

YEAR 42 ● VOL. 29 ● NUMBER 1 and 2 ● 2020-2021

(A PEER REVIEWED JOURNAL)

NEPAL LAW REVIEW

EDITORIAL BOARD

Editor In Chief

Associate Prof. Dr. D.N. Parajuli,

Editors

Prof. Dr. Laxmi Prasad Mainali

Assistant Prof. Laxmi Sharma



NEPAL LAW CAMPUS
FACULTY OF LAW, TRIBHUVAN UNIVERSITY
KATHMANDU, NEPAL

2020

NEPAL LAW
REVIEW

(A Peer Reviewed Journal)

PUBLISHER:

NEPAL LAW CAMPUS
FACULTY OF LAW
TRIBHUVAN UNIVERSITY
KATHMANDU, NEPAL

©NEPAL LAW CAMPUS, 2020

PRICE NRS 750.00

OUTSIDE OF NEPAL US\$ 40

ISSN: 2505-0869

Copies: 1000

Printed by: Tribhuvan University Press, Kritipur, Kathmandu

Authors are solely responsible for their expression of idea, opinion and linguistic styles of the articles. The expression of idea, knowledge and opinion of authors do not reflect the idea and opinion of the Editorial Board, Nepal Law Campus.

NEPAL LAWREVIEW

ADVISORY BOARD

PATRON

Prof. Dr. Bijaya Singh Sijapati, Dean, Faculty of Law, Tribhuvan University

ADVISORS

Professor Dr. Dharma Kanta Banskota, Vice-Chancellor, Tribhuvan University

Professor Dr. Shiva Lal Bhusal, Rector, Tribhuvan University

Professor Dr. Peshal Dahal, Registrar, Tribhuvan University

Professor Dr. Laxmi Prasad Mainali, Senate Member, Tribhuvan University

Professor Dr. Nutan Chandra Subedee, Head, Central Department of Law, Tribhuvan University

Professor Mr. Purna Man Shakya, Nepal Law Campus, Tribhuvan University

Professor Mr. Ramesh Raj Pradhan, Nepal Law Campus, Tribhuvan University

Professor Dr. Shashi Kumari Adhikary Raut, Nepal Law Campus, Tribhuvan University

Professor Dr. Gandhi Pandit, Nepal Law Campus, Tribhuvan University

Associate Prof. Karna Bahadur Thapa, President, Tribhuvan University Teachers' Association (TUTA),
Nepal Law Campus Unit.

EDITORIAL BOARD

Editor In Chief

Associate Prof. Dr. D.N. Parajuli, Campus Chief, Nepal Law Campus, Tribhuvan University

Editors

Professor Dr. Laxmi Prasad Mainali, Nepal Law Campus, Tribhuvan University

Assistant Prof. Laxmi Sharma, Director, B.A.LL.B. Program, Nepal Law Campus, Tribhuvan
University



पत्र संख्या:-
Ref. No.
चलानी नं.:-

त्रिभुवन विश्वविद्यालय Tribhuvan University

कानून संकाय
FACULTY OF LAW

Message from Dean and Patron

डीनको कार्यालय
DEAN'S OFFICE

मिति:

Date: 5th April, 2021

It gives me great pleasure and honour to present the 29 volume of the Nepal Law Review to our esteemed readers. The Nepal Law Review Journal has been instrumental in promoting, understanding and enhancing the knowledge about legal system and judicial practice of Nepal. Moreover, it has also been able to contribute substantial inputs by conducting extensive legal research for the overall legal, judicial and jurisprudential development of Nepal. In addition, it has also contributed to enrich Nepalese Legal and Judicial Systems with a critical analysis and sharing of international practices in various area of law.

Today, *Nepal Law Review (NLR)* Journal has become a forum for law professors, lawyers, judges, researchers, law students and academicians to enable them to express their opinions and undertaken research on various legal and judicial issues of contemporary importance. It has further contributed to foster a culture of academic research and writings among the members of law and judicial fraternity.

I have observed the NLR Journal consists of research based papers by academicians on different legal and judicial issues that might be catalytic for national and international readers including judges, prosecutors, lawyers and academicians. I would, therefore, like to express my gratitude to all who have contributed their valuable writings in this journal.

Finally, I congratulate and appreciate NLR for the commitment displayed by its leadership and a team of editors for bringing out this journal. I wish all the success for NLR Law Journal team in its future endeavors.

