

Deconstructing the Criminal Justice System in Nepal: Toward a Victim-Centered Justice Paradigm within the Shadows of a Hybrid Legal System

Bimal Prasad Lamichhane¹, Kabita Dahal^{*2}

^{1,2}Tribhuvan University, Nepal

*Corresponding Author: kabitudahal11@gmail.com

Article History:

Submitted:

14-04-2025

Received:

18-04-2025

Accepted:

28-09-2025

Keywords:

criminal justice system, legal reform, human rights, victim-centered justice

Abstract

Nepal's criminal justice system, despite undergoing legislative reforms, remains entangled in a historical legacy rooted in hierarchical social structures and patriarchal values. This legal system, marked by minimal implementation of justice principles, has yet to realize a truly participatory and victim-centered model of justice. This study aims to evaluate the extent to which legal reforms in Nepal have ensured more equitable and victim-oriented justice, and how legal transformation within the criminal justice system can be actualized. Through a critical examination of Nepal's legal history, constitutional texts, and legislative reform initiatives, this article assesses the dissonance between progressive legal theories and practical implementation. Employing a normative-juridical approach with an emphasis on critical legal analysis and a comparative-historical perspective, the study reveals that, despite legislative efforts to reduce inequality and discrimination, law enforcement practices continue to reflect structural disparities that neglect the needs of victims and reinforce state dominance in criminal proceedings. Accordingly, current reforms remain insufficient to achieve substantive change and necessitate an ideological transformation toward a legal paradigm that is more responsive and sensitive to victims' rights.

1. Introduction

The criminal justice system in Nepal, as reconstructed through legislative developments and law enforcement policies, continues to reflect a normative configuration deeply rooted in a pseudo-feudal colonial legacy, interwoven with ideological residues of traditional Hindu law.¹ The contemporary face of Nepalese criminal law has yet to adequately address the fundamental challenges to justice, particularly those oriented toward victim protection and the restoration of human dignity.² The systemic failure to guarantee the right to a fair trial, freedom from torture, and due and fair legal process underscores a significant legitimacy deficit within the current practices of criminal law.

Criminal law reform in Nepal, formally initiated through the amendment of the Muluki Ain in 1963 and subsequently advanced by the introduction of the Criminal Code Bill, the Criminal Procedural Code Bill, and the Criminal Offences (Assessment and Execution of

¹ Suman Acharya, "Historical Compartment of Nepalese Legal System," *SSRN Electronic Journal*, 2021, <https://doi.org/10.2139/ssrn.3835576>; Lukas Heckendorn Urscheler, "Innovation in a Hybrid System: The Example of Nepal," *European Journal of Comparative Law and Governance* 15, no. 3 (2013): 1-16, <https://doi.org/10.1163/22134514-45060009>.

² Bijaya Khadka, "Rights of Crime Victim under the Prevailing Laws of Nepal," *Shanti Journal* 4, no. 1 (October 10, 2024): 109-28, <https://doi.org/10.3126/shantij.v4i1.70560>.

Punishment) Bill in 2011³, appears to reflect the state's intention to align itself with international legal principles. However, beneath the seemingly progressive legal construction lies an enduring epistemic structure that upholds a coercive, state-centric, and socially disciplinary character of the law. A retributive paradigm continues to dominate the architecture of Nepalese criminal law⁴, wherein justice is measured by the punishment of offenders rather than by the restoration of social relations or the empowerment of victims within the judicial process. The absence of a legal framework that explicitly prioritizes the needs of victims particularly in relation to witness protection, access to legal aid, and the guarantee of meaningful participation at every stage of the criminal process suggests that such reforms are largely cosmetic and procedural. The system continues to treat victims as passive entities, valued primarily for their role in the evidentiary stage of proceedings.

The central premise underpinning this analysis is that a legal system constructed upon the foundations of patriarchy, caste-based social stratification, and the hegemonic dominance of state apparatuses throughout all stages of the criminal justice process structurally negates the possibility of realizing participatory justice—one that acknowledges the voices and lived experiences of victims. Within such a configuration, law functions not as a restorative mechanism, but rather as an instrument of social control⁵, positioning both victims and offenders as mere administrative subjects. The evidentiary process is designed within a framework of procedural formalism that leaves little room for personal narratives or the restoration of dignity. The notion of justice is thereby reduced to the imposition of punishment, rather than the reconstruction of social relations fractured by criminal acts.⁶ When the system prioritizes legalistic resolution over substantive engagement, the essence of justice as a process of healing, recognition, and empowerment is systematically marginalized, leaving victims in a persistently peripheral position.

