.

Until we citizens stop becoming sheep and start to exert healthy public pressure by questioning our government, we cannot dream to secure criminal justice just by enacting lists of criminal laws. The provision of the Prevention of Corruption Act to presume unjustified property as corrupted property applies equally to high level politicians, ministers and senior bureaucrats who appoint CIAA chief at their privilege. Does the constitution give authority to our political parties to appoint heads of our constitutional bodies on the basis of inter-party quota agreement throwing the candidate's merit and capacity in dumping site? We cannot expect prosperous Nepal until we think to sew our corruption hole before begging for foreign grants and add. Nor can we expect 'Naya Nepal' (in terms of drastic economic growth and environment protection) if we continue importing gas, petrol and other fuels instead of generating domestic hydropower energy for our kitchen, transport, and industries.

After the constitution overthrew monarch from Nepal in 2007, the historic and traditional belief of 'king as an incarnation of god Indra' and symbol of national unity; that used to unite all citizens into the bond of nationality also ended. Symptoms have started to appear that same familiar faces in politics are dominating the national politics for continuously decades of years, have now started feeling and presenting themselves as kings. Neither these figures are king nor incarnation of lord Indra today. We, the Nepali citizens ourselves are fortune makers of this soil. If we conscious citizens continue to keep our mouth closed, if we do not raise questions lawfully against unfair government activities, if we continue sleeping; how can we expect that some foreign grant/ some particular politician or some magic will make our country prosperous early morning when we open our eyes in bed? Time has come for all citizens to feel oneself as Indra instead of sheep and keep a vigilant eye on government activities to make it accountable and run for the national interest.}

JUDICIAL RESPONSE ON PROTECTING YAKTHUNG STONE

Prabin Pandak

Abstract

Human civilization struggling to carry the cultural legacy and the protection from the judiciary is the eminent contribution. The cultural differentiation works as the fundamental basis of behavioral and ideological variations. Multidimensional communities bearing micro cultural diversity matters in the totality despite of challenges in the recognition. An organ of state might be the cause to destroy and demolish the cultural identity even though innocently, on the other hand, another organ of the state contributes to the protection and promotion of its organic value preserving the national property.

COLLECTIVE BARGAINING AS A PACIFIC MEANS FOR THE SETTLEMENT OF LABOUR DISPUTE: A DELVE INTO LABOUR ACT, 2017

Kabita Shrestha

Abstract

Labour law envisions a sound industrial relation between the employer and the employee. And, collective bargaining is an amicable means of settlement of labour disputes. This article discusses the importance of collective bargaining, forms of collective bargaining, subject matters of collective bargaining and how Labour Act, 2017 (2074) encompasses the provisions related to collective bargaining in Nepal as a pacific settlement of labour disputes. Furthermore, the paper explores the judicial interpretations made by the Supreme Court of Nepal and India.

JURISPRUDENTIAL WISDOM ON STRUCTURE AND FUNCTION OF LAW

Amar Bahadur Shah

Abstract

In the study of jurisprudence, to define and believe the law is chaos. Though some general statements based on experience had turned the individuals as extraordinary philosophers. The experimental research analyzed in intervals of time had been respected in the current date. Wisdom is inestimable. Which evolved first: law or society is debatable, but the relationships they maintain are of nail and flesh. In this doctrinal research, the views of jurists are very much studied in matters of structure and function of the law in the society to further forward in the imminent. It's important but depends upon the next generation how they are going to percept the ancient philosophies. Internalizing the value that the experts may die but the knowledge led by them is going to be useful in the study as well as making new laws to have a peaceful and progressive society. Definition of law, the relationship between law and society, social and normative structures of law and general and social functions of law are archived from the many renowned scholars to widespread the research paper.

FEMALE CRIMINALITY IN NEPAL: PREVALENCE AND CAUSES

Laxmi Bakhadyo

Abstract

Female criminality is one of the important phenomena in popular media and also in academia. From the very beginning of the criminological study, the focus was made on the criminality of males. Researches were done on the masculinity feature of crime. Women were regarded to have a role inside the house. But the scenario has been changed. It is true that the number of female perpetrators is less than that of the male perpetrator, but it does not entail that women are not prone to criminality. This article is a descriptive and analytical study in the context of female criminality in Nepal. Data reveals that the number of female involvement in crime is increasing which has taken into consideration for preparing this article.

