

Compendium of Landmark Judgments of the Supreme Court of Nepal on Gender Justice and Equality

2020



National Judicial Academy, Nepal
Manamaiju, Kathmandu, Nepal

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Content Editor : Hon. Sapana Pradhan Malla, Justice, Supreme Court
Language Editor : Dr. Diwakar Bhatta
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Translators:

Mr. Sundeep Bista
Ms. Shreya Sanjel
Hon. Kailash Prasad Subedi
Ms. Sharmila Shrestha
Mr. Ashwin Kumar KC
Ms. Grishma Bista

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Sapana Pradhan Malla
Justice

Supreme Court of Nepal

Foreword

The Constitution of Nepal has, for the enforcement of fundamental rights or any other legal right for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective and the settlement of any constitutional or legal question, involved in any dispute of public interests or concern, provided the Supreme Court with the extra-ordinary power to issue necessary and appropriate order to enforce rights or settle such dispute and to declare any law or any part thereof to be void either *ab initio* or from the date of its decision if any citizen submits petition in the Supreme Court requesting to have such law or any part thereof declared void on the ground of being inconsistent with the Constitution.

In the scenario where the Constitution itself has institutionalized Public Interest Litigation (PIL), it can be observed that a number of cases of gender discrimination have been petitioned in Supreme Court under the extra-ordinary jurisdiction and various orders and decisions have been issued or made in such cases. Many landmark judicial precedents also have been handed down implicating the amendment to existing law, rules and regulations to create a equal, just and fair society.

In its judicial interpretations, the Supreme Court of Nepal have issued various orders by looking into some pertinent issues such as, promotion of justice against injustice, making the legal rights enjoyable ensuring equality against inequality, filling the loopholes in law, seeking the institutional and procedural mechanism on gender justice to protect the self-respect of women, raising a concern on the allocation and management of budget and other resources and enhancing awareness programs in order to uproot the exploitative conducts or change prejudiced mindset against women.

In this process, the Supreme Court has, declared various gender discriminatory laws relating to women as null and void and issued various directive orders for the formulation of laws or to have structural development. Orders have been issued for obliging the State to the existing positive laws and procedures for the effective implementation of laws, rules and regulations. While rendering justice to women who have been subjected to violence, some judicial precedents have been handed down to criminalize marital rape and introduce the jurisprudence of **Battered Women Syndrome (BWS)**, and **Rape Trauma** for the recognition of women's autonomy of life and possible judicial prescriptions to rape trauma cases to Nepali legal and judicial practice.

Also, for ensuring the recognition of special measures to be adopted to attain equality in reproductive health, ensuring the equal rights in property, developing a conducive environment for making the rights enjoyable by women like that of men in the marital and family relationship, the Supreme Court of Nepal has propounded landmark decisions fully taking into account the differences between the laws as such and practice in real life situation.

Although it is an obligation of legislative body to make the domestic laws in line with the international conventions relating to human rights to which Nepal is a Party, the Supreme Court has played a catalyst role to fulfil such obligations handing down various orders and decisions from the jurisprudential viewpoint.

📍 : Ramshahpath, Kathmandu, Nepal

☎ : +977-1-4262546 (O), +977-1-4223553 (R)

📠 : +977-1-4262878. GPO Box :20438

✉ : sapana.pm@supremecourt.gov.np, sapana12@live.com,

sapana_pradhan_malla@hks14.harvard.edu

🌐 : www.supremecourt.gov.np



Sapana Pradhan Malla
Justice

Supreme Court of Nepal

I would like to thank National Judicial Academy for conducting a research and publishing "**Compendium of Landmark Judgments of the Supreme Court of Nepal on Gender Justice and Equality (2020)**" by incorporating the *ratio decidendi* of important decisions made in various issues, such as women's property right, self-respect, self-determination, reproductive health, privacy, employment, identity, marriage, family relationship, special protection for the women in cases of gender and sexual violence and being victimized due to unequal treatment in various walks and other issues relating to gender Justice and equality as well.

Finally, I would like to thank the National Judicial Academy, Nepal and its research team for providing me an opportunity to direct, assist, advise and suggest it in connection with the collection of the judgements, their screening and finalization for the purpose of publication and making them suitable for the readers and researchers.

I believe that this publication will help especially to researchers, writers, advocates, government attorneys, judges and rights' claimants, women's right activists, Judgment Execution Directorate and all others who have their interests on the issue of gender equality and justice.

Sapana Pradhan Malla
Justice, Supreme Court of Nepal

📍 : Ramshahpath, Kathmandu, Nepal

☎ : +977-1-4262546 (O), +977-1-4223553 (R)

☎ : +977-1-4262878. GPO Box :20438

✉ : sapana.pm@supremecourt.gov.np, sapana12@live.com,
sapana_pradhan_malla@hks14.harvard.edu

🌐 : www.supremecourt.gov.np



राष्ट्रिय न्यायिक प्रतिष्ठान, नेपाल

National Judicial Academy, Nepal

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Preface

After the promulgation of the Constitution in 2047 BS (1990 AD), public interest litigations were entertained in the Supreme Court of Nepal under its extraordinary jurisdiction. As Nepal became parties to various international human rights instruments and its domestication process was started, the Supreme Court of Nepal has played a pivotal role to interpret the national laws and issued various directive orders and mandamus to the government to fulfill its obligations. In this process the Supreme Court has set various judicial principles on human rights and gender equality particularly on gender-based violence, equal right to property, right to reproductive health, right to identity, family and marital relation, equal rights in employment and so on. As a result, various legal and institutional reforms have made.

In this regard a research team studied the published and unpublished landmark judgements of the Supreme Court covering the period from 1992 to 2020. This **"Compendium of Landmark Judgments of the Supreme Court of Nepal on Gender Justice and Equality (2020)"** has included 121 landmark judgments. In addition to these three recent judgments of the Supreme Court relating to the COVID-19 pandemic and one decision relating to reproductive health rights are also included. This is the second publication of the National Judiciary Academy (NJA) on gender justice and equality.

We would like to express our sincere thanks and gratitude to Hon. Justice Ms. Sapana Pradhan Malla, the Supreme Court of Nepal, for providing necessary direction, guidance and advice in bringing this publication.

NJA would also like to express its sincere appreciation and gratitude to the Former Executive Director of NJA Hon. Top Bahadur Magar for his encouragement and guidance in course of this publication. Likewise, Hon. District Court judge and Faculty of NJA Hon. Dr. Diwakar Bhatta, Director Mr. Shreekrishna Mulmi, Business Development Manager Mr. Rajan Kumar KC and other NJA colleagues also deserve special thanks for their tireless efforts for this publication.

Lastly, we would like to convey special thanks and gratitude to the Representative of UN Women, Ms. Wenny Kusuma, Deputy Representative of UN Women, Ms. Gitanjali Singh and Programme Analyst (Access to Justice) Ms. Subha Ghale for providing technical and financial assistance.

We believe that law students, judicial officers, law practitioners, university teachers/professors, academics, researchers, government, non-government organization, development agencies, women's rights activists, and other national and international institutions will be benefitted by this publication. NJA hopes that this publication will also provide an easy access to judgments for those who use and interpret national and international laws/documents on gender justice and equality.

Kedar Paudel
Acting Executive Director
National Judicial Academy

Executive Summary

The formulation and modification of Nepal's laws have been based on the Supreme Court's directive orders issued to the legislature and executive. These orders have pertained to abolishing gender-based violence and ending harmful, discriminatory or unequal practices. These decisions and orders issued by the Supreme Court have had a wide-reaching impact on gender justice. This study looks at all the past and present judicial purviews and principles established by the Supreme Court.

A total of 134 important published or unpublished decisions by the Supreme Court from 1992 to 2020 were reviewed for the publication. These decisions are categorized into eight subjects as follows: gender-based violence, equal right to property, right to reproductive health, right to identity, family and marital relation, equal rights in employment, special protection, and cases related to COVID 19.

These decisions have been issued through orders or directives to Nepal's government to amend existing laws in accordance with international treaties or conventions including Convention on the Elimination of All forms of Discrimination Against Women (CEDAW). These decisions have helped to clarify the dilemmas and insufficiencies that were present in the existing laws and set jurisprudence or principles based on eight subjects relating to gender justice and equality. Of the 121 decisions that have been published, 33 are on gender-based violence, 21 on equal right to property, 15 on right to reproductive health, 22 on right to identity, 10 on family and marital relation, 9 on equal rights in employment, and 9 on special protection and 2 cases related to COVID 19. A total of 121 *ratio decidendi* of the decisions have been published.

A total of 33 judgments are covered in **PART ONE – GENDER-BASED VIOLENCE** of the publication, in which 22 are writ petitions and 11 are cases related to gender-based violence. In the case titled “*Advocate Sapana Pradhan Malla v. His Majesty's Government, Ministry of Law, Justice and Parliamentary Affairs (2058 B.S, Writ No. 56, Decision Date: 2059/01/19)*,” declared that the legal provision related to No. 7 in the “Rape Chapter” of Muluki Ain (National Code) was discriminatory among women and unequal, and resulted in the elimination of the provision in which rape offenders committing the same rape offence were given different punishment based on the character and profession of the victim. In the human trafficking and rape case titled “*Lakpa Sherpa v. Government of Nepal via first information report of Yamuna Rai, a pseudonym, (Nepal Law Review (NLR) 2073, Issue 9, Decision Number 9684)*,” a principle was propounded that a woman can rape another woman and that the offence of rape can also occur when a perpetrator uses artificial objects to rape. Similarly, in the rape case titled “*Government of Nepal via first information report of “Gha” Kumari v. Sagar Bhatta (071-CR-0659, Judgment Date 2076/8/2)*,” a new principle in rape case was propounded. The decision states that an offender cannot be given immunity from the offence even in situations where the crime scene

cannot be ascertained because the body of the victim in itself is the main crime scene in rape offences.

Similarly, in the case “*Bhupendra Khadka v. Nepal Army, Jungi Adda Bhadrakali, Kathmandu (NLR 2076, Issue 8, Decision No. 10342)*”, additional jurisprudence was developed in relation to gender justice. This decision states that consent obtained by an army officer who uses his position of influence to have sexual intercourse with a female army official of a lower level should be understood as consent obtained from undue influence. The consent obtained from this undue influence has to be considered a form of delusion and cannot be considered consent.

Apart from this, in “*Jitkumari Pangen (Neupane) et al. v. Government of Nepal, Office of the Prime Minister and the Council of Ministers et al. writ application (NLR 2065, Issue 6, Decision No. 7973)*”, interpretation was made with regard to discriminatory punishments in marital rape and extramarital rape offences. In that case, the Supreme Court propounded a principle stating that the provision of holding rape as punishable only in situations where rape has been committed against someone else’s wife, except for one’s wife, is considered a disregard to the self-respect, prestige and uninterrupted and absolute right over her body. Therefore, such provision was deemed to be inconsistent with the values of gender justice and a directive order was issued to the legislature to amend the legal provision. As a result, a law to make marital rape punishable has already been formulated along with the amendment in the legal provision.

The writ application titled “*Advocate Jyoti Paudel et al. v. Government of Nepal, Office of the Prime Minister and the Council of Ministers et al. (NLR 2066, Issue 12, Decision No. 8282)*” pertains to the cruel and inhumane offence of throwing acid. It found that, since throwing acid was not yet incorporated in the Domestic Violence (Offence and Punishment) Act, 2066, judgment needed to be delivered to make a provision for this offence in the same Act, as per the amount of offence. The decision was also made on the establishment of a fast-track court. Similarly, the mandamus writ application titled “*Advocate Sharmila Parajuli et al. v. His Majesty’s Government, Council of Ministers’ Secretariat, et al. (NLR 2061, Issue 10, Decision No. 7449)*,” resulted in an order to formulate a necessary law on sexual harassment at workplace. This decision also mentioned that there is no doubt regarding the significance of the principles propounded by the Supreme Court in ending violence against women, mitigating crimes, and formulating necessary laws for the same.

In the intentional homicide case “*Government of Nepal via first information report of Guransdevi Lama v. Radhika Shrestha (NLR 2071, Issue 9, Decision No. 9242)*,” a judgment was delivered with regard to distinct situations in which a woman who has **Battered Women Syndrome (“BWS”)** commits a crime. In the judgment, interpretation was made about the legal benefits received in situations where the deceased is the perpetrator, and the woman is the one who is battered. This decision drew attention to: (1) examination of BWS in intentional homicide cases on the basis of propounded principles, changed context, and the gravity of BWS and, (2)

timely creation of necessary law and infrastructure after studying the examination report and the experts' findings, and (3) creating legal and other infrastructure to provide partial exemption in punishment or full acquittal from punishment in making BWS acceptable as evidence (with help from the examination report and expert testimonies).

Similarly, other harmful practices plague society, such as accusations of witchcraft (**Boksi**), social discrimination and untouchability, and **Baikalya** and **Kamlari** practice. These forms of discrimination have been contemplated in various cases and have been determined to be against society's morality, human rights, and human norms and values. Through various cases, the Supreme Court has issued orders to the legislature to draft new laws that would make such discriminatory and inhumane behaviors punishable. In order to discourage behavior condoning "untouchability," the "**Witchcraft Accusation (Offence and Punishment) Act, 2072 BS. (2014 AD) and National Penal Code, 2074 BS, (2017 AD)**" have been promulgated and come into effect as special laws that make inhumane and anti-social behaviors, such as witchcraft accusations punishable.

Of the 21 judgments related to **PART TWO - EQUAL RIGHT TO PROPERTY** covered in this publication, 15 are writ applications and the remaining 6 are related to various cases. In the writ application "**Meera Dhungana v. His Majesty's Government (Writ No. 3392 of 2050 BS., Order Date: 2052/04/15, Decision No. 6013)**", a directive order was issued to make appropriate laws after experts were consulted. They determined that there was no consistency of Clause 16 of the Chapter on Partition of Property of the National Code, 2020 BS with Article 11 of the Constitution of Nepal, 1990 (2047 BS). Similarly, a directive order was issued to present an appropriate bill in Nepal's parliament after holding discussions with the related parties in the case "**Dr. Chanda Bajracharya v. The Parliament Secretariat (NLR 2053, Issue 7, Decision No. 6223)**." This was a writ application that stated that provisions in the Chapters on Partition of Property, Inheritance, Adoption, Adultery, Marriage, Husband and Wife, and Bestiality were discriminatory and contrary to the right to equality.

Additionally, principles have been propounded by the Supreme Court in "**Advocate Meera Dhungana v. Council of Ministers Secretariat, et al. al., NLR 2061, Issue 4, Decision No. 7357**" as to whether or not inheritance must be returned after someone gets married. The case "**Narayan Prasad Tharu v. Harendra Kumar Chaudhary, 073-NF-0032**," found that the daughter is the closest heir for inheritance from a mother who has given birth to that daughter.

Similarly, out of the 15 judgments related to **PART THREE - RIGHT TO REPRODUCTIVE HEALTH**, 2 are writ applications and the remaining 14 judgments are related to various reproductive health rights. In the case of "**Annapurna Rana v. Gorakh Shamsher J.B.R., et al. al. (NLR 2055, Issue 8, Decision No. 6588)**," a judicial principle was propounded about privacy and reproductive rights. It states that conducting virginity test for the proof of whether or not a woman is married or has become a mother is against a woman's inviolable rights to privacy.

The writ application titled “*Advocate Prakash Mani Sharma v. His Majesty’s Government, Women, Children and Social Welfare Ministry, et al. al. (NLR 2060, Volume 9, Decision No. 7268)*,” demands a law to be made in relation to maternity protection after determining the period of minimum maternity leave, based on standards in international conventions. An important judgment was also rendered in relation to infant health and maternity protection. Similarly, in the writ application “*Laxmidevi Dhikta, et al. v. the Government of Nepal, Office of the Prime Minister and the Council of Ministers, et al. al. (NLR 2067, Volume 9, Decision No. 8464)*,” the Supreme Court has given judicial perspective, demanding accessible abortion facilities and a separate law to be made in relation to abortion. On the basis of this writ order, the “Safe Motherhood and Reproductive Health Rights Act, 2075 BS” is found to be promulgated and in effect.

Two other writ petitions highlight how the Supreme Court has made important interpretations on equal reproductive rights. The writ petition “*Jung Bahadur Singh v. Office of Prime Minister and Council of Ministers, et al. al. (NLR. 2068, Issue 6, Decision No. 8631)*” provides family conjugal visits in prisons, enabling incarcerated people to exercise their reproductive rights. Similarly, the writ petition titled “*Jay Bahadur Tamang, et al. V. Government of Nepal by the FIR of Indira Bhandari [071-CR-1167, Decided on 10 July, 2017 (2074/03/26)]*” ensures the reproductive health rights of women during all steps of the criminal process; from the time an investigation begins to the time a decision and punishment are determined.

In the case of *Manju Tamang and Others v. the Office of the Prime Minister and Council of Ministers, Government of Nepal, Singh durbar and Others (Writ No. WO-0194, Year 2070)*, the SC emphasized the need to ensure all women (including those who are marginalized and impoverished) access to all kinds of contraceptive methods and services.

Likewise, out of 22 decisions in **PART FOUR - RIGHT TO IDENTITY**, 20 are writs and the remaining two are related to other proceeding cases. In the writ petition “*Sunil Babu Panta v. Office of Prime Minister and Council of Ministers, et al. (Application No. 070-WO-0287)*,” an order given on 23 January, 2017 (2073/10/10), *Decision No. 987*, emphasizing that groups with special sexual orientation and gender identity groups should be able to enjoy the political, social, cultural and economic rights in the same way as people from other groups. The order also issued identity-based citizenship to ensure the right to identity of people with special identity. Similarly, in the writ petition “*Dilu Buduja v. Office of Prime Minister and Council of Ministers, et al. al. (NLR 2070, Issue 8, Decision No. 9048)*,” it was ordered that people from the third gender community should be given passports specifying “third gender” as opposed to just “male” or “female.”

In the case of “*Sabina Damai, et al. v. the Office of Prime Minister and Council of Ministers et. al. (NLR. 2068, Volume 2, Decision No. 8557)*,” it was observed that the right of acquiring citizenship in the name of a mother falls under women’s rights. This decision ordered the

government to provide citizenship in the name of mothers. In the case titled “*Advocate Tek Tamrakar, et al. v. His Majesty Government, Secretariat of the Council of Ministers, et al. (NLR 2062, Issue 6, Decision No. 7550)*,” an order was given to make necessary arrangements for children of Baadi community and all children whose fathers could not be found.

Out of the 10 decisions related to **PART FIVE - FAMILY AND MARITAL RELATION** covered in the publication, eight are related to writ petitions and the remaining 2 are related to case proceedings. In the writ petition “*Advocate Sapana Pradhan Malla, et al. v. the Office of Prime Minister and Council of Minister, et al. (NLR 2063, Issue 3, Decision No. 7658)*,” which was filed stating that the marital age of men and women is discriminatory, it was ordered to amend provision of Clause No. 2 of the Chapter on Marriage of the *National Code, 2020 BS.* and Section 4(3) of the Marriage Registration Act, 2028, in order to these provisions uniform. Also, with regard to child marriage, the government was ordered to implement the relevant laws effectively in order to stop child marriage. In the case of “*Kiran Rana v. Puran Shamsher Jabara (NLR 2075, Issue 4, Decision No. 9999)*,” it was held that getting married a second time, living separately, and getting divorced are different matters.

Likewise, the 9 judgments covered in **PART SIX - EQUAL RIGHTS IN EMPLOYMENT** are all related to writ petitions. The order given in the writ petition “*Rina Bajracharya, et al. v. His Majesty Government, Secretariat of the Council of Ministers, et al. (NLR 2057, Issue 5, Decision No. 6898)*” ensures equal rights in employment, stating that the provision of services and facilities should not be discriminatory between male and female employees working in the same position. Similarly, in the case “*Sita Acharya v. Ministry of Health, et al. (Writ No. 3975 of Year 2055 B.S.)* and *Advocate Prakash Mani Sharma, et al. v. Ministry of Women, Children and Social Welfare et. al. (NLR 2063, Issue 1, Decision No. 7634)*,” it was held that unequal probation periods for female employees under different services are against their rights to equality.

The writ petition titled “*Advocate Prakash Mani Sharma, et al. v. Ministry of Women, Children and Social Welfare, et al. al. (NLR 2065, Issue 8, Decision No. 8005)*,” was related to protecting the rights of women working in dance and cabin restaurants. In this case, a directive order was issued to enact a law on the operation of dance bar, dance restaurants, cabin restaurant and massage parlor to protect the fundamental rights and employment of these women. In addition, a “**Directive Issued to Control Sexual Harassment in Workplaces such as Dance Restaurants and Bars, 2065**” was issued to prohibit and control the sexual exploitation and harassment of women working in such places until the aforementioned law was enacted. The **Sexual Harassment (Prevention) at Workplace Act, 2015 (2071)** has already been formulated and in effect.

Similarly, there are 9 decisions related to **PART SEVEN - SPECIAL PROTECTION** provisions and all of them are writ petitions. A writ petition titled “*Pradhosh Chhetri, et al. v. the Office of Prime Minister and Council of Ministers [Writ No. 3059 of Year 2061, Decided on 29 October,*

2004, (2061/07/13)],” stated that the decision to provide reservation to Tribhuvan University employees without making a law is against the Constitution. It states that that laws need to prescribe a clear basis to determine how to protect women, marginalized people, and people who need protection, and that a program should be implemented for the protection and balanced development of women and groups that are in need. In addition, the order in the writ petition “*Advocate Raju Prasad Chapagain, et al. v. the Office of Prime Minister and Council of Ministers, et al. (NLR 2065, Issue 7, Decision No. 7987)*” to form a censor board and a high-level expert committee to control and regulate gender-friendly advertisements seems to have played a major role in protecting the rights of women. A writ petition titled “*Advocate Kabita Pandey, et al. v. the Office of Prime Minister and Council of Ministers, et al. al. (NLR 2067, Issue 7, Decision No. 8411)*,” alleged that the age limit for receiving widow allowance to single widowed women was discriminatory. This resulted the provision of social security allowance to single, female widows below the age of 60 by setting certain criteria. A directive order was also issued to collect data on widow.

Similarly, there are 2 decisions related to **PART EIGHT - RELATED TO COVID 19** In the recent case *Gopal Siwakoti (Chintan), et al. v. the Government of Nepal, the Office of the Prime Minister and Council of Ministers, et al. (Writ No. Wo-0939, Year 2019)*, the SC held that granting pardon to prisoners convicted of committing minor or petty offences will reduce overcrowding in prisons and protect them from COVID-19. It will also protect the human rights of those who are pregnant, breastfeeding women, and inmates with complex health issues within prison, with due priority given to them.

Similarly, the judgment rendered in the case of *Advocate Roshani Poudel, et al. v. the Government of Nepal, Secretariat, the Prime Minister and Office of the Council of Ministers, et al. (Judgment/Writ No. WO-0962 Year 2019)*, is a comprehensive judgment made with regard to gender equality and women’s empowerment in the COVID-19 context for addressing a range of issues faced by women with intersecting identities. The SC interpreted that there should be a provision for online case reporting and online hearing process to facilitate access to justice for GBV survivors, particularly survivors of domestic violence, even in the situation of pandemic. In addition, it also stated that there should be a provision of immediate interim relief and protection for survivors of domestic violence, establishment of special fund, and 24-hour helplines across all 753 local units for immediate rescue and relief of women and children affected by gender-based violence and COVID-19. Similarly, a directive order was issued to the government to conduct a research study to assess the adequacy and effectiveness of the Infectious Diseases Act, 1963, and other related laws. The decision states that based on the study, the government should consider enacting a new comprehensive law to address the challenges faced by women and other high-risk groups in a pandemic. A mandamus order has been issued in the name of the Government of Nepal to enact the Regulation related to the Safe Motherhood and Reproductive Health Right Act, 2018. An order has been issued to ensure safe maternity and reproductive health of women, pregnant and maternal women staying at quarantine/isolation, protection and care of newborns, to

ensure that there are no difficulties in accessing medicines and nutritious food, to carryout heath treatment needed for the pregnant woman and provide vaccines and injections required for them and the newborn children, to include reproductive health items in the essential package of health care, and to provide access to sexual and reproductive health services to women in a sensitive manner while distributing relief during COVID-19.

“Compendium of Landmark Judgments of the Supreme Court of Nepal on Gender Justice and Equality, 2020” has been published by including a total of 121 judgments or orders of eight various natures.

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				Parliamentary Affairs et.al.			
1.12	August 18, 2008	Writ No. 3581 of Year 2002	Mandamus et.al.	Advocate Puna Devi Maharjan “Sujan” v. Nepal Government, Office of the Prime Minister and Council of Ministers, et.al.	NLR 2008, Issue 6, Deci. No.: 7981	Related to necessary operation for the improvements in the <i>Kumari</i> practice by stopping discrimination and exploitation happening against the <i>Kumaris</i> .	19
1.13	October 22, 2008	State Case, Appel No. 0479 of Year 2007	Rape	Tri Ratna Chitrakar v. Nepal Government	NLR 2009, Issue 5, Deci. No.: 8148	Related to the difference between No. 46 of the Chapter on Punishment and the provision to recover half of the property to victims from the property of the offender in custodial rape along with the gravity of the offence and in rape cases.	20
1.14	February 8, 2009	Writ No. 0402 of Year 2006	Mandamus	Indira Basnet v. Nepal Government et.al.	N/A	Related to the increment in the 35-day statute of limitation provisioned in rape cases.	22
1.15	August 12, 2009	Writ No. 0424 of Year 2007	Mandamus et.al.	Advocate Jyoti Paudel v. Nepal Government, Office of the	NLR 2009, Issue 12, Deci. No.: 8282	Related to the formation of a fast-track court and amendment of the Domestic Violence (Offence and	23

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
				Prime Minister and Council of Ministers		Punishment) Act, with regard to provisioning punishment (as per the amount of crime), particularly for the crime of throwing acid, which has not been incorporated in the same Act	
1.16	December 1, 2010	Writ No. 0663 of Year 2009	Certiorari including Mandamus	Advocate Jyoti Lamsal Paudel v. Nepal Government, Office of the Prime Minister and Council of Ministers	NLR 2010, Issue 11, Deci. No.: 8507	Related to the necessity of a special legal and institutional provision for the state to impartially investigate cases of violence against women that are of a serious nature, such as gang rape.	26
1.17	December 1, 2010	Writ No. 0584 of Year 2009	Mandamus	Suntali Dhami (Shah) v. Office of the Prime Minister and Council of Ministers	NLR 2011, Issue 1, Deci. No.: 8541	Related to whether or not a judicial review can be done by the court regarding a decision made by the government attorney to not file a case in a situation where a case has been filed, but has not been filed in a gang rape case where the first information report specifies the perpetrators	27
1.18	May 16, 2012	Writ No. WO-0544 of Year 2009	Mandamus	Advocate Kabita Pandey et.al.	NLR 2012, Issue 10, Deci.	Related to eliminating <i>Baiklya</i> practice and making necessary	29

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
				v. Office of the Prime Minister and Council of Ministers	No.: 2012	provisions to operate much-needed programs	
1.19	August 23, 2012	Writ No. WS-0042 of Year 2011	Certiorari Mandamus	Advocate Jyoti Lamsal Paudel, et al. v. Office of the Prime Minister and Council of Ministers	NLR 2012, Issue 9, Deci. No.: 8883	Related to the violation of fundamental rights and violence against women because of dowry and that the provision relating to giving dowry in the Social Behavior (Reform) Act does not control dowry.	30
1.20	May 2, 2013	Writ No. WS-0046 of Year 2011	Certiorari et.al.	Advocate Meera Dhungana v. Office of the Prime Minister and Council of Ministers	N/A	Related to discriminatory provisions in various sections of the Human Trafficking and Transportation (Control) Act, 2007 which inappropriately classify victims as witnesses of cases and try them as per Government Cases Act.	31
1.21	December 15, 2013	Writ No. CR-0792 of Year 2009	Rape	Badri Khatri v. Nepal Government through the FIR of Yeshoda Karki	NLR 2014, Issue 6, Deci. No.: 9186	Related to irrelevance of penile penetration during a rape when the rape was committed against a female child.	32
1.22	September 12,	Writ No. RC-0112	Homicide	Nepal Government	NLR 2014,	Related to different types of crimes	33

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
	2014	of Year 2013		on behalf of Gurans Devi Lama v. Radhika Shrestha	Issue 9, Deci. No.: 9242	committed by women suffering from Battered Women Syndrome.	
1.23	February 2, 2015	Writ No. CR-1288 of Year 2010	Human Trafficking, Child Marriage, Rape	Lok Bahadur Karki et.al. v. Nepal Government on behalf of “Kha” Kumari (Name changed)	NLR 2015, Issue 2, Deci. No.: 9346	Related to rape in situations in which sexual intercourse was inflicted on a female child with or without her consent.	35
1.24	February 4, 2016	Writ No. CR-0753 of Year 2014	Mandamus	Advocate Punyashila Dawadi Ghimire, et al. v. Office of the Prime Minister and Council of Ministers, Singh durbar et.al.	NLR 2017, Issue 1, Deci. No.: 9741	Related to rape in situations in which sexual intercourse was inflicted on a female child with or without her consent.	39
1.25	July 5, 2016	Writ No. CR-0087 of Year 2014	Homicide	Sanju Mahato et.al. v. Nepal Government on behalf of Jhari Mahato	NLR 2017, Issue 8, Deci. No.: 9861	Related to the act of burning and killing a woman after accusing her of witchcraft (<i>Bokshi</i>), which is a form of violence against women.	41
1.26	September 1, 2016	Writ No. CR-0524 of Year 2013	Human Trafficking and Transportation and Rape	Lakpa Sherpa v. Nepal Government on behalf (Name	NLR 2016, Issue 9, Deci. No.: 9684	Related to whether or not a female can commit rape against another female and whether the offence of rape through the	42

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
				changed) Yamuna Rai		use of an artificial penis can be established or not.	
1.27	August 11, 2017	Writ No. CR-0879 of Year 2015	Human Trafficking and Transportation	Nepal Government on behalf of Apsara (Name changed) v. Shanti B.K.	NLR 2017, Issue 8, Deci. No.: 9868	Related to recovering compensation from the rehabilitation fund for victims in situations where compensation cannot be recovered due to poor financial status of the offender committing offences under the Human Trafficking and Transportation (Control) Act, 2007.	44
1.28	November 29, 2017	Writ No. WC-0020 of Year 2015	Certiorari/Mandamus	Advocate Rajiv Jung Shah, et al. v. Office of the Prime Minister and Council of Ministers	N/A	Related to whether or not there are different conditions in self-defense cases and defenses of chastity.	45
1.29	June 21, 2018	Writ No. CR-0020 of Year 2010	Unnatural sex with a minor	Nepal Government on behalf of "A" Kumari (Name Changed) v. Santosh Kushwaha	NLR 2019, Issue 8, Deci. No.: 10335	Related to the difference between the act of unnatural sexual intercourse and intention of sex.	47
1.30	January 14, 2019	Writ No. CR-0799 of Year 2015	Human Trafficking and Transportation	Padam B.K. v. Nepal Government	N/A	Related to recovering compensation for victims through the	48

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
				on behalf of Kailali 71 “B” Khima (Name Changed)		rehabilitation fund under the Human Trafficking and Transportation (Control) Act, 2007.	
1.31	April 28, 2019	Writ No. WO-0683 of Year 2013	Certiorari	Second Lieutenant Bhupendra Khadka v. Nepal Government, Nepal Army Headquarters et.al.	NLR 2019, Issue 8, Deci. No.: 10342	Related to the difference in power relations and status of people giving consent wherein consensual sexual relations have been made, but the person holds a position and status that he/she can use to influence the situation.	49
1.32	July 11, 2019	Writ No. NF-0001 of Year 2017	Attempt to Rape	Pradip Bhattarai v. Nepal Government on behalf of the father of the victim	NLR 2019, Issue 6, Deci. No.: 10280	Related to the differences between the nature of intention to have sex and the nature of attempting to rape.	50
1.33	November 18, 2019	Writ No. CR-0659 of Year 2014	Rape	Nepal Government on behalf of “GHA” Kumari v. Sagar Bhatta	N/A	Related to a non-acquittal of the offence because the place of crime could not be ascertained; in rape cases, the primary place of crime is the victim’s body.	51
PART TWO EQUAL RIGHT TO THE PROPERTY							
2.1	October 22, 1992	Deci. No.: 2311 of Year 1992	Certiorari	Mrs. Sarala Rani Rauniyar v. Secretary, His Majesty’s	NLR 1993, Issue 1, Deci. No.: 4680	Related to discrimination between men and women due to a provision stating	55

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
				Government, Ministry of Finance et.al.		that the tax assessment must be made in the name of the husband and using the joint income of couples.	
2.2	August 3, 1995	Deci. No.: 3392 of Year 1993	Laws inconsistent to Article 1 of the Constitution to be declared void pursuant to Article 88 (1) of the Constitution	Meera Kumari Dhungana v. Nepal Government, Ministry of Law and Parliamentary Affairs et.al.	NLR 1995, Issue 6, Deci. No.: 6013	Related to equal treatment done on the basis of sex between sons and daughters through a legal provision that provides property to daughters (equally to that of sons) who have reached the age of 35 and have not married yet.	57
2.3	December 11, 1995	Writ No. 2736	Certiorari et.al.	Advocate Sapana Pradhan Malla v. His Majesty's Government, Ministry of Law, Justice and Parliamentary Affairs, et al.	NLR 1996, Issue 2, Deci. No.: 6140	Related to the legal provision that rejects daughters, married women, and widows from having succession of tenancy rights.	59
2.4	July 18, 1996	Writ No. 2816 of Year 1994	Certiorari	Dr. Chandra Bajracharya v. Parliament Secretariat et.al.	NLR 1996, Issue 7, Deci. No.: 6223	Related to the Chapters on partition of property, inheritance, adoption, adultery, marriage, husband and wife and bestiality are discriminatory towards women and goes against the	61

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
						right to equality.	
2.5	July 29, 2004	Writ No. 110 of Year 2002	Request to declare laws void contrary to Article 88 of the Constitution of the Kingdom of Nepal, 1990	Advocate Meera Dhungana v. Secretariat Council of Ministers	NLR 2004, Issue 4, Deci. No.: 7357	Related to unequal legal provisions among women of the same condition where not being entitled to receive inheritance right until marriage has not been done by considering marital status as a basis, but inheritance must be returned after marriage.	63
2.6	July 29, 2004	Writ No. 34 of Year 2003	Request to declare laws void according to Article 88 (1) of the Constitution of the Kingdom of Nepal	Advocate Sapana Pradhan Malla v. Secretariat Council of Ministers	NLR 2004, Issue 4, Deci. No.: 7358	Related to discrimination against sons and daughters, Including that which occurs on the basis of marital status by discriminating against grandsons and granddaughters, and sons and daughters by prescribing a ranking for inheritance based on sex.	65
2.7	November 23, 2005	Civil Case, Appeal No. 7267 of Year 2001	Request to declare void the deed to partition	Mina Shrestha v. Gunja Bahadur Shrestha, et al.	NLR 2006, Issue 1, Deci. No.: 7640	Related to acts of partition done in such a way that they have resulted in the partition of property rights and a loss that cannot be deemed legal.	66
2.8	December 15,	Special Writ No.	Request to declare laws	Lily Thapa v. Office of the	NLR 2005,	Related to considering a	68

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
	2005	34 of Year 2004	contrary to the Constitution void pursuant to Article 88 (1) of the Constitution of the Kingdom of Nepal, 1990	Prime Minister and Council of Ministers	Issue 9, Deci. No.: 7588	provision that restricts the use of property in which the full ownership in the form of women's share and property is an unjust legal provision.	
2.9	December 15, 2005	Special Writ No. 31 of Year 2004	Request to declare laws void pursuant to Article 88 (1) of the Constitution of the Kingdom of Nepal, 1990	Advocate Prakash Mani Sharma v. Office of the Prime Minister and Council of Ministers et.al.	NLR 2005, Issue 8, Deci. No.: 7577	Related to depriving daughters from property rights received with other heirs of the joint family, merely due to exercising marital rights.	70
2.10	November 24, 2006	Special Writ No. 114 of Year 2005	Request to declare laws void pursuant to Article 88 (1) of the Constitution of the Kingdom of Nepal, 1990	Advocate Meera Dhungana v. Office of the Prime Minister and Council of Ministers	NLR 2006, Issue 8, Deci. No.: 7743	Related to non-return of property if the woman marries the person to whom she sold her property.	73
2.11	September 16, 2007	Civil Case, Appeal No. 8027, 9826 of Year 2005	Repeal of Deed of Legacy	Bas Narayan Maharajan v. Naresh Maharajan	NLR 2007, Issue 6, Deci. No.: 7864	Related to the act of transferring property that is in one's own name and the act of executing a deed of gift with immediate effect of some properties after executing a deed of gift with testamentary effect of the property in own name.	74

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
2.12	November 20, 2008	Writ No. WH-0030 of Year 2006	Certiorari	Sapana Pradhan Malla v. Nepal Government, Office of the Prime Minister and Council of Ministers	NLR 2008, Issue 11, Deci. No.: 8031	Related to differential treatment between unmarried and married daughters, by a provision that restricts married daughters from receiving partition of property and a provision that does not provide the same equal status as provided to sons in relation to inheritance.	75
2.13	August 26, 2010	Writ No. WS-0010 of Year 2010	Certiorari et.al.	Advocate Prakash Mani Sharma et. al. v. Office of the Prime Minister and Council of Ministers	NLR 2010, Issue 9, Deci. No.: 8456	Related to curbing or controlling the right to maintain martial relationships with a woman, including the right to give continuity to such relation provided by Clause 7 of the Chapter on Women's Share and Property	76
2.14	May 27, 2012	Civil Case, Appeal No. CI-0901, 9826 of Year 2010	Maintenance	Nar Bahadur Acharya et.al. v. Rukmani Devi Shah	NLR 2012, Issue 5, Deci. No.: 8822	Related to the economic status of the defendant being irrelevant, as the law has ensured the right of a daughter in law to recover bread and board.	78
2.15	May 30, 2012	Writ No. WO-0545 of Year 2008	Mandamus	Advocate Meera Dhungana et.al. v. Office of the Prime	NLR 2012, Issue 12, Deci. No.: 8928	Related to the legal provisions, such being able to freeze the asset of heirs after filing a case related to bread and	79

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
				Minister and Council of Ministers		board, the prohibition to sell/transfer joint property of such women in situations where bread and board have been separated, in Chapter on Partition of Property, Husband and Wife; Court Management must be amended along with framing of law, as such are insufficient.	
2.16	September 6, 2012	Writ No. DF - 0014 of Year 2011	Partition	Nirmala Rokka v. Bal Krishna Rokka	NLR 2013, Issue 3, Deci. No.: 8970	Related to the situation where the law has provided a person a right to paternal property in equality with other heirs, while the case is sub- judice, the same law cannot be applicable even in such cases.	80
2.17	May 20, 2018	Writ No. CI – 0392 of Year 2016	Transfer of Tenancy Right	Ramchandra Sahani v. Jhaliya Devi Mallahin	NLR 2019, Issue 6, Deci. No.: 10283	Related to situations in which there is only one son and only one wife of the tenant, and the landlord cannot ignore the tenancy of a daughter-in-law who is the legal rightful heir.	82
2.18	June 27, 2018	Writ No. WO – 0249 of Year 2012	Mandamus	Advocate Sushma Gautam, et al. v. Nepal	N/A	Related to tenancy rights that cannot be claimed by heirs as unconditionally and absolutely, as is	83