This paper therefore seeks to critically interrogate the extent to which criminal law reform in Nepal has—or has not—been able to establish a participatory, transformative, and victim-centered criminal justice system. Accordingly, this article is not merely evaluative of the existing legal substance but also aims to deconstruct the ideological assumptions that have long sustained structural injustices within Nepal's criminal justice system. This paper offers a novel contribution to the ongoing discourse on legal reform in Nepal by positioning itself at the intersection of structural critique and victim-oriented justice. While previous studies have acknowledged Nepal's hybrid legal system merging Hindu traditions, common law principles, and customary practices⁷ and have documented the growing legal recognition of victims' rights to information, participation, and compensation⁸, there remains a paucity of

³ Rajendra Bahadur Singh, "The 'Criminalized' Human Conducts in (Nepal) Country Penal (Code), Act 2017: A Critical Research Analysis," *SSRN Electronic Journal*, 2019, <https://doi.org/10.2139/ssrn.3481013>.

⁴ Khadka, "Rights of Crime Victim under the Prevailing Laws of Nepal."

⁵ Thommy Aruan, "Restorative Justice in Criminal Law Enforcement from a Legal Perspective as a Social Engineering Tool," *Journal of Community Development in Asia* 7, no. 1 (January 20, 2024): 67–69, <https://doi.org/10.32535/jcda.v7i1.2698>.

⁶ Zenon Szablowinski, "Punitive Justice and Restorative Justice Ss Social Reconciliation," *The Heythrop Journal* 49, no. 3 (May 15, 2008): 405–22, <https://doi.org/10.1111/j.1468-2265.2007.00373.x>.

⁷ Urscheler, "Innovation in a Hybrid System: The Example of Nepal."

⁸ Khadka, "Rights of Crime Victim under the Prevailing Laws of Nepal."

critical scholarship that interrogates how entrenched epistemic hierarchies obstruct the realization of these rights in practice. Furthermore, although governance in Nepal has transitioned from the moral codes of *Dharmasastra* to more democratic ideals of transparency, accountability, and inclusion in the federal era⁹, the lived experiences of victims particularly among marginalized communities continue to be shaped by structural exclusions and symbolic violence. As shown in the context of transitional justice, victims of the Maoist insurgency have often prioritized truth and socio-economic recognition over punitive justice¹⁰, revealing a stark disconnect between dominant legal frameworks and the restorative needs of those most affected. In light of this, the present study advances the state of the art by centering victims' narratives as epistemic interventions in the legal reform discourse, offering a deeper understanding of how law functions not only as a formal institution but as a cultural and political practice. It argues that genuine transformation requires a paradigmatic shift—from a coercive, punitive, and state-centric orientation to a participatory model of justice that places dignity, inclusion, and healing at its core.

2. Methods

This study employs a juridical approach, with a particular emphasis on critical legal analysis, grounded in a deconstructive reading of positive legal norms and institutional practices within the framework of Nepal's criminal justice system. It also adopts a comparative-historical perspective on the evolution of criminal law in Nepal, alongside a normative-critical analysis of various international instruments, particularly those concerning human rights, criminal justice, and victim protection.

3. Results and Discussion

3.1. Historical Genealogy and Dominant Narratives in the Construction of Nepal's Criminal Justice System

The genealogy of Nepal's criminal justice system is inextricably linked to the historical framework of the Muluki Ain of 1854¹¹, a legal codification that has been hegemonically positioned as the foundational marker of modern law in Nepal. However, in essence, it was a product of power consolidation marked by stratification and systemic discrimination. Designed by the monarchical elite within a feudal legal order, the Muluki Ain institutionalized social hierarchies based on caste, class, and gender as the organizational principles of the legal system.¹² Rather than dismantling inequality, this codification entrenched the legalization of structural exclusion and social domination, transforming law into a legitimizing instrument for entrenched social hierarchies.

⁹ Lokindra Hari Bhattarai, "Critical Appraisal of Governance and Justice: Then and Now in Nepal," *Molung Educational Frontier* 8 (December 3, 2018): 77–90, <https://doi.org/10.3126/mef.v8i0.22442>.

¹⁰ S. Robins, "Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal," *International Journal of Transitional Justice* 5, no. 1 (March 1, 2011): 75–98, <https://doi.org/10.1093/ijtj/ijq027>.

¹¹ Achyutananda Bhattarai, "Translating Muluki Ain of 1854 for Intercultural Communication in Law," *JODEM: Journal of Language and Literature* 15, no. 1 (August 22, 2024): 1–13, <https://doi.org/10.3126/jodem.v15i1.68908>.

¹² Prabhas Pokharel, "The Caste Hierarchy and the State in Nepal," *Dhaulagiri Journal of Sociology and Anthropology* 14 (December 30, 2020): 139–42, <https://doi.org/10.3126/dsaj.v14i0.31030>; Donald A. Messerschmidt, "The Caste Hierarchy and the State in Nepal: A Study of the Muluki Ain in 1854," *The Journal of Asian Studies* 40, no. 4 (August 23, 1981): 824–25, <https://doi.org/10.2307/2055725>.