INDEPENDENT CORPORATE PERSONALITY OF A COMPANY: A JURISPRUDENTIAL PERSPECTIVE

Yam Kumar Yonjan

Abstract

In the legal parlance, a company is an association of both natural and artificial person and is incorporated under the existing law of the country. The company has no strictly technical or legal meaning. The company is a business vehicle that implies a voluntary association of a group of persons for common objectives. In the common law a company is a "Legal Person" or "Legal Entity" which is separate from and capable of surviving beyond the lives of its members, capable of rights and duties of its own and endowed with the potential of perpetual succession. The term company has been described in many ways since a corporate body is the creation of law; it is not a human being. It is an artificial juridical person created by law and dissolved by the law. Company is a legal person which can own a business, property, rights and obligations separately from the people who manage or finance the company's activities as prescribed by law and the powers conferred upon it by its MoA, AoA and Company Act. So, Independent corporate personality is one of the characteristics of the company under which the company is said to be a legal or artificial person since it is invisible, intangible, and existing only in the contemplation of law.

TOWARDS COMPENSATORY JUSTICE: DISCOURSE ON CRIME VICTIM COMPENSATION IN NEPAL

Deepika Thapa Magar

Abstract

Compensation is one of the most important rights of crime victims. It acts as one of the pillars of victim assistance in the aftermath of victimization. With the advent of victims' rights movement, victims' right to compensation along with other substantial rights have found their place in various international instruments and national legislations of countries. Crime victim compensation is a developing concept in Nepal. In that purview, this paper briefly puts forth the conceptual aspect of crime victim compensation and attempts to discourse on various aspects of crime victim compensation along with the underlying issues regarding the implementation of victim compensation legislation in Nepal.

LEGAL FRAMEWORK FOR THE PROTECTION OF GREATER ONE-HORNED RHINO IN NEPAL

Aamod Dahal

Abstract

Rhinos are important heritages of nature. Today only five species of Rhinos remain. Among them, Greater One-Horned Rhino (GOH) is one of them. GOH is found in Nepal too, its population is very less and is now confined to the protected areas though. Status of GOH Rhino is vulnerable and is categorized under endangered species. Department of National Park and Wildlife Conservation is managing Rhino conservation activity in Nepal. Nepal is a state party to Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973. This convention has listed GOH Rhino in Appendix I as species threatened with extinction. NPWCA, 1973 (2029) is the principal legislation for the protection of GOH Rhino which has made provision on protection of GOH Rhino, punishment for poaching and trade of trophies of GOH Rhino, investigation and hearing of cases relating to it. The provision of this Act seems quite sufficient for controlling and criminalizing wildlife crime against GOH Rhino, strong implementation of this Act is very crucial so GOH Rhino remains safe and protected in the future as well.

BAR-BENCH RELATION IN NEPAL

Bimal Prasad Lamichhane

Abstract

The legal profession has been regarded all over the world as a very respectable, noble and prestigious profession. The Bar and Bench are called two wheels of the same cart as well as two sides of the coin involved in the dispensation of justice. The prestige, nobility, and honour of the legal profession and judiciary are only possible by the cordial, trusted and reciprocal relationship among Bar and the Bench. It is very important in the administration of justice and the promotion of the standard of justice. The Bench-Bar relationship with close ties allows judges and lawyers to cooperate and collaborate to reach in the correct, just and reasoned judgment as well as binds them together to sustain public trust on justice. The involvement of lawyers in the regulation of the Bench and court commands on regulation of the Bar can enrich public trust and confidence to both institutions and in return strengthened rule of law, judicial legitimacy and independent judiciary.