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
				Government, Office of the Prime Minister and Council of Ministers		the case with paternal properties.	
2.19	January 9, 2019	Writ No. WC – 0017 of Year 2015	Certiorari	Advocate Tej Bahadur Katuwal v. Office of the President, Sheetal Niwas et.al.	N/A	Related to a woman being able to claim property rights again from her husband after marriage, and after claiming such property from her parents because of the amendment made in the Act and such provision has made the sons-daughters of the sisters same as the sons-daughters of the brothers in terms of property and lineage. Thus, it must be annulled as it contradicts the paternal property related right provided by the Constitution.	84
2.20	July 7, 2019	Writ No. WO – 0877 of Year 2018	Certiorari, Mandamus et.al.	Mrs. Sukum Thapa, et al. v. Pitambar Thapa et.al.	N/A	Related to considering daughters as equal heirs to sons in paternal property cases.	85
2.21	December 19, 2019	Writ No. NF – 0032 of the Year 2016	Inheritance	Narayan Prasad Tharu v. Harendra Kumar	N/A	Related to a married daughter being the closest heir of the inheritance of her	86

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
				Chaudhary		mother.	
PART THREE RIGHT TO REPRODUCTIVE HEALTH							
3.1	June 8, 1998	Writ No. 2187 of the Year 1996	Certiorari	Annapurna Rana v. Gorakh Shamsher JBR and Others	NLR 1998, Issue 8, Deci. No.: 6588	Related to the non-necessity of conducting a virginity test for the purpose of verifying whether a woman has been married or has become a mother of a child in a bread and board case.	89
3.2	September 11, 2003	Writ No. 88 of the Year 2002	Request for the issuance of the Order of Mandamus including relevant order etc. pursuant to Article 88(1) and (2) of the Constitution	Advocate Prakash Mani Sharma and Others v. His Majesty's Government, Ministry of Women, Children and Social Welfare, Singh durbar and others	NLR 2003, Issue 9, Deci. No.: 7268	Related to determining a minimum obstetric leave.	91
3.3	February 24, 2005	Writ No. 52 of the Year 2004	Request to be declared invalid the legal provisions which are inconsistent with the Article 88(1) and 88(2) of the Constitution of the Kingdom of Nepal, 1990 (2047)	Sapana Pradhan Malla and Others v. His Majesty's Government, Office of the Prime Minister and Council of Ministers	NLR 2005, Issue 1, Deci. No.: 7478	Relating to a discriminatory provision concerning female victims and male offender involved in abetting women to get abortions.	93
3.4	May 18, 2005	Writ No. 3250 of the Year	Mandamus	Advocate Prakash Mani Sharma v.	N/A	Related to making infant care and breast-feeding	94

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
		2004		Government of Nepal, Prime Minister and the Office of the Council of Ministers		facilities available in different businesses.	
3.5	June 4, 2008	Writ No. WO-0230 of the Year 2007	Mandamus	Advocate Prakash Mani Sharma and others v. The Government of Nepal, the Office of the Prime Minister and Council of Ministers	NLR 2008, Issue 8, Deci. No.: 8001	Related to making free of cost consultancy, treatment, health services and facilities available to aggrieved women in order to address their reproductive health problems, particularly those that concern uterus health problems.	95
3.6	June 5, 2008	Writ No. WS-0028 of the Year 2006	Request to be declared unconstitutional, the legal provision invalid, and to be issued an order of Mandamus and other necessary orders.	Advocate Prakash Mani Sharma and Others v. The Prime Minister and the Office of the Council of Ministers	NLR 2008, Issue 4, Deci. No.: 7952	Related to differentiation in the reproductive health rights received by pregnant women in prison.	97
3.7	August 4, 2008	Writ No. 3352 of the Year 2004	Including the order of Certiorari	Advocate Prakash Mani Sharma and Others v. Office of Prime-minister and Council of Ministers and Others	N/A	Related to whether or not an uninterrupted unilateral right has been provided to women in receiving legal abortions.	98
3.8	May 20,	Writ No.	Mandamus	Laxmidevi	NLR	Related to creating	99

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
	2009	WO-0757 of the Year 2006		Dhikta and Others v. the Government of Nepal, the Prime Minister and the Office of the Council of Ministers	2010, Issue 9, Deci. No.: 8464	different laws for abortion and for ensuring accessible abortion services.	
3.9	February 25, 2010	Writ No. 0004 of the Year 2007	Certiorari and Others	Advocate Achyut Prasad Kharel v. the Prime Minister and the Office of the Council of Ministers	NLR 2010, Issue 6, Deci. No.: 8384	Related to having control over rights relating to reproductive health, like the maternity leave provided on the basis of times of delivery and number of children.	101
3.10	July 18, 2010	Writ No. 0748 of the Year 2008	Mandamus	Bimala Khadka and others v. Prime Minister and Office of the Council of Ministers and others	N/A	Related to the health of women with disabilities; framing and executing policies and programs so that they are easily accessible and simple.	102
3.11	April 11, 2011	Writ No. WO-1222 of the Year 2009	Certiorari and Mandamus	Junga Bahadur Singh and others v. Prime Minister and Council of Ministers and Others	NLR 2011, Issue 6, Deci. No.: 8631	Related to providing prisoners with facilities and family meetings to exercise their reproductive rights.	103
3.12	July 14, 2016	Writ No. WO-0119 of the Year 2015	Certiorari / Mandamus	Advocate Puspha Raj Pandey v. Nepal Government, Prime Minister and	NLR 2017, Issue 2, Deci. No.: 9757	Related to the act of operating surrogacy services in situations where there are no legal provisions for the same and it cannot	104

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
				Council of Ministers and Others		be deemed a legal act and the purpose of taking benefit from surrogacy service is against women's rights.	
3.13	January 25, 2017	Writ No. WO-0484 of the Year 2015	Certiorari /Mandamus	Shanti Balampaki v. Nepal Government, Ministry of Health, Ramshah Path, Kathmandu and Others	NLR 2018, Issue 3, Deci. No.: 9974	Related to the unreasonable act of transferring, without information or consent, a female employee who has a child below two years of age.	106
3.14	July 10, 2017	Writ No. CR-1167 of the Year 2015	Homicide	Jaya Bahadur Tamang and Others v. Nepal Government on the FIR of Indira Bhanadari	N/A	Related to ensuring reproductive health facilities to women in all stages of a criminal case (from investigation to judgment and sentence determination)	107
3.15	August 09, 2017	Judgment / Writ No. WO-0194 of the Year 2070	Mandamus	Ms. Manju Tamang and Others v. The Office of the Prime Minister and Council of Ministers, Government of Nepal, Singh durbar and Others	N/A	Ensure the access of all women (including those who are marginalized and impoverished) to all kinds of contraceptive methods and services.	108
PART FOUR RIGHT TO IDENTITY							
4.1	February 10, 1994	Writ No. 29 of the Year 1992	Request to issue an order of mandamus or whatever order	Meera Gurung, et al. v. Central Immigration	N/A	Related to discriminatory visas given on the basis of sex to foreign	111

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
			or letter is required under Article 16/71 of the Constitution	Department		citizens who have a marital relationship with Nepali citizens, which are considered to be contrary to the principle of equality.	
4.2	April 24, 1998	Writ No. 2228 of the Year 1994	Partition /Alimony	Ratna Lal Kanaudiya v. Renu Adhikary	NLR 1998, Issue 8, Deci. No.: 6585	Related to the relationship of husband and wife is established between the plaintiff and the defendant in a situation where a daughter is born after sexual intercourse between the plaintiff and the defendant.	112
4.3	February 7, 2002	Writ No. 3668 of the Year 2000	Request for issuance of appropriate order or letter whatsoever including mandamus with certiorari pursuant to Article 23, Clause (1) and (2) of Article 88 of the Constitution of the Kingdom of Nepal.	Advocate Chandra Kanta Gnyawali, et al. vs. His Majesty's government, Secretariat of the Council of Ministers et al.	NLR 2001, Issue 11, Deci. No.: 7044	Related to discrimination on the basis of sex and that citizenship obtained on the basis of descent cannot be considered just.	113
4.4	March 23, 2005	Writ No. 3504 of the Year 2004	Certiorari /Mandamus	Advocate Achyut Prasad Kharel v. Office of the Prime Minister and Council of	NLR 2005, Issue 4, Deci. No.: 7533	Related to giving citizenship on the basis of descent to children born from single mothers.	115

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
				Ministers et al			
4.5	September 15, 2005	Writ No. 121 of the Year 2003	Mandamus as well	Advocate Tek Tamrakar, et al. v. His Majesty's Government secretariat of the Council of Ministers et. al.	NLR 2005, Issue 6, Deci. No.: 7550	Related to making necessary provisions in relation to citizenship and birth registration of children born from women.	116
4.6	November 28, 2005	Writ No. 3355 of the Year 2003	Certiorari /Mandamus	Punyabati Pathak, et al. v. His Majesty's Government, Ministry of Foreign Affairs et al	NLR 2005, Issue 8, Deci. No.: 7585	Related to the non-requirement of guardian approval while issuing passports to women.	117
4.7	August 31, 2006	Writ No. 43 of the Year 2004	Certiorari /Mandamus	Advocate Meera Dhungana, et al. v. Office of the Prime Minister and Council of Ministers et al	NLR 2006, Issue 5, Deci. No.: 7693	Related to determining priorities concerning giving names to children after birth.	118
4.8	December 21, 2007	Writ No. 917 of the Year 2007	Request to issue an order Certiorari, Mandamus and Prohibition or including whatsoever order or warrant is required.	Sunil Babu Panta v. His Majesty's Government and the Office of the Prime Minister and Council of Ministers	NLR 2008, Issue 4, Deci. No.: 7958	Related to guaranteeing and protecting the fundamental rights of third gender people.	119
4.9	April 16, 2006	Writ No. 0089 of the Year 2006	Certiorari	Nakkali Maharjan, et al. v. Office of the Prime Minister and Council of Ministers et al	NLR 2008, Issue 11, Deci. No.: 8035	Related to issuing citizenship to married women in the name of their fathers based on descent.	121
4.10	June 26,	Writ No.	Mandamus	Ranjit Thapa,	NLR	Related to ensuring	122

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
	2009	WO-0035 of the Year 2008		et al. v. Office of the Prime Minister and Council of Ministers	2009, Issue 6, Deci. No.: 8175	the right to obtain citizenship through mothers.	
4.11	February 7, 2011	Writ No. WS-0017 of the Year 2010	Certiorari as well	Advocate Saroj Nath Pyakurel, et al. v. Office of the Prime Minister and Council of Ministers et. al.	NLR 2011, Issue 1, Deci. No.: 8536	Related to citizens not being deprived of their right to vote and being a candidate in an election when she is a single woman.	123
4.12	February 27, 2011	Writ No. WO-0703 of the Year 2010	Mandamus as well	Sabina Damai, et al vs. the Government of Nepal Office of the Prime Minister and Council of Ministers and et al.	NLR 2011, Issue 2, Deci. No.: 8557	Related to the right to obtain citizenship in the name of mothers, which falls under women's rights.	125
4.13	November 5, 2012	Writ No. WH-0030 of the Year 2012	Habeas corpus	Prem Kumari Nepali, et al. v. National Women Commission et al	NLR 2013, Issue 1, Deci. No.: 8945	Related to the right to live or spend one's life with another homosexual woman or man.	126
4.14	June 10, 2013	Writ No. WO-0027 of the Year 2011	Mandamus	Dilu Buduja v. Government of Nepal, Office of the Prime Minister and Council of Ministers et. al.	NLR 2013, Issue 8, Deci. No.: 9048	Related to providing citizens with passports that contain a third gender identity option.	128
4.15	March 15, 2016	Writ No. WO-0731	Mandamus	Sajda Sapkota, et	NLR 2016,	Related to preventing	129

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
		of the Year 2011		al. vs. Government of Nepal, Office of the Prime Minister and Council Of Ministers et al.	Issue 7, Deci. No.: 9627	obstacles in issuing citizenship when the identity of the father and his nationality is not ascertained.	
4.16	April 4, 2016	Writ No. WO-0903 of the Year 2014	Mandamus	Bipana Basnet, et al. vs. Government of Nepal, Office of the Prime Minister and Council of Ministers et al	NLR 2018, Issue 8, Deci. No.: 10066	Relating to granting citizenship certificates to a child in the name of mothers or fathers.	130
4.17	August 29, 2016	Writ No. WO-0709 of the Year 2014	Mandamus	Sripana Kharel v. Government of Nepal, Office of the Prime Minister and Council of Ministers, et al.	NLR 2016, Issue 9, Deci. No.: 9687	Related to the non-necessary task of submitting citizenship of one's father in order to obtain citizenship on the basis of descent.	131
4.18	January 23, 2017	Writ No. WO-0287 of the Year 2013	Mandamus	Sunil Babu Panta, et al. v. Office of the Prime Minister and Council of Ministers, et al.	NLR 2017, Issue 9, Deci. No.: 9875	Related to citizenship, including the gender identity of people who belong to sexual and gender minority communities (including for those who have already been issued citizenship).	132
4.19	April 30, 2017	Writ No. CI-0131	Relationship be established	Narayan Mani Lamichhane	NLR 2017,	Related to not mentioning the	133

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
		of the Year 2016		v. Sarita Shrestha	Issue 6, Deci. No.: 9833	husband's name in the citizenship or in the appointment letter or not obtaining citizenship from the name of the husband.	
4.20	August 21, 2017	Writ No. WO-0852 of the Year 2016	Mandamus /Certiorari	Uma Singh (Bhattarai), et al. v. District Administration, Morang et al	NLR 2017, Issue 7, Deci. No.: 9841	Related to whether or not citizenship can be issued on the basis of descent in the name of the mother in situations where the identity of the father is unknown.	135
4.21	October 9, 2017	Writ No. CI-0724 of the Year 2016	Mandamus	Chief District Officer of District Administration, Bardiya v. Sweta Shribastab	N/A	Related to giving a decision after making a necessary investigation in relation to whether citizenship can be issued or not.	137
4.22	October 23, 2017	Writ No. WO-1054 of the Year 2016	Certiorari /Mandamus	Suman Panta v. Ministry of Home Affairs, Department of Immigration, Dillibajar and et al	NLR 2017, Issue 12, Deci. No.: 9921	Related to illegal tourist visas of people from sexual and gender minority communities who have already concluded homosexual marriage.	138
PART FIVE FAMILY AND MARITAL RELATION							
5.1	August 2, 2001	Writ No. 3313 of the Year 1998	Request to issue the writ of Certiorari, Mandamus including other appropriate order or warrant pursuant to	Tara Devi Poudel v. Secretariat of the Council of Ministers, et al.	NLR 2001, Issue 7, Deci. No.: 7016	Related to the legal provision that does not prohibit widowed men from marrying their deceased wife's sister (after the death of wife), but	141

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
			Article 23, 88(1), 88(2) of the Constitution of Kingdom of Nepal, 1990			prohibits widowed women from marrying their deceased husband's brothers (after death of her husband).	
5.2	February 13, 2005	Writ No. 37 of the Year 2004	Request to issue an order of Certiorari, Mandamus including other appropriate order or warrant pursuant to Article 23, 88 (1) (2) of the Constitution of Kingdom of Nepal 1990.	Advocate Chandrakant Gyawali, et al. v. His Majesty's Government, Prime Minister and Office of the Council of Ministers et.al.	NLR 2004, Issue 11, Deci. No.: 7459	Related to the legal provision allowing men to practice polygamy under certain conditions, but making women liable to punishment if they practice polyandry in same circumstances.	142
5.3	March 30, 2006	Writ No. 64 of the Year 2004	Request to issue an order to declare null and void the laws inconsistent with the Constitution pursuant to Article 88 (1) of the Constitution of Kingdom of Nepal 1990.	Advocate Meera Dhungana, et al. v. Office of Prime Minister and Council of Ministers et.al.	NLR 2006, Issue 1, Deci. No.: 7635	Related to a legal provision prohibiting husbands from filing for divorce if a child is not conceived (because of the wife's health) within 10 years of marriage.	143
5.4	July 13, 2006	Writ No. 98 of the Year 2005	Request to issue an order of Certiorari, Mandamus including other appropriate order pursuant to Article 23, 88(1), 88(2) of the Constitution	Advocate Sapana Pradhan Malla, et al. v. Nepal Government, Office of Prime Minister and Council of	NLR 2006, Issue 3, Deci. No.: 7659	Related to discriminatory legal provisions concerning the age of marriage for men and women.	144

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
			of Kingdom of Nepal, 1990.	Ministers et.al.			
5.5	January 10, 2007	Writ No. 2679 of the Year 2005	Certiorari, Mandamus.	Advocate Nirmala Upreti v. Government of Nepal, Ministry of Law, Justice and Parliamentary Affairs	NLR 2006, Issue 3, Deci. No.: 7763	Related to need for changing the legal provision relating to adoption.	145
5.6	September 11, 2008	Writ No. WS-0011 of the Year 2007	Certiorari, Mandamus.	Advocate Sapana Pradhan Malla et.al. v. Office of Prime Minister and Council of Ministers et.al.	NLR 2008, Issue 8, Deci. No.: 7997	Related to situation in which women have to bear further violence due to the provisions that allow polygamy in situation where the wife is disabled.	146
5.7	October 22, 2009	Writ No. WS-0034 of the Year 2007	Request to issue an order of Certiorari including any other appropriate order	Advocate Achyut Prasad Kharel v. Office of the Prime Minister and Council of Ministers et.al.	NLR 2011, Issue 9, Deci. No.: 8677	Related to discriminatory legal provisions that terminates the service of a parachute folder woman if she marries within five years of appointment	147
5.8	May 17, 2009	Writ No. MS- 0015 of the Year 2009	Habeas corpus	Sabita K.C on behalf of Prarthana Rayamajhi v. Ram Bahadur Rayamajhi, et al.	NLR 2010, Issue 6, Deci. No.: 8393	Related to who will be the parent or guardian of a female child.	148
5.9	July 8, 2013	Writ No. CR- 1201 of the Year	Polygamy	Nepal Government by the FIR of Nirmala	NLR 2014, Issue 2, Deci.	Related to whether or not the second wife will be an offender in a	149

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
		2010		Basnet v. Yogita alias Yogmaya Chimariya Basnet.	No.: 9124	polygamy case.	
5.10	May 11, 2018	Writ No. CR- 0726 of the Year 2010	Divorce	Kiran Rana v. Puran Shumsher J.B.R.	NLR 2018, Issue 4, Deci. No.: 9999	Related to whether or not divorce can be done if the husband lives separately from the wife continuously for up to 3 years (without the wife's consent) and whether or not the husband can divorce the wife if she has received property from her husband.	150
PART SIX EQUAL RIGHTS IN EMPLOYMENT							
6.1	September 14, 1998	Writ No. 3975 of the Year 1998	Certiorari, Mandamus including others.	Sita Acharya v. His Majesty's Government, Ministry of Health et.al.	N/A	Related to a provision on unequal probation periods for female employees working in civil and health services.	153
6.2	June 8, 2000	Writ No.- 2812 of the Year 1997	Request to issue an order of Certiorari, Mandamus including other appropriate order or warrant	Reena Bajracharya, et al. v. His Majesty's Government, Secretariat of Council of Ministers et.al.	NLR 2000, Issue 5, Deci. No.: 6898	Related to discriminatory provisions in services and facilities between male and female flight attendants of the crew section.	154
6.3	September 5, 2001	Writ No.- 2784 of the Year 2000	Request to issue an order to declare null and void the laws in consistent with	Advocate Meera Dhungana v. His Majesty's Government,	N/A	Related to discriminatory provisions requiring approval of a guardian and the	155

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
			the Constitution pursuant to Article 88 (1) of the Constitution of Kingdom of Nepal 1990	Ministry of Law, Justice and Parliamentary Affairs.		government in order for an employer company to send women abroad for employment.	
6.4	May 29, 2003	Writ No. 82 of the Year 2002	Certiorari including others.	Advocate Basundhara Thapa v. His Majesty's Government, Secretariat of the Council of Ministers et.al.	NLR 2003, Issue 5, Deci. No.: 7217	Related to unequal tenure among nominated male and female members of equal status and equal condition.	156
6.5	March 30, 2006	Writ No. 69 of the Year 2005	Request to issue an order of Certiorari, Mandamus including other appropriate order to declare void the inconsistent legal provision with the Constitution	Advocate Prakash Mani Sharma v. Prime Minister and Office of the Council of Ministers, et al.	NLR 2006, Issue 1, Deci. No.: 7634	Related to an unequal probation period of female employees in different services.	157
6.6	June 28, 2007	Writ No.- 01-063-00001 of the Year 2006	Certiorari including others.	Advocate Meera Dhungana v. Prime Minister and Office of the Council of Ministers et.al.	NLR 2007, Issue 6, Deci. No.: 7854	Related to inheritance discrimination in Nepal's army in terms of the scholarship or allowance received by sons and daughters because of marriage.	158
6.7	November 28, 2008	Writ No. 2822 of the Year 2005	Mandamus	Advocate Prakash Mani Sharma v. Nepal Government, Ministry of Women,	NLR 2008, Issue 8, Deci. No.: 8005	Related to protecting the fundamental rights of women employed in dance and cabin restaurants.	160

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
				Children and Social Welfare et.al.			
6.8	April 30, 2009	Writ No. WS-0001 of the Year 2007	Mandamus including others.	Advocate Sapana Pradhan Malla v. Prime Minister and Office of the Council of Ministers et.al.	NLR 2009, Issue 7, Deci. No.: 8187	Related to depriving married woman from entering the army police service due to restrictions discriminating against them on the basis of sex and marital status.	162
6.9	December 29, 2005	Writ No. 63 of the Year 2004	Request for the law that in conflict with the Constitution should be declared invalid pursuant to Article 88 (1) of the Constitution of the Kingdom of Nepal, 1990 (2047)	Advocate Prakash Mani Sharma and Others v. His Majesty's Government, Ministry of Culture, Tourism and Civil Aviation.	N/A	Related to obstetric leave given to female employees based on their marital status.	163
PART SEVEN SPECIAL PROTECTION							
7.1	October 29, 2004	Writ No. 3059 of the Year 2004	Certiorari and Mandamus	Pradhosh Chhetri, et al. v. Office of the Prime Minister and the Council of Ministers.	N/A	Related to the decision to provide reservations to employees of Tribhuvan University without any law being contrary to the constitution and the issue of how women and other marginalized groups require protection through the law.	167
7.2	June 8,	Special	Request to	Rupak	NLR	Related to wrongful	168

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
	2006	Writ No. 55 of the Year 2004	declare the law inconsistent with the Constitution null and void pursuant to Article 88(1) of the Constitution and to issue the writ of certiorari and mandamus pursuant to Article 88(2).	Dhakal, et al. v. Prime Minister and office of Council of Ministers et. al. Dhakal	2006, Issue 4, Deci. No.: 7678	process of determining reserved quotas under Scholarship Rules in a situation where special law has not been made to identify the prescribed groups and provide special protection without selecting quotas of scholarship on the basis of qualifications.	
7.3	November 6, 2007	Writ No. WS-0036 of the Year 2006	Certiorari Mandamus and other	Sambhu Prasad Sanjel, et al. v. Ministry of Cultural, tourism and Civil Aviation et. al.	NLR 2007, Issue 9, Deci. No.: 7876	Related to the requirement of different provisions to upgrade employees working in an organization to be based on discretionary divisions.	170
7.4	December 25, 2007	Writ No. 3561 of the Year 2006	Request to issue an order or Mandamus and other necessary order including warrant pursuant to Article 88(2) of the Constitution of the Kingdom of Nepal, 1990(2047 BS)	Advocate Sapana Pradhan Malla, et al. v. The Government of Nepal, Office of the Prime Minister and the Council of Ministers et. al.	N/A	Related to the Constitutional duty of Government of Nepal to protect citizens' rights to privacy.	172
7.5	October 2, 2008	Writ No. 0723 of the Year 2006	Mandamus	Advocate Raju Prasad Chapagain et. al. v. Nepal Government,	NLR 2008, Issue 7, Deci. No.: 7987	Related to forming a sensor board and a high-level experts committee to control and regulate	173

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
				Office of the Prime Minister and the Council of Ministers et. al.		gender unfriendly advertisements.	
7.6	August 12, 2009	Writ No. WO-0187 of the Year 2007	Including mandamus.	Advocate Jyoti Lamsal (Paudel), et al. v. Government of Nepal, Office of the Prime Minister and the Council of Ministers et. al.	N/A	Related to taking necessary provisions to protect women and human rights activists.	175
7.7	March 10, 2010	Writ No. WO-0187 of the Year 2008	Including mandamus.	Advocate Kabita Paadey, et al. v. Government of Nepal, Office of the Prime Minister and the Council of Ministers.	NLR 2010, Issue 7, Deci. No.: 8411	Related to discrimination imposing a limit on age for widows; providing widow allowance to single widowed women and collecting statistics related to widowed women.	176
7.8	July 12, 2010	Writ No. WO-0186 of the Year 2007	Mandamus	Jyoti (Lamsal) Paudel v. Government of Nepal et. al.	N/A	Related to the need to create appropriate policy, programs, and strategies, (legal, administrative, and related to infrastructure) that comply with the provisions of CEDAW.	177
7.9	February 2, 2012	Writ No. WS-0033	Request to declare the law	Advocate Narayan Jha	NLR 2010,	Related to provisions about	178

S. No.	Decision /Date of Order	Case No./ Writ No.	Case/ Petition	Parties	NLR/ Year/ Decision No.	Subject	Page No.
		of the Year 2010	inconsistent with Constitution void	v. Tribhuwan University Assembly, Kirtipur et. al.	Issue 2, Deci. No.: 8765	proportionate inclusivity at Tribhuwan University among teachers and employees.	
PART EIGHT RELATED TO COVID 19							
8.1	August 03, 2020	Writ No. Wo-0939 of the Year 2019	Mandamus	Gopal Siwakoti (Chintan), <i>et al.</i> v. The Government of Nepal, The Office of the Prime Minister and Council of Ministers <i>et al.</i>		Related to granting pardon to prisoners convicted of committing offences to immediately reduce overcrowding in prisons and protect them from COVID-19, especially pregnant women, breastfeeding women, and inmates with complex health issues on a priority basis.	183
8.2	August 5, 2020	Judgment / Writ No. WO-0962 of the Year 2019	Certiorari/Mandamus	Advocate Roshani Poudel <i>et al.</i> v. The Government of Nepal, Secretariat, the Prime Minister and Office of the Council of Ministers, <i>et al.</i>	N/A	Related to an online case registration or hearing service for registering complaints and hearing domestic violence cases, and for ensuring immediate interim relief and protection to victims, especially among the current challenges arising from the COVID-19 pandemic.	185

PART ONE
GENDER-BASED VIOLENCE

Date of Order 2012/05/01	Case No./Writ No. 55 of Year 2011	NLR/Year/Decision No. Not available
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Special Bench

Honorable Justice Mr. Laxman Prasad Aryal
Honorable Justice Mr. Kedarnath Upadhyaya
Honorable Justice Mr. Krishna Kumar Varma

Subject: Request to declare laws contrary to the Constitution null and void pursuant to Article 88 (1) of the Constitution of the Kingdom of Nepal, 1990

Meera Dhungana v. HMG, The Council of Ministers and Secretariat et.al.

- An offence that is punishable cannot be deemed otherwise merely because the status of the actors is different. If the same act were committed against any woman other than the perpetrator's wife, then the act would be deemed an offence. However, if the same act is committed against one's spouse (in cases in which such acts are not deemed to be an offence), then it creates discriminatory results. Differentiation cannot be made between a spouse and other women.
- Crime is committed by a criminal act and not according to differences in the status of the perpetrator. There may be a difference in the level of punishment, but such a person cannot be immune to punishment. The law recognizes consent as the basis of marriage and in the absence of consent, marriage cannot be solemnized and therefore, sexual relationships even after solemnization of marriage cannot be established in the absence of consent between a husband and wife. Sexual relationships in the absence of consent are an act of rape.
- If a man subjects a woman to the inhumane criminal act of rape, in the absence of her consent, then the man cannot receive immunity from criminal liability merely because the victim is his spouse.
- Marital rape is a punishable offence. However, the quantum of punishment given to a third person for the offence of rape and the offence of rape committed by a husband cannot be the same, and therefore, a directive order is hereby issued in the name of the Ministry of Law, Justice and Parliamentary Affairs to submit an amended Bill in Nepal's Parliament that looks into the evidence, circumstances, and appropriateness of sentencing. In Clause 8, under the 'Chapter on Rape' that discusses a rape committed by others, the respondent is hereby directed to make clear legal provisions that consider the status of the husband and rape committed during child marriage, and to implement the law relating to marital rape.

Date of Order 2002/05/02	Case No./Writ No. 56 of the Year 2001	NLR/Year/Decision No.
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Special Bench

Honorable Justice Mr. Laxman Prasad Aryal

Honorable Justice Mr. Kedarnath Upadhyaya

Honorable Justice Mr. Krishna Kumar Varma

Subject: Request to declare laws contrary to the Constitution null and void pursuant to Article 88 (1) of the Constitution of the Kingdom of Nepal, 1990

Advocate Sapana Pradhan Malla v. HMG, Ministry of Law, Justice and Parliamentary Affairs

- Pursuant to the laws of our country, an offence of rape is generally an offence targeted against women. Rape is rape regardless of whether the victim is married or single, a minor or matured, or engages in prostitution. The physical and mental injury that a woman endures after an act of sexual violence is same in nature. A prostitute is a woman and a human being – and being human, she is entitled to inherent rights and enjoys these rights.
- Compelling and forcing a woman to use her body in the absence of her consent is a violation of the right to live in dignity and a violation of a woman's right to self-determination. It is an affront and violation of a woman's human rights regardless of whether the woman is engaged in prostitution or the sex trade.
- We cannot concur and agree that the Constitution of our country is discriminatory with regards to prostitutes. Since the Constitution is not discriminatory among women, the discrimination provided by the law between a prostitute and other women is not appropriate or logical. In addition, the various international conventions on women and human rights guarantees equal rights to women and human beings, and since Nepal is party to those conventions, it is necessary that Nepal take steps to fulfill its obligations under those conventions.
- The law prescribes lesser punishment to offenders committing rape against prostitutes and as such, these women have been discriminated and derogated to a lower status without reasons and grounds. Formulating and implementing unequal laws and enabling discriminatory behavior among citizens are not in line with the spirit of the Constitution. It is not rationale that an offender should be granted lesser punishment (or that there should be differences in the level of punishment) due to their victim's profession or character. Offences of rape against prostitutes will be encouraged if such discriminatory laws are prevalent. Laws that encourage such grave criminal offences cannot be maintained.

- The legal provision providing weaker punishment based on the character and profession of the victim is contrary and discriminatory, according to the Constitution and various international covenants and conventions relating to women and human rights. Therefore, Section 7 under the Chapter of Rape of the Muluki Ain (National Code) is discriminatory and unequal between women and is also contrary to Article 1 of the Constitution and therefore, the said provision pursuant to Article 88 (1) of the Constitution is declared null and void.

Date of Order 2004/02/12	Case No./Writ No. 3434 of the Year 2004	NLR/Year/Decision No. 7449
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Division Bench
Honorable Justice Mr. Dilip Kumar Paudel
Honorable Justice Mr. Khil Raj Regmi

Subject: Mandamus, et al.

Advocate Sharmila Parajuli, et al v. HMG, Secretariat, the Council of Ministers, et al.

- It cannot be deemed otherwise that the petitioners do not have a meaningful relationship or substantial interest in the public interest issue regarding the right of women to live a life free from sexual misconduct and violence.
- Sexual misconduct is a sexual act committed against a woman without her consent. This includes rape, sexual exploitation, teasing, grappling, use of vulgar words, drawing or showing vulgar pictures, winking, etc., which has an effect on the work performance of the victim and an impact on her health and professional life.

Sexual misconduct (harassment) is undesired conduct committed against a person. Sexual misconduct is conduct that is performed physically, verbally, and in writing. Touching, embracing, blocking the pathway, pinching, and shouldering are acts that are considered to be sexual misconduct, whereas making vulgar or demeaning comments, using vulgar words, teasing, saying sexually sex-oriented jokes, making indecent sexual proposals, and inviting or pressuring to accept such invitations are considered oral sexual misconduct.

- Displaying vulgar and provocative pictures and distributing sexual materials are considered written forms of sexual misconduct. Ogling, staring, and making sexual signs also fall within the ambit of sexual misconduct.
- Sexual misconduct in the workplace refers to sexual misconduct committed by a higher-level employee or colleague in an office or enterprise where the woman works. It can also refer to sexual misconduct committed by any client of the enterprise. The supervisor or higher-level employee of an office may threaten the female employee and put her job at risk if sexual favors are not provided. Sexual misconduct can also be committed under the pretext of providing a higher evaluation of work performance to a female employee or promoting her.
- It is a universal principle and an obligation of the State to implement the provisions prescribed in international treaties and agreements to which the State is party, and to frame laws according to those provisions.

- It is a recognized principle that courts do not make laws, but rather they interpret laws. In the absence of a legal structure for controlling crime and punishment and where the judicial directives may not be appropriate and sufficient – the petitioner’s appeal to issue judicial directives cannot be entertained.
- The court hereby issues a directive order in the name of the respondent with regard to sexual misconduct, and advises that the respondent conduct a study and frame appropriate law as deemed necessary.

Date of Order 2004/08/10	Case No./Writ No. 2891 of the year 2002	NLR/Year/Decision No. 7498
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Division Bench

Honorable Justice Mr. Ramnagina Singh

Honorable Justice Mr. Anup Raj Sharma

Subject: Certiorari et.al.

Advocate Reshma Thapa v. HMG, Secretariat, the Council of Ministers, et al.

- In our society, the act of accusing a woman of witchcraft is still prevalent and women accused of being witches are subjected to exploitation. They are often forced to consume feces, stripped naked and paraded around their communities, expelled from their villages, and have their heads shaved. Such acts are degrading to humans; these are acts of physical and mental torture. What is witchcraft? What kind of acts does it entail? What are some issues related to witchcraft that need to be looked at? Page 986 of Extensive Nepali Dictionary published by The Nepal Royal Academy defines “witchcraft” as a witch who is a woman performing magical spells. In particular, when someone gets illness or dies, a woman is thought to have cast spells causing this person to fall sick or succumb to illness. Because these allegations are often made by local shamans, the woman is subjected to inhumane treatment. It is known that death caused by illness often occurs in the absence of proper medical treatment or by fatal injuries. Death caused by “casting spells” is not based on any scientific facts; it is the product of superstitious, stereotypical, and uncivilized society. Such beliefs do not have a place in this scientific age. What is the basis for proving that a person died because of a spell? What evidences proves that the alleged witch caused a person’s death? Accusing a woman of being a witch and parading her naked in the village and forcing her to eat feces are inhumane acts – they are an affront to a woman’s dignity and fall within the ambit of a criminal act.

(Paragraph No. 12)

- As to whether or not there are appropriate laws to control such inhumane acts perpetrated against women, the rejoinder submitted by His Majesty’s Government Ministry of Law and Justice states that there is no need to draft and frame new laws since sufficient laws have been prescribed under the Chapter on Battery of the *Muluki Ain* (National Code), Defamation Act, and Public Offence Control and Punishment Act, 2027. However, these Acts do not have sufficient provisions to control inhumane acts against a person accused of being a witch. It has been observed that the Public Offence Control Act, 2027 is applied only when a petition has been filed. However, that cannot be deemed to be the only appropriate law. In this regard, the Supreme Court in *Shambhu Prasad Gupta v. His Majesty’s Government in criminal Appeal No. 1966, 2171 of the Year 1998* has rendered its decision, which has been published in the Supreme Court Bulletin Year 13, No. 2 of the Year 2004. As such, this Court need not delve into that matter. It is evident that in order to eradicate superstition, illiteracy, and ignorance existing in the society, public awareness programs need to be conducted at the village-level and in order to provide stringent punishment against such inhumane acts, it is imperative to frame new laws.

(Paragraph No. 14)

Date of Order 2005/05/02	Case No./Writ No. 3303 of the Year 2004	NLR/Year/Decision No. 7531
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Division Bench
Honorable Justice Mr. Anup Raj Sharma
Honorable Justice Mr. Arjun Prasad Singh

Subject: Mandamus, et al.

Dil Bahadur Biswarkarma v. HMG ,The Office of the Prime Minister and Council of Ministers

- The petitioner stated that during the monthly menstruation period in far western districts, women are forced to reside in “*Chhaupadi*” sheds and are deprived of milk, curd, and other nutritious food. This is meted out in a discriminatory fashion. In this regard *Rajdhani*, a daily newspaper in western Nepal, reported on 2004/04/23 that in far western hilly districts, women experiencing menstruation were forced to stay in *chhaupadi* sheds for seven days as prisoners and that they were forcefully sent to the shed and even beaten by men. They were not only deprived of nutritious food such as milk, curd, and butter, but were also not allowed to touch such things and were instead given stale bread with salt and chilies. The newspaper further states that the women were prohibited from using taps and wells during their menstruation period. On 2004/11/26, an editorial in *Kantipur* titled “Women against chhaupadi” states that women from the far western region had to spend their time in an insecure and dirty place (*chhaupadi*) during their monthly menstruation period or when they were lactating, and that these women were often victims of rape and sometimes faced illness an even death. Likewise, the *Annapurna Post* published an article on 2004/02/18 titled “Menstruating women spend their nights in chhaupadi sheds.” After reading these reported newspaper articles, there is no doubt that this custom prevails in far western districts; women are being forced to spend their time at *chhaupadi* sheds located far from their houses. In order to control the *chhaupadi* system, it was deemed necessary to see as to what steps His Majesty’s Government has taken at the government level. The rejoinder submitted by the Ministry of Women and Children states that the Women Development Department subordinate to the Ministry has conducted awareness-raising programs in order to change the discriminatory behavior and other harmful social practices in society. However, the rejoinder fails to state and submit any facts as to how those awareness programs are being conducted and what kinds of mechanisms have been developed and adopted to stop these customs. Therefore, it is evident that the respondent has not adopted any effective measures to control the discriminatory custom of isolating the women in *chhaupadi* sheds during their menstrual cycles in far western districts. As such, the following directive orders have been issued in the name of the respondents:
 - a) An order is hereby issued in the name of His Majesty’s Government, the Office of the Prime Minister and Council of Ministers to declare within one month from the date of

receiving this order, the practice of sending menstruating women to *chhaupadi* sheds is illegal.

- b) An order is also hereby set aside directing the Ministry of Health to create a task force comprised of doctors who will evaluate the impact *chhaupadi* practices have on women and children in those districts and places where the custom is prevalent. The task force will also identify actions that should be taken in relation to their health and submit recommendations as soon as possible in a report to the Ministry of Health and the Supreme Court.
- c) The Ministry of Local Development is also hereby ordered to mobilize local units to conduct public awareness programs against *chhaupadi* customs.
- d) The Ministry of Women and Children and the Ministry of Social Welfare is hereby ordered to draft and implement the Directives within three months from the date of receiving this order and to inform the Supreme Court regarding the formulation of such Directives.
- e) Since the Parliament is currently not in session, the Supreme Court expects that extensive research to formulate a law will be carried out and that the law shall be framed. And, the court also expects that since the petitioners are affiliated to a non-governmental organization, the petitioners will carry out extensive and appropriate programs on preventing and stopping *chhaupadi* customs.