Although the Muluki Ain is often portrayed in official narratives as “progressive” for abolishing certain extreme forms of punishment such as mutilation and the death penalty, such assessments fail to recognize that this purported progressivism never penetrated the ideological foundations of the legal system itself. The elimination of corporal punishment was not accompanied by a genuine commitment to the principle of equality before the law; on the contrary, it reinforced legal privileges for dominant castes for instance, exempting *Brahmins* from the death penalty and institutionalized differentiated punishments based on gender. Women were systematically subjected to half the sentence imposed on men, not as a protective measure, but as a legal expression of their subordinated status.¹³ As such, law functioned not as an emancipatory arena, but as an instrument for articulating patriarchal ideology and social conservatism.¹⁴

The residual influence of Hindu law, grounded in the norms of *Manusmriti* and the *Dharmashastra* tradition¹⁵, serves as the latent spirit underlying the construction of Nepal’s criminal legal framework. This influence is manifested in normative tendencies that prioritize the restoration of social hierarchy over the pursuit of justice. Meanwhile, the reception of continental European legal traditions particularly the French system and the Napoleonic Code has remained largely superficial. Although formally adopted, these foreign legal models have been utilized merely as technocratic frameworks, without internalizing the egalitarian values and legal rationalism that underpin modern European codification. Consequently, the transplantation of foreign legal systems into Nepal’s legal order has failed to catalyze a radical commitment to social justice. Instead, it has resulted in a legalistic amalgamation that frames legal modernity in the guise of empty formalism.

The criminal justice system of Nepal in the post-amendment era of the Muluki Ain (1963) continues to preserve the cognitive structure shaped by colonial legal traditions and entrenched internal social hierarchies.¹⁶ This legacy is manifested in the dominance of legal positivism, which treats legal norms as self-contained entities, detached from the surrounding social realities. Proceduralism has been adopted as the central framework for handling criminal cases, effectively nullifying the space for substantive participation by directly affected parties particularly victims and marginalized groups. The state maintains a monopoly over the authority to define victimhood, regulate the validation of suffering, and control the trajectory of legal proceedings. As a result, the judicial mechanism has drifted away from empathetic and transformative orientations. Structural power relations that underlie criminal acts receive little to no attention, while the restoration of human dignity for those harmed

¹³ Gail Armstrong, “Females under the Law – ‘Protected’ but Unequal,” *Crime & Delinquency* 23, no. 2 (April 4, 1977): 109–20, <https://doi.org/10.1177/001112877702300202>.

¹⁴ Mary Hawkesworth, “Political Life and the Law,” in *The Routledge Global History of Feminism* (London: Routledge, 2022), 303–19, <https://doi.org/10.4324/9781003050049-25>.

¹⁵ Richard W. Lariviere, “Justices and Paṇḍitas: Some Ironies in Contemporary Readings of the Hindu Legal Past,” *The Journal of Asian Studies* 48, no. 4 (November 23, 1989): 757–69, <https://doi.org/10.2307/2058113>; John Nemeč, “Hindu Law and Society,” *Journal of the American Oriental Society* 140, no. 1 (September 19, 2021): 205–17, <https://doi.org/10.7817/jameroriesoci.140.1.0205>; Donald R. Davis, “Hinduism as a Legal Tradition,” *Journal of the American Academy of Religion* 75, no. 2 (June 1, 2007): 241–67, <https://doi.org/10.1093/jaarel/lfm004>.

¹⁶ Messerschmidt, “The Caste Hierarchy and the State in Nepal: A Study of the Muluki Ain in 1854.”

remains absent from mainstream legal discourse. Consequently, justice is confined to the narrow realm of punitive response, rather than encompassing restorative or civically grounded social reconciliation.

Thus, the criminal justice system of Nepal has never been truly reconstructed on a paradigmatic level. The legal reforms undertaken remain confined within a state-centric logic and have failed to transform the law into an arena for the struggle for substantive, victim-centered justice. The structural character of Nepal's criminal law remains ensnared in the old logic of control, order, and normalization, rather than embracing the transformative ideals of liberation, restoration, and rehabilitation in their true sense.¹⁷ Therefore, it is imperative to reposition the dominant legal narrative and advocate for the reconstruction of the criminal justice system based on a new epistemology: one that is rooted in justice derived from the victim, not the state; from lived experience, not merely legal norms.

3.2. The Paradox of Constitutionalism and the Implementation of Human Rights in the Practice of the Criminal Justice System

Nepal's constitutionalism, as outlined in the Interim Constitution of 2007 and the subsequent Draft Constitution, textually reaffirms a commitment to fundamental principles of due process of law, including guarantees of impartial justice and prohibitions against any treatment that undermines human dignity¹⁸. However, the reality of the criminal justice system starkly reveals a sharp disparity between constitutional norms and their actual implementation. The guarantee of the right to justice is not reflected in institutional practices, which remain dominated by a repressive culture and impunity among law enforcement authorities. Acts of torture during investigations, detention without access to legal counsel, and criminalization based on structural discrimination demonstrate that constitutional texts serve merely as normative legitimization, without any real executive power. Human rights are reduced to a legalistic symbol that fails to intervene in power relations within legal processes, thus failing to effectively limit the power of the state.