FUNCTIONAL ASPECTS OF NEPALESE CRIMINAL JUSTICE

Samikshya Mishra

Abstract

After hard work for 62 years, the nation has received National Penal Code, 2074 (2017) that attempts to reform, modernize and unify the criminal law of Nepal. The statute is a landmark in the sense that it has introduced certain major changes such as (i) arrangement of general principles of criminal law, (ii) criminalization of new offences such as disappearance, torture, malafide investigation or prosecution, and criminal conspiracy, (iii) plea bargaining of up to 50% reduction in punishment, (iv) recognition of victim's right to compensation in all offences, (v) corporate criminal liability, (vi) polygamy as void marriage, (vii) imprisonment and fine, both mandatory in offences. Despite ambitious promulgation, the spirit of Code if could not be implemented, and if the required infrastructure for effective implementation cannot be installed, the functional efficacy of the Nepalese criminal justice system will get frustrated. The challenge today is to ensure the effective implementation and functioning of these guarantees.

JUDICIAL REMEDY IN TAXATION: CASE STUDY OF NCELL CAPITAL GAIN TAX IN NEPAL

Bandana Upreti

Abstract

Ncell and 'Capital Gains Tax' payment is possibly one of the biggest concerns not only amongst professionals and academicians involved in the field of taxation but also to each aware citizen of this country. Needless to say, different views and arguments regarding the issue have been floating around, where it seems to be a general agreement amongst many that payment of capital gain tax is a must, confusion seems to arise as to how much should that amount be and who exactly (buyer or seller) should be liable for payment of such Capital Gain Tax. The issue further seems to be complicated by numerous court cases and inconsistent verdicts of the Supreme Court. The recent arbitration request by Ncell to ICSID and the interim order by ICSID gave a new turn to the issue. In such a context this article tries to understand the tax controversy, the verdicts given by the court of law at various time frames and the role of the judiciary in this tax-related case.

COMPARATIVE STUDY OF INSOLVENCY LAW OF NEPAL WITH INSOLVENCY AND BANKRUPTCY CODE OF INDIA

Sujan Phuyal

Abstract

This article is an attempt to present the comparative study of Insolvency Bankruptcy Code, 2016 of India and laws relating to the insolvency in Nepal. Major aspects of the insolvency legal regime of both countries have been presented in the tabular form. The article has covered the procedure-related to application, liquidation and restructuring of the company in brief. The article is only an attempt to highlight corporate insolvency and doesn't cover individual insolvency proceedings. The reason behind it is, individual insolvency under "The Insolvency and Bankruptcy Code, 2016" of India isn't yet notified and not in force, whereas in Nepal, it is governed by the "National Civil Code, 2074 (2074)." The insolvency law of Nepal is compared with India because it has been recently enacted and reformed frequently. The primary objective of the article is to highlight the major aspect and development regarding the insolvency regime in both jurisdictions with special reference to Nepal. To some extent, it is expected that it can make some contribution in the field of business law and assist in further research in the insolvency area.

SOCIALIST CONSTITUTIONALISM

Bhim Bahadur Phadera

Abstract

Constitutionalism is quality to judge the constitutional practice and arrangements of a particular country. It is more qualitative than quantitative. It is more practices and experiences than arrangements. It is the synthesis of centuries long many more political and legal thoughts. Constitutionalism must concentrate on the welfare of people not only limiting government power. What would be the system of government; the government must gain the faith and trust of people and protect the best interest of the general public. It is the first condition of constitutionalism that the government must be limited by the constitution, but in socialist model the leadership of the communist party controls the government. If people have no objection of being controlled by a single party and they have enjoyed all the freedoms, have the finest chance to develop personality than we must accept in under the paradigm of constitutionalism. So, the socialist model may be the positive dimension of constitutionalism as indicated by Barber. The evil nature of government is the center of constitutionalism but in socialist model there is a communist party above the government. Therefore, the communist party must be brought under the preview of constitutionalism in an organic way to secularize it. Modern constitutionalism must be analyzed from the perspective of the finest coordinated relationship between government and people. The most significant contribution of modern constitutional scholars would be emancipating the constitutionalism from the political ideology to preserve its eternal objectives.

ANNEX

List of Articles Published in *Annual Survey of Nepalese Law* and *Nepal Bar Council Law Journal* from 2000 to 2018

Annual Survey of Nepalese Law, Volume I, 2000

Coordinator: Kanak Bikram Thapa

Editor: Kumar Regmi

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