(Paragraph No. 12)

Date of Order 2006/09/10	Case No./Writ No. 3215 of the Year 2004	NLR/Year/Decision No. 7705
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Division Bench
Honorable Justice Mr. Sharada Prasad Pandit
Honorable Justice Mr. Balaram KC

Subject: Mandamus, et al.

Som Prasad Paneru v. HMG, the Office of the Prime Minister and Council of Ministers

- Since the custom of *Kamlari* (bonded slavery) is contrary to Articles 9, 14, 15, 16, 18, 19, 28, 31 and 32 of the Convention on the Rights of the Child (CRC) to which Nepal is signatory, an order of mandamus is hereby issued in the name of Nepal's government to implement the Act relating to Bonded (Prohibited) Labor, 2002 (2058).
(Paragraph No. 43)
- The child labor cannot be ended merely on being a party to the CRC and enacting other laws due to the pervasive traditional and superstitious belief, poverty, illiteracy and ignorance prevalent in our existing society
(Paragraph No. 44)
- Nepal has ratified international human rights conventions, such as the CRC, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Therefore, a directive order is hereby issued in the name of the Council of Ministers and Ministry of Education to include these conventions in the curriculum of school children.
(Paragraph No. 45)
- The main obligation of the government is to establish a welfare state based on social, economic lives and a judicious society. The State is also responsible with removing all economic and social inequalities and establishing and developing a just society based on justice and morality between various ethnicities. It is responsible with preventing children from being exploited and protecting their rights and interests, making provisions for education, health and employment, and creating other provisions deemed necessary to uplift the backward Janajati and communities who are economically and socially backwards. Developing into a welfare state is the goal of the present Constitution. Likewise, the Constitution guarantees rights against exploitation – a person cannot be trafficked, enslaved, or brought into servitude and cannot be subjected to work against their will. From among the Directive Principles and Policies of the State, Article 26 (8) and (9) are relevant for the petition. The objective of Article 26 (8) is to prohibit children from being exploited and to protect the rights and interests of children, whereas Sub-article 9 dictates that it is the constitutional duty of the government to make social security provisions for the protection and prosperity of orphaned children.
(Paragraph No. 50)

Date of Order 2006/12/06	Case No./Writ No. 131 of the Year 2006	NLR/Year/Decision No. 7742
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Special Bench
Honorable Justice Mr. Anup Raj Sharma
Honorable Justice Mr. Ram Prasad Shrestha
Honorable Justice Mr. Pawan Kumar Ojha

Subject: Request is hereby made to provide legal provisions based on the principle of equality.

Advocate Meera Dhungana v. the Office of the Prime Minister and Council of Ministers

- The State has formulated laws that create differences between men and women during marriage; in comparison to women, additional facilities have been provided to men.
- Differences in punishment cannot be made on the basis of one's gender and the provision under Section 4 (3) of the Social Reform Act, 1976 (2033) that punishes women more than men is deemed contrary and inconsistent with the right to equality.

(Paragraph No. 14)

- Laws that don't support rights to equality cannot be deemed appropriate and this court has repeatedly issued directive orders to amend these laws. The petitioner has sought to make laws compatible with the principle of equality. Therefore, this court hereby issues a directive order in the name of the Government of Nepal, the Office of the Prime Minister, and Council of Ministers to make laws based on the principle of equality.

(Paragraph No. 15)

Date of Order 2007/01/25	Case No./Writ No. WS-128 of the Year 2006	NLR/Year/Decision No.
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Special Bench
Honorable Justice Mr. Min Bahadur Rayamajhi
Honorable Justice Mr. Sharada Shrestha
Honorable Justice Mr. Balaram KC

Subject: Request is hereby made to declare laws void that are inconsistent with the Constitution and issue an order of Mandamus for the eradication of child marriage and to make the necessary provision.

Advocate Rama Pant Kharel v. the Government of Nepal, et al.

- Section 2 under the Chapter of Marriage of the *Muluki Ain* (National Code) states that in the absence of consent from the guardian, marriage cannot be solemnized until the age of 20. Section 9 of the Chapter stipulates that a marriage solemnized before the bride or groom has reached 18 years of age will be deemed void if the 18-year-old person did not give consent to the marriage. There is also a difference in age regarding consent and, since child marriage can still be solemnized, it is imperative to prohibit this. The government needs to look into this specific concern. Therefore, a directive order in the name of the respondent has been hereby issued to create and implement effective laws that prevent child marriage.

Date of Order 2008/07/10	Case No./Writ No. 0035 of the Year 2006	NLR/Year/Decision No. 7973
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Special Bench
Right Honorable Chief Justice Mr. Kedar Prasad Giri
Honorable Justice Mr. Anup Raj Sharma
Honorable Justice Mr. Balaram KC

Subject: Request to issue an order of mandamus, et al. to frame laws pursuant to the principle of equality for those laws that are inconsistent to Article 107 (1) of the Interim Constitution of Nepal, 2063.

Jit Kumari Pangeni (Neupane) v. the Government of Nepal, the Office of the Prime Minister and Council of Ministers

- There is no legal provision that reduces criminal punishment merely because the perpetrator is a relative of the victim. Therefore, if a husband murders his spouse or causes batters his spouse, the husband is not entitled to a reduced criminal sentence because of their relationship. The provision under the Chapter of Rape underlines that rape is a grave criminal offence and that the consequences of this crime are the same for all victims. It is not appropriate to minimize punishment based off a marital relationship and whether the offence is a non-marital offence.
- Crime is a result of a criminal act and if the level of punishment is determined based on the status of the perpetrator, then this is contrary to the principles of equality envisioned in the Constitution.

(Paragraph No. 5)

- The level of punishment (or length of a criminal sentence) in any crime is based on the nature of the crime, the medical conditions of the victim and the perpetrator, and their ages. Additional sentencing can be done in a way that is more than the initial sentence, however, the length of the sentence cannot exceed the initial sentence.
- It is important that the principal sentence not be less than the additional sentence. A sentence can be added to the principal sentence based on the gravity of the crime. The disputed provision prescribed under Section 3 (6) under the Chapter on Rape, which reduces the principal sentence is not justifiable and cannot be deemed appropriate according to the principle of equality.

(Paragraph No. 6)

- Even though the court observes that the provision relating to sentencing is contrary to the principles of equality, this court cannot declare it void. However, since this provision is not only contrary to constitutional principles, but is also contrary to the fundamental rights and

principles of criminal jurisprudence (and causes obstacles in developing criminal law and the justice system), the court cannot ignore its obligation on the pretext that it is the legislature's responsibility to frame sentencing policies.

(Paragraph No. 7)

- Therefore, a directive order is hereby issued in the name of the Ministry of Law, Justice and Parliamentary Affairs to make appropriate provisions. This effectively removes the discriminatory sentencing provisions.

(Paragraph No. 8)

Date of Order 2008/07/10	Case No./Writ No. 063-WS-0019 of the Year 2006	NLR/Year/Decision No. 7951
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Special Bench
Right Honorable Chief Justice Mr. Kedar Prasad Giri
Honorable Justice Mr. Anup Raj Sharma
Honorable Justice Mr. Balaram KC

Subject: Request is hereby made to declare laws inconsistent with the Constitution void and issue an order of mandamus or any other appropriate order.

Advocate Rama Pant Kharel v. the Government of Nepal, the Office of the Prime Minister and Council of Ministers

- It is not sufficient to merely state that the provisions of the law are inconsistent with a particular Article of the Constitution. It is also necessary to show and substantiate that these laws are inconsistent to the aforementioned provision of the Constitution.

(Paragraph No. 6)

- The State should uphold all its obligations under international treaties to which Nepal is party. Although the provisions of international treaties are equivalent to national laws, if the national laws are contrary, the provisions of international treaties shall prevail. However, as to whether or not the provisions outlined in national laws are contrary and inconsistent to the provisions prescribed in the international treaties, a judicial review of those provisions pursuant to Article 88 (1) of the previous Constitution and Article 107 (1) of the present Constitution cannot be made.

(Paragraph No. 7)

- If people involved in social practices are aware of the extravagant expenses that are incurred during social functions, such as marriages, then this awareness will have a positive and meaningful implementation of the Act. Therefore, it is hereby directed to include Social Practice (Reform) Act, 2033 in the curriculum.
- It is not appropriate for the Executive to witness the law being violated. Thus, it should implement and cause to implement the Act in its letter and spirit. It is hereby directed to set up a mechanism to effectively monitor and implement the provisions of the Act.

(Paragraph No. 15)

Date of Order 2008/07/11	Case No./Writ No. 3393 of the Year 2004	NLR/Year/Decision No. 8038
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Division Bench
Honorable Justice Mr. Balaram KC
Honorable Justice Mr. Kalyan Shrestha

Subject: Mandamus

Advocate Sapana Pradhan Malla v. the Government of Nepal, Ministry of Law, Justice and Parliamentary Affairs, et al.

- In crimes related to rape, the evidence collection and forensic process consumes a considerable amount of time. This process includes a physical examination of the victim and the accused – including an examination of the victim’s clothing – an examination of the crime scene, collecting a statement from the accused, writing a report based on expert testimony from the forensic laboratory, and collecting other forms of evidence to be examined. There is often a delay in filing the First Information Report (FIR) – but the law prescribes that the investigation should be completed and a charge sheet should be filed within 35 days from the date the crime allegedly occurred. As such, the limitation of 35 days is insufficient. Rape is a grave crime involving violence perpetrated against a woman. In such grave crimes (during which the government is the plaintiff), the court expects the evidence to be submitted beyond any reasonable doubt. According to the law pertaining to evidence, the burden of proof lies upon the plaintiff. In addition to our evidence law, the recognized principles of criminal justice, and different international human rights treaties, such as the ICCPR, the accused are guaranteed the right to remain silent in an accusatorial system like our country, and rests the burden of proof upon the plaintiff. This is the core tenet of a fair trial. Recognizing this issue, the previous government – His Majesty’s Government on 2001/08/31 – constituted a high-level committee, and on 2001/08/17 the Task Force on Criminal Justice Administration recommended a six months’ time-limitation period to file a charge sheet, instead of the 35 days for crimes of rape in the proposed Penal Code. From this, it can be concluded that the period of time-limitation prescribed by Section 11 under the Chapter on Rape is limited and insufficient.

(Paragraph No. 10)

- The principal objective of criminal law is to guarantee social order. Therefore, necessary steps need to be taken in order to prevent criminal activities in society. The law expects the State to bring the perpetrators of such crimes before it with sufficient evidence.
- If the laws made by the Legislature are incomplete or flawed, the courts have the right to issue appropriate order to fulfill those laws.

(Paragraph No. 12)

- The period of limitation stipulated in Section 11 under the Chapter of Rape is insufficient and causes obstacles in providing justice to victims. In order to carry out effective investigations that consider the gravity of the crime and its subsequent prosecution, we must recognize social psychology, the amount of time consumed during the investigation, and victims' access to justice. A directive order is hereby issued in the name of the Government of Nepal to reform the period of limitation stipulated in Section 11 under the Chapter on Rape.

(Paragraph No. 13)

Date of Order 2008/08/18	Case No./Writ No. 3581 of the Year 2005	NLR/Year/Decision No. 7981
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Division Bench
Honorable Justice Mr. Balaram KC
Honorable Justice Mr. Top Bahadur Magar

Subject: Mandamus et.al.

Advocate Puna Devi Maharjan “Sujan” v. the Government of Nepal, The Office of the Prime Minister and Council of Ministers, et al.

- The right to education explicitly enshrined in the Constitution cannot be violated in the name of customs, traditions, recognized practices or stereotypes. Since Nepal’s laws and other laws do not prohibit a Kumari from receiving education because of her identity, it cannot be deemed that the right to receive education by a Kumari has been violated.
(Paragraph No. 18)
- Through the extraordinary jurisdiction vested in this court by Article 107 (2) of the Interim Constitution of Nepal, 2007, the court can issue appropriate orders if the rights of children have been violated by any law or by any executive/administrative order and exercise those rights. However, if a person does not exercise those rights due to traditions or customs, society should be aware of this and should exercise those rights. The Executive should create awareness in society through programs and should empower people to exercise those rights.
(Paragraph No. 20)
- As long as rights guaranteed under Nepal’s Constitution and International Conventions are not violated, the custom of Kumari should be recognized as part of religion and culture followed by a certain ethnic group.
(Paragraph No. 22)
- Kumaris do not have to work or labor for anyone; the custom of Kumari was developed to pay homage to Kumari who is recognized as a living goddess. Since the Kumaris accept offerings made by the devotees, it can be deemed that the Kumari custom does not violate the rights of children.
(Paragraph No. 24)
- It cannot be deemed that the fundamental rights guaranteed by the Interim Constitution of Nepal, 2007, and the rights guaranteed by international child and human rights conventions have been violated merely because a child is a Kumari.
(Paragraph No. 28)

Date of Order 2008/10/22	Case No./Writ No. 0479 of the Year 2007	NLR/Year/Decision No. 8148
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Division Bench
Honorable Justice Mr. Balaram KC
Honorable Justice Ms. Gauri Dhakal

Subject: Rape

Tri Ratna Chitrakar v. the Government of Nepal

- From the case file, it is evident that the appellant was not only a rapist, but was also a child abuser. This is probably the first case this court has reviewed in which a pedophile had a control over a minor girl and repeatedly exploited her sexually. In this case, it has been proved that the victim was intentionally subjected to rape and unnatural sexual activities. These offences can be termed as custodial rape. In such crimes, the Appellate Court should not have intervened in the punishment meted out by the District Court.

(Paragraph No. 17)

- Without considering the gravity of the crime, the Appellate Court intervened in the punishment meted out by the District Court and without any grounds, reduced the perpetrator's sentence to seven years. The decision to reduce the sentence by the Appellate Court is arbitrary. During the trial phase, the District Court examined all the evidence and meted out the sentence. However, the Appellate Court – which is a higher-level court – acted like an authoritative regime by arbitrarily reducing the sentence without providing any reasons. The court does not have the right to do this and the Appellate Court should be acquainted with this matter. Based on the Appellate Court decision, we can infer that the honorable justices of the Appellate Court were ignorant about sentencing policy. The legislature had prescribed seven to ten years of punishment and the judges had the discretion to provide a minimum of seven years and a maximum of 10 years imprisonment.
- Based on the gravity of the crime, the damage caused to the victim, the repetition of the crime, the victim's condition, the volume and the *modus operandi* of committing the crime, the legislature has prescribed a discretionary provision for minimum seven years and a maximum of 10 years imprisonment. However, the honorable justices of the Appellate Court did not consider this fact.

(Paragraph No. 18)

- Rape is a heinous and grave crime perpetrated against a woman. If the victim, within one hour of committing the crime, kills the perpetrator, the victim is absolved of facing punishment for killing the perpetrator. This right has been guaranteed to women by the legislature to protect their dignity, which is an inviolable right. Rape is not only an offence against a woman, but is

also a crime against humanity. While the District Court laid down a sentence against such a heinous crime, the Appellate Court intervened without any sufficient grounds and reduced the sentence. As such, this action of the Appellate Court has been noted seriously and is hereby directed to the justices of the District Court and Appellate Court; they must lay down a reasonable sentence based on the gravity of the crime and the damage caused to the victim.

(Paragraph No. 20)

- The judgment from the District Court decision states that, if the victim submits an application pursuant to Section 10 of the Chapter of Rape, upon fulfilling the rules pursuant to the law, they shall be compensated with half the share of the perpetrator's property. The provision that entitles victims to half of their perpetrator's property is detailed under Section 10 of the Chapter of Partition. The District Court has failed to find the difference in the provision prescribed under Section 46 of the Chapter of Punishment. The person receiving half of the share of the property pursuant to Section 10 under the Chapter of Partition is the victim of the crime. The property received by the victim as compensation is in lieu of the long-term effects the crime will have on the victim's family, as well as the human, psychosocial, physical, intellectual, and economic effects of this crime. In such circumstances, the provisions under the Chapter of Punishment are not applicable to the victim. The victim (pursuant to Section 46 under the Chapter of Punishment) does not need to submit an application to partition the share of property. The court should inform the victim of their decision and implement it. The victim is not a family member of the defendant and as such, the victim is not in a position to submit the descriptions or disclosure of the defendant's property. How can a minor victim implement the decision of the court? The provision under Article 13 (3) of the Constitution and Article 20 are rights that are enshrined to guarantee the provisions prescribed in conventions relating to discrimination against women and conventions relating to child rights. In *Rakesh Kumar Singh vs. the Government of Nepal*, this court called the victim and recovered a share of the property from the defendant, according to the spirit and sentiments imbibed by Section 10 under the Chapter of Partition (NLR, 2064, Part 1, Page 86). Pursuant to this decision, we will notify the Registrar to ask that the Makwanwapur District Court provide half the share of the property to the victim, implement this decision, and notify this court.

(Paragraph No. 26)

Date of Order 2009/02/08	Case No./Writ No. 0402 of the Year 2006	NLR/Year/Decision No.
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Division Bench
Honorable Justice Mr. Balram KC
Honorable Justice Mr. Damodar Prasad Sharma

Subject: Mandamus

Indira Basnet v. the Government of Nepal, et al.

- Rape cases are sensitive and therefore, this case has been included in the Schedule of State Cases Act, 2049 and is defined as a case in which the State is the Party. In sensitive cases like this, victims should not be denied remedy because of the limited period to file a case.
- Rape cases are a grave offence against a woman and the limitation period of 35 days is very insufficient. The 35-day statute of limitation is a small window of time for a victim to register an FIR and for the police to investigate the allegations. When the timeframe to file a case for a criminal offence is limited, the perpetrator benefits and the victim is further victimized.
- Recognizing this matter, the court pursuant to Writ No. 3393 of the Year 2061 issued a directive order to extend the existing 35-day statute of limitation in rape cases perpetrated against women. Even in such grave and serious issues, the provision made by Section 11 under the Chapter of Rape has not been amended to date.
- Therefore, an order is hereby issued in the name of the Attorney General, who is the principal legal advisor of the government. The order is hereby set aside in the name of the Government of Nepal, the Office of the Prime Minister, and the Council of Ministers to reconsider the issue of extending the limitation.

Date of Order 2009/08/12	Case No./Writ No. WO-0424 of the Year 2007	NLR/Year/Decision No. 8282
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Division Bench**Honorable Justice Mr. Balaram KC****Honorable Justice Mr. Awadesh Kumar Yadav****Subject: Mandamus, et al.****Advocate Jyoti Paudel v. the Government of Nepal, the Office of the Prime Minister and Council of Ministers**

- The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) was ratified by Nepal on 22 April 1991. When a State is a signatory to any convention and when the convention has been ratified by the nation, then the State becomes party to the convention. When a State becomes party to any convention or treaty, the State must abide by the laws prescribed in the convention or treaty in letter and spirit, and cannot derogate from the provisions of the convention or treaty. The State should follow the recognized international principle of *Pacta Sunt Servanda* or in other words, the agreement must be honored in good faith. According to Article 21 of the Vienna Convention on Law of Treaties, 1969, when a State becomes party to the covenant or conventions, the State cannot violate the convention or covenant due to domestic or internal reasons. This is a recognized principle regarding international law. The same provision was enshrined in Section 9 of the Nepal Treaty Act, 2047. According to Section 9 of the Act, Nepal is party to any treaty or convention through ratification, and if provisions of the treaty or convention are inconsistent with the provisions of Nepal's laws, then Nepal's law will not be applicable and the provisions of the treaty or conventions will be applicable. From the above provision, it is clear that once Nepal becomes party to any convention, then it cannot derogate from its treaty obligation. When a State becomes party to a convention or treaty, the provisions of the convention or treaty should be followed in letter, spirit, and in good faith; this is an indisputable fact.

(Paragraph No. 7)

- Although Nepal has been party to CEDAW for almost 20 years, women, in particular daughters-in-law or spouses, are considered inferior with respect to other members of the family. Excluding urban areas, male members in villages do not have to be involved in domestic work; female family members are expected to do all domestic works. Male family members are engaged in study and leisure, whereas women because of being spouses or daughters-in-law are deprived of such privileges. They are economically, socially, intellectually, and physically exploited and are subjected to domestic violence. These are issues that should be taken into judicial notice by the courts. Women should not be exploited and considered inferior merely because they are a daughter-in-law or spouse. The reason why

women are exploited and considered inferior is that Nepal has not implemented the provisions of CEDAW in letter and spirit and has failed to make any laws criminalizing such discriminatory behavior, harmful tradition practices, and domestic violence. Likewise, this is also due to a lack of effective policy and programming on education and raising awareness. The Domestic Violence (Offence and Punishment) Act, 2009, was implemented on 2009/04/27. Section 3 Part (a) of the Act defines domestic violence. According to the definition provided in the Section, “domestic violence” means any form of physical, mental, sexual, or economic, harm and the term also denotes any acts of reprimand or emotional harm. The definition provided under Clause 2 (a) is limited to activities within the family. However, CEDAW prescribes that other than domestic violence, any other activities based on custom and practice in which women are treated inferior to men should also be criminalized. Domestic Violence (Offence and Punishment) Act, 2009 has not incorporated Article 3 of CEDAW and in particular, Article 2 (f) and Article 5 of CEDAW. Women are subjected to domestic violence and are considered to be inferior to men because laws pursuant to Article 3 and Article 2 (f) and Article 5 of CEDAW have not been formulated. Since the present Domestic Violence (Offence and Punishment) Act, 2009 has not incorporated Article 5 of CEDAW and Article 3 of the Declaration. There is no law abolishing the practice of treating women inferior to men. In the absence of education, laws, and awareness, and laws criminalizing and abolishing such concepts and traditions, women will continue to be treated inferior to men, and discrimination against women will not end. Therefore, it is imperative that laws should be framed incorporating the appropriate provisions of CEDAW.

(Paragraph No. 18)

- The definition of domestic violence is provided under Section 2 (a) of the Domestic Violence (Offence and Punishment) Act, 2009. The definition does not include the act of acid throwing and disfiguring the face of a woman. The definition prohibits physical torture and considers this to be an act of domestic violence. Section 13 of the Act outlines punishment. Taking into consideration the fact that throwing acid on a woman violates her right to life and limbs, this provision outlining punishment does not have any deterring effect. Punishment alone will not provide justice to the victim. It is the discretion of the legislature to determine what types of crimes should be incorporated within the definition of crime and what the level of punishment should be for each. Whether acid throwing should be brought within the ambit of crime or whether its punishment should increase are matters of legislative policy; it would not be appropriate for this court to intervene with its extraordinary jurisdiction. However, Nepal has been party to CEDAW for a long period and Article 156 of the Constitution lays down the effectiveness of law when Nepal is party to any treaty or convention. In addition, Section 9 of the Nepal Treaty Act, 1990 specifies that if the provisions of a treaty to which Nepal is party are inconsistent with Nepal’s laws, then Nepal’s laws will not be applicable and the provisions of the treaty will be as enforceable as Nepal’s laws. This legal provision has given primacy to treaty obligations and in the context of this unique legal provision, the Domestic Violence (Offence and Punishment) Act, 2009 has no provisions relating to the petition given by a woman victim of domestic violence. It also has no provisions related to the investigation and writing a charge sheet and a lack of effective punishment for the perpetrator. There is not a separate Bench to expedite the hearing of such sensitive cases. And, there is no provision for

rehabilitation and relief to the victim. As such, it is deemed that Nepal has not fulfilled its treaty obligation and this court, being the guardian of the fundamental rights of Nepal's citizens, deems it appropriate to issue an order under the extraordinary jurisdiction in the name of the Nepal Government.

(Paragraph No. 20)

- A fast-track court is needed by law to hear criminal cases in which women are victims. In order to constitute such a court, there should be sufficient human resources, funds, and physical infrastructure. Therefore, it is imperative that a study should be conducted in this regard. This study should be carried out and a report should be submitted to the Government of Nepal, the Ministry of Women and Children and a four-member committee should be constituted. The recommendation provided by the committee on a fast-track court may be difficult to be implemented immediately. Therefore, a directive order is hereby issued in the name of the government to implement the establishment of a fast-track court respectively.

(Paragraph No. 23)

Date of Order 2010/12/01	Case No./Writ No. 0663 of the Year 2009	NLR/Year/Decision No. 8507
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Division Bench**Honorable Justice Mr. Balaram KC****Honorable Justice Mr. Bharat Raj Upreti****Subject: Certiorari including Mandamus****Advocate Jyoti Lamsal Paudel v. the Government of Nepal, the Office of the Prime Minister and Council of Ministers**

- If any crime occurs in society, it is the constitutional responsibility of the State to initiate an investigation against the person perpetrating the crime. It is the State's duty to provide punishment to the perpetrator and justice to the victim and as such, the government cannot shy away from its constitutional duty and obligation.

(Paragraph No. 18)

- There should not be any lapses in the investigation and prosecution of a crime owing to negligence, error, or malice on behalf of the investigators and prosecutor. If such things exist, the government should be held responsible.

(Paragraph No. 21)

- Rape is not only against the law; it is also a grave crime and as such, it is deemed to be against the morality of a civilized human society. Such acts that are against morality should be deemed criminal.

- In order to provide assistance to female victims, the State should establish counseling centers in every district with sufficient resources.

(Paragraph No. 35)

- If the investigation of the crime is carried out by the current police organization, rather than by a separate police organization, the police will focus on maintaining peace and security. As such, the investigation of the crime may not be satisfactory. Investigating the crime may be a priority for the police. Therefore, reform should be made in the current situation and a separate police organization should be established to solely investigate crimes.

(Paragraph No. 38)

- In order to provide justice to a rape victim, hospitals in every district should be properly equipped with the necessary technology, laboratories, and experts. Health services that lack sufficient budgets, experts, and employees cannot be excused.

- Every District Court should make provisions to create separate rooms for the victim and the person accompanying the victim, the witness of the plaintiff and victim, and the witness of the defendant.

(Paragraph No. 41)

Date of Order 2010/12/01	Case No./Writ No. 0584 of the Year 2009	NLR/Year/Decision No. 8541
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Division Bench
Honorable Justice Mr. Balaram KC
Honorable Justice Mr. Bharat Raj Upreti

Subject: Mandamus

Suntali Dhami (Shah) v. the Office of the Prime Minister and Council of Ministers

- In accordance with the provisions specified under Sub-Article 135 (2) of the Interim Constitution of Nepal, 2007, all cases falling under Schedule 1 and 2 of State Cases Act, 1992, and other cases prescribed in specific Nepal laws wherein the State is the plaintiff must be considered State cases.
- The decision made by the Attorney General may be final for government authorities. Although Article 135 has entrusted this right upon the Attorney General, it does not limit or control the extraordinary jurisdiction (Article 107) of the Supreme Court.
- Article 107 (2) of the Interim Constitution of Nepal, 2007 prescribes the following constitutional provision: “For the enforcement of the fundamental rights conferred by the Constitution or for the enforcement of any other legal rights for which n other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective or for the settlement of any constitutional or legal questions in any disputes of public interest or concern, have the extraordinary power to issue necessary and appropriate orders to enforce such rights or settle such disputes.” According to this constitutional provision, the court can conduct a judicial review of decisions made by any unit or officer in order to seek justice.

(Paragraph No. 4)

- According to Article 116 of the Constitution, the decisions made by the Supreme Court shall be precedents and shall be binding to all the courts. If a larger Bench has made a decision on a similar issue made by this Bench, it shall be binding upon this Bench to follow that decision. However, if the disputed matter is different and is made by a larger Bench and if the decision is *per incuriam*, then a smaller Bench may not recognize such *per incuriam* decisions.

(Paragraph No. 6)

- The State represents and defends the victim until the final disposal of the case. The status of the victim is limited to that of a witness. In our system, the victim cannot initiate the proceeding of a case. The victim has to depend on the police and a government attorney

provided by the State. When a victim submits a complaint (along with evidence substantiating that the victim has been victimized) and if the police and government attorney do not initiate the case, the victim's right to justice will be violated.

(Paragraph No. 8)

- When the rights pursuant to Article 31 have been guaranteed to citizens and when the right to judicial review as guaranteed by Article 107 (2) of the Constitution has not been excluded or limited, this court (other than in matters having political questions, in matters related to internal work management of the legislature, in matters that have been finalized according to Article 107 (3) of the Constitution, and in matters relating to writ against the judiciary), the court can conduct a judicial review of decisions made by each officer of the Executive.

(Paragraph No. 9)

Date of Order 2012/05/16	Case No./Writ No. WO-0544 of the Year 2009	NLR/Year/Decision No. 8901
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Division Bench
Honorable Justice Mr. Kalyan Shrestha
Honorable Justice Dr. Bharat Bahadur Karki

Subject: Mandamus

Advocate Kabita Pandey, et al. v. the Office of the Prime Minister and Council of Ministers

- According to human rights standards, any customs that are likely to harm people's freedom, dignity and self-respect should not be recognized and any culture, tradition or values that are not legally should not limit and violate people's basic rights.
(Paragraph No. 4)
- Any custom, tradition or culture that victimizes women is considered an obstacle to women's development and empowerment. These customs, traditions or cultures create inequality and discrimination between women and men and as such, they should not be nurtured and supported in society.
- The *Baikalya* custom is prevalent in some districts in Nepal's Terai region and presents a serious problem. This custom requires that young married girls who are widows or have been forsaken by their husbands must live with their maternal families. This custom prevents young married girls facing this situation from receiving their partition property rights because the law does not prescribe any provision for receiving partition for married daughters and child marriage is also illegal. However, there has not been any sufficient study and research into this matter. Although the gravity and nature of this social custom has not been ascertained, we cannot deny its existence. The problem encountered by girl children in the Terai region needs to be specifically addressed.

(Paragraph No. 7)

Date of Order 2012/08/23	Case No./Writ No. WS-0042 of the Year 2011	NLR/Year/Decision No. 8883
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Special Bench
Right Honorable Chief Justice Mr. Khil Raj Regmi
Honorable Justice Mr. Girish Chandra Lal
Honorable Justice Gyanendra Bahadur Karki

Subject: Certiorari Mandamus

Advocate Jyoti Lamsal Paudel, et al. v. the Office of the Prime Minister and Council of Ministers

- Terminology within any law cannot be interpreted in isolation or determined to be inconsistent or contrary to the Constitution. The background and reasons for promulgating any Act, the objective of the Act, and whether the Act was issued to control any practice, prevent, manage and regulate the activities prevalent in society should be meticulously viewed.

(Paragraph No. 3)

- The Social Practice Reform Act does not intend or expect to establish dowry as an accepted social ideal. Dowry had never been in practice in Nepali society before the enactment of the Act, and therefore, it cannot be said that the Act does not provide protection against dowry and has created social disorder. In order to bring about social changes in society, the Social Practice Reform Act has therefore been promulgated,

(Paragraph No. 7)

- When the petitioner raised the issue of dowry, they stated that Nepali society is vexed with this problem, however, this Bench does not concur with the petitioner's statement. In the name of dowry, women are subjected to humiliation, beating, and burning. This fact cannot be denied. It is evident that the government has made small efforts to stop and prevent this practice. However, the problem of dowry-related violence has not subsided; it has only increased. It is clear that government efforts have not been effective. Dowry is a grave social evil and it is not possible to control it only through initiatives of the State or government authorities. To this end, civil society, non-governmental organizations, those working in the communication sector, and every member of Nepal's society should honestly make contributions from their side.

(Paragraph No. 13)

- A directive order is hereby issued in the name of the respondent, the Nepal Government, et al., and the government is hereby directed to engage people from the aforementioned sectors to conduct a study on the effectiveness of the law and reforms that can be made in the law. This effort will help formulate an appropriate strategy and make provisions to create human resources that have a sufficient budget to effectively implement and monitor the program. It will also help them conduct campaigns (with the help of national and local media) to reduce violence that arises from the continued and illegal practice of dowry.

(Paragraph No. 16)

Date of Order 2013/05/02	Case No./Writ No. 068-WS-0046 of the Year 2011	NLR/Year/Decision No. Not available
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Special Bench
Honorable Justice Mr. Kalyan Shrestha
Honorable Justice Mr. Girish Chandra Lal
Honorable Justice Mr. Gyanendra Bahadur Karki

Subject: Certiorari, et al.

Advocate Meera Dhungana v. the Office of the Prime Minister and Council of Ministers

- When situations arise in which no more than one person receives benefits from the crime, an FIR has been filed against a person, and if he/she has not been arrested, he/she may obstruct the victim or the informer from receiving justice. They might threaten or intimidate the victim, the informer or the informant, which could affect the investigation process and the path of justice. There is a high likelihood that when a victim or informer or informant provides information about the crime, they may give hostile statements that differ from their earlier statements or the information provided in the FIR.
- Section 15 (6) of Human Trafficking, Transportation (Control) Act, 2008, states that if a victim gives a statement during the proceeding of the case that contradicts a statement they gave earlier, or if they do not appear before the court on the prescribed date, they are liable for punishment. As such, the implementation of this provision provides additional punishment to the victim. The court could take judicial notice of a hostile witness or their absence; however, this legal provision is an obstacle to the application of a judicial notice. Such legal provisions cannot be deemed rational and appropriate.
- Within the criminal justice system, it is the State's duty to punish the offender and provide justice to the victim, and as such, it is imperative that the State provides victims with information on such matters. Likewise, the victim who is a prime witness for prosecution should be produced before the court as and when required by the court without any obstacles. The State should create an environment conducive for the victim to give her statement independently.
- If State mechanisms do not assist and initiate the process of recovering compensation for the victim, the victim will never experience justice.
- When a proceeding is initiated based on a witness statement or information provided about the crime, and if this witness intentionally lied about the facts and provides a different statement or changes their earlier statement, or if this witness does not appear in court and intends to change their statement, or if for any reason the witness does not assist in the judicial process, there should be a provision enabling this witness to be punished. However, this provision is applicable even people who contradict their earlier statements for any reason or do not appear in court; therefore, it is necessary to review and reform this provision.

Date of Order 2013/12/15	Case No./Writ No. CR-0792 of the Year 2009	NLR/Year/Decision No. 9186
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Division Bench**Honorable Justice Mr. Tarka Raj Bhatta****Honorable Justice Mr. Dr. Bharat Bahadur Karki****Subject: Rape****Badri Khatri v. the Government of Nepal by the FIR of Yeshoda Karki**

- This case deals with the following questions: To what extent can an act be ‘attempt to rape’ or rape? Does the age and condition of the accused involve matter? Although the nature of the incident may be the same in a particular case, the facts of the case may be different and therefore, the question also arises as to whether or not the provision of the Act is relevant and applicable in the case. In the present case, the perpetrator rubbed his penis against the vagina of a minor girl for sexual pleasure and ejaculated semen. The intention the legislature and objective of law collapses in the situation when it is assumed that a perpetrator has only committed attempted rape because he did not penetrate his penis into the vagina of a minor girl.

(Paragraph No. 8)

Date of Order 2014/09/12	Case No./Writ No. RC-0112 of the Year 2012	NLR/Year/Decision No. 9242
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Division Bench
Honorable Justice Ms. Shushila Karki
Honorable Justice Mr. Baidyanath Upadhyaya

Subject: Homicide

Nepal Government on behalf of Gurans Devi Lama v. Radhika Shrestha

- There are some differences between provocative homicide and violence committed by a battered woman. Provocative homicide involves immediate and uncontrollable anger and as such, it lacks intention on the part of the offender. The incident claimed to be a case of **Battered Women Syndrome (BWS)** is a homicide case. However, the actions of the deceased person were the motivating factor that led the offender to commit the homicidal crime. In many disputes involving BWS, women have been battered by their husbands or lovers for years, have endured considerable trauma, and have had their lives threatened. The murder committed against one's husband or a lover is not an act committed immediately; rather, it is an act that is done after many days in order to protect one's life. It can also be an act committed when the perpetrator is asleep or under the influence of drugs. The only reason the offender commits this homicidal act is to be free from hatred, violence, and the threat of being killed by their spouse or lover.

(Paragraph No. 8)

- The application of Section 188 of the Court Management in homicide cases is to provide a rebate (concession) in the level of punishment, which depends on the circumstances surrounding the crime. However, BWS is a legal privilege that a woman is entitled to in circumstances in which the deceased was a perpetrator of violence and the woman was their victim. The crime committed by these women is the result of torture they endured. Therefore, because Section 188 of the Court Management alone cannot address BWS, it is imperative that a separate law addresses it.

(Paragraph No. 18)

- Based on the factual circumstances, the woman was a victim of domestic violence perpetrated by her husband wherein the family environment was bad. The defendant reached a state in which she felt compelled to kill her husband. The defendant also has two minor children and the responsibility for caring and protecting them rests on her shoulders. Therefore, sentencing the defendant pursuant to Section 13 (1) under the Chapter of Homicide of the *Muluki Ain* (National Code), would be too excessive. Also, the Appellate Court's decision to not

confiscate the property of the defendant and reduce her sentence to 10 (ten) years seems to be reasonable and justifiable.

(Paragraph No. 19)

- The condition of BWS is separate from the provision prescribed under Section 188 of the Chapter of Court Management in the *Muluki Ain* (National Code). Based on the precedent propounded, BWS should be tested in homicide cases. Also, given the examination report and expert testimony, it is appropriate to make provisions to decide whether the defendant's sentence should be reduced or whether she should be absolved from the sentence.

(Paragraph No. 20)

Date of Order 2015/02/02	Case No./Writ No. CR-1288 of the Year 2011	NLR/Year/Decision No. 9346
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Division Bench**Honorable Justice Ms. Shushila Karki****Honorable Justice Mr. Jagadish Sharma Paudel****Subject: Human Trafficking, Child Marriage and Rape****Lok Bahadur Karki, et al. v. the Government of Nepal by the FIR of “Kha” Kumari (Name Changed)**

- Section 2 under the Chapter of Marriage in the *Muluki Ain* (National Code) states that the marriageable age for females and males is 18 years old, provided that their guardians have given consent. In the absence of a guardian’s consent, the marriage cannot be solemnized unless the couple is at least 20 years old. With regard to this case, at the time of the defendants’ marriage, they did not stat whether their guardians gave them consent or whether they were at least 20 years old. They also failed to substantiate their statements with evidence. The age of the victim at the time of marriage was only 14 years old; therefore, based on the facts, the marriage entered between the victim and the defendant cannot be considered a valid, legal marriage; instead, it is deemed a child marriage.
(Paragraph No. 7)
- Section 1 under the Chapter of Rape in the *Muluki Ain* (National Code) states that "having sexual intercourse with a woman without her consent or sexual intercourse with a person who is below sixteen years of age with or without her consent shall be deemed to be an offence of rape." Therefore, pursuant to the above provision, sexual intercourse without the consent of a woman or sexual intercourse with a girl below sixteen years of age with or without her consent shall be deemed to be an offence of rape.
- At the time of the offence, the victim was below 16 years old. Therefore, the defendant’s contention that he was married to the victim or had sexual intercourse with the consent of the victim is not legally valid.
(Paragraph No. 9)
- When the victim’s age is 14 year, the marriage solemnized with the minor cannot be recognized as a valid marriage. Sexual intercourse cannot be deemed valid either; instead, it is deemed an offence of rape.
(Paragraph No. 10)
- The victim has appeared before the investigating officer and provided her statement regarding the offence. The statement was immediately authenticated by the nearest District Court and

therefore, the victim's statement pursuant to Section 6 (3) of the Human Trafficking and Transportation (Control) Act, 2007 can be taken as evidence.

- To initiate an investigation into this incident, it is not necessary to inquire whether the victim appeared before the investigating officer to provide her statement or whether she submitted an FIR or complaint. The fact that the victim's parents or guardians filed a complaint or FIR does not *ipso facto* diminish the value of the victim's statement. The court authenticated the victim's statement and as such, we cannot confine and narrowly accept it in the eye of the law.