The provision of Article 25 in the Interim Constitution, which normatively prohibits detention beyond 24 hours without being brought before a court, has, in practice, undergone systemic deviation through coercive actions implicitly legitimized by law enforcement authorities. Detention exceeding the constitutional time limit has become a routine mechanism in the early stages of the judicial process, obscuring the presumption of innocence and reducing the right to liberty to a mere procedural illusion. Arrests without valid legal grounds, obstruction of legal counsel from the outset of questioning, and intimidating practices such as torture to extract confessions, all contribute to the construction of the criminal justice system as a tool of repressive social control, rather than as a safeguard of citizens' rights. This situation creates a relational imbalance between the state and individuals facing the law, where institutional accountability is nearly absent, and human rights violations are treated as mere technical deviations rather than as a structural crisis in the administration of criminal justice.

¹⁷ Bhattarai, "Critical Appraisal of Governance and Justice: Then and Now in Nepal."

¹⁸ Govinda Prasad Guragain et al., "Human Rights in Nepal's Democracy: Achieving Best Practices," *European Journal of Theoretical and Applied Sciences* 2, no. 4 (July 1, 2024): 237-47, [https://doi.org/10.59324/ejtas.2024.2\(4\).20](https://doi.org/10.59324/ejtas.2024.2(4).20).

The gap between *lex lata* and *lex ferenda* in the criminal law landscape of Nepal reflects a complex structural issue. Although the state has formally ratified various international human rights conventions, such as the International Covenant on Civil and Political Rights (1966) and the United Nations Convention Against Torture (1984), their implementation fails to demonstrate convergence between its commitments and institutional realities. The concept of protection of bodily integrity and the guarantee of a fair legal process are not operationalized as systemic principles but are merely decorative discourses that embellish the state's image. In practice, these conventions lack binding operational force internally and are instead instrumentalized as evidence of symbolic participation in the global legal community. As a result, the law loses its normative capacity as a guide for institutional behavior¹⁹, transforming into a cosmetic instrument that conceals structural repression and the absence of justice in the criminal law enforcement process²⁰.

This condition reflects what many critical legal scholars refer to as legal fetishism, which is the belief that the mere textual existence of law is sufficient to guarantee justice, without accounting for the structural inequalities in its implementation. In this paradigm, law is sacralized as an autonomous normative entity, detached from the power relations that govern its use.²¹ Law enforcement officers do not perceive the law as a mechanism for accountability but rather as an instrument to validate their actions, regardless of how repressive and human rights-violating those actions may be.²² Consequently, systemic violations such as torture, intimidation of witnesses, criminalization of marginalized groups, and the extraction of confessions outside of legal procedures are practiced within a legal-formalistic framework that appears administratively legitimate.

The paradox of Nepal's criminal justice system becomes more pronounced when the absence of a credible independent oversight mechanism is coupled with the dominance of the state's narrative in defining the concepts of 'crime' and 'perpetrator.' Law enforcement authorities are granted near-absolute discretion in determining legal actions, without any institutional controls capable of ensuring effective accountability.²³ In this context, constitutional rights not only undergo a superficial formalization but are also employed solely as a means of legitimization, concealing systemic dysfunctions and perpetuated structural violence. The state performatively affirms the principle of the rule of law²⁴, while simultaneously creating a space of impunity that shields officials from legal accountability. The relationship between law and power no longer operates within a framework of mutual oversight but instead merges into a singular entity, producing legality without justice, and

¹⁹ Barry Friedman, "Taking Law Seriously," *Perspectives on Politics* 4, no. 02 (June 18, 2006), <https://doi.org/10.1017/S1537592706060178>.

²⁰ Terry Skolnik, "Criminal Justice Reform: A Transformative Agenda," *Alberta Law Review* 59, no. 3 (March 22, 2022): 631–68, <https://doi.org/10.29173/alr2689>.

²¹ Christopher Tomlins, "How Autonomous Is Law?," *Annual Review of Law and Social Science* 3, no. 1 (December 1, 2007): 45–68, <https://doi.org/10.1146/annurev.lawsocsci.3.081806.112741>.

²² Rachel Wahl, "Justice, Context, and Violence: Law Enforcement Officers on Why They Torture," *Law & Society Review* 48, no. 4 (December 1, 2014): 807–36, <https://doi.org/10.1111/lasr.12108>.

²³ Wahl.

²⁴ Saroj Kumar Giri, "The Rule of Law Under the Constitution of Nepal," *Gyanjyoti* 3, no. 1 (March 7, 2023): 74–84, <https://doi.org/10.3126/gyanjyoti.v3i1.53038>.

procedures that fail to provide genuine protection for citizens, especially vulnerable groups who are most affected by the abuse of authority in criminal justice processes.