(Prof. Dr. Bijay Singh Sijapati)

Dean
FACULTY OF LAW
Faculty of Law

Tribhuvan University
Kathmandu, Nepal.



TRIBHUVAN UNIVERSITY
CENTRAL DEPARTMENT OF LAW
EXHIBITION ROAD, KATHMANDU

Ref No. 69.....

Date: 6th April, 2021

Message from the Head of Central Department

I am very much pleased that, *Nepal Law Review* Year 42, Vol. 29, Number 1 & 2, 2020/2021 is being published under the academic leadership of Prof. Dr. Laxmi Prasad Mainali at the first day of New Year 2078 B.S. Despite the very busy timeframe, Prof. Dr. Mainali has displayed energetic craftsmanship for the research oriented journal publication. Similarly, Chief Editor Dr. D.N. Parajuli, Campus Chief, as well Editor Laxmi Sharma, Director B.A.L.L.B. Program have played an active as well as appreciable role to establish the *Nepal Law Review* as the glorious national level's Peer Reviewed Academic Journal. In fact, article writing in journal is an intuitive exploration that excavates in depth study of concerned specific issue which is the indicator of standardization of exposer academia. My best wishes are with the new Volume of the *Nepal Law Review* in achieving a significant stage for the sources of legal expertism in Nepal.

Prof. Dr. Nutan Chandra Subedee
Head, TU Central Department of Law

HEAD OF THE DEPARTMENT OF LAW



TRIBHUVAN UNIVERSITY

Faculty of Law

NEPAL LAW CAMPUS

Exhibition Road, P.O.Box No. 1247, Kathmandu

Ref No

Date: 7th April 2021



Message from the Editor in Chief and Campus Chief

The *Nepal Law Review (NLR)*, Year 42, Volume 29, Number 1 & 2 has come in readers' hand. Nepal Law Campus, the oldest legal educational institution in Nepal, has been publishing this academic journal regularly since 1998 A.D. encompassing contemporary legal issues with in-depth analytical and comprehensive legal writings, legal research, review on legal texts, and commentary on judicial decisions in strengthening the socio-legal understanding of various aspects of law.

The faculty members, publication committee and management team are always desperate for innovation and reform in the continued work. This has paved the path to start the peer review of contributions made by the authors for the journal. To cater new challenges, widen the scope and minimize duplication in authors' writings, *Nepal Law Review* introduced 'the Peer Review Journal' in 2016 A.D. This volume of *NLR* is the continuity to the other peer reviewed volumes of the journal. I am confident, this form of journal gives more importance to our valued authors and readers at national and international arena. This journal encompasses the scholarly articles on various avenues of law including constitutional law, human rights law, private international law, environmental law, commercial law, forensic law, criminal law, jurisprudence and pertinent socio-political contemporary legal issues which lead this volume to a new edge.

At last, on behalf of the Nepal Law Campus and the Editorial Board, I as an Editor – In – Chief, express sincere gratitude to Prof. Dr. Bijaya Singh Sinjapati, Dean, Faculty of Law, T.U., Prof. Dr. Nutan Chandra Subedee, Head, Central Department of Law, T.U. and to the members of editorial board Prof. Dr. Laxmi Prasad Mainali and Assistant Prof. Laxmi Sharma, valued authors, peer reviewers, faculty members, and concerned staff of the Nepal Law Campus including the Chief Technical Assistant Mr. Kishwor Sapkota and Mr. Mek Rana for their contributions and continuous technical support in preparing the journal. It is to be noted that the interpretation of any legal text, expression of academic opinion/view, analysis and conclusion provided in the writings of each article are solely of authors' belonging and shall not reflect views of the Editorial Board. However, the committee anticipates constructive suggestions, advice and comments from the valued readers.