(Paragraph No. 14)

- In order to make a victim's statement admissible in human trafficking and transportation crimes, it is not important to submit proof that the victim or a third person filed a complaint against trafficking and transportation. Instead, it is important to see whether the court authenticated the victim's statement.
- Whether or not a minor victim submitted their complaint in person and whether or not they reappeared in court to give their statement are not technical grounds to label the authenticated statement false. Such grounds cannot be accepted contrary to the legal provision prescribed under Section 6 (3) of the Human Trafficking and Transportation (Control) Act, 2007.

(Paragraph No. 17)

- The purpose of providing victims with compensation after the crime is to maintain their livelihoods prior to the offence or to aid in their rehabilitation. Merely formulating laws concerning compensation is not sufficient. In order to provide actual compensation to the victim, these laws should be appropriate and effectively implemented.

(Paragraph No. 20)

- States that are party to the Convention on the Rights of the Child (CRC), 1989 must make appropriate provisions to protect the rights and interests of children. Parents, legal guardians or any other people responsible for a child must provide them with proper care and maintenance and protect them from all forms of physical or mental exploitation, damage or maltreatment, exploitation and sexual exploitation. To protect children, the State shall make provisions for appropriate laws and adopt administrative, social, and academic measures. Since Nepal is signatory to this convention, it cannot ignore its obligations.

(Paragraph No. 22)

- In order to provide compensation to child victims who faced these kinds of offenses, the Government of Nepal must establish a separate fund and immediately provide compensation pursuant to the final decision made by the court. The perpetrator must be responsible for funding the compensation and therefore, it is necessary for the Government of Nepal and other sectors to develop the necessary and appropriate infrastructure to do this.

(Paragraph No. 31)

- The right of crime victims to receive compensation should be considered part of upholding their right to life as provisioned under Article 12 of the Interim Constitution of Nepal. Therefore, it is evident that the right to compensation to crime victims should be addressed under ‘the right to life’ as prescribed under Article 12.

(Paragraph No. 32)

- The amount of compensation given to the victim should be determined based on the nature of suffering or cruelty inflicted on the victim.
- The amount of compensation a victim receives should be determined regardless of the victim’s economic situation. The right to compensation should not be limited merely because the offender was not identified, has poor financial conditions, has absconded from the area or is a minor.
- If such conditions arise, the victim will be deprived of her right to life and the victim will not have access to justice. The victim may not receive judicial protection towards her right to life, which is fundamental.

(Paragraph No. 34)

- Pursuant to the provisions prescribed under Article 12 and 20 of the Interim Constitution of Nepal, 2007 and international legal provisions and practices in other countries, the right to compensation for crime victims is considered an integral part of ‘the right to life.’ Obtaining compensation is a fundamental right of crime victims. This right should be practically, factually and fully implemented, and it is the obligation of the court and duty of the State to provide justice to victims.

(Paragraph No. 40)

- If the perpetrator is not able to provide compensation, hasn’t been identified, or is absconding, it is the duty of the State to protect citizens and provide victims with compensation.

(Paragraph No. 31)

- According to ‘victimology’ (the study of crime victims and their psychological wellbeing), victims should be given compensation to sustain their lives whether or not the perpetrator has been identified or prosecuted. The compensation should be adequate and the victim should be immediately rehabilitated; both of which should be provided by the State. Since the State is considered to be the guardian and protector of its citizens, they should immediately provide compensation to victims of violence against women, rape, and human trafficking and transportation. With regard to recovering the amount in lieu of compensation from the perpetrator, the State shall make and implement appropriate laws. Just because a perpetrator cannot provide compensation does not mean a victim should be denied their right to it. If this happens, it would bring additional, unnecessary grief to the victim.

(Paragraph No. 42)

Date of Order 2016/02/04	Case No./Writ No. WO-0753 of the Year 2014	NLR/Year/Decision No. 9741
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Division Bench**Right Honorable Chief Justice Mr. Kalyan Shrestha****Honorable Justice Mr. Devendra Gopal Shrestha****Subject: Mandamus**

Advocate Punyashila Dawadi Ghimire, et al. v. the Office of the Prime Minister and Council of Ministers, Singha Durbar, et al.

- The State should follow and adopt appropriate measures to provide victims better access to justice. The State should create an environment where, from the beginning, victims can experience State-provided care and protection. If there are social and cultural barriers that prevent victims (who have been compelled to endure physical, mental, and psychosocial distress) from receiving judicial remedy, such barriers should be removed. Women are often socially and economically disadvantaged and under family pressure, they are sometimes discouraged to file complaints. Such practices should be discouraged.

(Paragraph No. 4)

- Victims of sexual violence by relatives – as well as the people assisting them with filing a complaint – are often subjected to displacement. It has also come to the attention of this Bench that there are incidents of sexual violence and domestic violence (perpetrated by the husband and other family members) that go unreported. This poses a challenge to women's development and wellbeing. The State should take cognizance of such matters; it is imperative that female violence victims have access to justice. In order to create an enabling environment that helps victim's access justice, interim relief, compensation and other protective and remedial measures should be extended and made effective.

(Paragraph No. 5)

- It is the responsibility and obligation of the State to adopt appropriate measures and laws or reform or eradicate laws, rules, traditions, and practices that discriminate against women. Likewise, the State cannot ignore its legal obligations to uphold international human rights standard, which are outlined in conventions to which it is party. Neither a civilized society, nor the State, can disregard issues raised by the petitioner.
- By its very nature, the law is dynamic and should be reformed from time to time, as is expected in modern societies. The State should be involved in the process of amending laws in a timely manner. Likewise, the court should encourage the State to make timely laws through its judicial review. The State cannot overlook the expectations and commitments prescribed in its domestic

laws and international conventions. As such, continuity cannot be given to laws that discriminate against women and children.

(Paragraph No. 9)

- Access to justice for victims of sexual violence is a right protected under international law. Ensuring a legal remedy is an important aspect of enabling victims to access justice. If a victim fails to receive justice through the legal system, it should be acknowledged that they have been deprived access to justice. This also suggests that the person has been deprived of exercising their legal rights. We are born human beings; our dignity as humans is not dependent upon our sex or gender identity. Therefore, it is the obligation of the State to guarantee equal rights to all the citizens as their *parens patriae*.

(Paragraph No. 10)

- The Convention on the Rights of the Child, 1989 has ensured access to justice and legal remedy for child victims. Article 3 of the Convention states that the State shall undertake the necessary and appropriate measures for child victims of violence. Similarly, Article 39 of the Convention states that the State shall take all appropriate measures it can to promote the physical and psychological recovery and social integration of child victims. The Article also states that measures shall be taken to foster children's health, self-respect and dignity. As such, the State cannot remain a mute spectator in the implementation of these provisions.

(Paragraph No. 13)

Date of Order 2016/07/05	Case No./Writ No. CR-0087 of the Year 2014	NLR/Year/Decision No. 9861
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Division Bench

Honorable Justice Mr. Kedar Prasad Chalise
Honorable Justice Dr. Ananda Mohan Bhattarai

Subject: Homicide**Sanju Mahato, et al. v. the Government of Nepal on behalf of Jhari Mahato**

- Accusing a person of witchcraft and tormenting, humiliating, ostracizing, attacking, ridiculing or killing them is a grave crime. Witchcraft allegations are in and of themselves an attack on the victim's right to lead a dignified life, including their freedom and ability to move or travel and conduct business and work. Therefore, this issue is a grave violation of human rights.
- People who believe in the existence of witches including the following: people who practice exorcism based on the notion that they (or someone else) is under the spell of a witch, people who resort to violence against someone they have accused of witchcraft, and bystanders who witness such incidents. People who resort to physical or mental violence against an alleged "witch" do not consider that they are doing injustice to that person. Rather, they justify their actions and believe they are providing justice under the influence of divine powers. Until and unless these superstitions are removed from society, we will continue to see witchcraft accusations happen in certain rural areas of Nepal. Therefore, we need to inform society that there is no such thing as a "witch." It is necessary to inform people of all ages – men, women, children, teenagers, and the elderly – that services provided by shamans are often not social services. Instead, they often spread superstitions and people are frequently exploited through these services. Our State, the legal system and the judicial system should not only stand against witchcraft accusations, but should also stand against root cause of this problem: local shamans who encourage these beliefs.

(Paragraph No. 12)

Date of Order 2016/09/01	Case No./Writ No. CR-0524 of the Year 2013	NLR/Year/Decision No. 9684
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Division Bench**Honorable Justice Mr. Bishwambhar Prasad Shrestha****Honorable Justice Ms. Sapana Pradhan Malla****Subject: Human Trafficking and Transportation and Rape****Lakpa Sherpa v. the Government of Nepal by the First Information Report of Yamuna Rai (Name Changed)**

- This case concerns whether or not a woman can commit rape against another woman. There are several different types of sexual identities in our society: heterosexual people who maintain sexual relationships with the opposite sex, homosexual people who maintain relationships with the same sex, and bisexuals who have relations with both sexes. Since this is the case, it cannot be ruled out that disagreeable or forceful relations cannot occur in any type of consensual relationship. If, in the pursuit of sexual pleasure, a woman uses an object to simulate a penis, then this must be considered a sexual act. With the development of science and technology, various sex toys have been produced to fulfill one's sexual desires. New developments have also been made in the area of sexual exploitation. Therefore, the notion that only a person with a natural penis can commit rape does not address new, artificial forms of sexual pleasure. If a woman conceals her name, sex, gender, and features and performs rape with the use of a dildo, the person cannot be entitled to immunity just because the person is a woman. Sexual penetration is the principal basis for rape, but this does not mean that rape can only be done through penile penetration. Penile penetration should not be the only basis for establishing the offence of rape. If a person with sexual intention performs non-consensual vaginal, oral or anal penetration with an object, then these acts must be brought within the ambit of rape; this is a recognition that has been developed in the later stages. Section 2 of the Sexual Offence Act, 2003 of England states that if sexual penetration with the use of the dildo and without the consent of the women is performed, then such act falls within the ambit of rape.
- Person *A* commits an offence if he intentionally penetrates the vagina or anus of another person with a part of his body or anything else and this penetration is sexual, and person *B* does not consent to the penetration and person *A* does not reasonably believe that person *B* consents.

(Paragraph No. 9)

- The definition and nature of crime evolves as society changes over time. Science and technology have brought new elements into sexual relationships. In turn, this has brought on new forms of crime and has complicated the nature of certain crimes. With regard to the

criminal offense of rape, wider societal changes have altered conceptual principles surrounding rape and identifying certain sexual acts as “rape” has broadened over time. For example, during the 19th century, unlawful sexual intercourse had to be present for an act to be identified as “rape” and marital rape was not within the ambit and purview of rape. However, at the present moment, many common law countries and civil law countries have framed laws and included marital rape within the ambit and purview of rape. Likewise, vaginal intercourse and anal intercourse have also been included in the definition of rape. Furthermore, Section 2 of the Sexual Offence Act, 2003 of England defined non-consensual vaginal and anal penetration by any part of the body or by any other object to be offence of rape. While interpreting the law, the court should also take cognizance of the changes that have appeared in the nature of the crime. In such circumstances, it cannot be concluded that a woman cannot rape another woman by using a dildo; it would not be justifiable to provide immunity to such a woman. It is clear that a woman can rape another woman through the use of an external or artificial sexual object. Mental and psychosocial elements are prevalent when a woman rapes another woman. For example, it is possible that some women may commit rape in order to obtain psychosocial satisfaction. Likewise, some people may commit rape for sexual pleasure – a type of mentality that develops within certain social contexts and relations. In these circumstances, disagreement or rape can happen and it is necessary to bring this within the purview of law.

(Paragraph No. 13)

Date of Order 2017/08/11	Case No./Writ No. CR-0879 of the Year 2015	NLR/Year/Decision No. 9868
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Division Bench

Honorable Justice Dr. Ananda Mohan Bhattarai

Honorable Justice Ms. Sapana Pradhan Malla

Subject: Human Trafficking and Transportation

The Government of Nepal by the FIR of Apsara (Name Changed) v. Shanti B.K.

- In order to provide justice to the victim, the State should fulfill its responsibility. With regard to the State giving compensation, the Constitution of Nepal and the laws have, to some extent, embraced the international legal standards. Therefore, the State and its relevant institutions should be sensitive and serious in implementing this.
- The present legal provision and the context in which the legal provision was prescribed should be considered while interpreting the law. The context in which the law was introduced and the intended objectives of the law should also be explored while interpreting the law.
- Penalty and compensation should be looked at under different lenses within the judicial system. A penalty is recovered from the perpetrator during sentencing. The penalty goes into the State coffer. If the accused fails to pay the penalty, the amount is recovered through the process of sentencing the accused, whereas compensation is provided to the victim, which includes rehabilitation and reparation. If the perpetrator cannot pay compensation, the State will pay it to the victim. Compensation is a mechanism for helping the victim.

(Paragraph No. 5)

Date of Order 2017/11/29	Case No./Writ No. WC-0020 of the Year 2015	NLR/Year/Decision No. Not available
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Constitutional Bench

Right Honorable Chief Justice Mr. Gopal Parajuli
Honorable Justice Mr. Deepak Raj Joshi
Honorable Justice Mr. Om Prakash Mishra
Honorable Justice Mr. Cholendra Shamsher J.B.R.
Honorable Justice Mr. Deepak Kumar Karki

Subject: Certiorari/Mandamus

Advocate Rajiv Jung Shah, et al. v. the Office of the Prime Minister and Council of Ministers

- When rape is committed against a woman, the offence is not only a crime that is associated with the body of the woman, but it also diminishes her right to self-respect, bodily integrity and living with dignity. This offence not only physically damages the victim, but it also causes irreparable social and psychological harm. An offence of rape committed against a woman is similar to committing an offence of homicide. Security of life and property and self-defense are inherent rights that are vested in the concerned person. Rape against women is a grave offence that is perpetrated to diminish the self-worth and integrity of women and our legal system has categorized it as a serious, unpardonable offence. Likewise, our legislature has created relevant laws to deal with it. When a rape victim – acting in anger and fearing stigma from the rape – hits the perpetrator and incidentally kills them, it cannot be deemed that this act violates the right to life of the perpetrator in question.
(Paragraph No. 7)
- The legal system of most countries recognizes private defense as an important principle in criminal law. Defending chastity also falls within this principle. The right to chastity is a right that is directly related to the life of a woman and our legal system has recognized this right as part of defense of bodily integrity.
(Paragraph No. 8)
- It has been accepted that the principle of general defense protects one's body, life, property, and bodily integrity prior to the occurrence of the incident. However, the provision under Section 8 is contrary to the principle of criminal law because it only provides the opportunity for self-defense *after* a rape has occurred. Protecting one's own bodily integrity falls under the principle of general defense and has been recognized in criminal law. However, self-defense (as recognized in criminal law) and protecting bodily integrity cannot be measured in the same way. Special importance has been provided to the bodily integrity of a woman, which is considered to be sensitive. When a woman protects herself from rape (which affects her

bodily integrity), it cannot be said to be contrary to self-defense. The immunity provided to women in the context of protecting their bodily integrity cannot be considered contrary to the recognized principles of justice; neither can it be called a violation against the right to life of another person. This is a shield provided to protect a woman's bodily integrity – a concept that has been recognized by the general principles of criminal law. As such, the provisions prescribed in the Chapter of Rape under the *Muluki Ain* (National Code) by our legislature cannot be deemed antithetical to the fundamental rights guaranteed in the Constitution.

(Paragraph No. 9)

Date of Order 2018/09/23	Case No./Writ No. CR-0020 of the Year 2010	NLR/Year/Decision No. 10335
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Division Bench

Honorable Justice Mr. Ishwor Prasad Khatiwada

Honorable Justice Ms. Sapana Pradhan Malla

Subject: Unnatural sex with a minor

The Government of Nepal by the FIR of “A” Kumari (Name Changed) v. Santosh Kushwaha

- Although the intention to commit rape is sexual in nature, the person may not intend to commit rape. Intention to commit rape may only have elements of sexual misconduct. In such cases, the victim may feel frightened and upset because perpetrator acts in other ways – by writing about sexual matters, showing them sexual materials, looking at them, touching them or talking to them about sexual matters. This can damage the self-esteem of the victim. In order for an offense to be deemed “rape,” there must be an intention to commit rape and in order to realize that intention, the act of rape is committed.
- With regard to this case, the victim has detailed what happened during the incident. She has informed the court that the defendant inserted his finger inside her vagina and licked her breast. The medical report states that the hymen of the victim ruptured to some extent and that while the defendant was inserting his finger inside the victim’s vagina, some blood was wiped onto the chest of the victim. Based on facts about the incident, it cannot be deemed that the defendant performed these acts intending to rape the victim. However, the defendant was involved in causing mental and physical damage to the victim by partaking in other sexual activities; he looked at and touched the victim’s body and caused her hymen to rupture. In such circumstances, it cannot be determined that the defendant was involved *only* in the act of committing rape. The act committed by the defendant falls under the purview of child pedophilia. The activity performed by the defendant hereby falls under Section 9 (a) under the Chapter of Rape and is hereby deemed to be a crime of unnatural sex.

(Paragraph No. 35)

Date of Order 2019/01/14	Case No./Writ No. CR-0799 of the Year 2015	NLR/Year/Decision No. Not available
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Division Bench

Honorable Justice Mr. Hari Krishna Karki
Honorable Justice Ms. Sapana Pradhan Malla

Subject: Human Trafficking and Transportation

Padam B.K. v. the Government of Nepal by the FIR of Kailali 71 “B” Khima (Name Changed)

- Regardless of a defendant’s jail sentence or penalty, the life of the victim will always be in misery due to the social thinking, practices, and conditions arising – particularly if a victim does not experience justice. Therefore, in such sensitive cases that are related to the life of the victim, the prosecution and investigation should always be conscious of this and should always be victim-oriented. To enable the victim to live a respectful life, all units of the State, law framers, interpreters of the law, law implementers, seekers of justice, and the society should be victim-oriented.

(Paragraph No. 37)

- In the context of international standards, constitutional and legal provisions, it is expedient for the Supreme Court to exercise the residuary power vested in the Supreme Court to provide, to some extent some compensation to the victim. Although the legal provision prescribes for providing compensation to the victim which should be recovered from the defendant, and where the defendant has not been fined, the victim will be deprived of the remedy in lieu of the damage caused to her. The court, prosecution and other units involved should be sensitive towards the damage suffered by the victim. The Bench hereby concludes and observes that in the present case, the victim will not realize the attainment of justice in the absence of appropriate compensation. The purity of a person and victimology is determined through laws, and taking cognizance of the spirit of the victimology, the court hereby directs that where an offender pursuant to Section 17 (1) of the Human Trafficking and Transportation (Control) Act, 2007 is imposed fine, then from among the fine, fifty per cent of the fine or equivalent to it should be provided to the victim as appropriate compensation.

(Paragraph No. 39)

Date of Order 2019/04/28	Case No./Writ No. WO-0683 of the Year 2013	NLR/Year/Decision No. 10342
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Division Bench**Honorable Justice Ms. Sapana Pradhan Malla****Honorable Justice Mr. Purushottam Bhandari****Subject: Certiorari****Second Lieutenant Bhupendra Khadka v. the Government of Nepal, Nepal Army Headquarters, et al.**

- According to law, in any organization, a person working in a higher position exercises authority over their junior officer. In other words, the person at a higher level maintains authority over the person working at a lower level. In these circumstances, if the authority being exercised is misused, the person working at a lower level may be subjected to influence or pressure; there is a risk of taking inappropriate advantage. With regard to sexual violence, women should be categorized as a vulnerable group.
- With regard to this case, it has been determined that the physical relationship between both parties was consensual. Even though both of them work for the same institution as army officers, there is a vast authoritative difference between them and a vast difference in their hierarchy. Although they both work in the same office, there are unbalanced power relations between them. The sensitive questions that need to be analyzed by this court are: Who in this workplace relationship exercises the hierarchical power, including economic and social power? Should the conduct and discipline be considered ‘bad?’
- A person who is considered a subordinate in a workplace environment – someone who can be influenced with the intention of reaping inappropriate benefits – can be deemed an inappropriate influence. When a subordinate person is under this inappropriate influence, the person with economic or hierarchical power may influence them. The complainant felt she was at risk and filed a complaint.
- When an army officer has a sexual relationship with their subordinate, some may take advantage of this position of power and it can be deemed that consent in the relationship was taken through inappropriate influence. Consent taken through inappropriate influence should be viewed as delusive; it cannot be considered consent as exercised through free thought. This relation should be viewed as a form of sexual exploitation.

Date of Order 2019/07/11	Case No./Writ No. NF-0001 of the Year 2017	NLR/Year/Decision No. 10280
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Full Bench**Honorable Justice Ms. Mira Khadka****Honorable Justice Mr. Ishwor Prasad Khatiwada****Honorable Justice Mr. Bam Kumar Shrestha****Subject: Attempt to Rape****Pradip Bhattarai v. the Government of Nepal by the FIR of the victim's father**

- The offence of rape is categorized as rape, attempted rape, and sexual misconduct. These offences are categorized as sexual violence and are prohibited by law. It is not necessary to define what kind of act constitutes what kind of offence. The offence should be determined based on the nature of the act, the incidents involved, and the circumstances related to the dispute. On a conceptual level, though, it is necessary to be clear about the area in which this is exercised. Among the three kinds of offences, the “Offence of Rape” is a grave act in which the offence is fully committed. In an “attempt to rape,” the perpetrator has not completed the act of rape, but committed most of the activities involved in trying to commit it prior to the commission of the crime.
- While executing criminal law, the law cannot be applied based on its appropriateness or probability; instead, it should be applied according to provisions in the law. If any act falls within the ambit of sexual misconduct, then these acts should be deemed ‘sexual misconduct.’ There may be difficulty in drawing distinctions between acts relating to attempted rape and sexual misconduct. Therefore, the judicial mind should be applied and a conclusion should be reached based on the factual background of each act. The legal provisions of the law framed by the legislature should be interpreted and applied in a coordinated way. While exercising a law in the context of one issue, the application of that law should not make the provision of another law defunct. Such interpretations and application are not considered proper, according to the jurisprudential view.

(Paragraph No. 36)

Date of Order 2019/11/18	Case No./Writ No. CR-0659 of the Year 2014	NLR/Year/Decision No. Not available
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Division Bench

Honorable Justice Ms. Sapana Pradhan Malla

Honorable Justice Mr. Hari Prasad Phuyal

Subject: Rape

The Government of Nepal by the FIR of “GHA” Kumari v. Sagar Bhatta

- The act of rape is a grave offence that damages a person’s bodily integrity and self-respect. When a woman’s body and self-respect is violated, she may be mentally traumatized. In these circumstances, the victim may not be in a position to immediately narrate the incident of sexual violence that occurred. They might not be able to clearly remember the incident or they might remember it over a longer period of time. These conditions are known as ‘Rape Trauma Syndrome’ (RTS) and should be taken seriously by justice providers.

(Paragraph No. 58)

- The nature of rape is different from other kinds of offences. In other kinds of offences, the truth of the offence is evaluated based on the consistency of the victim’s statement. After the rape occurs, the victim’s statement may be inconsistent due to the trauma they have endured.

(Paragraph No. 59)

- When rape happens, the location of the incident is important and the court must look into this matter. In cases of rape, the victim’s body is the crime scene. The first piece of evidence to help determine whether rape occurred is the victim and a physical examination of the victim.

(Paragraph No. 59)

- An offence of rape is not only an offence against a woman’s bodily integrity, but is also an offence against her personhood. In this case, the victim was supposed to appear for her S.L.C. examination, which is considered the first step towards building a career and professional future. The victim was subjected to gang rape and, as a result, she was unable to take her examination. Receiving her academic qualification was delayed, which had an adverse effect on her future and career. Therefore, when determining compensation for the victim, courts should consider the shock victims suffer and the mental trauma they endure.

(Paragraph No. 90)

- Compensation should not be determined based on ‘reasonableness.’ Instead, it should be determined based on ‘adequacy.’

(Paragraph No. 91)

PART TWO
EQUAL RIGHTS TO PROPERTY

Date of Order 1992/10/22	Case No./Writ No. 2311 of the Year 1992	NLR/Year/Decision No. 4680
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Special Bench

Honorable Justice Mr. Trilok Pratap Rana
Honorable Justice Mr. Laxman Prasad Aryal
Honorable Justice Mr. Kedarnath Upadhyaya

Subject: Certiorari

Mrs. Sarala Rani Rauniyar v. Secretary, His Majesty’s Government, Ministry of Finance, et al.

- Article 12 (2) (e) of the Constitution of the Kingdom of Nepal, 1990 provides all citizens the freedom to practice any profession or carry out any occupation, trade, and business. In this context, Section 21 (a) of the Income Tax Act, 2031 does not restrict the petitioner’s freedom to have any occupation, industry, and business. The Section does not restrict the wife from being involved in any business, occupation, industry, or means of employment during their conjugal life.

(Paragraph No. 8)

- Even though Section 21 (a) of the Income Tax Act, 2031 does not violate the petitioner’s right to practice any business, profession, trade or employment, it cannot be deemed that the Section in question has restricted Article 12 (2) (e) of the Constitution of the Kingdom of Nepal, 1990.

(Paragraph No. 9)

- Article 11 (2) of the Constitution guarantees Nepal’s citizens the right to equality and the Article states that legal discrimination should not be made against any citizen on grounds of religion, race, sex, caste, tribe or ideological conviction. The learned advocate on behalf of the petitioner stated that determining the husband’s tax based on the joint income of the couple was unequal and discriminatory. Section 21 of the Income Tax Act, 1974 does not have any provision that levies a lesser tax to the husband based on his income and a higher tax based on the income of the spouse. Therefore, it cannot be concluded that this provision is discriminatory between husband and wife.

(Paragraph No. 10)

- Equality is never absolute. Discriminatory laws are those that violate constitutional rights without any reason. Equality in the eyes of the law – or equal protection before the law – means providing equal rights without discriminating against citizens based on their physical and academic qualifications or social status. The Income Tax Act does not contain

discriminatory provisions that levy lesser or higher tax amounts to men and women; it does not determine taxes based on gender. Determining taxes based on a joint income is different to taxes determined for single, unmarried women and men and cannot, pursuant to Article 11 of the Constitution, be deemed discriminatory against women. Determining taxes in the name of husbands on the joint income of a couple is the method of determining taxes. When levying taxes, deciding whose name is used in a couple with a joint income cannot be deemed unequal.

(Paragraph No. 11)

Date of Order 1995/08/03	Case No./Writ No. 3392 of the Year 1993	NLR/Year/Decision No. 6013
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Special Bench

Right Honorable Chief Justice Mr. Bishwonath Upadhyaya
Honorable Justice Mr. Surendra Prasad Singh
Honorable Justice Mr. Laxman Prasad Aryal
Honorable Justice Mr. Arbindanath Acharya
Honorable Justice Mr. Udaya Raj Upadhyaya

Subject: Laws inconsistent with Article 1 of the Constitution to be declared void pursuant to Article 88 (1) of the Constitution.

Meera Kumari Dhungana v. the Government of Nepal, Ministry of Law and Parliamentary Affairs, et al.

- Article 11 (1) of the Constitution of the Kingdom of Nepal, 1990 guarantees all citizens equal before the law. The Article states that no person shall be denied equal protection before the law and Article 11 guarantees citizens' equal treatment. No. 16 under the 'Chapter of Partition' in the *Muluki Ain* (National Code) prescribes that unmarried daughters who have reached the age of 35 are entitled to the partition of property rights equivalent to that of son. According to our legal provisions, sons are entitled (at birth) to their father's share of property, whereas daughters are entitled only upon reaching 35 years old if they are unmarried. However, if we are to look at the other provisions prescribed under the 'Chapter of Partition,' we cannot conclude there are discriminatory provisions and practices regarding daughters receiving share of property.

(Paragraph No. 14)
- If No. 16 under the 'Chapter of Partition' is deemed unconstitutional, then all daughters, like sons, would receive the partition of property and married daughters would also be entitled the right to receive property from their husbands and fathers. If this were the case, daughters – in comparison to sons – would receive more property than sons and this would be discriminatory toward sons. This would have impact all the State's laws relating to property rights. Therefore, declaring No. 16 under the 'Chapter of Partition' unconstitutional and providing daughters equal rights to that of the son does not remedy this problem.

(Paragraph No. 14)
- If traditional social practices and norms change immediately, society may not be able to adopt all these changes, which could in turn create unimaginable situations. Therefore, prior to reaching a decision on this issue, the constitutional provision regarding equality needs to be widely discussed and a judicial conclusion should be reached. While contemplating all family

laws relating to property, it is necessary to carry out a consultation with women's organizations, sociologists, the relevant social organizations, and legal experts who can help look into legal provisions in other countries. A directive order is hereby issued in the name of His Majesty's Government to present an appropriate Bill before the Parliament within one year from the date of receiving this order.

(Paragraph No. 14)

Date of Order 1995/12/11	Case No./Writ No. 2736	NLR/Year/Decision No. 6140
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Special Bench

Honorable Justice Mr. Mohan Prasad Sharma
Honorable Justice Mr. Krishna Jung Rayamajhi
Honorable Justice Mr. Govinda Bahadur Shrestha

Subject: Certiorari, et al.

Advocate Sapana Pradhan Malla v. His Majesty's Government, Ministry of Law, Justice and Parliamentary Affairs, et al.

- The Land Act, 2021 (1964) is a special law made for the provision of land. The contention that the general law is inconsistent and contrary to the provisions of the *Muluki Ain* (National Code) cannot hold good.

(Paragraph No. 13)

- The objective and policy to be adopted the Land Act, 2021 (1964) can be derived from its title, preamble, and the legal provisions prescribed therein. The objective of Section 26 (a) of the Land Act, 2021 (1964) is to prevent the tenant from transferring the tenancy rights so that they are not divided and the land remains with the tenant and his family. It also ensures and encourages the tenant to be involved in agricultural production. Section 26 (1) of the Act devolves the tenancy rights within the family of the tenant. The policy of the above provision is to keep tenancy rights within the family and not to transfer it to another family. Likewise, a tenant has been defined as a person or a person's family who cultivates the land. Upon marriage, daughters reside in another place and become a member of another family; this is the general social norms and practices. Therefore, the provision under Section 26 (1) has been written according to the policy vested in Section 26 (a). Therefore, the status of a daughter in comparison to the husband, spouse, and sons of a tenant is different.

(Paragraph No. 15)

- Pursuant to the provisions of Nepal's law, the son and daughter-in-law are entitled to property through the son. When the son has not received his tenancy right and subsequently transfers this right (after the in-laws) to the daughter-in-law, it is not congruent with the legal structure.

(Paragraph No. 16)

- After the parents, tenancy rights lie with the son. Pursuant to legal provisions, the wife of the son and the daughter-in-law are categorized as the beneficiaries of the tenancy right after the son. Therefore, when the petitioner contends that daughters and daughter-in-laws are not categorized as recipients to the tenancy rights pursuant to Section 26 (1) of the Land Act,

2021 (1964) and that it is discriminatory and not rational with the objective and policy of the law – and that this is inconsistent and contrary to Article 11 of the Constitution and is ipso facto void – this cannot be said to be true.

(Paragraph No. 17)

- Section 26 (1) of the Land Act, 2021 (1964) needs not be declared void pursuant to Article 88 (1) of the Constitution. However, in the writ petition (Writ No. 3392 of the year 2050), the Special Bench of this court (in the case of certiorari) had, on 1995/08/03, issued an order directing the government to make any amendments deemed appropriate to Section 26 (1), while submitting a Bill. Therefore, this court hereby issues a directive order in the name of His Majesty's Government to submit an appropriate Bill in this regard, pursuant to the above order.

(Paragraph No. 18)

Date of Order 1996/07/18	Case No./Writ No. 2816 of the Year 1994	NLR/Year/Decision No. 6223
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Special Bench

Honorable Justice Mr. Om Bhakta Shrestha
Honorable Justice Mr. Mohan Prasad Sharma
Honorable Justice Mr. Kedarnath Upadhyaya
Honorable Justice Mr. Krishna Jung Rayamajhi
Honorable Justice Mr. Narendra Bahadur Neupane

Subject: Certiorari

Dr. Chandra Bajracharya v. Parliament Secretariat, et al.

- Article 11 (1) of the Constitution of the Kingdom of Nepal, 1990 guarantees that all citizens are equal before the law and that no person shall be denied equal protection under the laws. Article 11 (2) states that no discrimination shall be made against any citizen in the application of general laws on the grounds of religion, race, sex, caste, tribe or ideological conviction. The writ petitioner has contended that the legal provisions are contrary to Article 11 of the Constitution. Looking at the legal provisions, Section 12 under the ‘Chapter on Partition’ states that a widow who has no sons shall not be entitled to her share of property and must live separately until she is 30 years of age, as long as she is provided with food, clothing, maintenance, and means for religious offerings. It is evident that in order to receive a share of the property, widows who do not have sons need to meet certain conditions. This law may have been formulated through the lens of Hindu law in which it is viewed that the relatives of a widow with no sons would do a better job protecting her interests than her father. This could be a protective legal provision for widows who do not have sons and have not reached the designated age.
- No. 2 under the ‘Chapter of Inheritance’ states that a daughter is not entitled to inheritance as long as the son of the deceased husband’s/wife or grandson is alive. If daughters were entitled to partition like sons, the same provision of inheritance can be given. Thus, the legal provisions under the ‘Chapter of Partition’ and the ‘Chapter of Inheritance’ are all related. The provision of inheritance and partition cannot be viewed separately from each other.
(Paragraph No. 10)
- The legal provisions that the petitioner has raised in this case – which regard different provisions for men and women – cannot be denied. Likewise, since there is a gender difference between men and women and we cannot forget that these differences are the result of social practices. It is a recognized principle that absolute equality cannot be maintained. The constitutionality issues raised by the petitioner with regard to the prescribed legal

provisions – whether they concern the inheritance rights of widows without sons, or the issue of fostering adopted children, or husbands marrying under certain conditions – the social status of men and women are different and that is why their rights or privileges are determined separately.

(Paragraph No. 15)

- In order to reach to a decision with regard to presentation of an appropriate Bill on above matters raised by the petitioner in her petition, it is necessary for this Bench to discuss the right to equality guaranteed by Article 11 of the Constitution. Formulating an appropriate Bill to address the issues raised by the petitioner will require time and therefore, a directive order is hereby issued in the name of His Majesty's Government to present an appropriate Bill in the Parliament within two years from the date of receiving this order. As such, that Bill should be considered and framed after carrying out research into this topic, in consultation with the relevant people, units, organizations, institutions, sociologists, and legal experts.

(Paragraph No. 16)

Date of Order 2004/07/29	Case No./Writ No. 110 of the Year 2002	NLR/Year/Decision No. 7357
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Special Bench

Right Honorable Chief Justice Mr. Govind Bahadur Shrestha

Honorable Justice Mr. Anup Raj Sharma

Honorable Justice Mr. Balaram KC

Subject: Request to declare laws void contrary to Article 88 of the Constitution of the Kingdom of Nepal, 1990

Advocate Meera Dhungana v. Secretariat Council of Ministers

- Property received through inheritance is considered personal property pursuant to No. 18 under the ‘Chapter of Partition’ and therefore, is not subjected to partition. When the property cannot be partitioned between the coparceners, the right of an inheritor to automatically obtain the property is contrary to the legal provisions prescribed in No. 18.
- Pursuant to the order of the court, a copy of the *Muluki Ain* (National Code) (with the eleventh amendment) was provided to the court. In the third column of amendment No. 12 (a), the ‘Chapter of Inheritance’ was added. The reason for this inclusion was based on situations in which an unmarried daughter had to forsake her share of property after marriage and a married daughter had to forsake her inheritance rights after marriage. The intention of the amended provision – No. 12 (a) of Chapter of Inheritance – imparts a right of partition property and as such, it cannot thus be argued that the inheritance to property is retained even after a daughter gets married.
- The coparceners' rights and the right to inheritance of property are two different issues. According to our prevailing laws, a coparceners' right is an inherent right whereas the inheritance property is devolved to others upon successors in chronological order as determined by the law. According to inheritance laws, apart from the successor, the care-giver to the deceased person is also entitled to inheritance, whereas partition is an act where the property is divided among the father, mother, husband, wife, sons, and daughters. In addition to that, amendment No. 1 (a) in the ‘Chapter of Partition’ states that married daughters are not entitled to the partition of property. However, Section 2 under the ‘Chapter of Inheritance’ states that a married daughter is also entitled to inheritance. Through laws – and the nature of ownership of property – it is clear that the concept of inheritance and partition are not the same.

- Since partition and inheritance are different concepts, when a married daughter is not entitled to partition, the legal provision that enables unmarried daughters to return their share of property cannot be integrated in the inheritance provisions.
- Human rights are inherent to all human beings. However, no international human rights conventions address the issue of daughters or sisters having to ‘return’ property they have inherited after getting married. Therefore, Nepal’s provision that addresses returning the property received through inheritance prior to one’s marriage is contrary to the covenants Nepal has ratified.
- Inheritance is the property that one receives for caring, maintaining, and fostering a person until a person’s death and the provision for returning this property after marriage is contrary to laws, justice, practices, and tradition.
- Daughters or sisters do not need to return their inheritance after they marry, and the notion that these same daughters or sisters need to return their property received through inheritance to her maternal inheritors also has no merit.
- The notion that unmarried daughters who receive inheritance need to return the property is not only discriminatory between sons and daughters, but also discriminatory between daughters and daughters.
- Prior to the eleventh amendment in the *Muluki Ain* (National Code), the property that married and unmarried daughters receive through inheritance (pursuant to No. 2 under the ‘Chapter of Inheritance’) need not be returned. Pursuant to No. 18 under the ‘Chapter of Partition,’ the notion that property received through partition need not be partitioned among the coparceners and that property needs to be returned after marriage is contrary to the recognized principles of human rights. Since the provision prescribed under No. 12(a) in the ‘Chapter of Inheritance’ is contrary to the principle of equality prescribed under Article 11 of the Constitution of the Kingdom of Nepal, 1990, No. 12 (a) under the ‘Chapter of Inheritance’ is hereby declared void pursuant to Article 88 (1) of the Constitution.

(Paragraph No. 11 to 13)

Date of Order 2004/07/29	Case No./Writ No. 34 of the Year 2003	NLR/Year/Decision No. 7358
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Special Bench

Rt Honorable Chief Justice Mr. Govinda Bahadur Shrestha

Honorable Justice Mr. Anup Raj Sharma

Honorable Justice Mr. Balaram KC

Subject: Request to declare laws void pursuant to Article 88 (1) of the Constitution of the Kingdom of Nepal, 2047.

Advocate Sapana Pradhan Malla v. Secretariat, the Council of Ministers

- A directive order is issued in the name of the Prime Minister and the Office of the Council of Ministers to formulate a new law amending the prevailing Act in accordance with the Constitution and human rights conventions to bring it into force within an appropriate timeframe; this law should be made compatible with Article 11 of the Constitution of the Kingdom of Nepal, 1990 and must be congruent to the treaty agreement and conventions ratified by Nepal. This law should be framed after consulting the National Human Rights Commission on the disputed matters relating to family and property law. An Expert Committee must be formed consisting of the Secretary of the National Human Rights Commission, a representative from the Ministry of Women, Children and Social Welfare (who has knowledge about these matters), a representative from the Ministry of Law and Justice (who has knowledge about these matters), sociologists, and a representative from a social organization (who has insight into these matters).