Thus, Nepal's criminal justice system reflects a fundamental contradiction between the promised constitutionality and the repressive practices that are carried out. To understand the law in this context, a positivist approach proves inadequate. A critical reading is required, one that views law not merely as text, but as part of the architecture of power, which must always be questioned, deconstructed, and advocated for, to truly function as a tool of justice rather than a mere symbol of empty legality.

3.3. Structural Injustice and the Abstraction of Victims in the Criminal Justice Regime

The structure of Nepal's criminal justice system systematically reproduces state dominance, resulting in the marginalization of the victim's role throughout the legal process. Based on a formalistic and state-centered construction of criminal law, victims lose their autonomy as parties with a direct interest in justice.²⁵ Their identity is obscured by procedural mechanisms, and their voices are diminished by legal frameworks that prioritize formal certainty over moral restoration. The state acts as the sole legitimate actor in determining prosecution and punishment, disregarding the complexities of social relations and the traumatic experiences of victims. There is no participatory instrument available that allows victims to fully express their needs, hopes, or interpretations of justice. As a result, the system claims neutrality, but in reality, it excludes the human dimension in addressing criminal acts, affirming that justice belongs solely to the state, not to those most affected by crime.

When criminal law is constructed within a framework of state dominance rather than in the relational context between the offender and the victim the result is the absence of a genuinely victim-centered approach. Victims are represented not based on their empirical experience as individuals directly harmed, but as a juridical abstraction in the indictment text. In this logic, fundamental questions such as who qualifies as a victim and how the vulnerability of their experience is accommodated within the system are never afforded an articulative space. On the contrary, victims from vulnerable groups such as women, children, lower-caste individuals, or indigenous communities consistently experience double criminalization: first, as the subjects suffering from criminal acts, and second, as parties perceived to tarnish the sanctity of state procedures when they attempt to critically demand their rights. This situation becomes even more complex for victims from marginalized groups, such as women, children, Dalits, or indigenous communities, who not only face systemic marginalization but also risk additional rejection when they seek access to justice. The state not only fails to provide protection but actively creates an intimidatory atmosphere that reduces the victims' struggle to mere defiance against the legitimacy of formal legal processes.

The disparity in access to justice exacerbates the structural exclusion experienced by victims. The absence of adequate legal aid mechanisms, particularly in rural and remote areas, renders the legal system not only inaccessible but also inimical. Victims are often unaware of the legal procedures they must follow, lack legal support, and frequently face social

²⁵ Albin Dearing and Holly Huxtable, "Doing Justice for Victims of Violent Crime in the European Union - Reflections on Findings from a Research Project Conducted by the European Union Agency for Fundamental Rights," *International Journal of Comparative and Applied Criminal Justice* 45, no. 1 (January 2, 2021): 39–66, <https://doi.org/10.1080/01924036.2020.1762233>.

stigmatization that is culturally and even institutionally legitimized. In cases of sexual violence²⁶, for example, victims are consistently positioned within a discourse that questions their morality rather than addressing the violation of their bodily integrity and legal dignity. Meanwhile, witness and victim protection mechanisms are either non-operational or nonexistent, further increasing the vulnerability of victims to threats, intimidation, and social exclusion.

Criticism of Nepal's criminal justice system must begin with its epistemological foundation, which is rooted in the positivist legal framework and state centralism. This paradigm positions the state as the sole legitimate entity responsible for managing, interpreting, and resolving criminal conflicts, without opening deliberative space for the participation of victims as dignified subjects. As a result, the suffering of victims is not recognized as a substantive experience deserving acknowledgment but is instead reduced to an element of proof in a formalistic process. The absence of mechanisms that prioritize the restoration of dignity, the acknowledgment of social wounds, and the fulfillment of victims' rights to reparations reflects the system's failure to transition from a retributive justice model to a more empathetic and transformative paradigm. Rather than acting as a facilitator of social recovery, the state becomes a hegemonic entity that defines justice without listening to those most affected. The law loses its ethical capacity as a tool for restoring broken social relationships.

The consequence is the formation of a criminal justice regime that not only fails to protect victims but also reproduces injustice through forms of exclusion that are normatively legitimized. When criminal law is unable to articulate the victim's experience as the core of justice, what occurs is the formalization of state power, rather than the distribution of justice. Therefore, what is urgent is not merely a technocratic shift in criminal law policy, but a paradigmatic reformulation of the very concept of the victim: from a passive object within the state's retributive logic to an active subject within the architecture of restorative and participatory justice.