Dr. D. N. Parajuli
Campus Chief

Campus Chief

Phone: 977-01-4225358, 01-4268578, Fax: 977-01-4232307, Email: info@nlc.edu.np, Web site: www.nlc.edu.np

Contents

- Wetlands and International Conservation Tools: An Overview
 - *Prof. Dr. Bijay Singh Sijapati / -Shringa Rishi Kafle*
- Changing Context of Culpable Homicide in Nepal: An Appraisal
 - *Prof. Dr. Rajit Bhakta Pradhananga / -Dr. Kunshang Lama*
- Reimagining the Nepalese Prosecution System
 - *Shyam Kumar Bhattarai / - Prabhat Chhetri*
- An Analysis of Concept of Damages in Contract
 - *Dr. D.N. Parajuli*
- Good Governance and Role of Administrative Law
 - *Krishna Prasad Bashyal*
- Impact of Federal Form of Government in Nepal on Its Public Exchequer
 - *Dr. Suresh Kumar Dhungana*
- Constitutional History of Rule of Law in Nepal
 - *Dr. Binod Bashyal*
- International Instruments of Fair Trial in Criminal Justice System: An Account of Nepali Experience
 - *Gyaneshwer Parajuli*
- Restitution of Conjugal Rights: Whether a Matrimonial Relief or a Violation of Human Rights?
 - *Bibek Kumar Poudel*
- An Overview of Trademark Law in Nepal and Use of Well-known Mark
 - *Laxmi Narayan Dhungel*
- Supreme Court on Animal Sacrifice and Animal Rights
 - *Bijaya Prasad Mishra*
- Plea Bargaining, Its Application and Role of the Judges: A Comparative Study
 - *Diwakar Bhatta*
- An Analytical Study of Problems and Prospects of Public Procurement in Nepal

- ***Tul Bahadur Shrestha /- Sarala Moktan***
- Holmes and Realist Road: Re-Examined
 - ***Kamal Raj Thapa***
- Right to a Nationality and Statelessness in Nepal
 - ***Laxmi Sharma / -Amrit Kharel***
- Critical Analysis of Implementation Torture Law in Nepal
 - ***Dr. Balram Prasad Raut***
- Human Rights Provisions under the United Nations Charter
 - ***Nabin Kumar Subba***
- Physical Evidences, Chain of Custody and Steps Involved in Nepalese Crime Investigation
 - ***Dr. Ramesh Parajuli***
- Surrogacy: Concepts, Practice and Its Regulations
 - ***Bishnu Bashyal***
- Role of Apt. Legislation in Promoting Foreign Investment and Technology Transfer in Nepal
 - ***Dr. Newal Chaudhary***
- Modern Criminology and Biological Risk Factors for Involvement in Crime and Its Treatment
 - ***Bishnu Prasad Soti***
- Presumption of *Mens Rea* in Strict Liability Offence
 - ***Subash Acharya***
- An Archival Study on Laws and Practices of Letter of Credit in Nepal
 - ***Lokindra Hari Bhattarai***
- An Insight into the American Legal Realism : An Analytical Approach
 - ***Manish Nepal***
- Feminist Analysis of the Citizenship Law of Nepal
 - ***Subin Mulmi***
- Legitimacy Crisis of Democracy in Nepal: A Brief Contextual Analysis
 - ***Samip Ghimire***
- Growing Importance of Sustainable Development : An Observation Based on Jurisprudential Purview
 - ***Dev Bahadur Mahat***

- Evidentiary Value of DNA Profiling Test in Nepal : Case Review with Reference to Cases of Paternity Test
 - *Laxmi Bakhdayo*
- Changing Climate and Depleting Heritages: Adding the Climate Change Dimension to the Protection of World Heritages
 - *Roshani Giri /- Lisha Dangol Maharjan*
- Regional Development of Human Rights in South Asia
 - *Rakshya Khanal*
- Citizenship Rights of Women in Nepal: Issue of Identity and Equality
 - *Roshana Pradhan*
- Legal Response to Impact of Climate Changes on Water Resources in Nepal
 - *Makan Tamang*
- Privity of Contract and Its Specification with Reference to Nepal
 - *Bimal Prasad Lamichhane /- Saroj Bhandari*

Student Column

- Judicial Review of Limitations to Constitutional Amendments: A Nepalese Perspective
 - *Samrit Kharel*
- Hart-Devlin Debate: The Position of Social Morality in Nepalese Criminal Law
 - *Sulav Kharel*

Book Review

- Text Book of Criminal Law: Theory and Practice
 - *Prof. Dr. Laxmi Prasad Mainali*
- Forensic Jurisprudence
 - *Prof. Dr. Laxmi Prasad Mainali*
- Questioning the Causes of Offending and Victimization: Criminology and Victimology
 - *Prof. Dr. Nutan Chandra Subedee*
- List of Articles Published in Nepal Law Review from 1998 to 2019
 - *Compilation by Prof. Dr. Laxmi Prasad Mainali*