(Paragraph No. 10)

- Article 1 of the Constitution of the Kingdom of Nepal, 1990 states that the Constitution is the fundamental law and also prescribes that any laws inconsistent with the Constitution shall, to the extent of such inconsistency, be void. The proviso enshrined under Article 131 stipulates that laws inconsistent with this Constitution shall, to the extent of inconsistency, *ipso facto* cease to operate one year after the Constitution commences. In this context, this court has from time-to-time issued directive orders, however, with regard to the legal provision concerning inheritance and which family members are entitled to inheritance, there remains discrimination between sons and daughters and between daughters and daughters. Over the years, various writ petitioners have submitted writ petitions seeking to declare those Acts and laws void. The Office of the Council of Ministers must devise an appropriate provision by formulating new laws that amend the prevailing Act and law or ensure that they are in line with the Constitution and human rights conventions.

(Paragraph No. 11)

Date of Order 2005/11/23	Case No./Writ No. Civil Appeal No. 7267	NLR/Year/Decision No. 7640
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Division Bench

Honorable Justice Mr. Anup Raj Sharma

Honorable Justice Mr. Rajendra Kumar Bhandari

Subject: Request to declare void the deed of partition.

Mina Shrestha v. Gunja Bahadur Shrestha, et al.

- In his rejoinder submitted before the court, the defendant, Gunja Bahadur, states that he married the plaintiff, Mina Shrestha, in 2047 and that they have a son and daughter. He further states that, owing to pressure and threats from his wife and eldest sons, he passed the deed of partition on 1991/08/11. To determine when Bahadur married Shrestha, Kaski District Court issued an order on 1996/08/06. The village then made a deed of recognizance on 1996/08/17, wherein majority of people confirmed that Bahadur and Shrestha married in 1990 and have two children together. Although Shrestha, the plaintiff, and Bahadur, the defendant, registered their marriage on 1993/03/18, it states that they were married according to social customs on 1990/06/28. The respondents have not made any claims regarding the registration of the marriage, nor did they initiate any legal steps to declare such registration otherwise. As such, the court can presume the matters expressed in that document to be true, pursuant to Section 6 (c) of the Evidence Act, 2031. In a similar case, the Division Bench of this court established a principle that if a marriage was solemnized on 1987/03/09 and (pursuant to Sections 11 (1) of the Marriage Registration Act, 2028) is still valid, it shall be acknowledged as registered pursuant to the law by an authorized officer (NLR 2046, Part 5, Decision No. 3831, Page 545). On the basis of this principle, the means and process to obtain a marriage certificate is not relevant in the present case. Thus, it cannot be deemed appropriate and justifiable to say that their marriage was not solemnized in 1990 merely on the grounds that it was registered in 1992.

(Paragraph No. 14)

- The birth registration certificate (number 3103) issued by Western Regional Hospital on 1991/12/09 declares that a daughter was born to the plaintiff, Shrestha, and the defendant, Bahadur. Therefore, pursuant to Section 6 (d) of the Evidence Act, 2031, it is presumed that the offspring born within 272 days is the child of the plaintiff and defendant. This also proves that their marriage was solemnized before 272 days. Therefore, it is evident that Shrestha was the spouse of the defendant prior to the registration of the deed of partition on 1991/08/11.

(Paragraph No. 15)

- Based on the analysis made above, it is evident that the marriage of Shrestha and Bahadur was solemnized in 2047 and that the defendant accepted this as a fact; as such, amendment No. 8

under the 'Chapter of Partition' cannot be applicable to the plaintiff. The deed of partition was registered between the defendants on 1991/08/11 and the plaintiff was a coparcener prior to the deed of partition. Pursuant to amendment No. 1 of the 'Chapter of Partition,' all coparceners are entitled to a proportionate partition of the property. However, while registering the deed of partition, the plaintiff's right to partition was hidden. Therefore, the deed of partition sought by the plaintiff and the registration made on the basis of that deed is hereby declared void. The original decision of Kaski District Court disclaiming the claim made by the plaintiff and the Appellate Court, as well as Pokhara's decision to uphold the decision of the district court on 1998/08/31 is hereby revoked.

(Paragraph No. 16)

Date of Order 2005/12/15	Case No./Special Writ No. 34 of the Year 2004	NLR/Year/Decision No. 7588
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Special Bench
Honorable Justice Mr. Min Bahadur Rayamajhi
Honorable Justice Mr. Badri Kumar Basnet
Honorable Justice Mr. Kalyan Shrestha

Subject: Request to declare laws contrary to the Constitution void, pursuant to Article 88 (1) of the Constitution of the Kingdom of Nepal, 1990.

Lily Thapa v. the Office of the Prime Minister and Council of Ministers

- When an unmarried woman, a married woman or a widow receives property in lieu of partition and when that ownership is vested in such women, it is not expedient to make laws contrary to the principle of basic ownership.

(Paragraph No. 19)

- The second question that this case addresses is: What kind of adverse effects will this have on the disputed provision prescribed under amendment No. 2 of the ‘Chapter of Property of Woman.’ The objective of the Constitution of the Kingdom of Nepal, 2047 is to promote social justice. One of the constitutional mechanisms to promote social justice is positive discrimination. The disputed provision prescribed under No. 2 under the ‘Chapter of Women’s Property’ will not promote gender justice. It negatively impacts women’s property rights or her ownership over the property. When a person cannot enjoy property in their own name or through their own right to that property, then such provisions are contrary to the concept of ownership and property. Through the Constitution and laws, this court has promoted gender justice in disputes related to women. Some examples of such decisions are “*Meera Dhungana v. Secretariat, the Council of Ministers, et al.*” (NLR 2052, Page 462, NLR 2061, Page 377, Writ No. 55/058 (date of decision 2059/1/19), “*Dr. Chanda Bajracharya vs. Secretariat, the Council of Ministers, et al.*” (NLR 2053, Page 537), *Advocate Sapana Pradhan Malla, et al. v. Secretariat, the Council of Ministers* (Nepal Law Review, Page 105, Writ No. 56/058, (date of decision: 2059/1/19), and *Reena Bajracharya, et al. v. Secretariat, the Council of Ministers, et al.* (NLR 2057, Page 376). In this context, if the disputed provision is maintained, it would have an adverse effect on gender justice and if the disputed provision was to be discontinued, the women would be independent to use the property and would be aware and empowered to exercise their rights. If the status quo of the aforementioned legal provision is maintained, men would exercise their rights over property and would be able to develop their livelihoods, whereas women will not be able to exercise property rights, which would lead to a difficult life. Such conditions would be against the provision of gender justice and universally accepted principles of justice.

(Paragraph No. 35)

- The provision is contrary to ownership and recognized norms relating to property. Maintaining the disputed provision would adversely impact gender justice and therefore, No. 2 under the ‘Chapter of Women’s Property; is hereby declared void, pursuant to Article 1 and Article 88 (1) of the Constitution of the Kingdom of Nepal, 1990.

(Paragraph No. 36)

Date of Order 2005/12/15	Case No./Writ No. 31 of the Year 2004	NLR/Year/Decision No. 7577
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Special Bench
Honorable Justice Mr. Min Bahadur Rayamajhi
Honorable Justice Mr. Badri Kumar Basnet
Honorable Justice Mr. Kalyan Shrestha

Subject: Request to declare laws void pursuant to Article 88 (1) of the Constitution of the Kingdom of Nepal, 1990.

Advocate Prakash Mani Sharma v. the Office of the Prime Minister and Council of Ministers, et al.

In the application, acts will be considered discrimination against women if they restrict someone's rights and are done with the goal of harming or preventing women from exercising their political, economic, cultural, civil or any other human rights and freedoms. Other acts will be considered as such if they discriminate against women on the basis of gender and marital status.

(Paragraph No. 22)

- Special protection does not mean maintaining the status quo of the weaker section and would not weaken and impoverish their role. Rather, such sections should be provided in an effort to change their status and thus promote equality through the appropriate measures.

(Paragraph No. 25)

- Equality, freedom, and the 'right to life' is guaranteed to everyone. It means that people should have the right to live a life full of respect and dignity and that discrimination against women is not tolerated in any situation.

(Paragraph No. 27)

- The issue raised in this petition is related to amendment No. 1 under the 'Chapter of Partition.' The provision prescribed under No. 1 states that after marriage, daughters are not considered coparceners during the partition of property. With regard to the previous law, the legislature may have gone a step ahead and daughters have not been recognized as members of their father's family. After marriage, it is a social custom that daughters are to join their husband's family and entitled to partition of property from their husbands. To this end, the law has adopted a separation of relations system after marriage. The aforementioned provision is applicable to all married daughters, and as such it cannot be deemed discriminatory toward daughters. Maintaining non-discrimination before and after marriage, considering daughters equal coparceners to that of sons, and maintaining the current provision are policy matters. It would not be appropriate for the court to intervene in such policy-related issues if it is an

attempt to maintain the policy that entitles married daughters to coparcenary rights of their father's property. It would be appropriate to see as to whether or not it will have any affect in the past deed of partition, or whether it will create any effect. If the court entertains policy matters, the court may have to address various other issues that do not fall within the jurisdiction of the court. Even then, it cannot be said that the court cannot examine policies deemed contrary to the Constitution, law, and recognized principles of justice. When such issues arise, the court should always remain proactive and examine the constitutionality of the laws that are outcomes of such policies. Many legal and policy issues change over time as social values evolve. As such, the principles, practices, and constitutionality of the law should be tested within the ambit of these new concepts. Having not caused any adverse effect on the recognized principle, the provision prescribed under amendment No 1 under the 'Chapter of Partition' is a recent amendment. Therefore, it should be changed in a way that provides married daughters with coparcenary rights on their maternal side. Further, the structural framework of this law is a policy matter that falls within the jurisdiction of the legislature. As such, it would not be an appropriate matter for this court to intervene and change the law or repeal it by enacting another law as sought by the petitioner. Thus, the provision cannot be deemed contrary to Article 11 of the Constitution and cannot be declared void pursuant to Article 88 (1) of the Constitution. With regard to that matter, the Bench does not concur with the statement of the petitioner.

- Although amendment No. 16 under the 'Chapter of Partition' recognizes a daughter's right to her share of property and the right to continuously exercise it, this seems to be disrupted after marriage. This court has already recognized that any portion of property received through partition prior to the marriage of the daughter is property that the daughter can use. Such property can be used and enjoyed according to the daughter's desire and need; for example, she can transfer ownership or sell the property as she sees fit. If the daughters want to sell the property prior to their marriage, they are entitled to do so. However, if some property is left, she has to return the unspent property, according to the prevailing legal provision. During one stage, her right over the property is absolute and vested, but it can become contingent when she marries. Certain provisions would encourage the daughters to use their property prior to their marriage; though this could not be a sensible use and exercise of one's right. Likewise, if the share of property is transferred to the maternal side after marriage, the daughters might be coerced into marriage, or other coparceners might create obstacles that prevent the daughters from exercising their rights. It is the inherent and natural right of a property owner to use and dispose of their property as they wish. However, No. 16 under the 'Chapter of Partition' directly and indirectly affects the exercise and right of the owner. The objective of No. 10 under the 'Chapter of Partition' is to maintain gender equality, however, the provision of No. 16 does not assist in maintaining gender equality. The provision prescribed under No. 16 indirectly limits the provision under No. 10 and would lead towards discriminatory results. This would be contrary to Article 1 on the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

(Paragraph No. 32)

- Amendment No. 16 under the ‘Chapter of Partition’ needs to be reviewed in line with Article 11 of the Constitution, Article 1, 2, 3, 15, and 16 of CEDAW, Article 26 of the International Covenant on Civil and Political Rights, 1966, and Article 2 and 3 of the International Convention on Economic, Social and Cultural Rights (ICESCR) in order to make it congruent with the right to equality.
- A directive order is hereby issued in the name of His Majesty’s Government, the Office of the Prime Minister and Council of Ministers to hold consultations with the concerned unit and relevant stakeholders with regard to the provision prescribed under No. 16 of the ‘Chapter of Partition’ and to reconsider the provision prescribed therein.

(Paragraph No. 34)

Date of Order 2006/11/24	Case No./Writ No. 114 of the Year 2005	NLR/Year/Decision No. 7743
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Special Bench
Honorable Justice Mr. Anup Raj Sharma
Honorable Justice Mr. Khil Raj Regmi
Honorable Justice Mr. Sharada Shrestha

Subject: Request to declare laws void, pursuant to Article 88 (1) of the Constitution of the Kingdom of Nepal, 1990.

Advocate Meera Dhungana v. the Office of the Prime Minister and Council of Ministers

- If any property (other than dowry) received by a woman is transferred through donation or is sold, the transfer shall be deemed void and the woman is entitled to take back the property.
- When a woman transfers her right to dowry and marries a person who is a recipient of that right, the owner of that cannot end the act of transferring that right.
- When a woman donates or sells property (other than dowry) to which she has a right, and if this woman marries the person to whom she has donated or sold the property, the act of transferring that right is not void. When a provision for returning the property is made, the woman will be forbidden from transferring and receiving her right over the property.
- When a woman transfers her property through any means and marries the same person, the act of transferring the property prior to marriage cannot be considered valid. When it is transferred by a man and deemed valid, it is evident that there is discrimination between men and women.

(Paragraph No. 17)

- Marriage is a human right. If the act of a woman transferring property (which is her right) is considered invalid, this will narrow the right to marriage and right to property.
- The right to marriage and the right to property ownership (wherein a woman has the right to own property and dispose of it according to her will) are two different and meaningful rights. When a law provides both unlimited exercises of this right and also narrows this right, the law cannot be considered justifiable and logical.

(Paragraph No. 19)

- Amendment No. 7 under the ‘Chapter of Women’s Property’ is contrary and inconsistent to international treaties and agreements. It is also inconsistent with the concept of property ownership and antithetical to the right to equality as provisioned in the Constitution of the Kingdom of Nepal, 1990. Being discriminatory, the provision is thus declared void.

(Paragraph No. 20)

Date of Order 2007/09/16	Case No./Writ No. Civil Appeal No. 8027, 9826 of the Year 2005	NLR/Year/Decision No. 7864
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Division Bench
Honorable Justice Mr. Kalyan Shrestha
Honorable Justice Mr. Rajendra Prasad Koirala

Subject: Repeal of Deed of Legacy

Bas Narayan Maharajan v. Naresh Maharajan

- Based on the facts of this case, it is evident that the man's grandson took care of him because the man's son was not doing so. In such instances, when there is an absence of a deed of legacy, the law of inheritance bestows one with the right to obtain property. Further, amendment No. 2 under the 'Chapter of Women's Property' does not restrict women from enjoying their share of property according to their needs. Article 11 of the Constitution of the Kingdom of Nepal, 1990 does not provide separate and discriminatory standards between equal coparceners and does not discriminate in relation to receiving coparcenary rights, using property or transferring property. In the case "*Lily Thapa v. the Office of the Prime Minister and Council of Ministers*" in Writ No. 34 of the Year 2061, the court had deemed void the provision prescribed under No. 2 under the 'Chapter of Women's Property' pursuant to Article 88 of the Constitution. When the law has already been declared void, it is not appropriate to revisit the provision prescribed under No. 2 of the 'Chapter of Women's Property,' as it states that property only enjoyed upon the consent of the coparceners would be contrary to laws, justice, and equity.

(Paragraph No. 22)

Date of Order 2008/11/20	Case No./Writ No. WS-0030 of the Year 2006	NLR/Year/Decision No. 8031
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Special Bench

Honorable Justice Mr. Ram Prasad Shrestha
Honorable Justice Mr. Balaram KC.
Honorable Justice Mr. Rajendra Prasad Koirala

Subject: Certiorari

Sapana Pradhan Malla v. Nepal Government, the Office of the Prime Minister and Council of Ministers

- Article 107 (1) of the Interim Constitution of Nepal, 2007 states that any citizen of Nepal can file a petition in the Supreme Court to have any law or any part thereof declared void on the grounds of inconsistency because it imposes an unreasonable restriction on the enjoyment of fundamental rights conferred by the Constitution. As such, the Supreme Court will have the extraordinary power to declare that law void either *ab initio* or from the date of the decision if it appears that the law in question is inconsistent with the Constitution.

(Paragraph No. 12)

- Under the existing laws, the petitioner contends that marriage has created discrimination against women, but it does not reflect the conditions created by one's sex. When a woman is unmarried or single, the law does not prevent her from receiving her share of property like the son from his parents. The law entitles women to their share of property from their husbands after marriage; therefore, we cannot deem that the law discriminates between married and unmarried women. Our property law recognizes a person's birth and marital status. Since the law does not discriminate in the way described by the petitioner, the provision prescribed under No. 1 (a) under the 'Chapter of Partition' cannot be deemed inconsistent with the Constitution or inconsistent with the principle of equality.

(Paragraph No. 18)

- Inheritance is always conferred to the closest heir and the Act classifies the list of heirs. The legal provision states that unmarried daughters are not entitled to inheritance as long as there is an heir; as such, this legal provision cannot be deemed otherwise. The notion that a granddaughter from the daughter's side needs to remain unmarried to inherit property from her grandfather or grandmother from her maternal side is not discriminator; rather it is a demarcation of status. The issue that the petitioner raises – that a widowed daughter-in-law should be entitled to the same inheritance rights as a son in the event of his death – would create a discriminatory condition. The amendment No. 2 in the 'Chapter of Inheritance' prescribes that if the deceased has no son, then the widowed daughter-in-law is entitled to inherit property equal to that of the son. The provision has been made to end discrimination based on sex and maintain equality between daughters and daughters-in-law

(Paragraph No. 20)

Date of Order 2010/08/26	Case No./Writ No. WS-0010 of the Year 2010	NLR/Year/Decision No. 8456
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Special Bench
Honorable Justice Mr. Balaram KC
Honorable Justice Mr. Prem Sharma
Honorable Justice Mr. Bharat Raj Upreti

Subject: Certiorari, et al.

Advocate Prakash Mani Sharma, et al. v. the Office of the Prime Minister and Council of Ministers

- Laws that discriminate on the basis of gender do not have legal status and are not considered valid in the eyes of the Constitution.
(Paragraph No. 11)
- When a woman is guaranteed the right to property, but is prohibited to use this property, then the property becomes useless. It devalues the women's self-respect, integrity and dignity.
(Paragraph No. 26)
- It is not legal that the owner who is entitled to use the property according to their interest cannot donate or sell such property. When a person donates property, the transaction related to the property *ipso facto* ends. After a donation or sale of the property the right is vested in the buyer and not on the donor, unless deemed otherwise. When a woman giving the property claims that she has a marital relation, but the right has already been bestowed upon a party, this must be considered a different matter. This relation cannot be linked with the earlier property transaction.
- When a marriage is deemed valid, any transaction done prior to the marriage that was designated invalid is not deemed appropriate and justifiable.
- The laws that prescribe women's property rights cannot create hurdles or control the right to continuity in such relations.
- If a law infringes a woman's rights to property and also creates obstacles to exercising the right to maintain marital relations, then this law (pursuant to right to equality, right to property and rights relating to women as prescribed Article 13, Article 19, and Article 20 of the Constitution) cannot be deemed consistent.

(Paragraph No. 30)

- Amendment No. 7 under the; Chapter of Women's Property' in the *Muluki Ain* (National Code) is inconsistent with the right to equality and the right to property as prescribed by the Interim Constitution of Nepal, 2007. Therefore, through a prospective ruling, the aforementioned legal provision has been declared void on this date.

(Paragraph No. 33)

Date of Order 2012/05/27	Case No./Writ No. Civil Appeal No. CI-0901 of the Year 2010	NLR/Year/Decision No. 8822
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Division Bench
Rt Honorable Chief Justice Mr. Khil Raj Regmi
Honorable Justice Mr. Prakash Wosti

Subject: Maintenance

Nar Bahadur Acharya, et al. v. Rukmani Devi Shah

- In this case, it is clear that there is no dispute regarding the relations between the respondent plaintiff and the appellant defendant. The plaintiff contends that the appellant denied a maintenance amount to the plaintiff and repeatedly beat and evicted her from the house. The plaintiff further contends that kerosene was poured over her body and lit on fire. At the time, the plaintiff was not in a condition to stay in the house and she was treated outside; witnesses who made depositions in court verified this statement. The appellant defendant refutes the claims made by the plaintiff and in rebuttal states that the plaintiff poured kerosene over her own body, which she lit on fire. The appellant claims that he did not commit such acts. However, it cannot be concluded that the plaintiff poured kerosene over her own body and lit herself on fire, committed an act of physical violence against her own body, since she had the intention of obtaining alimony from the defendant. It cannot be assumed that a person receiving humane treatment from her family members would file a case of alimony before the court or that such a case is filed just to make a husband and his family members suffer. Gender and domestic violence is prevalent in our society and in particular, incidents perpetrated against daughters-in-law are extremely common. As such, the claim made by the plaintiff cannot be deemed to be otherwise.

(Paragraph No. 3)

- When a woman is married and accepted as a wife and daughter-in-law, it is the legal and moral duty of the concerned family members to show affectionate behavior toward her. When family members do not treat their wife or daughter-in-law this way and instead make her leave the house or subject her to violence, then the woman is entitled to alimony, pursuant to amendments No 10 under the ‘Chapter of Partition’ and No 4 under the ‘Chapter of Husband & Wife.’ When inhumane and illegal acts are inflicted upon a married woman, leaving her unable to live in the house, the person or family member causing such distress cannot claim that they are economically unable to provide her with alimony. Such contentions are deemed baseless.

(Paragraph No. 4)

Date of Order 2012/05/27	Case No./Writ No. WO-0545 of the Year 2008	NLR/Year/Decision No. 8928
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Division Bench**Honorable Justice Mr. Damodar Prasad Sharma****Honorable Justice Dr. Bharat Bahadur Karki****Subject: Mandamus****Advocate Meera Dhungana, et al. v. the Office of the Prime Minister and Council of Ministers**

- The petitioner's concern in matters of public interest, such as the country's gender discriminatory laws, cannot be considered unnatural. The matters raised by the petitioner are not limited to their personal or private interests; rather, they are related to the protection of the coparcenary rights of women and are a matter of concern for the general public. This matter is of public interest and the petitioners cannot be deemed devoid of *locus standi*.
(Paragraph No. 4)
- The Interim Constitution of Nepal recognizes the separation of power and balance of power. The functions, duties, and rights of the organs of the State, such as the legislature, judiciary, and executive bodies and other Constitutional bodies have been prescribed by the constitutional provision. As such, these bodies should function within the ambit of this constitutional provision. Within the authority vested by the Constitution, the legislature shall frame certain policies or principles and it is under the jurisdiction of the legislature to implement them. It is the exclusive jurisdiction of the legislature to determine what kinds of laws should be made to fulfill the objectives. According to the principle of separation of power, formulating laws falls within the ambit of legislative domain and generally, the courts cannot intervene in such matters. Amending and creating laws is the responsibility of the legislative body and court intervention in such issues cannot be deemed appropriate.
(Paragraph No. 7)
- Considering the spirit and objective of the Constitutional provisions and the obligations vested upon the State by the Nepal Treaty Act, 2047, it cannot be disputed that the provisions of family law concerning women's property protection should be amended at this time. A directive order is hereby issued directing the respondent Government of Nepal, the Office of the Prime Minister, and the Council of Ministers to consider the public interest issues raised by the petitioner while framing these laws.
(Paragraph No. 10)

Date of Order 2012/09/06	Case No./Writ No. DF-0014 of the Year 2011	NLR/Year/Decision No. 8972
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Full Bench**Honorable Justice Mr. Ram Kumar Prasad Shah****Honorable Justice Mr. Baidyanath Upadhyaya****Honorable Justice Mr. Kamal Narayan Das****Subject: Partition****Nirmala Rokka v. Bal Krishna Rokka**

- Pursuant to amendment No. 1 under the ‘Chapter of Partition,’ partition should be proportionately made between fathers, mothers, husbands, wives, sons, and daughters with the commencement of this Clause and should be done in accordance to the other Clauses. After the implementation of this amended legal provision, the District Court rendered a decision on 2063/1/21. On 2058/12/15, the plaintiff submitted the suit and claims pursuant to the legal provisions prescribed in the prevailing amendment. However, amendment No. 1 under the ‘Chapter of Partition’ was amended and implemented on 2059/6/10 and daughters were also included as coparceners. Neha Rokka, the daughter of the plaintiff, was born on 2055/4/10 and did not qualify as a coparcener at the time this case was registered. However, at the time of the case’s decision, she qualified to be a coparcener pursuant to the amended Clause. Therefore, it should be deemed that the coparcener had been born during the litigation of this case.

(Paragraph No. 3)

- Generally, courts should be limited to a plaintiff’s claims and decisions should be focused within such claims. Further, during the appeal, courts should limit themselves within the claims of the plaintiff and should look into the factual or legal errors of the District Court. While submitting an appeal, the original claim cannot be changed. Also, additional claims or a separate claim different than that of the original claim cannot be made. It is a general decision-making rule, that one cannot render decisions on matters not claimed or render decision beyond matters claimed. However, with regard to inherent rights like coparcenary rights, if the number of coparcenary claimed by the plaintiff increases or decreases at the time of decision, then a special circumstance arises wherein the court has to render its decision about the actual number of coparceners based on the available evidence.
- When a father’s offspring or a coparcener files a case of partition based on the number of coparceners, and during the sub-judice of the case, if another child is born increasing the number of coparceners or a coparcener dies reducing the number of coparceners, the judgment should determine the total number of coparceners at the time of rendering a

decision. The judgment should be made therein; this is the objective of the law relating to partition and ensures justice.

(Paragraph No. 5)

- During the litigation of partition of property-related cases, if the number of coparceners increases or decreases or the property increases or decreases, it is our judicial tradition to decide on the partition of property accordingly. In such circumstances, if the law provides rights over parental property like other coparceners, then from the day this provision is made, it should be recognized that a new coparcener has been born. When a court makes a decision on partition of property, during the stage of executing the judgment, the partition of property should be determined upon fulfilling the conditions prescribed by law.

(Paragraph No. 6)

- After a decision is made in a case and during the stage of executing this decision, if there is an increase or decrease in the number of coparceners, then one need not file a case. Rather, the actual number of coparceners should be determined based on the case file decision; this is the provision of the law. Prior to the decision of cases involving partition, if the number of coparceners mentioned by the plaintiff increases or decreases, the partition of the property should be done pursuant to the prevailing laws among the coparceners identified therein; these are recognized judicial norms. If a narrow definition of the prevailing law is made with regard to partition, which is an inherent right, and it is interpreted that a coparcener born during the litigation of the case is not entitled to a coparcenary right, it would be inconsistent to the amended law regarding coparcenary rights to daughters and the party may not receive justice.

(Paragraph No. 8)

Date of Order 2018/05/20	Case No./Writ No. CI-0392 of the Year 2016	NLR/Year/Decision No. 10283
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Division Bench**Honorable Justice Mr. Cholendra Shamsher J.B.R.****Honorable Justice Mr. Deepak Kumar Karki****Subject: Transfer of Tenancy Rights****Ramchandra Sahani v. Jhaliya Devi Mallahin**

- In this case, the tenant (Makhan Sahani) had only one son (Swaroop Sahani) and he had a wife, the plaintiff (Jhaliya Devi). When the daughter-in-law is the only heir, pursuant to the law, the landowner cannot deny the existence of the tenant. The limitation to transferring the tenancy right has not been prescribed in the Land Act. Therefore, it would not be valid to state that her right cannot be established merely because the tenancy right has not been transferred.

Date of Order 2018/06/27	Case No./Writ No. WO-0249 of the Year 2012	NLR/Year/Decision No. Not available
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Rt Honorable Chief Justice Mr. Deepak Raj Joshi
Honorable Justice Mr. Om Prakash Mishra
Honorable Justice Mr. Cholendra Shamsher J.B.R.
Honorable Justice Mr. Deepak Kumar Karki
Honorable Justice Mr. Kedar Prasad Chalise

Subject: Mandamus

Advocate Sushma Gautam, et al. v. the Government of Nepal, the Office of the Prime Minister and Council of Ministers

- Tenancy rights can be transferred among members of a family. However, such rights cannot be transferred to a person outside the family; this is an objective envisaged by the legislature. Tenancy rights are not unconditional rights like rights that concern ancestral property. The tenant cultivates the land of another person and increases the productivity of the land. Since the tenant maintains the land's viability, the landowner trusts the tenant and allows them to cultivate it. Therefore, under Section 26 (1), the landowner is vested with the right to recognize a tenant and can choose a tenant whom he or she believes will take care, preserve, cultivate, and increase the productivity of the land. This is a special right that is created on the basis of trust between the tenant and the landowner. Therefore, the coparceners of the tenant cannot claim tenancy rights to the land as unconditional and absolute right. Tenancy rights are the rights created by law between the tenant and the landowner, and the right to choose a tenant is up to the landowner. Any person whom the landowner trusts shall receive tenancy rights pursuant to Section 26 (1).

(Paragraph No. 7)

Date of Order 2019/01/09	Case No./Writ No. WC-0017 of the Year 2015	NLR/Year/Decision No. Not available
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Constitutional Bench

Right Honorable Chief Justice Mr. Cholendra Shamsher J.B.R.

Honorable Justice Mr. Deepak Kumar Karki

Honorable Justice Mr. Kedar Prasad Chalise

Honorable Justice Ms. Mira Khadka

Honorable Justice Mr. Hari Krishna Karki

Subject: Certiorari

Advocate Tej Bahadur Katuwal v. the Office of the President, Sheetal Niwas, et al.

- There can be no difference of opinion that the Constitution and laws allow women to be property owners and to this end, there are constitutional and legal provisions. These provisions not only recognize women as property owners, they also create rights and privileges for women to receive property, use and hold property, transfer property, and forsake property. The female property owner is solely vested with the right to choose how to utilize the property and whom to transfer the property to. Questioning what a woman will “do” with her (own) property is presumptuous and goes against the principle of gender equality adopted by our Constitution. A woman’s social and family status changes upon marriage. We cannot draw a conclusion that this change in her marital and familial status also changes her right over her own property; the court should make such kinds of interpretations. Sons and daughters have equal rights over their parental property and the mode of utilizing that property is not determined by the person, but rather by the Constitution and laws.

(Paragraph No. 9)

- In order to fulfill an objective, the legislature makes legal provisions and as long as those provisions are not inconsistent with equity and recognized principles of justice, it is not expedient for the court to exercise its extraordinary jurisdiction and intervene in such matters. The petitioner has not been able to substantiate the challenges he has made to the court, nor has he been able to substantiate that the provisions are inconsistent and contrary to the recognized norms established by the Constitution or recognized principles of justice. Therefore, it cannot be deemed appropriate to conduct a judicial review of the laws made by the legislature.

(Paragraph No. 10)

Date of Order 2019/07/07	Case No./Writ No. WO-0877 of the Year 2018	NLR/Year/Decision No. 10346
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Division Bench

Rt Honorable Chief Justice Mr. Cholendra Shamsher J.B.R.

Honorable Justice Ms. Sapana Pradhan Malla

Subject: Certiorari, Mandamus, et al.

Mrs. Sukum Thapa, et al. v. Pitambar Thapa, et al.

- Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979 recognizes the following as discrimination: treating men and women differently within marriage and violating their rights through prohibiting them from obtaining property.

(Paragraph No. 11)

- Forcing women to choose between accepting marriage or their right to parental property is a form of discrimination against women. A woman's identity and parental property are two different issues and thus property rights cannot be determined based on marriage. The right to parental property is created in the prenatal stage and obtained upon birth. Treating sons and daughters differently based on their marital status is discrimination. This can result in women being prohibited from receiving property and daughters being excluded from exercising their rights to parental property.

(Paragraph No. 13)

Date of Order 2019/12/19	Case No./Writ No. NF-0032 of the Year 2016	NLR/Year/Decision No. Not available
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Full Bench

Honorable Justice Ms. Sapana Pradhan Malla
Honorable Justice Mr. Prakash Kumar Dhungana
Honorable Justice Mr. Hari Prasad Phuyal

Subject: Inheritance**Narayan Prasad Tharu v. Harendra Kumar Chaudhary**

- The law prescribes a provision for partition in two separate Chapters, as well as a separate sequence of heirs. Therefore, it cannot be deemed that partition and inheritance are the same. Partition is confined within familial relationships, whereas in inheritance, it is not mandatory that the person be a familial relation to the person giving the inheritance. A person who has fostered and cared for another person can also be entitled to inheritance. Further, the heir of the deceased can also be entitled to inheritance. However, with regard to categorizing the closest heirs, the one with blood relations is deemed to be the closest. Therefore, when there is a blood relation, the stepchildren cannot be designated the nearest heirs.

(Paragraph No. 23)

- When a property is jointly maintained, it does not mean that one's right to that property is surrendered to the joint owner or is transferred to the joint owner.

(Paragraph No. 26)

- If the right of daughters to inheritance is no longer recognized solely due to their marital status, a person's own married children may be excluded from their mother's inheritance. The Constitution of Nepal and laws prohibit all forms of discriminations made on the basis of marriage. Amendment No. 2 under the 'Chapter of Inheritance' in the *Muluki Ain* (National Code) uses the term "deceased." Therefore, when there is no son on one's familial side, the married biological daughter is closer than the step-children. Stepsons cannot be designated as the closest heir merely because the daughter is married.

(Paragraph No. 26)

PART THREE
Right to Reproductive Health

Date of Order 1998/06/08	Case No./Writ No. 2187 of the Year 1996	NLR/Year/Decision No. 6588
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Division Bench

Honorable Justice Mr. Arbindranath Acharya

Honorable Justice Mr. Rajendraraj Nakhwa

Subject: Certiorari

Annapurna Rana v. Gorakh Shamsher JBR and others

- This case touches on issues worth considering in the context of alimony lawsuits. The plaintiff, Annapurna Rana, was ordered to get her vagina and womb examined through the rejoinder. The respondent has claimed that the plaintiff, Rana, was married to Mukul RS Tagadi of Nainitaal, India and that she had given birth to a daughter named Duhi Laxmi Singh Tagadi. These names have been confirmed, along with the records from G.P Panth Nainitaal Hospital. Therefore, when it is mentioned that the petitioner was married to a particular person and supplied details of the names of her husband and daughter, the question arises as to why she was given this examination. What is the utility of the virginity test? The issue of her marriage and the birth of her child automatically find priority in analysis and evaluation.

(Paragraph No. 14)

- It cannot be determined that the woman concerned is married based on an examination of her vagina and uterus. The condition of virginity not remaining intact and that of being married are two different conditions, and this is so legally as well. Contending that virginity loss leads to being married is a wrong perception; a woman can have sexual intercourse with any man at any point of time. This is a norm these days. Sexual intercourse can result in voluntary or involuntary pregnancy, which is common these days. The point is considered in this decision whether the virginity test had meaningful results. In accordance with Section 3 of Evidence Act, 2031 BS, the examination of the plaintiff's vagina and uterus is also relevant evidence. However, justice cannot be invoked if this evidence does not suit society's moral standards. If we consider changing social contexts, the choice to maintain one's virginity or not in sexual relationship is a private affair. Some people may do this secretly, while others may be more open about their choice. Having sexual relation with another person does not change a woman's legal status. Some may opt to legally get married after having sexual intercourse and even after the birth of a child. Further, we cannot say that a woman is married even if she lives with a man for years as if they were spouses. It cannot be ascertained that they are spouses when they stay together, but behave independently until they actually get legally married. It cannot automatically be said that a girlfriend and boyfriend are married just because they go out together and have a child together. In the given context, it cannot be determined that a woman has been married to a man without factual basis – proof that they were married in accordance with established traditions or married by registering it

as per law. Since our modern society emphasizes personal liberty and must keep up with evolving social norms, the notion of premarital sex alone cannot establish marriage and this situation does not imply that the parents' responsibility to their daughter is over. On the other hand, Section 7 of the 'Chapter of the Partition' in the *Muluki Ain* (National Code), which provides maternal property rights to children whose fathers are not known, was developed under the view that a woman could bear children through pre-marital sex and that the question of a child's legitimacy or the paternity of children born to unmarried mothers may arise. However, because a separate process and basis can be established on the issue of the legitimacy of a child, there is a need for further explanation into this.

Date of Order 2003/09/11	Case No./Writ No. 88 of the Year 2002	NLR/Year/Decision No. 7268
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Special Bench

Honorable Justice Mr. Krishna Kumar Varma
Honorable Justice Mr. Harischandra Upadhyaya
Honorable Justice Mr. Khil Raj Regmi

**Subject: Request for the issuance of the Order of Mandamus including a relevant order, etc.,
pursuant to Article 88(1) and (2) of the Constitution**

Advocate Prakash Mani Sharma and Others v. His Majesty's Government, Ministry of Women, Children and Social Welfare, Singha Durbar and others

- Maternal protection and child health are matters of interests to human society, and hence, are of concern to the petitioners. Even though opponents have raised no special questions in this regard, there is no need to consider the *locus standi* of the petitioner.
- In cases that involve taking leave from work, a written or verbal request can be made to the employer and the employer can accept or reject that request depending on the situation. The nature of this right is statutory and contractual; as such, it cannot be considered its own right.
- In their writ petitions and during the pleadings, lawyers have not been able to adequately refute the provisions of the Act and Rules; they have appeared to not claim that the provisions are in conflict with the Constitution. It has been demanded that the provisions be declared “ultra-virus” or repugnant to the Constitution, as only the provisions related to leave are unequal. In view of the fact that leave cannot be considered a right and can only be considered a concession, it should not be equated with Constitutional rights as granted by the State to its citizens.
- In reference to maternity leave, which can be taken before or after by the pregnant worker or employee to deliver their baby, it is a form of leave and cannot be interpreted against the right to equality mentioned in Article 11 of the Constitution of the Kingdom of Nepal, 1990. This is because it is not a constitutionally guaranteed right or a right in general, as discussed above. Therefore, the contention of the petitioner to declare the legal provision on maternity leave ineffective or ultra-virus is not established.
- Since taking leave is a condition of service and is contractual in nature, it cannot be said that it must be a statutory right enacted by the Parliament. It is not compatible with legal norms stating that leave is not a right and is only a matter of facilities (a fringe benefit). Therefore,

legislation cannot protect maternity leave as compulsory leave, as it is also a form similar to other leaves. Hence, the facilities could not be changed into a right.

- There should be no need for further consideration, as there is a compulsory constitutional provision to allow the Parliament to make laws regarding the remuneration, allowance, leave, pension, gratuity, and other facilities and other conditions of service.
- Leisure time could be denied to women, given the fact that the mother plays a key role in caring for a newborn baby and the infant has a right to be breastfed.
- Since women require a safe environment from the time of pregnancy to the time of delivery, it is the responsibility of the State to make special arrangements for them to access nutrition, care, protection, and health-related needs.
- With regard to the petitioner's contention to issue an order of Mandamus to give 14 weeks maternity leave – which is applicable to all women on equal basis as provided by the International Labor Organization's Convention on Maternity Protection, 2000 – the petitioner correct that the convention's provisions would be equally as applicable Nepal's ordinary laws, as per the Nepal Treaty Act, 2047 BS. Therefore, issuing a Mandamus order would not be *ipso facto*.
- In view of the legal provisions related to child health and maternity protection, and considering the international convention on maternity protection, a directive order is hereby issued in the name of His Majesty's Government to make measures on maternity protection by prescribing a fixed minimum maternity leave for female that incorporates the appropriate standards.