3.4. The Illusion of Reform: Critique of Legislative Engineering and the Rehabilitation Agenda

The reforms reflected in the formulation of the Criminal Code Bill, the Criminal Procedural Code Bill, and the Criminal Offences (Assessment and Execution of Punishment) Bill of 2011 are often seen as significant steps toward a more humane and rehabilitative criminal justice system in Nepal. However, critical analysis reveals that these reforms function more as a symbolic project aimed at appeasing both international and domestic pressures, without creating structural change. While on the surface, these reforms appear as attempts to improve the legal system, they remain entrenched within a retributive and procedural paradigm that is exclusionary and repressive. Through this legislation, the state continues to centralize power in the hands of enforcement agencies, while victims remain positioned as objects in the legal process, rather than as subjects entitled to restoration. The normative

²⁶ United Nations Nepal, "Literature Review on Harmful Practices in Nepal," [nepal.unfpa.org](https://nepal.unfpa.org/sites/default/files/pub-pdf/Literature%20Review%20on%20Harmful%20Practices%20in%20Nepal.pdf), January 2020, <https://nepal.unfpa.org/sites/default/files/pub-pdf/Literature%20Review%20on%20Harmful%20Practices%20in%20Nepal.pdf>.

changes reflected in the legislation have not been fully implemented in practice, and the reforms are still far from achieving justice for all parties involved.

The new norms introduced by the three Bills indeed adopt reformist rhetoric: replacing prison sentences with community service, establishing a system of parole and probation supervision, witness protection, and rehabilitating offenders through social institutions. However, these norms become rhetoric without realization when confronted with a legal infrastructure still reliant on retributive, technocratic, and state-centered approaches. The absence of implementational mechanisms, adequate human resources, and institutional resistance within law enforcement agencies render these regulations no more than normative exhibitionism essentially²⁷, a superficial display of political will without any real transformative capacity.

Furthermore, there is an acute conceptual contradiction within the legislative documents: on one hand, they adopt the discourse of restorative and rehabilitative justice, yet on the other hand, they maintain a criminal sanction structure characterized by retributivism. The penal provisions in the Criminal Code Bill remain heavily laden with prison sentences, even for minor offenses that could ideally be resolved through non-penal alternatives. This demonstrates that the state has not genuinely detached itself from penal populism, where punishment is used as a tool to uphold the state's authority rather than as a humane corrective measure. Thus, what is referred to as the "reformatory turn" in Nepal's criminal justice system remains nothing more than a normative illusion that has yet to challenge the foundational paradigms of the criminal justice system.

Legal reform, within this framework, is not merely a change in the text of laws, but should rather be a process of deconstructing the dominant values that have historically justified the exclusion of victims, the criminalization of marginalized groups, and the legitimization of institutional violence by the state. When reform only operates within the symbolic realm without addressing the ideological roots of the law itself, what results is not substantive justice²⁸, but rather the reproduction of inequality in a new, more "civilized" guise.

Considering these dynamics, it can be concluded that the reform of the criminal justice system in Nepal currently operates within the logic of "social control" rather than "social transformation." Regulations are crafted not to create a substantive redistribution of justice, but to strengthen the state's claim as the sole actor entitled to define crime, perpetrators, and victims. Without an epistemological repositioning of the relationship between law and power, and without a shift from legalism to legal consciousness, the rehabilitation agenda will always remain trapped in empty rhetoric that fails to address the structural realities of injustice experienced by Nepalese society.

3.5. International Law as a Counter-Hegemonic Instrument: Potentials and Limitations

In the midst of the transition towards a democratic rule of law state in the post-conflict period, Nepal has formally positioned itself as a normative actor in the international legal

²⁷ Jusil Lee, "Why Have Policies Often Remained Symbolic? Understanding the Reasons for Decoupling between Policy and Practice," *Review of Policy Research* 34, no. 5 (September 30, 2017): 617-35, <https://doi.org/10.1111/ropr.12241>.

²⁸ Robert Lorinskas, David Kalinich, and Dennis Banas, "Symbolism and Rhetoric: The Guardians of Status Quo in the Criminal Justice System," *Criminal Justice Review* 10, no. 1 (May 1, 1985): 41-46, <https://doi.org/10.1177/073401688501000106>.

system through the ratification of various international legal instruments that embody fundamental principles of human rights and procedural justice, such as the United Nations Convention Against Torture (UNCAT) and the International Covenant on Civil and Political Rights (ICCPR). These steps, in normative terms, signify the country's commitment to universal standards and seemingly demonstrate a constitutional commitment to the principles of rule of law, due process, and individual dignity. However, this formal commitment does not automatically ensure the substantial transposition of these principles into a national criminal justice system that is responsive and empathetic to the needs of victims, nor does it guarantee the comprehensive fulfillment of both procedural and substantive justice.

Article 9 of the Nepal Treaty Act of 1991 has established a relatively progressive legal framework by asserting that provisions in international treaties that have been ratified and approved by Parliament hold equal authority to national law. In theory, this provision enables harmonization between international law and domestic law, and even positions international instruments as a corrective tool against the rigidity and limitations of national legal norms. This means that international law should ideally be seen as a counter-hegemonic legal tool a normative mechanism capable of challenging the positivist, state-centric, and hierarchical dominance within Nepal's criminal justice system. However, this potential is structurally undermined by the significant gap between ratification and realization. In practice, international law is only applied in a declaratory manner and is rarely translated operationally into norms, procedures, or domestic institutional frameworks. International principles, such as the absolute prohibition of torture (a non-derogable norm under UNCAT), the right to counsel, and freedom from arbitrary detention (under ICCPR), have not been internalized in the actions of law enforcement or the design of the criminal justice system. As a result, juridical schizophrenia occurs as a condition in which national law formally acknowledges international norms but systematically and consistently disregards them in practice.