(Paragraphs No. 17 to 24)

Date of Order 2005/02/24	Case No./Writ No. 52 of the Year 2004	NLR/Year/Decision No. 7478
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Special Bench

Honorable Justice Mr. Bhairab Prasad Lamsal

Honorable Justice Mr. Dilip Kumar Paudel

Honorable Justice Mr. Balaram KC

Subject: Request to declare legal provisions void that are inconsistent with the Article 88(1) and 88(2) of the Constitution of the Kingdom of Nepal, 2047 BS

Sapana Pradhan Malla and others v. His Majesty's Government, the Office of the Prime Minister and Council of Ministers

- It is justified or reasonable to say that there should be different penal provisions for those who commit crimes of abortion and the person who incites the others to commit the same offence.
(Paragraph No. 19)
- If amendment No. 28 exclusively penalizes a pregnant woman and amendments No. 28a and 32 penalize all (whether male or female), the provision cannot be regarded as discriminatory from a gender standpoint. However, the differences in punishment – maximum punishment for a pregnant woman and minimum punishment for those men or women who provoke abortion – are deemed discriminatory.
- Based on the gravity of the offence, the punishment stipulated for offenders other than pregnant women are minimum. It would be appropriate and rationale to make this punishment the same as for a pregnant woman.
(Paragraph No. 22)
- The provision for punishment pursuant to No. 28 is relatively appropriate. Therefore, a directive order is issued in the name of respondent, the Council of Ministers, and Office of the Prime Minister to create a necessary amendment to No. 28a and 32, or to create an appropriate legal provision for the punishment of abortion by harmonizing it with the provisions in No. 28.
(Paragraph No. 23)

Date of Order 2005/05/18	Case No./Writ No. 3250 of the Year 2004	NLR/Year/Decision No. Not available
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Division Bench
Honorable Justice Mr. Ramnagina Singh
Honorable Justice Mr. Rajendra Kumar Bhandari

Subject: Mandamus

Advocate Prakash Mani Sharma v. the Government of Nepal, Prime Minister and the Office of the Council of Ministers

- Special provisions on child care and breastfeeding are related to the important rights of women workers, such as the right to motherhood, the right of mothers to work, and the right of the children of women workers to access adequate nutrition and health. It cannot be denied that His Majesty's Government has a major responsibility to implement the above legal provisions.
- Since the aforementioned legal provision in Section 42 of the Labor Act, 1992 BS is directly linked to rights and health of children, there is no doubt that it would be ridiculous if this law remains passive and isn't actually implemented. Therefore, an order is issued to draw the attention of His Majesty's Government towards the implementation of the legal provision provided by 42 of the Labor Act, 2048 BS to fix the number of establishments as much as possible.

Date of Order 2008/06/04	Case No./Writ No. WO-0230 of the Year 2007	NLR/Year/Decision No. 8001
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Division Bench
Honorable Justice Mr. Min Bahadur Rayamajhi
Honorable Justice Mr. Kalyan Shrestha

Subject: Mandamus

Advocate Prakash Mani Sharma and others v. the Government of Nepal, the Office of the Prime Minister and Council of Ministers

- Although the problem of uterine prolapse relates to reproductive health, it is also a problem that women specifically face as a group and therefore, it is necessary to treat subject as a matter of constitutional and legal rights. It also the responsibility of the State to create and implement strategies to tackle this issue.

(Paragraph No. 8)

- The right to live a dignified life is a basic right. If the State does not provide its citizens with facilities to protect their health, then the right to life cannot be achieved. Therefore, it is necessary to link the right to life to the right to health.

(Paragraph No. 10)

- The State should make these rights enjoyable by formulating necessary laws and programs. Not creating any mechanism (unless this self-executing right becomes ineffective) would constitute a breach of the State's obligations. If such conditions arise, the court may issue a necessary order or directive to fulfill those responsibilities.

(Paragraph No. 16)

- Reproductive health is a right that the Constitution does not sufficiently recognize. As such, physical facilities should be made available for the enjoyment of this right. In the absence of any legal, institutional, procedural and result-oriented infrastructure, this right would be limited to formalities. Therefore, in order for people to realize this right, efforts should be made towards formulating policies (including laws), drafting plans and subsequently implementing, extending, and evaluating it.

(Paragraph No. 17)

- When reproductive health has been included and envisaged in the Constitution, it can be ascertained that women's health and rights receive philosophical recognition. In order to guarantee these rights, laws should be formulated that provide facilities where services are decentralized and information is disseminated that helps generate awareness among citizens.

(Paragraph No. 41)

- Therefore, a directive order is hereby issued in the name of the Prime Minister and the Office of the Council of Ministers to hold necessary consultations with health-related experts and representatives of civil society to draft a bill and submit it before the Legislature Parliament as soon as possible.
- Likewise, an order of mandamus is hereby issued in the name of the Ministry of Women, Children and Social Welfare and Ministry of Population and Health to prepare special work plans and provide free counseling, treatment, health services, and facilities to aggrieved women. This ministry should also set up various health centers and initiate effective programs with the aim of raising public awareness on problems concerning women's reproductive health and uterine prolapse.

(Paragraph No. 42)

Date of Order 2008/06/05	Case No./Writ No. WS- 0028 of the Year 2006	NLR/Year/Decision No. 7952
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Special Bench
Honorable Justice Mr. Khil Raj Regmi
Honorable Justice Mr. Top Bahadur Magar
Honorable Justice Ms. Gauri Dhakal

Subject: Request to declare an unconstitutional legal provision void and issue an order of Mandamus and other necessary orders

Advocate Prakash Mani Sharma and others v. the Prime Minister and the Office of the Council of Ministers

- From a social justice viewpoint, it cannot be deemed inappropriate to make a law that classifies a group (class) from another based on jurisprudence, discretion, objectivity, and the equally applicable criteria of each person in the concerned class. If such a law is not reasonable, proper, and justifiable, it will be considered discriminatory.
- The law that mentions classification should be able to indisputably justify that there is a difference from one group to another while classifying them. After distinguishing between one and another, one should be able to justify the purpose of this classification and why such distinctions have been made. The legislation enacted to address this situation should not be discriminatory. Even if the law treats one class and another class differently, such classification should not be considered discriminatory.
(Paragraph No. 7)
- Regarding crime, incarcerated women are treated differently depending on whether they were convicted of minor or serious crimes; it cannot be said that there is equal treatment among every offender.
(Paragraph No. 8)
- It cannot be considered unequal treatment if the law requires some prisoners to complete community service and others to remain in prison (particularly those who were convicted of serious crimes). There is a legal provision not to keep them in open prison.
(Paragraph No. 10)
- It is not against the principle of equality or constitutional provisions to provide more facilities and opportunities to pregnant woman who are convicted of minor crimes than those convicted of serious crimes.
(Paragraph No. 12)

Date of Order 2008/08/04	Case No./Writ No. 3352 of the Year 2004	NLR/Year/Decision No. Not available
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Division Bench
Honorable Justice Mr. Balaram KC
Honorable Justice Mr. Top Bahadur Magar

Subject: Certiorari, et al.

Advocate Prakash Mani Sharma and others v. the Office of Prime Minister and Council of Ministers and others

- There is still a lack of education and awareness in Nepali society; superstitions and traditional customs and beliefs are still prevalent. There is no remarkable or meaningful change in the male-dominated family structure. Society has not yet transformed to enable women to enjoy their rights independently and without hindrance, like men. There are still traditional beliefs that a son is more important to have than a daughter in order to continue the family lineage. Hormones determine whether a son or daughter is born and it is said that the male hormone plays an important role in the birth of a son. Superstitious, traditional, and conservative beliefs do not change overnight. Under such a social and familial backdrop, women (whose health is vulnerable) should be empowered with certain rights. Women should have equal rights to say that they do not want to have children. If the man is given the sole power to decide such matters, and if the wife does not have the right to say anything about it, then how can we say that there is equality between men and women? Moreover, reproductive health is an important right for women and it is also a component of her right to life. No one has the right to forcibly violate a woman's right to health. If a woman is required to take consent from her family, especially from her husband, women's empowerment and social progress would not be possible.
- Thus, it is found that the provisions contained in Article 16(1)(e) of CEDAW and amendment No. 28b (1) under the 'Chapter relating to Human Life' in the *Muluki Ain* (National Code) cannot be considered absolute. Although, on the face of it, the provision in No. 28b of the Chapter relating to Human Life in the *Muluki Ain* (National Code) that provides women with rights seem to deprive men their right to equality, in practice, this happens with spouse consent. The provision cannot be said to be inconsistent with the Article 16(1)(e) of CEDAW. It cannot be forgotten is that CEDAW is an instrument for protecting the interests of women. Since it is the aim of CEDAW to promote and protect women's rights based upon equality, the interpretation of Article 16(1)(e) of CEDAW cannot be construed in absolute terms.

Date of Order 2009/05/20	Case No./Writ No. WO-0757 of the Year 2006	NLR/Year/Decision No. 8464
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Division Bench

Honorable Justice Mr. Kalyan Shrestha
Honorable Justice Mr. Rajendra Prasad Koirala

Subject: Mandamus

Laxmi Devi Dhikta and others v. the Government of Nepal, the Prime Minister and the Office of the Council of Ministers

- We know that fetuses do not exist separately from a mother's body; they only exist within her womb. Even if we did recognize the interests of a fetus, we could not say that those interests would prevail over a mother's interests.

(Paragraph No. 15)

- If it is accepted that a woman must act against her own wishes and assume the potentially adverse outcomes of a pregnancy in order to fulfill her husband's desire to become a father, then the woman loses all control over her own body. As a result, she is explicitly and implicitly forced to accept a continuous position of subordination. Just as a wife cannot force her husband to become a father or engage in sexual intercourse, a husband cannot force a woman to do the same.

(Paragraph No. 26)

- In a broad sense, reproductive health and reproductive rights include a woman's decision to have or not have children. Within such matters, it must be recognized as the right of a pregnant woman who does not wish to conceive or continue a pregnancy.
- Reproductive rights cannot be understood as placing an obligation on people to become pregnant. Within its scope, reproductive rights include the right not to become pregnant. As an affirmative matter, the right to undertake certain activities includes the freedom not to engage in such acts, so reproductive rights must be considered the same way.

(Paragraph No. 40)

- Abortion services will only be meaningful if they are accessible and affordable to people in need.

(Paragraph No. 62)

- Legal rights are relevant to the public interest. If the law ensures any benefit or protects an interest, it should be distributed equally and a necessary environment should be fostered for this right to be enjoyed equally among citizens. To be entitled to equal protection under the

law means having equal access to all the benefits of the law and the right to access those benefits; judicial responsibility cannot be denied in this regard.

(Paragraph No. 73)

- Abortion is a health concern; the right to health is guaranteed as a fundamental right and should be regarded as a survival right. In addition to recognizing the fundamental right to social justice, the directive principles of state policy establish the protection of women's rights as an important responsibility of the State. Therefore, the right to abortion and pregnancy-related concerns cannot be regarded as individual problems distinguished from public duties of the State.

(Paragraph No. 75)

- Since the Constitution and other existing laws do not bestow fetuses with the right to life before birth, it does not seem appropriate to make abortion-related issues part of the 'Chapter on Human Life.'

(Paragraph No. 87)

- It is objectionable and extremely unsuitable to keep the provisions on abortion, which is a newly recognized right, within a harsh and rigid criminal law framework as is currently done in the 'Chapter on Human Life.' As such, it is necessary to introduce a comprehensive and special piece of legislation to address this issue.

(Paragraph No. 90)

- Abortion does not only concern the issue of whether or not to continue a pregnancy or whether or not abortion services are available. Abortion is an issue that has broader implications for women's overall health. A proper system of legal remedies is necessary when a woman suffers after her right to abortion is violated; this includes cases in which a woman is denied an abortion or if the quality of services she receives is poor. In terms of legal remedies, there must be appropriate provisions to punish those guilty of crime, compensate the victim, and provide other facilities for the victim's health.

- Since the right to access an abortion requires certain obligations on behalf of both the State and a service provider, it cannot be viewed as the sole discretion of the State.

(Paragraph No. 96)

Date of Order 2010/02/25	Case No./Writ No. 0004	NLR/Year/Decision No. 8384
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Full Bench
Honorable Justice Mr. Khil Raj Regmi
Honorable Justice Mr. Balaram KC
Honorable Justice Mr. Girish Chandra Lal

Subject: Certiorari, et al.

Advocate Achyut Prasad Kharel v. the Prime Minister and the Office of the Council of Ministers

- Since the entire right to determine how many children one wants and space one's births accordingly falls within scope of women's reproductive rights, it could be interpreted narrowly within the Constitution.

(Paragraph No. 17)

- Women's reproductive rights as granted by the Constitution cannot be protected by provisions that do not allow her to take any more than two maternity leaves in the event of the first child's death, the birth of a deformed child, or in case any other situation makes her want to give birth to a third or fourth child. It is not probable to say that this provision will be misused and that female employees would take multiple maternity leaves just for the sake of taking leave.

(Paragraph No. 20)

- The social, cultural or economic rights enjoyed citizens cannot be implemented only through making decisions or issuing orders, as happens to be the case when dealing with civil or political rights. Fulfilling social, cultural or economic rights requires sufficient financial resources and time. Even if the State wishes to, such rights cannot be fulfilled at once when there is a lack of financial resources. Enabling such rights should be gradually implemented, with consideration given to the economic and financial condition of the State.

(Paragraph No. 21)

Date of Order 2010/07/28	Case No./Writ No. 0748 of the Year 2008	NLR/Year/Decision No. Not available
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Division Bench
Honorable Justice Mr. Balaram KC
Honorable Justice Mr. Bhararaj Upreti

Subject: Mandamus

Bimala Khadka and others v. the Prime Minister and Office of the Council of Ministers and Others

- Victims who identify as women, men or third gender people should not be deprived of enjoying human rights granted by the Constitution and various international Conventions. Hence, the government is under an obligation to gradually implement constitutional provisions and provisions from international conventions. Therefore, a directive order in the name of the Government of Nepal, the Ministry of Health and Population, and the Ministry of Women, Children and Social Welfare is issued to gradually implement the Constitution and international conventions by allocating part of the budget to create policies and programs to make hospitals, public transportation, and public places more accessible to disabled people, especially female disabled people. The court also orders to the government to make these policies and programs available.

Date of Order 2011/03/11	Case No./Writ No. WO-1222 of the Year 2009	NLR/Year/Decision No. 8631
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Division Bench
Honorable Justice Mr. Balaram KC
Honorable Justice Mr. Girish Chandra Lal

Subject: Certiorari and Mandamus

Junga Bahadur Singh and others v. the Prime Minister and Council of Ministers and Others

- The Interim Constitution of Nepal, 2007 provides prisoners the right to education under Article 17 and the right to practice one's religion under Article 23. A person's fundamental rights are not postponed or suspended when they are incarcerated. With the exception of freedom of movement, their other rights and freedoms do not cease while they are incarcerated.

(Paragraph No. 11)

- Reformatory practices that provide prisoners with the opportunity to study and participate in vocational have been implemented. These practices are based on the notion that prisoners may improve their behavior and become better citizens, and that their crimes may have been committed due to certain social circumstances. These practices exist in Nepal's prisoners; therefore, prisoners' access to reproductive healthcare and reproductive rights should not be denied.

(Paragraph No. 12)

- The State can punish perpetrators for committing crimes. However, the State has no power to infringe their reproductive rights, as there is no provision in the Constitution to do so.
- If a husband and wife provide proof that they are married, such as their marriage certificate, then they should be given conjugal rights and meetings.

(Paragraph No. 20)

- For security purposes, the prison administration should determine the conditions stipulated in provisions on facilities for family meetings, security checks during those meetings, maintaining a peaceful environment inside prisons, arranging food for the family meeting, not allowing other people to enter the family meeting, etc.

(Paragraph No. 23)

Date of Order 2016/07/14	Case No./Writ No. WO-0119 of the Year 2015	NLR/Year/Decision No 9757.
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Division Bench

Right Honorable Chief Justice Ms. Shushila Karki
Honorable Justice Mr. Govinda Kumar Upadhyaya

Subject: Certiorari / Mandamus

Advocate Puspha Raj Pandey v. the Government of Nepal, the Prime Minister, and Council of Ministers and others

- The relationship between a mother, father, and their children is considered either natural or legal. The natural relationship occurs in biological births and the legal relationship occurs when a couple adopts a son or daughter through the legal system. Childbirth falls under the constitutional right to reproduction, while legal adoption is subject to the conditions of law. This legal arrangement seems to be a public policy issue put in place to maintain social interests. Apart from the above conditions, our social practices and legal system do not recognize any other forms of having children.

(Paragraph No. 15)

- Only the legal system can resolve issues pertaining to procreation between unmarried couples, determining the paternity and maternity of the child, and determining the rights and responsibilities of the father, mother, and child. The contentious issues raised in this regard must be settled in accordance with the law. The law our Parliament enacting regarding surrogacy is not only necessary, but also indispensable because it addresses various contentious issues that stem from surrogacy services.

(Paragraph No. 20)

- The practice of using a women's uterus for surrogacy without considering her physical and mental health and the use of commercial surrogacies that treat childbirth as transactional and do not go through proper legal channels, is fatal to society and encourages women to partake in exploitative work. Surrogacy services should not be practiced without the permission of the proper regulatory body as per the law; otherwise, they can create a situation in which women are stigmatized for getting pregnant before marriage.

(Paragraph No. 28)

- It is a matter of public health and ethics that surrogacy services and businesses should be regulated through laws enacted by Parliament. It would be against public policy and public interest to run a surrogacy service in the absence of a legal system that addresses the rights of surrogate mothers, children born to those mothers, and biological parents who want to have children through surrogate mothers. It is not a matter of constitutional rights to have a child through surrogacy or to run such a profession or business. It should not be considered a right

since running a procreation-related business or surrogacy service is not addressed in the Constitution.

(Paragraph No. 29)

- Surrogacy cannot be given legitimacy without legal provision. This even applies to situations in which a woman chooses to become a volunteer surrogate mother for charitable reasons. It is exploitative for health institutions to encourage surrogacy arrangements, particularly among women from poor socioeconomic backgrounds. It is also unethical to take babies away from surrogate mothers when there are no legal provisions stipulating the conditions of the arrangement. It is not considered morally appropriate to encourage women to earn money by “renting” their wombs or running business related to surrogacy.

(Paragraph No. 30)

- For any action to be considered legitimate, it must be socially acceptable, morally appropriate, and approved by law. Whether or not this action is valid in the terms of justice is not important. If a woman does not voluntarily choose to become a surrogate mother, it must be considered that it was through compulsion.
- If a woman has a benevolent, voluntary desire to have a child for someone who is not able to carry her own, then money or charging a fee would not be involved.
- It becomes clear that women who choose to be surrogates for money face financial precariousness. The relationship between mother and child is eternal, sacred, and even the closest relationship people might have during the course of their lives. There will be a sense of attachment to a child, even if the surrogate mother has to give the child to another person, as per the concluded agreement.
- It is not tolerable for women to carry a child for a third party and agree to give the child away forever due to financial circumstances. It is very difficult for a mother to hand over her child to others. In some countries, surrogate mothers have been known to refuse to handover the child, and in some cases, such women have been diagnosed with mental health problems after the child was separated from her. Commercial surrogacy has prevented certain laws from being passed in many countries because it does not consider fair as it makes the surrogate woman a permanent victim, and it does not do justice to the surrogate mother in any way that is linked to the woman's feelings. In such a situation, it would not be appropriate to operate or allow commercial surrogacy services in Nepal without making a law.

(Paragraph No. 31)

- Ignoring the need for a regulatory institution to operate surrogacy services would be inappropriate; no surrogacy services should be conducted without legal provisions that address the serious public health and ethical implications involved in this issue.

(Paragraph No. 32)

Date of Order 2017/01/25	Case No./Writ No. WO-0484 of the Year 2015	NLR/Year/Decision No. 9974
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Division Bench**Honorable Justice Mr. Deepak Kumar Karki****Honorable Justice Ms. Sapana Pradhan Malla****Subject: Certiorari/Mandamus**

**Shanti Balampaki v. the Government of Nepal, Ministry of Health, Ramshah Path,
Kathmandu and others**

- No one can deny the fact that women conceive and give birth to children and that it is important for the child to be with her mother. The State is required to make special arrangements for mothers who choose to breastfeed their children, as they are the only ones who can carry out this responsibility. At the government level, there is no systematic arrangement for the operation of childcare centers. Not having childcare can affect a woman's ability to continue her employment, which can lead her to feel discouraged or discontinue her work. It can also impact her work when she is forced to balance both. Since this situation would lead to discriminatory consequences, the State must recognize the role of women in childbearing as a social role and formulate policies concerning it. Therefore, it is not justified to transfer female employees who have small babies without their consent. On the one hand, women who work in government are civil servants, and on the other hand, they can also be mothers who help continue future generations. Therefore, transferring a female employee who has a child under the age of two, without her consent, is a clear violation of legal provisions; her "double role" is protected under policies and laws. Further, respecting the role of women in childbirth is not only a social norm. The right to safe motherhood and reproductive health is also enshrined in Article 38 (2) of the Constitution and it has been violated in this case.

(Paragraph No. 5)

Date of Order 2017/07/10	Case No./Writ No. CR-1167 of the Year 2014	NLR/Year/Decision No.
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Division Bench**Honorable Justice Mr. Ishwar Prasad Khatiwada****Honorable Justice Mr. Sapana Pradhan Malla****Subject: Homicide****Jaya Bahadur Tamang and others v. the Government of Nepal by the FIR of Indira Bhanadari**

- Men and women have different biological capabilities. Women have menstruation cycles and can get pregnant, give birth, and breastfeed. In this case, the right to reproductive health does not seem to have been provided to accused women in the custody. However, women who are serving sentences in the prison have been provided such facilities. In this regard, the investigating officer, prison administration and prosecution, including the court at the time of extending the remand date, need to pay close attention to this issue.
- The police should ensure that those who are accused of crimes have a right to reproductive healthcare during the investigation, as should the public prosecutor during the prosecution and the court while extending the time for investigating the crime and taking statements from the accused.

Date of Order 2017/08/09	Case No./Writ No. WO-0194 of the Year 2012	NLR/Year/Decision No.
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Division Bench**Honorable Justice Mr. Om Prakash Mishra****Honorable Justice Mr. Sarada Prasad Ghimire****Subject: Mandamus****Ms. Manju Tamang and others v. the Office of the Prime Minister and Council of Ministers, the Government of Nepal, Singha Durbar, and others**

- Since certain methods of family planning may have adverse effects on one's reproductive health, it is essential to conduct tests as to which method is appropriate or suitable for whom. In choosing a family planning method, it is the right of both men and women to have access to different methods, to choose the method least likely to harm their health, and to use their method of choice freely and without any barriers. While exercising their freedom to decide when to have children it is also their right to access safe, effective, affordable, and acceptable family planning methods and access information on these matters.
- These rights are basic rights for all married couples. It is also their right to decide the number of children they would like to have, the spacing of these births, and what time during their life they feel they can responsibly have a child. These rights also encompass the right to obtain necessary information and the right to attain the highest standard of family planning methods and sexual and reproductive health.
- Environments that deprive women of information (about family planning) prevent them from making choices about appropriate methods. These environments do not allow women to make their own decisions. In a patriarchal society, there is reason to doubt whether women can easily access these rights.
- It is essential and urgent that the State formulate and implement policies and programs that make contraceptive methods more accessible to women from impoverished or illiterate backgrounds, as these women may have a low level of awareness and access to reproductive health.
- Therefore, it is held that an Order of Mandamus must be issued in the name of the respondents, the Council of Ministers, and the Ministry of Health to make necessary revisions to the National Family Planning Strategy, 2068 BS (2012 AD). This will help establish and ensure that all women, including those from marginalized and poor backgrounds, have access to different types of contraceptive methods and services. The right of women to reproductive health is protected by the Constitution of Nepal; as such, it is important to make arrangements for other related policies, laws, and programs, and allocate the necessary human resources and budget to implement them with due diligence.

PART FOUR
RIGHT TO IDENTITY

Date of Order 1994/02/10	Case No./Writ No. 29 of the Year 1992	NLR/Year/Decision No. Not available
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Full Bench

Right Honorable Chief Justice Mr. Bishownath Upadhyaya

Honorable Justice Mr. Om Bhakta Shrestha

Honorable Justice Mr. Keshab Prasad Upadhyaya

Subject: Request to issue an order of mandamus or whatever order or letter is required under Article 16/71 of the Constitution

Meera Gurung, et al. v. the Central Immigration Department

- Entering or living in the Kingdom of Nepal is not a matter of foreigners' rights. Matters that concern what kinds of foreigners can enter Nepal and under what conditions (and for how long) they may enter and live in Nepal is the discretion of His Majesty's Government of Nepal.
- His Majesty's Government of Nepal may or may not grant permission to a foreign citizen to enter or stay in Nepal on various grounds, such as justification, reciprocity, and diplomatic expediency. In order to regulate the entry or presence of foreigners, His Majesty's Government of Nepal may formulate a policy of any kind based on rationality and appropriateness, and implement it into law.
- Granting or not granting a visa to a foreigner on the mere grounds that they are a foreigner or granting a visa to a foreigner married to a Nepali citizen of a different color, sex or caste are two different matters. There must be reasonable causes to provide legal provisions that give a visa to foreigners who are married to a Nepali citizen based on the grounds of color, sex or caste. Otherwise, the said legal provision is inconsistent with the constitutional provision. Also, since the provision of Sub-rule 4 of the Nepal's Citizenship Rule, 1992 made discrimination between married Nepali women and married Nepali men in an unreasonable and inappropriate way, the aforementioned provision is contrary to Article 10 of the then Constitution of Nepal and Article 11 of the present Constitution.

Date of Order 1998/04/24	Case No./Writ No. Civil 2228 of the Year 1994	NLR/Year/Decision No. 6585
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Division Bench**Honorable Justice Mr. Krishna Jung Rayamajhi****Honorable Justice Mr. Harischandra Prasad Upadhyaya****Subject: Partition/Alimony****Ratna Lal Kanaudiya v. Renu Adhikari**

- A child is usually born nine months after conception. This suit concerns a disputed date of conception. The plaintiff claims that her sexual relation with the defendant began 9 or 10 months ago. The claimant, though, fails to explain the exact date, yet mentions that the year was 2032 (1975) and month was Bhadra (August). The report from the *prasutigriha* (the maternity hospital) states that the plaintiff's menstruation stopped during the year 2032 (1975) in the month of Bhadra (August). In a situation like this, there is no condition whereby the plea of the defendant is proved merely on the grounds that the plaintiff failed to reveal the date of her conception by commission of sexual intercourse.
- The plaintiff and defendant accept the fact that His Majesty's Government, has filed a polygamy case in the Kathmandu District Court against the claimant and the defendant, after an investigation occurred. The Kathmandu District Court then disposed the aforementioned case on the grounds of an expired limitation period. Since this occurred, the plaintiff and defendant are only concerned with this polygamy case to know whether they will be sentenced or not. This Bench cannot agree with the plea made in the appeal that the relationship between the plaintiff and defendant cannot be established due to the disposal of the polygamy case.

Date of Order 2002/02/07	Case No./Writ No. 3668 of the Year 2001	NLR/Year/Decision No. 7044
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Full Bench

Honorable Justice Mr. Krishna Jung Rayamajhi
Honorable Justice Mr. Hari Prasad Sharma
Honorable Justice Mr. Kedarnath Upadhyaya
Honorable Justice Mr. Tope Bahadur Singh
Honorable Justice Mr. Ramnagina Singh

Subject: Request to issue an appropriate order or letter including mandamus with certiorari pursuant to Article 23, Clause (1) and (2) of Article 88 of the Constitution of the Kingdom of Nepal.

Advocate Chandra Kanta Gnyawali, et al. v. His Majesty's Government of Nepal, the Secretariat of the Council of Ministers, et al.

- Article 11 of the Constitution of the Kingdom of Nepal guarantees the right to equality between Nepali men and women. Nepal's citizens cannot be discriminated against on the grounds of sex and they are guaranteed equal protection under Nepal's law. Furthermore, Clause (1) and (2) in Article 9 states that a person whose father was Nepali citizen at the time of his/her birth shall be a citizen of Nepal by virtue of being his descendant, and that a child found within the Kingdom of Nepal shall be a citizen of Nepal by virtue of descendant until his or her father is traced and his nationality is established. The petitioner claims that since the provisions of Article 9 only grant validity to fathers and fatherhood and do not consider mothers and motherhood, they are inconsistent with the right to equality under Article 11 by virtue of being discriminatory. When it is apparent that a law enacted by Nepal's legislature and any legal provision imposes unreasonable restrictions on fundamental rights guaranteed by the Constitution, and when a law is clearly inconsistent with a Constitutional provision, this court may declare such law void and annul it by reviewing the constitutionality of the law. This is done under Article 88(1) of the Constitution, which enables this court to exercise extraordinary jurisdiction. However, this case does not present a situation in which the constitutionality of Article 9(1) (2) of the Constitution falls under the purview and judicial review of this court.
- With regard to the question advocate Balaram KC raised on behalf of the petitioner, concerning whether both Articles must be harmoniously interpreted, the court contests that both these Articles have their own objectives and are independent of each other, and that the right to equality under Article 11 is not an absolute right. Therefore, there is no chance of such an interpretation. This does not imply that the Constitution's drafters

framed these Articles to be inconsistent with each other. Since matters related to citizenship are significant and highly sensitive, another provision was made in Nepal's Constitution concerning it. The drafters of the Constitution wrote Articles 9(1) and (2) because they believed these articles were in the best interest of Nepal, from a larger perspective. It is also not consistent with the Constitution for this court to interpret articles to have other meanings not in consonance with the objective of a provision in the Constitution of the Kingdom of Nepal, 1990, which is the fundamental law. Since Nepal is also party to the Convention on the Elimination of all forms of Discrimination against Women, 1979, passed by the United Nations in consonance with the principles enunciated in the Universal Declaration of Human Rights, which stipulates that discrimination of any type against men and women shall be invalid, it is the obligation of Nepal to abide by the norms of the Convention.

- Article 2 of the Convention, whilst condemning all forms of discrimination, imposes an obligation on the State to incorporate the principles of equality between women and men into their own national constitutions, as well as other appropriate laws. It also requires States to practically realize the principle of equality through laws or other mediums, whereas the definition of discrimination against women in Article 1 of the Convention conveys the matter as a human right issue. The jurisdiction of framing and amending the Constitution and laws do not fall under the purview and power of this court. This court exists to dispense justice on the basis of the existing Constitution and law. Further, Section 9 of the Treaty Act, 1990 states that if a provision of a treaty is inconsistent with the provision of a law, the law shall be invalid to the extent of inconsistency, and that the provision of treaty should be applied as if it were a law. This case is not of that nature. This case also doesn't pose a situation in which it can be said that the treaty gets priority over Nepal's Constitutional provisions. Likewise, the Act also states that when a treaty assigns additional obligations to the Kingdom of Nepal or His Majesty's Government, measures should be taken toward implementing related legal provisions.
- It cannot be said that the provisions of Clause (1) and (2) of Article 9 of the Constitution and Sub-section (1), (4) and (5) of Section 3 of the Citizenship Act, 2020 (1963), Rule 3 and 3(A) of the Nepal Citizenship Regulation, 2049 (1992) and provisions mentioned in Schedule (1) (2) and (3) thereof does not seem inconsistent with Art. 11(1)(2)(3) of the Constitution. Thus, the writ petition invoked by the petitioner in this concern cannot be issued.

(Paragraph No. 14 to 16)

Date of Order 2004/03/23	Case No./Writ No. 3504 of the Year 2004	NLR/Year/Decision No. 7533
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Division Bench

Honorable Justice Mr. Ram Prasad Shrestha

Honorable Justice Mr. Paramananda Jha

Subject: Certiorari/Mandamus

Advocate Achyut Prasad Kharel v. the Office of the Prime Minister and Council of Ministers, et al.

- The matter of awarding Nepali citizenship *ipso facto* to a minor who was born to Nepali mother without tracing out his or her father cannot be considered in theoretical or policy terms by this court, as it is not suitable to Nepal's national prestige, dignity, morality and religious norms.

(Paragraph No. 10)

- As our law stipulates that a minor is a citizen of Nepal by descent until his or her father is traced out, the minor is not rendered citizenship unless and until his or her father is traced out.

(Paragraph No. 11)

- We cannot agree with the plea of the petition that a writ should be issued to award citizenship to a minor (who was born to an unmarried mother) on the grounds of motherhood.

(Paragraph No. 13)

Date of Order 2005/08/15	Case No./Writ No. 121 of the Year 2003	NLR/Year/Decision No. 7550
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Special Bench
Honorable Justice Mr. Anup Raj Sharma
Honorable Justice Mr. Sharada Prasad Pandit
Honorable Justice Mr. Arjun Prasad Singh

Subject: Mandamus, et al.

Advocate Tek Tamrakar, et. al. v. His Majesty's Government, Secretariat, the Council of Ministers, et al.

- This case concerns a petition that minors born to *Badi* women are unable to register their births and obtain citizenship because they are not able to trace the whereabouts of their fathers (to determine his nationality). Since this analysis concludes that this act is not consistent with the Constitution and law, *Badi* women's children's legal rights to have their births registered and their constitutional right to acquire citizenship shall not be deprived merely on the grounds that their father is not traceable. It cannot be said that registering a birth and awarding citizenship should be denied upon filing an application, which was in compliance with the legal process used to handle these procedures.

(Paragraph No. 32)

- In the provision that states "the information of birth and death shall be supplied by the head of the family and in his/her absence by the eldest person from amongst male person of the family having attained majority," which appears in Clause (a) of Sub-Section (1) of Section 4 of the Birth, Death and other Personal Incidents (Registration) Act, 2033 (1976), the phrase "from amongst male persons" shall be deemed void, as per Article 32 of the Constitution.
- In the name of the respondents, a writ of mandamus is issued that stipulates families cannot be denied the ability to register their children's births, including families from the *Badi* community, on the grounds that their fathers are not traceable. This writ also states that Nepali citizenship should be awarded to children by making the necessary arrangements without any delay, as per Clause (2) of Article 9 of the Constitution of the Kingdom of Nepal and Sub-Section (4) of Section 3 of the Citizenship Act 2020.

(Paragraph No. 34)

Date of Order 2005/11/28	Case No./Writ No. 3355 of the Year 2003	NLR/Year/Decision No. 7585
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Division Bench
Honorable Justice Mr. Badri Kumar Basnet
Honorable Justice Mr. Balaram KC

Subject: Certiorari/Mandamus

Punjabati Pathak, et al. v. His Majesty's Government, Ministry of Foreign Affairs, et al.

- The Passport Act, Regulation and Articles 11 and 12 of the Constitution do not confer power on His Majesty's Government to specify that women can only obtain passports with the concurrence of parent. As such, the aforesaid conditions specified by the decision of the Council of Ministers dated 2052/9/10/ (1995/12/25) did not pay regard to the Constitutional and legal provisions; the decision was above the executive power of the Council of Ministers.

(Paragraph No. 23)

- Regardless of the intention, any executive decision that causes more hardship to women than men should be regarded as discriminatory, an excess of power, arbitrary, and contrary to the rule of law.

(Paragraph No. 23)

- Passports are issued for various reasons – like travelling to participate in various work meetings (through the United Nations, the Asian Development Bank, or SAARC), to attend international conferences, to assume the charge of Nepali representatives in the Nepali Embassy and Head of Mission, to study abroad, or for leisure. It has been proven that a passport is issued for the purpose of enjoying one's freedoms as outline under Article 12 of the Constitution, and that Nepali women enjoy this right equal to men. The Act does not make a distinction between men and women. Anyone can represent Nepal in the aforementioned organization; citizen denotes both women and men. If a passport is not issued to a female citizen in the absence of her parent's concurrence, due to the conditions specified by the Council of Ministers as dated on 2052/09/10 (25/12/1992), the State's representation fails and women are deprived from enjoying their freedoms guaranteed by Article 12 of our Constitution. Since an unreasonable restriction is likely to be imposed –with regard to enjoying one's freedoms guaranteed by the Constitution and the ICCPR to use a passport to represent the State or for personal use – the executive decision cannot be made.

(Paragraph No. 27)

Date of Order 2006/08/031	Case No./Writ No. 43 of the Year 2004	NLR/Year/Decision No. 7693
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Special Bench
Honorable Justice Mr. Ramnagina Singh
Honorable Justice Mr. Ram Prasad Shrestha
Honorable Justice Mr. Khil Raj Regmi

Subject: Certiorari/Mandamus

Advocate Meera Dhungana, et al. v. the Office of the Prime Minister and Council of Ministers, et al.

- The Children's Act concerns the rights and interests of children and the petitioner seeks to declare a provision in Section 3(1) of the Act invalid, which concerns matters relating to naming a child. The court recognizes that this concerns the nature of identity and that such matters should be determined within families, through mutual consultation and understanding. In the reply provided by the Ministry of Women, Children and Social Welfare, it is stated that a high-level committee has been formed to amend these laws – if found discriminatory in line with international conventions. Therefore, since the law impugned by the petitioner is also likely to be amended soon, the provision of Section 3(1) of the Child Act, 2048 (1991) need not be declared valid.

(Paragraph No. 15)

Date of Order 2007/12/12	Case No./Writ No. 917 of the Year 2007	NLR/Year/Decision No. 7958
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Division Bench
Honorable Justice Balaram KC
Honorable Justice Mr. Pawan Kumar Ojha

Subject: Request to issue an order, Certiorari, Mandamus or Prohibition, otherwise a warrant is required.

Sunil Babu Panta v. His Majesty's Government, the Prime Minister and Office of Council of Ministers

- Disputes involving the subjects (labeled below) to ascertain or settle a Constitutional or legal question can be considered disputes of public interest litigation:
 - a. Matters concerning the deprivation of rights enshrined under Part 3 of Constitution to different groups, castes, tribes, sexes, communities, linguistic groups, due to delays or inaction by the State;
 - b. Matters concerning the deprivation of rights due to the State's inattention to directive principles, which should be gradually implemented;
 - c. A situation or act that seems to be in contravention of the preamble of the present Constitution, especially the provision and spirit of the of fourth Paragraph of the preamble,
 - d. Matters relating to intervening in the judicial independence and independence of other constitutional bodies to function independent of the Constitution;
 - e. Matters relating to environmental protection;
 - f. Matters relating to the rights and interest of tribes, persons, or classes whose protection and empowerment must be made through special arrangements as referred to in proviso under Article 13 (3) of the Constitution;
 - g. Matters relating to rights and interests of other people, groups or classes as referred to in Parts 3 and 4 of the Constitution;
 - h. Matters relating to historical and archaeological subjects concerning Nepal's cultural heritage;
 - i. And matters in which any class, group, caste or tribe of Nepali citizens is victimized due to the executive's failure to discharge its constitutional duty.
- (Paragraph No. 2)
- A child born into one sex may change their biological sex or choose to identify as a different gender other than the one they were assigned at birth. These changes do not mean that they are not a human being or citizen.