Even more problematic is the discursive failure to understand international law not only as a source of law but as an epistemological paradigm that requires a reconceptualization of the position of legal subjects, power relations, and the goals of punishment. Instead of serving as an emancipatory instrument for groups marginalized by domestic law, international law is reduced to a symbol of procedural compliance, mobilized for the state's legitimacy before the international community. At this point, international law loses its transformative power and becomes trapped in the logic of compliance without commitment.

Thus, the presence of international law within Nepal's criminal justice architecture must be critically examined as part of the dialectic between hegemonic and counter-hegemonic forces. On one hand, it holds potential as a channel for deconstructing the oppressive and patriarchal national legal order. On the other hand, without political commitment, institutional reform, and a progressive reconstruction of legal consciousness, international law will remain in a state of ornamental normativity merely a symbolic ornament that fails to address the reality of structural injustices and the systemic disregard for victims' rights within Nepal's criminal justice system.

4. Conclusions

The criminal justice system in Nepal, as constructed through the historical trajectory of the Muluki Ain and subsequent legislation, represents a legal configuration deeply embedded

with the legacy of hierarchical, patriarchal, and state-centric social structures. Legal reforms that are claimed to be progressive such as the abolition of the death penalty and the introduction of the principle of legal equality fail to penetrate the power substructures that define who is worthy of protection, who is sacrificed, and who is defined as a legal subject. The constitutionalization of human rights in the 2007 Interim Constitution and the ratification of international instruments were expected to open space for the reconfiguration of a victim-centered legal system. However, in practice, systemic violations of fair trial principles, arbitrary detention, and the use of institutional violence against suspects demonstrate the failure of norm enforcement and the absence of justice. The state, instead of serving as a facilitator of justice, assumes the role of a dominant actor in disciplining its citizens without sensitivity to victims' trauma. The 2011 legal reforms became merely a cosmetic project, as they were not accompanied by an epistemic shift in viewing law as an instrument of emancipation. Therefore, the revitalization of Nepal's criminal justice system requires more than just procedural reform. It necessitates an ideological deconstruction of hegemonic law and the mainstreaming of a legal paradigm that prioritizes victims, is grounded in human rights, and is aware of historical social inequalities. Without this, the law will remain an apparatus of power, not a medium for justice.

5. Acknowledgments

We would like to express my sincere gratitude to all those who supported and assisted in the writing of this article, particularly my colleagues, researchers, and legal practitioners who provided invaluable insights. Special thanks are also extended to the institutions that offered resources and facilities, as well as my family for their unwavering support.

6. Reference

- Acharya, Suman. "Historical Compartment of Nepalese Legal System." *SSRN Electronic Journal*, 2021. <https://doi.org/10.2139/ssrn.3835576>.
- Armstrong, Gail. "Females under the Law – 'Protected' but Unequal." *Crime & Delinquency* 23, no. 2 (April 4, 1977): 109–20. <https://doi.org/10.1177/001112877702300202>.
- Aruan, Thommy. "Restorative Justice in Criminal Law Enforcement from a Legal Perspective as a Social Engineering Tool." *Journal of Community Development in Asia* 7, no. 1 (January 20, 2024): 67–69. <https://doi.org/10.32535/jcda.v7i1.2698>.
- Bhattarai, Achyutananda. "Translating Muluki Ain of 1854 for Intercultural Communication in Law." *JODEM: Journal of Language and Literature* 15, no. 1 (August 22, 2024): 1–13. <https://doi.org/10.3126/jodem.v15i1.68908>.
- Bhattarai, Lokindra Hari. "Critical Appraisal of Governance and Justice: Then and Now in Nepal." *Molung Educational Frontier* 8 (December 3, 2018): 77–90. <https://doi.org/10.3126/mef.v8i0.22442>.
- Davis, Donald R. "Hinduism as a Legal Tradition." *Journal of the American Academy of Religion* 75, no. 2 (June 1, 2007): 241–67. <https://doi.org/10.1093/jaarel/lfm004>.
- Dearing, Albin, and Holly Huxtable. "Doing Justice for Victims of Violent Crime in the European Union - Reflections on Findings from a Research Project Conducted by the European Union Agency for Fundamental Rights." *International Journal of Comparative and Applied Criminal Justice* 45, no. 1 (January 2, 2021): 39–66. <https://doi.org/10.1080/01924036.2020.1762233>.
- Friedman, Barry. "Taking Law Seriously." *Perspectives on Politics* 4, no. 02 (June 18, 2006). <https://doi.org/10.1017/S1537592706060178>.