- Based on sexual orientation, a third gender person (someone who is neither a woman nor a man) cannot to be discriminated against.
- The State must not deprive those who identify as third gender; the State must accept their existence as natural citizens and guarantee their rights under Part 3 of the Constitution.
(Paragraph No. 4)
- No one has any right or reason to question when people of the appropriate legal age to have sexual intercourse choose to do so, and whether such intercourse is natural or unnatural.
- Sexual intercourse between people of the opposite sex is protected under privacy rights; this also applies to people of the third gender who have different gender identities and sex orientations.
- The gender identity and sexual orientations of homosexual people and third gender people cannot be denied by labeling their sexual intercourse as unnatural. When a person chooses their gender identity, it is part of their self-realization. Other people, society or the State cannot determine their biological sex, what type of sex partner they should choose, and whom they are allowed to marry. This falls exclusively under their personal rights.
- From a human rights perspective, provisions that harm one's freedom, prestige, and self-respect cannot be deemed acceptable. A person's basic rights must not be limited on any grounds, such as religion, culture, tradition, values, and norms.
- If there is a legal provision preventing a person from enjoying their fundamental rights under Part 3 of the Constitution, as well as their rights enshrined in different international human rights conventions to which Nepal is party and has enacted as domestic law, such provisions must be regarded as arbitrary, unreasonable, and discriminatory. The act of the State in implementing any of these laws must also be regarded as arbitrary, unreasonable, and discriminatory.
- A law that does not allow one to enjoy fundamental rights, freedoms, and their own identity should be regarded as discriminatory.
- Since Section 9 of Treaty Act, 2047 (1990) ensures that the ICCPR and ICESCR are considered as good as Nepal's law, the LGBT community should be entitled to enjoy their own identities like other people and their other rights granted under Nepal's laws without any discrimination. A directive order is issued in the name of the Government of Nepal to make, after conducting a study, an appropriate law or amend existing laws to ensure that people with different gender identities and sexual orientations are entitled to enjoy their rights without discrimination. It is an inherent right that anyone of a certain age is entitled to get married to another person if the relationship is consensual. Homosexual marriage should be viewed as a right in society and among families.

(Paragraph No. 6)

Date of Order 2008/04/16	Case No./Writ No. 0089 of the Year 2006	NLR/Year/Decision No. 8035
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Division Bench**Honorable Justice Mr. Anup Raj Sharma****Honorable Justice Mr. Kalyan Shrestha****Subject: Certiorari****Nakkali Maharjan, et al. v. the Office of the Prime Minister and Council of Ministers, et al.**

Section 9 of the Treaty Act states that if any provision of a ratified, acceded, accepted or confirmed treaty to which the Kingdom of Nepal or Nepal Government is party is inconsistent with a law, that law will be deemed invalid to the extent of the inconsistency, and the provision of treaty shall be applied as Nepali law. It is the duty of Nepal as State party to international conventions to discharge its obligations under the aforementioned international conventions.

(Paragraph No. 8)

In addition to international conventions, Article 8(2) of the Interim Constitution of Nepal and Section 3(1) of the Nepal Citizenship Act, 2063 (2007) states that a person whose father or mother was a citizen of Nepal at the time of his or her birth shall be citizen of Nepal by descent. As such, the choice of the respondent (the municipality) to not issue a recommendation discriminated against the petitioner on the grounds of sex or marital status, which deprived them from obtaining their citizenship certificate, and has been deemed illegal.

(Paragraph No. 9)

Date of Order 2009/06/26	Case No./Writ No. WO- 0035 of the Year 2008	NLR/Year/Decision No. 8175.
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Division Bench
Honorable Justice Ms. Gauri Dhakal
Honorable Justice Mr. Rajendra Prasad Koirala

Subject: Mandamus

Ranjit Thapa, et al. v. the Office of the Prime Minister and Council of Ministers

- Section 9 of the Treaty Act, 1990 states that if any provision of a ratified, acceded, accepted or confirmed treaty to which the Kingdom of Nepal or Nepal Government is party is inconsistent with a law, then that law will be deemed invalid to the extent of the inconsistency, and the provision of treaty shall be applied as Nepali law. Further, the provision of the treaty shall be applied as Nepali law in relation thereto and the concerned provisions of the aforementioned treaty ratified by Nepal are also valid. Since the provisions relating to acquiring citizenship under the Interim Constitution of Nepal, Nepal Citizenship Act, 2063 (2006) and Nepal Citizenship Regulation, 2063 (2006) are consistent with international human rights conventions, it cannot be said that they condone any discrimination between women and men in the act of acquiring citizenship.

(Paragraph No. 7)

- Rule 3 of the Nepal Citizenship Regulation also grants anyone the right to obtain a citizenship certificate in the name of either one's father or mother by deeming both the father and mother as their descendant. Therefore, even if the address of the father and mother is different and the petitioner files to obtain one's citizenship certificate in any place (and under the prescribed procedure) with the recommendation from concerned authority, he or she can obtain the certificate using either the father or mother's address.

(Paragraph No. 8)

Date of Order 2011/02/07	Case No./Writ No. WS- 0017 of the Year 2010	NLR/Year/Decision No. 8536
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Special Bench
Honorable Justice Mr. Balaram KC
Honorable Justice Mr. Bharat Raj Upreti
Honorable Justice Prof. Dr. Mr. Bharat Bahadur Karki

Subject: Certiorari, et al.

Advocate Saroj Nath Pyakurel, et al. v. the Office of the Prime Minister and Council of Ministers, et al.

- Only citizens have the right to vote and run as candidates for Constituent Assembly or the legislature (such as the parliament and local bodies). Even if a person has resided in Nepal for a long time, he or she can only be identified as a Nepali citizen through a certificate of Nepali citizenship. The rights to run as a candidate for office or cast a vote are political rights. Only citizens have political rights.

(Paragraph No. 3)

- In the absence of a citizenship certificate, the right to vote cannot be upheld based on presenting other identity cards (even those that suggest the concerned person has lived in a particular country for a long time). Evidence of such residence cannot substitute or replace the citizenship certificate. Only a citizen obtains the right to exercise civil and political rights. To exercise such rights, one must have obtained a citizenship certificate.

(Paragraph No. 10)

- All persons who are eligible to be Nepali citizenships may not be forced to obtain citizenship certificates, but if one is to exercise political rights in this country such as voting, the citizenship certificate must be obtained to prove their identity.

(Paragraph No. 20)

- When the words "citizenship certificate" are already mentioned in Sub-Section (1) of the Voters Roll Act, 2063 (2006), the legislature cannot add other documents to substitute them. While registering one's name in voter rolls, the registration officer may, if the citizenship certificate is found to be unclear or confusing, ask for other documents, including a land ownership certificate referred to in Sub-Section (1) and (2), which would be asked for only to verify information presented in the citizenship certificate.

(Paragraph No. 23)

- The extraordinary jurisdictional powers conferred on this court under Article 107 play a pivotal role in promoting the principles of constitutional supremacy envisioned in the

Constitution. No law enacted by the legislature can control or limit the jurisdiction of this court.

(Paragraph No. 25)

- The provision outlined in Section 25 of the Voters Rolls Act, 2063 (2006) cannot ignore, dishonor, make ineffective, or limit or control in any way the extraordinary jurisdiction conferred on this court under Article 107 (to the extent that no question is raised before a court against the act or against the activities carried out by the Election Commission in matters concerning voter rolls).

(Paragraph No. 26)

Date of Order 2011/02/27	Case No./Writ No. WO- 0703 of the Year 2010	NLR/Year/Decision No. 8557
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Division Bench
Honorable Justice Mr. Balaram KC
Honorable Justice Mr. Bharat Raj Upreti

Subject: Mandamus, et al.

Sabina Damai, et al v. the Government of Nepal, the Office of the Prime Minister and Council of Ministers, et al.

- A citizenship certificate is only issued to people who qualify as citizens under the Constitution and law. A person without the qualifications specified under the Constitution and laws cannot become a citizen, regardless of how long he or she has resided in Nepal.
(Paragraph No. 4)
- A citizenship certificate is important to every person. No one is entitled to exercise political rights in Nepal without becoming a citizen first.
- A citizen cannot be deprived from obtaining a citizenship certificate when a designated officer fails to understand or misinterpreted the Constitution, law and human rights conventions to which Nepal is party. It is not acceptable that people face hardship when applying for their citizenship.
(Paragraph No. 10)
- Even if only one parent is a Nepali citizen, their child is entitled to obtain Nepali citizenship through descent.
(Paragraph No. 11)

Date of Order 2012/11/05	Case No./Writ No. WH 0030 of the Year 2012	NLR/Year/Decision No. 8945
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Division Bench

Honorable Justice Mr. Kalyan Shrestha
Honorable Justice Mr. Girish Chandra Lal

Subject: Habeas Corpus**Prem Kumari Nepali, et al. v. the National Women on Commission, et al.**

- Although the physical identity of a person may correspond to their sex organ, from the viewpoint of sexual orientation, it may be different from his/her physical identity and such orientation and behavior cannot be undermined

(Paragraph No. 2)

- Since there is no constitutional restriction against the rights of those who identify as homosexual or third gender, their constitutional rights may be enjoyed equally pursuant to the Constitution and any other relevant laws concerning their interests.

(Paragraph No. 4)

- Legal provisions that entitle a husband to curtail the personal rights and freedoms of his wife on the grounds of marriage are not valid.

(Paragraph No. 5)

- Social norms should not prevent someone from enjoying their rights that are not prohibited under prevailing laws or the Constitution.

(Paragraph No. 7)

- If a woman or man wants to spend their life with another homosexual woman or man, the court cannot legally impose restrictions on them to do so.

(Paragraph No. 9)

- The word "detention" denotes the act of keeping a person under control without allowing him or her to enjoy personal freedoms provided under the Constitution and prevailing laws; this detention can refer to control over the security of any organization, association or particular individual. In this context, the word "detention" extends not only to detention in police custody or prison, but also to a situation in which control is leveraged over someone to restrict their personal freedoms in contravention with law. No one – be it a police officer, a government official, an everyday person, or a government or non-governmental association – has power to control a person in contravention with the law. If this occurs, a writ of habeas corpus is issued.

(Paragraph No. 12)

- Any act curtailing someone's personal freedoms should not be committed (whether in good faith or with malicious intention). This physical control is equal to situations of detention and even the act of restorative protection by organizations is not lawful.

(Paragraph No. 16)

Date of Order 2013/03/10	Case No./Writ No. W0 -0027 of the Year 2011	NLR/Year/Decision No. 9048
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Division Bench
Honorable Justice Ms. Sushila Karki
Honorable Justice Mr. Baidyanath Upadhyaya

Subject: Mandamus

Dilu Buduja v. the Government of Nepal, the Office of the Prime Minister and Council of Ministers, et al.

- Machine-readable passports are documents of an international nature. When altering these documents, we must consider that they will be used abroad in places with policies that might differ to our country. There is no divergence in opinion that the writ petitioner Dilu Buduja is a third gender and has already received citizenship that identifies them as such. Since the petitioner has already obtained this, and on the basis of the provision in Article 12(1) and 13(1)13(2) of the Interim Constitution of Nepal, 2006 (which guarantees the right to equality to all and that no discrimination can be made on the grounds of caste, sex and class), the respondents must discharge their duty to issue passport to the petitioner with a third gender identity. However, since matters concerning passports are international in nature, caution should be exercised in altering or modifying the passport, so that the international structure is not disrupted. A directive order is hereby issued to restore the gender identity and constitutional rights of the petitioner in the name of the respondents; issuing the passport with the third gender identity should be carried out as soon as possible to make this passport available and to amend Schedule 2 relating to Sub-Rule(1) of Rule (7) of the Passport Regulation, 2067.

(Paragraph No. 8)

Date of Order 2016/03/15	Case No./Writ No. W0- 0731 of the Year 2011	NLR/Year/Decision No. 9627
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Division Bench

Honorable Justice Mr. Kalyan Shrestha
Honorable Justice Mr. Om Prakash Mishra

Subject: Mandamus

Sajda Sapkota, et al. vs. the Government of Nepal, the Office of the Prime Minister and Council Of Ministers, et al.

- The Constitution and law have already stated that people born to Nepali citizens, including mothers, may obtain citizenship in the name of their mother. Therefore, when considering the respondent's statement that the citizenship certificate was not issued because it was unclear whether the petitioner's father was a foreigner or Nepali, the act of refusing to issue it on this basis contravenes Article 13 (1), (2) and Article 20(1) of the Interim Constitution of Nepal, 2006. Article 13 (1) states that all citizens shall be equal in the eye of law and Clause (2) provides that no citizen shall be discriminated against on the basis of sex. Likewise, Article 20(1) has already recognized that woman shall not be discriminated against on the grounds of being women. Therefore, the respondent's act of not issuing the citizenship certificate on the grounds that the father's status was not clear, even when the petitioner's mother's citizenship certificate proved that she is a citizen of Nepal, is found to have discriminated against the petitioner's mother as a woman. This act overruled the constitutional provisions.

(Paragraph No. 7)

- Constitutional and legal provisions ensure that a person who resides in Nepal and was born from a Nepali citizen, whether it be a father or mother, holds the right to obtain their citizenship certificate in the same district they live in. Until becoming a citizen, no one is entitled to exercise political and civil rights in Nepal, acquire immovable property, vote in elections, among other rights only entitled to Nepali citizens. Every qualified person has the right to obtain citizenship in a convenient and simple manner if they have filed an application in the format prescribed by the law, and in compliance with the necessary formalities. However, instead of cordially rendering assistance in a sensitive issue like citizenship, the respondents are found to have made the petitioners wait by refusing to issue the certificate under certain pretexts; this cannot be said to be responsible and lawful.

(Paragraph No. 9)

Date of Order 2016/04/04	Case No./Writ No. W0- 0903 of the Year 2014	NLR/Year/Decision No. 10066
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Division Bench
Honorable Justice Mr. Gopal Parajuli
Honorable Justice Mr. Gobinda Kumar Upadhyaya

Subject: Mandamus

Bipana Basnet, et al. vs. the Government of Nepal, the Office of the Prime Minister and Council of Ministers, et al.

- Since the father and mother of the petitioner were citizens of Nepal at the time of his birth, there is no dispute over the aforementioned constitutional provision that he needs to be prove he is a citizen through descent. Article 12 of the Constitution states that a person obtaining Nepali citizenship by descent may obtain a citizenship with the gender identity by the name of his or her father or mother. The discussed legal provisions reveal that women have equal rights to men. The court already emphasized this principle in the suit of petitioner “*Sabina Damai, et al. v. Government of Nepal, the Office of the Prime Minister and Council of Ministers, et al.*,” mandamus, as well as judgment No. 8557, when it was stated that “...a citizen cannot be deprived from obtaining the certificate of citizenship due to a designated officer not understanding the Constitution, law and human rights covenants or giving wrong reasons or meaning.” If the petitioner wants to obtain citizenship through his mother on these grounds, he can. The concerned official may also issue citizenship by descent on the grounds of providing evidence of the father's surname. Furthermore, it was held in Sabina’s suit that citizenship by descent can be obtained through the mother, and the mother's surname can be stated. There is no legal ground barring someone from using their mother’s surname in the absence of their father's. Thus, since the Constitution of Nepal and other provisions provide precedent that citizenship may be obtained through either the father or mother, preventing the petitioner from using his mother’s surname when applying for citizenship (stating that he can only use his father’s) is discriminatory.
- Furthermore, stating otherwise would violate the petitioner’s right to choose his family surname and equal rights between men and women. The act of a body or official not to issue citizenship without stating reasons is not lawful or appropriate, Measures for simplifying the citizenship process pursuant to legal provisions are needed. Therefore, an order of mandamus is issued to the District Administration Office, Kathmandu, to make a decision to provide citizenship as soon as possible after making an inquiry pursuant to the Constitution of Nepal, Citizenship Act, 2063 (2006) and Nepal Citizenship Regulation e, 2063 (2006),

(Paragraph No. 5)

Date of Order 2016/08/29	Case No./Writ No. W0- 0709 of the Year 2014	NLR/Year/Decision No. 9687
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Division Bench**Honorable Justice Mr. Dr. Ananda Mohan Bhattarai****Honorable Justice Mr. Prakash Man Singh****Subject: Mandamus****Srijan Kharel v. the Government of Nepal, the Office of the Prime Minister and Council of Ministers, et al.**

- A citizenship certificate is the only document to designate someone as a citizen of this country. Political rights cannot be enjoyed without becoming a citizen – including the right to obtain employment, hold public office, obtain social security and vote, etc. Since citizenship is a highly sensitive matter attached to a person’s identity, it is not justice to subject those seeking citizenship to an unnecessarily difficult process.

(Paragraph No. 9)

- In the writ petition “*Sabina Damai, et al. vs. the Government of Nepal, the Office of the Prime Minister and Council of Ministers, et al.*” (Writ No. 067 -WO 0703, NLR 2068 judgment No. 8557, Issue 2, Page 247) this court issued an order of mandamus to the District Administration Office to issue citizenship through mothers. Based on the Office of the Prime Minister and Council of Ministers’ reply, a circular was already issued by the Council of Ministers on 2068/06/06 (2011/07/22) to the Ministry of Home Affairs and by the Home Ministry through a letter on 2068/05/05 (2011/07/21) to all the District Administration Offices and concerned bodies. Likewise, in the writ petition “*Bhola Nagarkoti, et al. v. the Government of Nepal*” (Writ No. 2069 -WO -0880), this court also issued an order to provide citizenship in the name of mothers. The judgment delivered in the petition of Ranjit Thapa is referred above. Hence, this court has already established that Nepali citizenship may be obtained through mothers. Since the petitioner requests issuance of citizenship in their mother's name, it is not relevant to ask where their father has gone or what happened to him. When a provision already exists that states citizenship can be obtained through mothers, depriving the petitioner of this right is tantamount to carrying out an illegal act. Legally competent officials must execute this duty; not doing so would be contrary to equality and equity. Since the petitioner stated that he filed an application in the District Administration Office, Kathmandu, it is vital that the respondent office address this sensitive manner as soon as possible.

(Paragraph No. 12)

Date of Order 2017/01/23	Case No./Writ No. W0- 0287 of the Year 2013	NLR/Year/Decision No. 9875
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Division Bench

Honorable Justice Mr. Deepak Kumar Karki

Honorable Justice Mr. Hari Krishna Karki

Subject: Mandamus

Sunil Babu Panta, et al. v. the Office of the Prime Minister and Council of Ministers, et al.

- It is a basic human right that people should be able to live their lives in their own identities. Constitutional provisions and human rights law also protects people with different gender identities and sexual orientations and ensures that they should be able to live with self-respect.

(Paragraph No. 4)

- People have the right to acquire a different gender identity for their own self-realization. It is not relevant for society, the State or laws to determine what biological sex is.

(Paragraph No. 6)

- The Constitution, Nepal Citizenship Act, 2063 (2006), Nepal Citizenship Regulation, 2063 (2006), and the “Guideline relating to issuing citizenship to the persons of sexual and gender minority community” already accept the existence of a third gender and the rights of this community. To say that a citizenship certificate must be obtained on the basis of biological sex denies the existence of people from gender minority communities, like the petitioner.

(Paragraph No. 7)

- It violates the human rights of sexual minorities by compelling them to hide their identity since they must live with an identity card that specifies a sexual identity different from their actual one. It harms their self-respect and weakens social ownership.

(Paragraph No. 8)

- In some situations, one's own biological sex may only be known and expressed after citizenship has already been obtained. In such situations the right to amend the citizenship certificate accordingly must be legally secured.

(Paragraph No. 9)

Date of Order 2017/04/30	Case No./Writ No. CI- 0131 of the Year 2016	NLR/Year/Decision No. 9833
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Division Bench

Honorable Justice Mr. Anil Kumar Sinha
Honorable Justice Ms. Sapana Pradhan Malla

Subject: Relationship to be established

Narayan Mani Lamichhane v. Sarita Shrestha

- In considering the plea made in the appeal that a deed executed by the defendant, Narayan Mani Lamichhane, on 2065/4/16 (2008/10/02) accepting the claimant, Sarita Shrestha, as his wife is now contrary to law cannot receive legal validity. It is stated in the deed of 2065/4/16 (2008/10/02) that, Narayan Mani Lamichhane, the executor of the deed, and Sarita Shrestha, were first acquainted with each other on 2056/1/15 (1999/04/28) in the District Cottage and Small Industry Development Office and in spite of having intimate relations, he did not bring her legally to his home. Therefore, the executor married her after showing up to her rented room of and executed the deed with his signature and thumbs prints in the presence of witnesses (who are referred to at the end of this deed). The deed shows that there are two witnesses on the claimant's side and two witnesses on the defendant's side. The defendant made a statement that the signature and thumbprints on the deed were made under coercion; the National Forensic Laboratory received a request to examine this. The resulting examination states that the thumb impression on the deed matches that of the defendant (which was also corroborated by witnesses) If the deed was coerced, the defendant would have filed a complaint before the concerned body claiming this was the case. Since this deed was executed on 2065/4/16 (2008/10/02), we cannot agree with the plea that it was executed under coercion at the time. Despite the existence of the Personal Incidents Registration Act requiring that marriages be registered, it has not always been used in Nepal until recently; as such, love marriages and social-cultural marriages can not to be termed otherwise. The claimant is asking the court to legitimize the relationship after the defendant denied it. Even though the marital had already been disclosed, the claimant submitted a deed on 2065/4/16 (2008/10/02)) and this deed cannot be termed otherwise. A court may admit as evidence a notebook, pictures or anything relevant, including oral and written evidence. It cannot be said that a deed executed under the consent of the parties and in the presence of witnesses cannot be admitted as evidence. Although marriage cannot be said to be "solemnized" even if physical relations occurred, the claimant stated that the couple had physical relations since 2056 (1999) and that the claimant and defendant had lived as husband and wife since 2056 (1999). The defendant's notion that he was only an acquaintance with the claimant was not proven based the available evidence.

(Paragraph No. 2)

- Regarding situations in which a woman obtains citizenship by not mentioning the name of her husband in the appointment form (in 2065/5/17 BS), the court acknowledges that it is a woman's right to choose her family name, as provisioned by Article 16 of CEDAW. Therefore, her decision

not to use her husband's name on her own citizenship certificate cannot be used to prove that she is not his wife. Based on the judicial decision (NLR 2046, issue 11, judgment No. 3985, page 1113), it would not be a condition if the woman states that the couple had not been in a love marriage. There does not seem to be any condition requiring an unmarried woman to explain that she had sexual intercourse with a man, that they lived together as husband and wife, and that the husband was faithful in their relationship.

(Paragraph No. 4)

Date of Order 2017/08/21	Case No./Writ No. WO -0852 of the Year 2016	NLR/Year/Decision No. 9841
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Division Bench

Honorable Justice Mr. Deepak Raj Joshi
Honorable Justice Ms. Sapana Pradhan Malla

Subject: Mandamus/Certiorari

Uma Singh (Bhattarai), et al. v. District Administration, Morang, et al.

- Article 9(2) of the Convention on the Elimination of all Forms of Discrimination against Women, 1979, to which Nepal is party, obligates that states ensure equal rights to women and men with respect to issuing nationality to their children. Article 1 of the same convention prevents discriminating against women on the grounds of marital status and considers discrimination as “the act of any distinction, exclusion or restriction having the effect of impairing or nullifying the recognition, enjoyment or exercise of human rights and fundamental freedoms of women.” This case concerns citizenship. The father must be considered missing if his permanent address is not known and the mother is a Nepali citizen by descent; these are facts. If children are prevented from acquiring citizenship through their mothers, it affects the mother's right to equality as a Nepali citizen, her family rights, and her right to choose her residence. Furthermore, the Convention on the Rights of the Child to which Nepal is party states in Article 7 and 8 that every child shall have the right to acquire nationality and that unlawful interference cannot hinder citizenship. International law does not accept statelessness and states party to the convention are obligated to observe the identity of child every child.

(Paragraph No. 5)

- In considering the petitioner's claim that citizenship should be obtained through mothers, Article 12 of the Constitution of Nepal states that "a person obtaining citizenship of Nepal on grounds of descendant pursuant to this Constitution may obtain certificate of citizenship of Nepal with gender identity with the name of his/her father or mother," and the Nepal Citizenship Act, 2063 (2006) states that a person whose father or mother was a citizen of Nepal at his or her birth is a Nepali citizen by descent. Based on these provisions, Nepali citizenship may be obtained through the father or mother. Article 18 of the Constitution of Nepal also states that no discrimination can happen between a man (father) and a woman (mother) in issuing citizenship. Likewise, Article 38(1) of the Constitution states that every woman shall have equal lineage rights. Therefore, it would contradict these provisions to discriminate between fathers and mothers in issuing citizenship to the children of the petitioner.

(Paragraph No. 6)

- It is clear then that acquiring Nepali citizenship can happen through the father or mother. Similar lawsuits have taken up this issue; these writ petitioners cannot be refused from being issued citizenship certificates by descent through mothers. Furthermore, Article 11(5) of the Constitution of Nepal states that a person born to a Nepali mother who is a citizen, and has only resided in Nepal, and whose father is not traceable, may obtain citizenship through their mother. However, if it is discovered that the father is a foreigner, such person shall be turned into a naturalized citizen. The Constitution of Nepal also provides citizenship by descent to minors found in Nepal (even when the identity of their fathers is unknown). Further, Article 18 of the Constitution of Nepal ensures citizens a right against discrimination on the grounds of sex, marital status, pregnancy or any other grounds. In the context of these constitutional provisions, it is against the spirit of the Constitution to prohibit giving citizenship to children through their mothers.

(Paragraph No. 7)

Date of Order 2017/10/09	Case No./Writ No. CI -0724	NLR/Year/Decision No. Not available
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Division Bench
Honorable Justice Ms. Mira Khadka
Honorable Justice Mr. Prakash Man Singh Raut

Subject: Mandamus

The Chief District Officer of District Administration, Bardiya v. Sweta Shribastav

- An order of mandamus is of a public nature. When public officials, administrative bodies or officials do not discharge their legal duties, the order of mandamus is issued in order to discharge the duty. Since the writ petitioner filed an application before the appellate respondent to issue a citizenship certificate, a legal duty is imposed upon the respondent to carry out the necessary proceedings pursuant to the law and to reach a decision about whether or not the certificate is issuable. If issuable, the petitioner must be informed of that decision.
- The respondent was found not to have issued a decision about the citizenship certificate, which was his legal duty. Therefore, the order of mandamus issued by the Appellate Court Nepalgunj in order to discharge the respondent from his duty is lawful.
- The order of mandamus issued by the Appellate Court Nepalgunj in the name of the respondents on 2072/11/5 (17/02/2017) on the matter concerning the petitioner is found lawful and the order stands confirmed.

Date of Order 2017/10/23	Case No./Writ No. WO-1054 of the Year 2016	NLR/Year/Decision No. 9921
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Division Bench**Honorable Justice Mr. Dr. Ananda Mohan Bhattarai****Honorable Justice Mr. Tanka Bahadur Moktan****Subject: Certiorari/Mandamus****Suman Panta v. the Ministry of Home Affairs, the Department of Immigration, Dillibazzar, et al.**

- The word "person" or "citizen" used in the Constitution does not denote only men or only women. Therefore, it is not accurate to say that the fundamental rights guaranteed by the Constitution are only available to men or women. It is not fair to say that these rights are not guaranteed to other groups that do not fall traditionally under male or female, and do not wish to be classified as such. Equal protection in the Constitution is available to them equally and they cannot be deprived from equal protection of their rights.
- The right to live with dignity guaranteed under the Constitution encompasses a person's right to identity, as well. Until one's physical existence and identity is accepted, the question of dignity does not arise. Likewise, until a person's autonomy is honored, it is not accurate to say that one's dignity is accepted. From this viewpoint, laws, policies, and practices inconsistent with this right conferred by the Constitution cannot be considered valid.

(Paragraph No. 6)

- Laws and fundamental rights laid out in our Constitution that bar discrimination based on gender or against sexual minorities is illegal. No discrimination can be made on the grounds of sex, physical conditions or marital status.

(Paragraph No. 13)

- If a foreigner married to a Nepali citizen submits their marriage certificate for registration and the Nepali spouse verifies their marriage during the foreigner's visa application process, the foreigner cannot be denied a non-tourist visa. Nepal's Constitution is not only a document that outlines rights; it also concerns justice. By recognizing gender and sexual minorities, the Constitution guarantees that they cannot be discriminated against. If the Immigration Act or Regulation do not reject this identity either, it is unjust to only have the option of "husband and wife" in the application. This runs contrary to constitutionally conferred rights; therefore, the respondent's contention that issuing a non-tourist visa is in contravention with the Constitution is not acceptable.

(Paragraph No. 18)

PART FIVE
FAMILY AND MARITAL RELATION

Date of Order 2001/08/02	Case No./Writ No. 3313 of the Year 1998	NLR/Year/Decision No. 7016
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Special Bench

Right Honorable Chief Justice Mr. Keshab Prasad Upadhyaya

Honorable Justice Mr. Krishna Jung Rayamajhi

Honorable Justice Mr. Hari Prasad Sharma

Honorable Justice Mr. Krishna Kumar Varma

Honorable Justice Mr. Gyaiendra Bahadur Shrestha

Subject: Request to issue the writ of Certiorari, Mandamus, including other appropriate orders or a warrant pursuant to Article 23, 88(1), 88(2) of the Constitution of Kingdom of Nepal, 1990

Tara Devi Poudel v. the Secretariat, the Council of Ministers, et al.

- The legal influence of religious texts, like the *Muluki Ain* (National Code), can be comprehended through studying its preamble. The indisputable provision of No. 10a of the ‘Chapter on Incest’ recognizes practices existing within one’s caste and ancestry. Article 19 of the Constitution of Kingdom of Nepal, 1990 provides the right to religious freedom. The purpose of amendment No. 4 in the ‘Chapter on Incest’ is to prevent disloyalty and it is not generally appropriate for the court to interfere in matters of legislative discretion.
- As per Nepal’s laws, after the death of a woman’s husband, his rights and duties are transferred to his widowed wife, and being a member of the husband’s family, she is entitled to obtain partition as a coparcener. As such, the relation between the husband and wife shall continue to exist until she remarries. It is not lawful to say that the relation that existed between the husband’s brothers (brothers-in-law) with the widowed sister-in-law is not as same as it was while her husband was alive. This case concerns the claim of the petitioner that provision No. 4 (which does not prohibit marriage between a widowed men with his wife’s sister) discriminates between men and women. The deceased wife’s sister is not a member and a coparcener who has any right over the property of the husband’s family. As such, it cannot be said that a widowed wife and a widowed husband are not in the same position. In such marital relations (which are often influenced by social, religious, and traditional customs) it cannot be said that both spouses have same position. The right to equality means equal application of the law and equal protection. It does not mean equal application of the law among unequal people. It is also not the claim of the petitioner that the provision in question is made unequally for men. The indisputable provisions No. 1 in the ‘Chapter on Marriage’ and No. 10 in the ‘Chapter on Incest’ state that women who knowingly involve themselves in such offenses are punishable. There are no clear legal grounds to show that No. 4 imposes improper restrictions on fundamental rights as per the claim of the petitioner. Thus, based on the provided grounds, No. 4 cannot be said to be discriminatory by being ultra-virus with the Article 11 (1) (2) (3) of the Constitution. The order to issue remedy to the petitioner by declaring the provision of No. 4 in the ‘Chapter on Incest’ is invalid according to Article 88 (1) of the Constitution.

Date of Order 2005/02/13	Case No./Writ No. 37 of the Year 2004	NLR/Year/Decision No. 7459
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Special Bench
Honorable Acting Chief Justice Mr. Bhairav Prasad Lamsal
Honorable Justice Mr. Min Bahadur Rayamajhi
Honorable Justice Mr. Balaram KC

Subject: Request to issue an order of Certiorari, Mandamus and any other appropriate order or warrant pursuant to Article 23, 88 (1) (2) of the Constitution of Kingdom of Nepal 1990

Advocate Chandrakant Gyawali, et al. v. His Majesty's Government, the Prime Minister and Office of the Council of Ministers, et al.

- Special reasons should not be used to justify discrimination between men and women.
- Unequal treatment is not just and reasonable by claiming that equality is not absolute and referring to positive discrimination.
(Paragraph No. 20)
- A provision that enables a man to remarry while his wife is still alive and they are not divorced, but bars a woman from doing this same action to her husband (lest she be liable to punishment) should be considered discriminatory.
(Paragraph No. 21)
- The conditional provision that only men get to remarry in No. 9 of the 'Chapter on Marriage,' which was also amended by the 11th amendment to the *Muluki Ain* (National Code), clearly shows marital discrimination between men and women.
(Paragraph No. 24)
- No legal provision can be considered invalid based on simple logic and analysis.
(Paragraph No. 25)
- No legal formulation or amendment should contradict the right to equality guaranteed under Article 11 of the Constitution of Kingdom of Nepal, 1990. In disputes this court addressed regarding family and property law, orders were given without discriminating between men and women or sons and daughters. These orders asked for the formulation, amendment or repeal of laws after conducting discussions and debates among various groups to analyze prevailing social beliefs, values, and conducts.
(Paragraph No. 28)

Date of Order 2006/03/30	Case No./Writ No. 64 of the Year 2006	NLR/Year/Decision No. 7635
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Special Court

Honorable Justice Mr. Kedar Prasad Giri

Honorable Justice Mr. Khil Raj Regmi

Honorable Justice Ms. Sharada Shrestha

Subject: Request to issue an order to declare null and void the laws inconsistent with the Constitution pursuant to Article 88 (1) of the Constitution of Kingdom of Nepal 1990

Advocate Meera Dhungana, et al. v. the Office of Prime Minister and Council of Ministers, et al.

- It is clear that the terms ‘impotency’ and ‘infertility’ are not synonymous and are different in context and meaning.

(Paragraph No. 12)

- The provision in Sub-Clause (1) of amendment No. 1 in the ‘Chapter on Husband and Wife’ in the *Muluki Ain* (National Code) states: “If within 10 years of marriage, is it proved by any medical board recognized by His Majesty’s Government that a child cannot be borne by reason of the wife, then the husband may dissolve his relation with such a wife.” The debate at hand concerns whether this provision contradicts the Constitution of Kingdom of Nepal, 1990 and the international human rights conventions ratified by Nepal. This is a sub-judice matter. Article 11 of the Constitution of Kingdom of Nepal states that all citizens shall be equal before the law, no person shall be denied equal protection under Nepal’s laws, no discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe or ideological convictions and that special provisions can be made to protect the interests of women, children, the aged or those who are physically or mentally incapacitated. Examining the claim of the petitioner that, the provision provided in Sub-Clause (1) of No. 1 in the ‘Chapter on Husband and Wife’ is discriminatory, it is noted that no similar provision exists allowing for women to dissolve their marriage if their husband is unable to conceive. Modern principles of equality do not support different treatment in the same matter. In fact, the Constitution adopted the principle of “positive discrimination” to make special laws to protect and uplift women. Nepal’s duty to provide special protection to marginalized groups and the subject of this case do not correspond to the aforementioned constitutional provisions and principles of equality.

(Paragraph No. 14)

- The provision in the *Muluki Ain* (National Code, (11th Amendment) Part 3, Chapter 12, ‘Chapter on Husband and Wife,’ No.1 Sub-Clause (1) is thus declared null and void pursuant to Article 88(1) of Constitution of Kingdom of Nepal.

(Paragraph No. 22)

Date of Order 2006/07/13	Case No./Writ No. 98 of the Year 2005	NLR/Year/Decision No. 7659
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Special Court

Honorable Justice Mr. Min Bahadur Rayamajhi

Honorable Justice Mr. Sharada Prasad Pandit

Honorable Justice Mr. Badri Kumar Basnet

Subject: Request to issue an order of Certiorari, Mandamus and any other appropriate order pursuant to Article 23, 88(1), 88(2) of the Constitution of Kingdom of Nepal, 1990

Advocate Sapana Pradhan Malla, et al. v. the Government of Nepal, the Office of Prime Minister and Council of Ministers, et al.

- In the ‘Chapter of Marriage’ in the *Muluki Ain* (National Code, 11th Amendment) it is provided that marriage cannot be conducted between a woman and man without them having reached the age of 18 (under a guardian’s consent) or 20 (without a guardian’s consent). This provision and the provision of Section 4(3) of Marriage Registration Act do not correspond with one another.
- It does not seem rational to make a person ineligible for marriage, who, according to the *Muluki Ain* (National Code 11th Amendment) can get married without consent of guardian at age 20.

(Paragraph No. 22)

- Provision No. 2 in the ‘Chapter on Marriage’ in the *Muluki Ain* (National Code) and Section 4(3) of the Marriage Registration Act, 1971 do not seem compatible with one another. So, in order to bring consistency and uniformity, they must be amended. Additionally, it is clear that child marriage is prevalent and the government must go to great lengths to prohibit it. Therefore, a directive order is hereby issued in the name of the respondents to effectively implement the law in this regard.

(Paragraph No. 24)

Date of Order 2007/01/10	Case No./Writ No. 2679 of the Year 2005	NLR/Year/Decision No. 7763
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Division Bench
Honorable Justice Mr. Khil Raj Regmi
Honorable Justice Mr. Sharada Prasad Pandit

Subject: Certiorari, Mandamus.

Advocate Nirmala Upreti v. the Government of Nepal, Ministry of Law, Justice and Parliamentary Affairs

- The Civil Code was drafted and published as a book in the month of June 2006, due to an initiative by the Government of Nepal, Ministry of Law, Justice and Parliamentary Affairs. It is found that the proposed draft makes provisions for adopted sons and daughters in paragraph six. It seems that this draft adds and modifies the provisions of the ‘Chapter on Adoption’ in the *Muluki Ain* (National Code). The Government of Nepal has felt the need to make timely changes in all former legal provisions regarding adoptions. From this point of view, it cannot be said that the Government of Nepal does not want to reform and modify the legal provisions regarding adoption. It is found that the Draft Civil Code, 2006 is under the government’s consideration and has already been published to solicit suggestions from the general public. Therefore, it is appropriate to modify the matters raised by the petitioner regarding the rights of adopted children. As such, a study on international conventions and standards (including the Convention on the Rights of the Child, 1989) should be conducted. A directive order is hereby issued in the name of the respondents to take this step and make appropriate legal arrangements in this regard.

(Paragraph No. 11)

Date of Order 2008/09/11	Case No./Writ No. WS-0011 of the Year 2007	NLR/Year/Decision No. 7997
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Special Court
Honorable Justice Mr. Anup Raj Sharma
Honorable Justice Mr. Ram Prasad Shrestha
Honorable Justice Ms. Gauri Dhakal

Subject: Certiorari, Mandamus

Advocate Sapana Pradhan Malla, et al. v. the Office of Prime Minister and Council of Ministers, et al.

- In order to realize the commitments Nepal has made when ratifying international instruments, domestic provisions need to be made.
(Paragraph No. 6)
- When exercising the power of judicial review, the judiciary should evaluate the legal vacuum at hand and what measures must be taken to fill it.
(Paragraph No. 9)
- The State should not continue laws that discriminate against women in any sense and ignore the commitments expressed in the fundamental law of the nation and international human rights conventions. Such provisions should be amended in a timely manner and during that process, the Constitution and international conventions to which Nepal is party, as well as Nepal's social, cultural, and family structure should be taken into consideration.
(Paragraph No. 10)
- Modifying amendments No. 9 and 9a of the 'Chapter on Marriage' in *Muluki Ain* (National Code) in line with the provisions of Interim Constitution of Nepal, 2007, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the appropriate legal arrangements, should be made in a way that does not discriminate between husbands and wives.
(Paragraph No. 11)

Date of Order 2009/10/22	Case No./Writ No. WS-0034 of the Year 2007	NLR/Year/Decision No. 8677
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Special Court

Honorable Justice Mr. Ram Kumar Prasad Shah

Honorable Justice Ms. Gauri Dhakal

Honorable Justice Mr. Prem Sharma

Subject: Request to issue an order of Certiorari, including any other appropriate order.

Advocate Achyut Prasad Kharel v. the Office of the Prime Minister and Council of Ministers, et al.