- Giri, Saroj Kumar. "The Rule of Law Under the Constitution of Nepal." *Gyanjyoti* 3, no. 1 (March 7, 2023): 74–84. <https://doi.org/10.3126/gyanjyoti.v3i1.53038>.
- Guragain, Govinda Prasad, Dol Raj Kafle, Sabita Kumari Mallik, and Bhawani Shankar Adhikari. "Human Rights in Nepal's Democracy: Achieving Best Practices." *European Journal of Theoretical and Applied Sciences* 2, no. 4 (July 1, 2024): 237–47. [https://doi.org/10.59324/ejtas.2024.2\(4\).20](https://doi.org/10.59324/ejtas.2024.2(4).20).
- Hawkesworth, Mary. "Political Life and the Law." In *The Routledge Global History of Feminism*, 303–19. London: Routledge, 2022. <https://doi.org/10.4324/9781003050049-25>.
- Khadka, Bijaya. "Rights of Crime Victim under the Prevailing Laws of Nepal." *Shanti Journal* 4, no. 1 (October 10, 2024): 109–28. <https://doi.org/10.3126/shantij.v4i1.70560>.
- Lariviere, Richard W. "Justices and Paṇḍitas: Some Ironies in Contemporary Readings of the Hindu Legal Past." *The Journal of Asian Studies* 48, no. 4 (November 23, 1989): 757–69. <https://doi.org/10.2307/2058113>.
- Lee, Jusil. "Why Have Policies Often Remained Symbolic? Understanding the Reasons for Decoupling between Policy and Practice." *Review of Policy Research* 34, no. 5 (September 30, 2017): 617–35. <https://doi.org/10.1111/ropr.12241>.
- Lorinskas, Robert, David Kalinich, and Dennis Banas. "Symbolism and Rhetoric: The Guardians of Status Quo in the Criminal Justice System." *Criminal Justice Review* 10, no. 1 (May 1, 1985): 41–46. <https://doi.org/10.1177/073401688501000106>.
- Messerschmidt, Donald A. "The Caste Hierarchy and the State in Nepal: A Study of the Muluki Ain in 1854." *The Journal of Asian Studies* 40, no. 4 (August 23, 1981): 824–25. <https://doi.org/10.2307/2055725>.
- Nemec, John. "Hindu Law and Society." *Journal of the American Oriental Society* 140, no. 1 (September 19, 2021): 205–17. <https://doi.org/10.7817/jameroriesoci.140.1.0205>.
- Pokharel, Prabhas. "The Caste Hierarchy and the State in Nepal." *Dhaulagiri Journal of Sociology and Anthropology* 14 (December 30, 2020): 139–42. <https://doi.org/10.3126/dsaj.v14i0.31030>.
- Robins, S. "Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal." *International Journal of Transitional Justice* 5, no. 1 (March 1, 2011): 75–98. <https://doi.org/10.1093/ijtj/ijq027>.
- Singh, Rajendra Bahadur. "The 'Criminalized' Human Conducts in (Nepal) Country Penal (Code), Act 2017: A Critical Research Analysis." *SSRN Electronic Journal*, 2019. <https://doi.org/10.2139/ssrn.3481013>.
- Skolnik, Terry. "Criminal Justice Reform: A Transformative Agenda." *Alberta Law Review* 59, no. 3 (March 22, 2022): 631–68. <https://doi.org/10.29173/alr2689>.
- Szablowinski, Zenon. "Punitive Justice and Restorative Justice Ss Social Reconciliation." *The Heythrop Journal* 49, no. 3 (May 15, 2008): 405–22. <https://doi.org/10.1111/j.1468-2265.2007.00373.x>.
- Tomlins, Christopher. "How Autonomous Is Law?" *Annual Review of Law and Social Science* 3, no. 1 (December 1, 2007): 45–68. <https://doi.org/10.1146/annurev.lawsocsci.3.081806.112741>.
- United Nations Nepal. "Literature Review on Harmful Practices in Nepal." [nepal.unfpa.org](https://nepal.unfpa.org/sites/default/files/pub-pdf/Literature%20Review%20on%20Harmful%20Practices%20in%20Nepal.pdf), January 2020. <https://nepal.unfpa.org/sites/default/files/pub-pdf/Literature%20Review%20on%20Harmful%20Practices%20in%20Nepal.pdf>.
- Urscheler, Lukas Heckendorn. "Innovation in a Hybrid System: The Example of Nepal." *European Journal of Comparative Law and Governance* 15, no. 3 (2013): 1–16. <https://doi.org/10.1163/22134514-45060009>.
- Wahl, Rachel. "Justice, Context, and Violence: Law Enforcement Officers on Why They Torture." *Law & Society Review* 48, no. 4 (December 1, 2014): 807–36. <https://doi.org/10.1111/lasr.12108>.