- It cannot be appropriate and reasonable to mention terms and conditions of service that do not relate to the concerned service from a judicial and practical point of view.
- The term of each public service may vary. It is also natural to demand different terms of service, according to the nature of the work. However, the terms of service prescribed for each should be objectively related to the work being performed. If the terms of such service are not related to the work being performed, damage the dignity of certain communities, or are discriminatory on the basis of ethnicity or gender, then such matters hinder the right to life under Article 12 Sub-Article (1) of the Constitution.

(Paragraph No. 4)

- All tasks in military service may not be of the same nature. It would not be appropriate to hold front line/combat operations and administrative tasks to same standard. If different conditions of qualification and disqualification are set for men and women to perform the same task, then it is expected this reasoning be made clear.

(Paragraph No. 5)

- Restricting women's ability to marry during their military service seems to have created a compulsive situation for Nepali women, wherein they must choose between the service or not getting married for five years after they have entered the service. The claim made by the respondent that women are free to not enter the service indicates discrimination towards women parachute folders. Since sex is a natural thing, being born into a particular sex cannot be one's own fault or incompetence.

(Paragraph No. 9)

- If unfair conditions or restrictions in employment are imposed in the name of "developing" or "empowering" backward classes, including women, then such acts cannot be considered in accordance with constitutional provisions.
- The Constitution provides the right to reproduction and reproductive health as a fundamental right, but the law preventing adult women from getting married for five years cannot be considered constitutional.

(Paragraph No. 15)

Date of Order 2010/05/17	Case No./Writ No. MS 0015 of the Year 2009	NLR/Year/Decision No. 8393
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Division Bench
Honorable Justice Mr. Top Bahadur Magar
Honorable Justice Mr. Bharat Raj Upreti

Subject: Habeas Corpus

Sabita K.C on behalf of Prarthana Rayamajhi v. Ram Bahadur Rayamajhi, et al.

- Amendment No. 3 of the ‘Chapter on Husband and Wife’ in *Muluki Ain* (National Code) provides provisions regarding raising minors of and below 5 years of age. Sub-Clause 1 of the aforementioned provision states that mothers should raise their children who are below 5 years if they want to raise them. If not, then the father must raise them. Similarly, Section 4 of the Children’s Act, 2048 (1992) enshrines the rights of children to be nurtured and provided education and health. Section 8(1) provides that in circumstances where parents of a child are living separately due to divorce or any other reason, the child living with the father shall be given an opportunity to maintain a relationship and direct contact with the mother, and vice versa on a regular basis, or should be allowed to live with either of their parents. In this context, if the mother and father live separately for any reason, the court cannot ignore the legal provision provided in Sub-Clause (1) of No. 3 that endows children with the right to grow up in the arms of their mothers and to be breastfeed them.

(Paragraph No. 7)

- In view of the fact that the minor, Prarthana, is only 10 months old and her mother, Sabita Rayamajhi, intends to raise her, No. 3 in the ‘Chapter on Husband and Wife’ in the *Muluki Ain* (National Code) endows the mother with the legal right to keep her.

(Paragraph No. 8)

- Habeas Corpus is the only mechanism to provide a remedy when the natural and legal guardian of a child is deprived of their rights. By keeping the minor child in the father's home and not allowing her to stay with her mother, it is clear that in addition to being illegally deprived of the rights provided by the law (including the right to motherhood and breastfeeding), the child was also deprived of the right to be cared for by her mother. It shall be deemed contrary to the recognized principles of the law to say that ordinary jurisdiction must be followed with regard to rights being violated (as pleaded by the respondent).

(Paragraph No. 9)

Date of Order 2013/07/08	Case No./Writ No. CR-1201 of the Year 2010	NLR/Year/Decision No. 9124
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Division Bench**Honorable Acting Chief Justice Mr. Damodar Prasad Sharma****Honorable Justice Mr. Baidyanath Upadhyaya****Subject: Polygamy****The Government of Nepal by the FIR of Nirmala Basnet v. Yogita (alias Yogmaya Chimariya Basnet)**

- Generally, it is not common for an unmarried woman to choose to marry a man who she knows already has a wife at home. In polygamy cases, the second wife who gets married unknowingly could also be a victim. Therefore, situations like this should be examined cautiously. In cases in which a woman unintentionally weds a married man, establishing guilt and punishing her in absence of evidence could further victimize her. Thus, a woman who weds a married man unknowingly cannot be convicted and punished in absence of clear evidence that suggests she was aware that he was already married.

(Paragraph No. 6)

Date of Order 2018/05/11	Case No./Writ No. CR-0726	NLR/Year/Decision No. 9999
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Division Bench**Honorable Justice Mr. Ishwor Prasad Khatiwoda****Honorable Justice Ms. Sapana Pradhan Malla****Subject: Divorce****Kiran Rana v. Puran Shumsher J.B.R.**

- Does the husband have the right to divorce his wife after he left her for more than three consecutive years? This case considers this question. Nepal's laws do not grant couples the right to divorce in a simple way in all cases; the law clearly stipulates that an environment fostering reconciliation should be created if both parties consent to this. In other cases, only conditional divorce is allowed. Now, in the context of whether a divorce can be allowed when husband and wife have lived separately for three years, Sub-Clause (1) of amendment No.1 of 'Chapter on Husband and Wife' states that "if a wife has left her husband and lived separately for a continuous period of three years or more without his consent, the husband may dissolve his relation with such a wife." In the present case, it can be ascertained that the husband chose to leave his home and separate from his wife during this period. It is not the intent of the aforementioned legal provision to allow a husband who left his home to evade his responsibilities towards his wife, mother, and children and divorce his wife without her consent. The aforementioned legal provision only applies to wives and provides no grounds for wives to divorce their husbands.

(Paragraph No. 3)

- Considering the question of divorce between the plaintiff and defendant, wherein the wife seeks to claim property through partition, the wife can be granted this property to take care of the house and family (mother-in-law and children), but can stay in the house without getting a divorce for the sake of her family and culture. Therefore, the provision of No. 10 in the 'Chapter on Marriage' that states a husband can remarry if his wife takes her share of partition does not mean that it provides a way for the husband to get a divorce. The prevailing laws do not accept this notion. Hence, remarriage, separation, and divorce are different matters.

(Paragraph No. 5)

PART SIX
EQUAL RIGHTS IN EMPLOYMENT

Date of Order 1998/09/14	Case No./Writ No. 3975 of the Year 1998	NLR/Year/Decision No. Not Available
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Division Bench

Honorable Justice Mr. Laxman Prasad Aryal
Honorable Justice Mr. Chandra Prasad Parajuli

Subject: Certiorari and Mandamus, including others

Sita Acharya v. His Majesty's Government, Ministry of Health, et al.

- The Civil Service Act of Nepal has made special legal provisions for female employees by separating male and female employees' probationary periods, Nepal now has to make provisions in the context of the prevailing Constitution and international conventions that the country has ratified. Thus, the provision on probationary periods for female employees working in His Majesty's Civil Service and female employees working in the Health Service and differently interpreting them is contrary to the spirit of the Constitution, various international conventions, and the special provision of Section 16 of Nepal Civil Service Act, 2049 (1992). The special provision of Section 16 of the Nepal Civil Service Act, 2049 (1993) should be followed, and the decision made by the respondent Public Health Office seems contrary to such provision.

Date of Order 2000/06/08	Case No./Writ No. 2812 of the Year 1997	NLR/Year/Decision No. 6898
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Special Court

Honorable Justice Mr. Laxman Prasad Aryal
Honorable Justice Mr. Krishna Kumar Varma
Honorable Justice M. Dilip Kumar Poudel

Subject: Request to issue an order of Certiorari, Mandamus or another appropriate order or warrant.

Reena Bajracharya, et al. v. His Majesty's Government, Secretariat, the Council of Ministers, et al.

- Nepal ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) April 22, 1991. Section 9 of the Treaty Act, 1990 implemented human rights conventions in a speedy manner by making the preponderance of treaty provisions override general laws. Basic human rights, such as gender equality, have far-reaching implications and are inextricably linked to the wellbeing of the nation. Therefore, gender discrimination should not be allowed in the law because it impacts all of humanity. It is a collective issue of duty and concern for all.

(Paragraph No. 22)

- The defendants have stated that the *Proviso Clause* of Rule 16.1.3 in the Nepal Airlines Corporation Employee Rules, 1974 protects female flight attendants and cannot be deemed discriminatory. This provision, though, seems left to the discretion of the Corporation. The *Proviso Clause* of the rule, which is conditional and based on the management's discretion, does not show that another job will be provided to employees after the end of their tenure. Based on this, it cannot be said that there is an Obligatory Clause that prevents the petitioners from being deprived of work at the Corporation. Since all flight attendants are unable to receive these facilities, it cannot be said that a law made in a discretionary manner protects the right to equality. As such, the aforementioned Clause cannot be considered a definite and obligatory provision.
- According to the above interpretation, there is doubt that the petitioners have an equal employment position to that of male crewmembers, and that their work, remuneration, and other facilities are equal to them. Thus, based on the above constitutional interpretation, the Rule 16.1.13 of Nepal Airlines Corporation Employee Rule, (2031) 1974 is considered contrary to the Constitutional provision on gender equality.

(Paragraph No. 25-27)

Date of Order 2001/08/05	Case No./Writ No. 2784 of the Year 2000	NLR/Year/Decision No. Not available
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Special Court

Honorable Justice Mr. Krishna Kumar Burma

Honorable Justice Mr. Bhairav Prasad Lamsal

Honorable Justice Mr. Dilip Kumar Poudel

Subject: Request to issue an order to declare null and void the laws inconsistent with the Constitution pursuant to Article 88 (1) of the Constitution of Kingdom of Nepal 1990

Advocate Meera Dhungana v. His Majesty's Government, Ministry of Law, Justice and Parliamentary Affairs.

- The right to property is a legal right guaranteed by Article 17(1) of the Constitution of Nepal. No restrictions should be imposed on women to receive, use, sell, and conduct any other transactions of property. Section 12 of the Foreign Employment Act, 2064 (2007) does not discriminate against women and hinder their rights guaranteed by Articles 11, 12(2) (e) and 17(1) of the Constitution. Such legal provisions have been enacted to protect women's rights and their personal development.

Date of Order 2003/05/29	Case No./Writ No. 82 of the Year 2002	NLR/Year/Decision No. 7217
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Special Bench

Right. Honorable Chief Justice Mr. Kedarnath Upadhyay

Honorable Justice Mr. Dilip Kumar Poudel

Honorable Justice Mr. Ram Prasad Shrestha

Subject: Certiorari, including others

Advocate Basundhara Thapa v. His Majesty's Government, Secretariat, the Council of Ministers, et al.

- It is acknowledged that the petitioner falls under the definition of a scheduled caste woman as per Section 2 (a) and Annex 36 of the National Foundation for Upliftment of Adivasi/Janjati Act, 2059 (2002). Further, since any Nepali citizen can file a petition in the Supreme Court to have any law declared void on the grounds that it is inconsistent with the Constitution (pursuant to Article 88 (1) of the Constitution of Kingdom of Nepal, 1990), the petitioner does have the *locus standi* to file a petition to examine the constitutionality of the *Proviso Clause* of Section 7 (3) of National Foundation for Upliftment of Adivasi/Janjati Act, (2059) 2002. She claims that the provision is unequal on the basis of gender and is contradictory to Article 11 of the Constitution.
- The legal provision that provides less tenure for nominated female members and thereby disqualifies them from being re-nominated implies that they are second-class citizens. The provision is clearly discriminatory.
- Therefore, the *Proviso Clause* of Sub-Section (3) of Section 7 in the National Foundation for Upliftment of Adivasi/Janjati Act, (2059) 2002 that stipulates this discriminatory law is declared void and unconstitutional pursuant to Article 88(1) of the Constitution. It is contradictory to Article 11 of the Constitution and discriminates against indigenous and tribal women.

(Paragraph No. 17)

Date of Order 2006/03/30	Case No./Writ No. 69 of the Year 2005	NLR/Year/Decision No. 7634 Not available
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Special Bench

Rtd Honorable Chief Justice Mr. Dilip Kumar Poudel

Honorable Justice Mr. Khil Raj Regmi

Honorable Justice Mr. Top Bahadur Magar

Subject: Request to issue an order of Certiorari, Mandamus, including other appropriate orders to declare void an inconsistent legal provision with the Constitution.

Advocate Prakash Mani Sharma v. the Prime Minister and Office of the Council of Ministers, et al.

- This court has acknowledged the fact that women are treated differently when it comes to matters related to property and family. This is not a situation of the past; it continues to exist. To protect women (who constitute half of the total population), their rights must be upheld like that of men. Since the state needs to formulate policies to make more women participate in national development, creating different arrangements amidst women in similar matters will likely have adverse effects on their development.
(Paragraph No. 15)
- The petitioner claims that there is no separate legal provision for women in other laws because the Civil Service Act, 1993 provides a six-month probationary period for female employees. This provision cannot be immediately declared unconstitutional based on the claim. In accordance with the *Proviso Clause* of Article 11 (3) of the Constitution of the Kingdom of Nepal, 1990 and the policy adopted by the State under Article 25(7) to protect women, it is appropriate to provide the same protections to women working in different sectors. There will certainly be differences that arise, given the nature of the work and service, but it is important to have uniformity in matters such as probationary periods.
- Although the Civil Service Act, 1993 makes the probationary period for female employees six months less than that of male employees based on positive discrimination to protect women, there is no uniformity. The probationary period for female employees as addressed in six other legal provisions, including the Education Regulation, 2002, do not contain separate arrangements concerning the probationary period of female employees. Thus, these arrangements need to be made as soon as possible to maintain uniformity.

(Paragraph No. 17)

Date of Order 2007/06/28	Case No./Writ No. 01-063-00001 of the Year 2006	NLR/Year/Decision No. 7854
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Special Bench
Honorable Justice Mr. Anup Raj Sharma
Honorable Justice Ms. Gauri Dhakal
Honorable Justice Mr. Tahir Ali Ansari

Subject: Certiorari including others

Advocate Meera Dhungana v. the Prime Minister and Office of the Council of Ministers, et al.

- Depriving someone the opportunity to seek and receive justice from a regular court – when there is no rational basis for doing so – is discriminatory and contrary to Article 11 (1) of the Constitution.

(Paragraph No. 16)

- Another aspect concerning the right to equality is the equal protection of law. Since people are unequal for natural, economic, status-based, cultural, and religious reasons, it is not possible to ensure equality entirely. Thus, if the notion that those in equal situations should be treated equally and those in unequal situation should be treated unequally is upheld, it goes against the aforementioned principle. Upholding the principle of equal protection under the law helps women, Dalits, tribal people, indigenous people, Madhesi, farmers, laborers or economically, socially and culturally backward people or children, as well as the elderly and disabled or physically or mentally incapacitated people. This principle aims to provide the same facilities and opportunities to people regardless of their identities or backgrounds. If individuals outside of these provided categories do not enjoy opportunities, this cannot be regarded as unequal treatment.

(Paragraph No. 17)

- Equality is relative; it's not complete and absolute. Its relativity is linked to the status, situation, and capabilities of the target group. People who are in the same situation or have the same status and ability belong to one category. With regard to the State providing its citizens with the right to equality, legislation can be made that creates categories in a legal, rational and objective manner. These can be implemented unequally among different categories while being equal to each person falling under a specific category.

(Paragraph No. 19)

- Categories, except for those that discriminate, should be based on substantial distinctions that are different. At the same time, it should be appropriate from the viewpoint of public interest and utility, as well.

(Paragraph No. 20)

- The categorization of laws made to discriminate among people should be lawful.

(Paragraph No. 20)

- It is not possible to explain the basis of categorization as an objective principle and mention it as a prerequisite in the Constitution. It depends on the good intent of the legislature while the principle basis comes from the court's legal examination of it.

(Paragraph No. 22)

- At first glance, the preamble of the Constitution of the Kingdom of Nepal, 1990 gives a sense of upholding formal equality. However, the phrase "securing to the Nepalese people social, political and economic justice long into the future" does not seem to only emphasize pure equality. In a society with extreme inequality and diversity, "justice" can be interpreted as providing substantive justice to unequal and backward categories of people by making special arrangements. This should be understood as "positive discrimination."

- Article 11(3) of the Constitution of Kingdom of Nepal, 1990 and its *Proviso Clause* states that special provisions may be made to protect and empower women. However, with regard to the constitutional guarantee that laws cannot be made with the aim of depriving people of facilities, the provision of the *Proviso Clause* of Rule 10 of the Nepal Army (Retirement, Subsidy and Other Facilities) Regulation, (2033) 1976 is discriminatory on the basis of marital status. This provision that treats married daughters and unmarried daughters differently, as well as married sons and daughters differently, is hereby declared void for not being consistent with Article 11.

(Paragraph No. 23)

Date of Order 2008/11/23	Case No./Writ No. 2822 of the Year 2005	NLR/Year/Decision No. 8005
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Division Bench
Honorable Justice Mr. Balaram KC
Honorable Justice Mr. Kalyan Shrestha

Subject: Mandamus

Advocate Prakash Mani Sharma v. the Government of Nepal, Ministry of Women, Children and Social Welfare, et al.

- Research suggests that a lack of transport to reach home after working late hours is harmful. Studies also suggest female workers in dance bars and cabin restaurants face certain levels of sexual exploitation and violence. In dance bars and cabin restaurants, it is clear that women are not able to work in an exploitation-free environment or in a dignified manner, and they have not only been exploited and abused, but have also been forced to continue this risky work at their own peril. The Constitution guarantees the right to live a dignified life on the basis of equality, the right to employment and social security, the right to social justice, and the right against exploitation. As such, women working in dance bars and cabin restaurants should not face exploitation while working there. The government cannot be a spectator and should be held accountable in this regard.

(Paragraph No. 16)

- Although there are no separate and special laws to implement the aforementioned provisions, in order to create an appropriate and comfortable work environment, the Labor Act, 2048 (1992) was formulated. Section 4 stipulates that female employees must provide an appointment letter before engaging in work and Section 5 states that female employees can only engage in late working hours (from 6: 00 AM to 6:00 PM) with their consent. Section 27 of the same Act provides health and safety arrangements within enterprises. Likewise, Section 48 (a) of the Act states that women may work in a hotel or travel agency at any time by making special arrangements for their safety, according to the nature of this work. But the aforementioned law does not include enterprises like dance restaurants and massage parlors, which seems inadequate. According to the Industrial Enterprises Act, 1992, there are provisions for the registration of hotels, restaurants, and resorts, but no such provisions have been made for dance bars, cabin restaurants, and massage parlors. The government therefore should immediately enact and implement separate and special laws to regulate dance bars, cabin restaurants, and massage parlors.

(Paragraph No. 19)

- As per the claims of the petitioner, an order is hereby issued in which laws must be formulated and implemented to adopt guidelines about dance bars, cabin restaurants, and massage parlor

operating in Nepal. They must be operated in a dignified manner that respects female workers' fundamental rights, while also paying attention to morality and social security. No law like this has been enacted yet. In the absence of such laws, enterprises cannot operate in a dignified and organized manner.

(Paragraph No. 35)

- The court does not formulate laws on its own, but because it is the guardian of citizens' fundamental rights, it may issue orders to enforce the implementation of rights provided in the Constitution, and those based on recognized principles of law and justice and various international human rights treaties to which Nepal is party.

(Paragraph No. 36)

Date of Order 2009/04/30	Case No./Writ No. WS-0001 of the Year 2007	NLR/Year/Decision No. 8187
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Special Court

Honorable Justice Mr. Ram Prasad Shrestha
Honorable Justice Mr. Ram Kumar Prasad Shah
Honorable Justice Mr. Abdhesh Kumar Yadav

Subject: Mandamus including others

Advocate Sapana Pradhan Malla v. the Prime Minister and Office of the Council of Ministers, et al.

- Empowerment and development cannot close the door on people's opportunities for employment. Depriving people opportunities instead of providing them with opportunities to develop professionally (which helps bring them into mainstream society) cannot be considered "positive discrimination. "

(Paragraph No. 15)

- If any gender discrimination occurs while one is entering employment of public service to the state (excluding cases where it is inevitably prohibited by the profession concerned), then there is little basis to say that this act corresponds to the principle of equality. Even if such laws and social practices exist in different regions of the country, it would be beneficial if the State takes steps to gradually stop them from being practiced.

(Paragraph No. 16)

- Allowing a pregnant woman to participate in basic military police training, which requires hard physical labor, could adversely affect her reproductive health. The State could be accused of violating the provisions of the Constitution. This issue needs to be changed accordingly and contemporary amendments need to be made to the disputed law.

(Paragraph No. 22)

- It is necessary to conduct a comparative study on the laws and practices of other countries with regard to human rights and gender justice. As these issues are considered "sensitive," it's important to simultaneously consider the social and cultural conditions of Nepal and the employment situation of women when framing any new laws. Therefore, it is imperative to make timely amendments and reforms on the Rules relating to military police.

(Paragraph No. 38)

Date of Order 2005/12/29	Case No./Writ No. 63 of the Year 2004	NLR/Year/Decision No. Not available
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Special Bench
Honorable Justice Mr. Min Bahadur Rayamajhi
Honorable Justice Ms. Sharda Shrestha
Honorable Justice Mr. Balaram KC

Subject: Request to declare invalid a law that is in conflict with the Constitution, pursuant to Article 88 (1) of the Constitution of the Kingdom of Nepal, 2047 BS

Advocate Prakash Mani Sharma and others v. His Majesty's Government, the Ministry of Culture, Tourism and Civil Aviation

- The petitioner's demand will be fulfilled by amending Rule 115 of the Bylaws that discriminate on the basis of marital status among female employees for the Royal Nepal Airlines Corporation. Since the respondent corporation is the only entity who can amend this Bylaw, there was no need to declare Rule 115 of the Bylaws invalid as contended by the petitioner. Therefore, a directive order is issued in the name of the respondent corporation to create necessary amendments to Rule 115 of the Bylaws on Service Conditions and Facilities of the Employees of the Royal Nepal Airlines Corporation, 2058 within three months from the date of receipt of this order. The amendments cannot contradict the provisions of the Constitution of the Kingdom of Nepal, 2047 and the provision on the right to equality in international human rights conventions.

PART SEVEN
SPECIAL PROTECTION

4/10/29	Case No./Writ No. 3059 of the Year 2004	NLR/Year/Decision No. Not available
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Division Bench
Honorable Justice Mr. Min Bahadur Rayamajhi
Honorable Justice Mr. Anup Raj Sharma

Subject: Certiorari and Mandamus

Pradhosh Chhetri, et al. v. the Prime Minister and Office of the Council of Ministers

- Nepali society is divided into various classes and castes. As such, special provisions are absolutely necessary to narrow the gap that exists between these groups due to discrimination they face in economic, social, and educational sectors. Until inequality decreases, marginalized communities will not get to experience the economic and social justice promised by the Constitution. Almost 14 years have passed since the Constitution was promulgated to make Section 11(3) operative. This section states that special provisions can be made through the law for those who need special protection. The failure to make these laws and special provisions cannot be understood. It is necessary that the State divert attention toward these issues such issues. The longer the State delays in bringing marginalized groups into national development, the more likely it is that social dissatisfaction will increase and disrupt aspirations of the Nepali people.
- A detailed explanation outlining why the State needs to make special provisions to uplift marginalized communities has already been written. Thus, a directive mandamus is issued in the name of His Majesty's Government, the Council of Ministers to operate programs that focus on protecting marginalized communities within this fiscal year by framing the appropriate laws.

Date of Order 2008/06/08	Case No./Writ No. 55 of Year 2004	NLR/Year/Decision No. 7678
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Special Bench
Honorable Justice Mr. Khil Raj Regmi
Honorable Justice Mr. Balaram KC
Honorable Justice Ms. Gauri Dhakal

Subject: Request to declare the law inconsistent with the Constitution null and void pursuant to Article 88(1) of the Constitution and to issue the writ of certiorari and mandamus pursuant to Article 88(2).

Rupak Dhakal, et al. v. the Prime Minister and Office of the Council of Ministers, et al.

- Article 11(1) of the Constitution mentions that all citizens shall be equal before the law and no person shall be denied the equal protection of law. Article 11(2) mentions that no discrimination shall be made on the grounds of religion, race, caste, sex, ideology or any other such ground and Section 11(3) mentions that the State shall not discriminate against citizens on these grounds. However, the law creates a special provision to protect and help women, children, senior citizens, and people with disabilities, as well as people from economically, socially, and educationally backward groups. Among the aforementioned constitutional provisions, Sub-Article (1) and (2) are related to formal equality and Sub-article (3) are related to substantive equality. Substantive equality aims to ensure that all the aforementioned groups are able to exercise the right to equality and participate in mainstream national development. In this way, the law is the tool used to provide people with opportunities to develop their capabilities. The Constitution clearly mentions that the law itself should make special arrangements to protect backward communities, as the law ensures people's rights. However, laws making special arrangements have not been enacted by the State in accordance with the aforementioned constitutional provision and intention until recently. In order for the State to implement Article 11(3) of the Constitution, it is necessary to enact a comprehensive umbrella law that protects these groups.

(Paragraph No. 14)

- If the rules are enacted in a mechanic manner, they will not seem consistent with the overall intent and objective of substantive equality envisioned by the Constitution. Reserving a percentage of scholarship to backward communities in a superficial manner that does not recognize clear criteria is false and irrational. First, the State must create a policy to identify the groups that are specified as being able to receive special protections pursuant to the proviso of Article 11(3) of the Constitution. This should be ascertained on an objective and scientific basis. The government's attempt to fulfill this objective without formulating special laws is irrational. Proviso of Rule 10(3) and 12 of the Scholarship Rule, 2060 must be analyzed in this respect. Although women, Dalit, and

indigenous (Janajati) people are given certain spaces in government scholarship, this practice is not consistent with the spirit of the Constitution.

(Paragraph No. 15)

- The *Proviso Clause* of Rule 10 (3) and 12 of Scholarship Regulation, 2060 (the "Regulation") is repugnant to the objective and sense of *Proviso Clause* of Article 11 Sub-Article (3) of the Constitution of Kingdom of Nepal, 2047 (1990). It does not heed the principle of substantial equality; therefore, it is declared unacceptable and void pursuant to Article 88 (1) of the Constitution. From this date forward, these provisions are declared void and related activities and decisions done before this are hereby annulled. Therefore, an order of Certiorari as per the contention of the writ petitioner cannot be issued. However, since it is necessary to frame laws to protect and help marginalized communities as envisioned by the proviso of Article 11(30) and Article 11(3) of the Constitution, a directive order is issued in the name of the Council of Minister requiring the necessary arrangements.

(Paragraph No. 17)

Date of Order 2007/11/06	Case No./Writ No. WS - 0036 of the Year 2006	NLR/Year/Decision No. 7876
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Division Bench

Honorable Justice Mr. Min Bahadur Rayamajhi

Honorable Justice Mr. Balaram KC

Honorable Justice Mr. Kalyan Shrestha

Subject: Certiorari, Mandamus, and other

Sambhu Prasad Sanjel, et al. v. the Ministry of Cultural, Tourism and Civil Aviation, et al.

- If any law provides special privileges or protection to one person, but curtails those of another person with the same position or status, the right to equality is not present. Equity laws do not intend absolute equality among all citizens.
- Any laws made to fulfill certain requirements or resolve certain problems, and any laws made to classify people by situation, status and position by which some people are provided more privileges and protections than others, are against the right to equality by conduct.
- During the drafting of any law, the “intelligible differentia,” the objective of making the law, and the reasons for rational nexus or objectivity should be clear if those laws are made applicable to some people and non-applicable to other ones.
- The State should not generally discriminate between citizens in relation to conduct, facilities, and opportunities. In case a division between classes occurs, the intelligible reason should be discerned and if it is not against the principle of justice, then only citizens can be treated equal among equal and unequal among unequal. Therefore, a law should be made to treat every person of the concerned respective class equally.
(Paragraph No. 5)
- The purpose and classification of laws designed to discriminate between individuals must be lawful and reasonable. If such an objective is not reasonable, then classification is not justifiable.
- The classification accepted by the Act must confirm the principles of the law; no class should be prevented from obtaining a facility or given an undue burden. Also, illegal pressure should not be exerted during the implementation phase.

(Paragraph No. 6)

- The differences between getting upgraded and receiving a special promotion should be considered. Upgrade refers to an increase in the same positional level or a level within the same level; as such, there is no resulting difference in the salary given to the highest level of the same post and the nature of the work. Special promotion or promotions transfer someone from a lower level to the higher level or position; as such, the nature, temperament, and designation involved in the position is different, as well as the salary.
(Paragraph No. 10)
- The fact that these applicants came to the service from government positions in which they had the same conditions, but were not treated like other employees with the same conditions shows that they have faced discrimination. In fact, the essence of equality is to not discriminate, even with justification.
(Paragraph No. 11)
- While giving promotions, setting one standard for one employee and setting another standard for another employee is arbitrary behavior. The question is not about which level the employee belongs to; rather, it is about the target policy, class, and result. If the discrimination is done without any justification on the basis of titles, then the principle of equality should be considered unfavorable.
(Paragraph No. 14)
- If the basis of a special promotion is applied using the same principle, on the one hand, it does not seem to create an unfavorable situation in the interest of the latter class. On the other hand, however, if a policy like a special promotion is adopted, the same benefits should be available to lower-level employees, as well.
(Paragraph No. 15)
- The provision of equality in the Constitution gives the State exemption to positively discriminate through efforts to uplift marginalized communities. These communities should be treated fairly through laws or policies. Barring this case in which facilities, concessions, or opportunities are provided to marginalized classes, deprivation should be considered as obstruction.
- The sentence “notwithstanding anything contained in Sub-Rules (3) and (4), in the case of a first-tier attendant and a third-tier driver, it shall be in accordance with sub-rule (6) of rule 6.3” in the Rule 3.6(4) of the main Regulation relating to the Conditions and Facilities of the Nepal Civil Aviation Authority Employees and the sentence “except for the first-tier attendant and the third-tier driver” in Directive No. 3(1) of the Procedural Directive related to the Special Promotion of the Nepal Civil Aviation Authority Employees, 2006(2063), which were made on the same basis, shall be declared void. The applicants are entitled to equal rights under the Constitution.
(Paragraph No. 18)

Date of Order 2006/12/25	Case No./Writ No. 3561 of Year 2006	NLR/Year/Decision No. Not available
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Division Bench

Honorable Justice Mr. Khil Raj Regmi

Honorable Justice Mr. Kalyan Shrestha

Subject: Request to issue an order or Mandamus and any other orders, including a warrant pursuant to Article 88(2) of the Constitution of the Kingdom of Nepal, 1990 (2047 BS)

Advocate Sapana Pradhan Malla, et al. v. the Government of Nepal, the Office of the Prime Minister and the Council of Ministers, et al.

- Women often suffer violence, such as rape and incest. Similarly, cases involving HIV-infected people or children mean they may still interact with the State after the trial, through various police offices, government attorneys' offices, district administration offices and other judicial and quasi-judicial authorities. It must be considered whether it is reasonable to give continuity to systems adopted in situations in which the aforementioned people are involved in cases before the decision is rendered and in cases in which legal provisions have not been executed yet. Even after a decision is made, if the victims' rights to privacy continue to be violated, then even if the law made after this order is issued provides privacy protection, compensation for the harm suffered could not be possible. Therefore, it is expedient to not give continuity to such provisions and important to immediately stop such procedures.
- A directive order is issued in the name of the defendants, the Office of the Prime Minister and the Council of Ministers, as well as the Ministry of Law, Justice and Parliamentary Affairs, to frame laws incorporating the rights and obligations of the concerned parties, in cases where women and children are involved as victims or in cases where HIV-infected people are involved in the case. The laws must ensure that these victims' privacy is maintained from the time they file the case to when a decision in the case is rendered and thereafter. Thus, this order is issued in the name of the aforementioned defendants, requiring them to execute the provisions as per the directive.

Let the work and proceedings be implemented as per the following directive issued by the court.

Date of Order 2008/10/02	Case No./Writ No. 0723 of the Year 2006	NLR/Year/Decision No. 7987 Not available
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Division Bench

Honorable Justice Mr. Min Bahadur Rayamajhi

Honorable Justice Mr. Anup Raj Sharma

Subject: Certiorari

Advocate Raju Prasad Chapagain, et al. v. the Government of Nepal, The Office of the Prime Minister and Council of Ministers, et al.

- This case considers the possibility of sexual violence resulting from the publication and broadcasting of certain advertisements that present women as sexual and consumable commodities. Such gender-unfriendly advertisements do not contribute to the protection of women.
- We cannot be deemed irresponsible for possibly hurting women's self-esteem of and making them vulnerable to violence due to advertisements that feature half-naked, obscene, and gender-unfriendly visuals.

(Paragraph No. 5)

- It has been provisioned in Clause (d) and (e) of Section 14 of the Press and Publication Act, 2048 (1991) that publications that encourage enmity and spread communal disharmony among people from different castes, tribes, religions, classes, regions, and communities should not be featured in any book or magazine. When mass media publicizes services without considering gender sensitivity, it stands as the primary cause of violence against women (for example: promoting dowry). Advertising alcohol with images of half-naked women on boards could hurt social honor and spread communal disharmony, as stated in the Press and Publication Act and constitutional provisions. Though there are no specific standards as to what constitutes "spreading communal disharmony" and "hurting social honor," a specific parameter can be determined in relation to such issues.

(Paragraph No. 6)

- Since these advertisements should be prohibited, it is certainly under the government's responsibility to create a mechanism that monitors whether or not such issues contradict provisions in the Act.

(Paragraph No. 7)

- A mandamus is issued in the name of the Ministry of Information and Communication requiring that a committee be formed. This committee must consist of organizations working

in the concerned sectors, representatives of government authorities, as well as organizations working in the sector of gender justice and human rights. An advertisement sensor board should be created as per the Long Term Policy of Information and Communication Sector, 2059 (2002); this board will formulate a specific standard and directive relating to gender justice and a mechanism to monitor whether or not these standards are being respected.

(Paragraph No. 10)

Date of Order 2009/08/12	Case No./Writ No. WO-0187 of the Year 2007	NLR/Year/Decision No. Not available
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Division Bench
Honorable Justice Mr. Balaram KC
Honorable Justice Mr. Abhadewesh Kumar Yadav

Subject: Mandamus, et al.

Advocate Jyoti Lamsal (Paudel), et al. v. the Government of Nepal, the Office of the Prime Minister and the Council of Ministers, et al

- United Nations Resolution 53/144, from December 1, 1998, issued a declaration for States to make provisions to protect human rights activists. It is the constitutional duty of the Government of Nepal to protect everyone in the State. It is even more necessary to protect human rights activists. Thus, a mandamus is issued to the Government of Nepal to make security arrangements for human rights activists if information is provided to the police that these activists are experiencing security dangers while investigating human rights violations.

Date of Order 2010/03/10	Case No./Writ No. WO-0337 of the Year 2008	NLR/Year/Decision No. 8411
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Division Bench
Honorable Justice Mr. Khil Raj Regmi
Honorable Justice Mr. Girish Chandra Lal

Subject: Mandamus, et al.

Advocate Kabita Pandey, et al. v. the Government of Nepal, the Office of the Prime Minister and the Council of Ministers

- The act of not providing social security allowance by imposing an age limitation among single (widowed) woman cannot be considered just, especially considering their economic and social status in society.

(Paragraph No. 5)

- A directive order is hereby issued in the name of the respondents, including the Office of the Prime Minister and the Council of Minister to provide society security allowance to single (widowed) women below sixty years of age. Standards must be developed to determine their income source, employment, properties, and both her husband's and her own pension as a single (widowed) woman using the resources of the State.
- A directive order is also hereby issued to the National Planning Commission and the Department of Central Statistics to collect statistics in the upcoming national census to facilitate programs and policies that can help uplift women based on their age, population, economic, social and educational conditions, such as single (widowed) women.

(Paragraph No. 9)

Date of Order 2010/07/12	Case No./Writ No. WO-0186 of the Year 2010	NLR/Year/Decision No. Not available
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Division Bench
Honorable Justice Mr. Balaram KC
Honorable Mr. Bharat Raj Upreti

Subject: Mandamus

Jyoti (Lamsal) Paudel v. the Government of Nepal, et al.

- A woman cannot be harassed and discriminated against in any manner by the husband and her in-laws just because she is a woman. This cannot occur in the name of practices and traditions. A directive order is hereby issued in the name of the Government of Nepal, Council of Ministers requiring that the following be done in order to end the harassment and discrimination against rural women, by eliminating the prevailing practice of treating them poorly within families, just because they are women. They have done free labor and contributed to the economic prosperity of the family.

Date of Order 2012/02/02	Case No./Writ No. WS-0033 of the Year 2010	NLR/Year/Decision No. 8765
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Special Bench
Honorable Justice Mr. Ram Kumar Prasad Shah
Honorable Justice Mr. Prakash Wosti
Honorable Justice Dr. Bharat Bahadur Karki

Subject: Request to declare the law inconsistent with Constitution void

Advocate Narayan Jha v. Tribhuwan University Assembly, Kirtipur, et al.

- Sub-Section (11) of Section 7 of the Civil Service Act, 2049 (1993) states that the provision concerning reservations shall be reviewed every 10 years. This case concerns the request of the petitioners to declare Rule 6.3(6) void. It states: “for the purpose of sub-rule 3(5), the meaning and use of area of the categorized candidate shall mean the meaning and use as specified by the Government of Nepal.” The goal of “positive discrimination” is to make a more inclusive society by providing reservations to communities who have not been integrated into mainstream national life due to their economic, social, educational or cultural circumstances. As such, there can be no disputing the fact that it is the State’s obligation to identify such communities. Since the collective effort of authorities is necessary to uplift these communities as identified by the government, the provision of Rule 6.3(6) is consistent with national policy and does not contradict the constitution.

(Paragraph No. 16)

- There is legal provision for reservation of people who are economically and socially marginalized. In line with that, “women” is already recognized as a distinct class with 33 percent reservation. In this context, 33 percent reservation for women even within other classes (such as indigenous groups, Madhesi, Dalit, disabled, backward region) under the Clause (b) of Rule 6.3(8) of the Civil Service Rule, 2055 (1998) is not consistent with the principle of substantive equality

(Paragraph No. 23)

- In the second sentence of Clause (c) it is provisioned that “the candidate would be selected who achieves the highest marks of the upper section that is closest among the inclusive sections if the applicant has not passed from the concerned section.” It cannot be said that this provision is unconstitutional because the provision provides substantial equality and inclusion.

(Paragraph No. 26)

- Articles 13 and 21 of the Interim Constitution of Nepal, 2006, gave priority to the principles of equality, social justice, and inclusivity. Therefore, it would not be appropriate or in the spirit of the Constitution to refer a candidate who has passed both open and inclusive sections to an inclusive section. If the said candidate is referred to an open section, other candidates in the inclusive sector would get opportunities. Therefore, the provision of Clause (f) does not seem contrary to the spirit of the Constitution.

(Paragraph No. 27)

PART EIGHT
RELATED TO COVID 19

Date of Order 2020/08/03	Case No./Writ No. WO-0 939 of the Year 2019	NLR/Year/Decision No. Not available
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Division Bench

Honorable Justice Ms. Sapana Pradhan Malla
Honorable Justice Mr. Prakash Kumar Dhungana

Subject: Mandamus

Gopal Siwakoti (Chintan), et al. v. the Government of Nepal, the Office of the Prime Minister and Council of Ministers, et al.

- Although the prevailing law lists offences related to crimes against human life under the negative list, Rule 29 (1) of the Prisons Regulation, 1964 has not listed them under the negative list. However, as Section 37 (a) of the Criminal Offences (Sentence Determination and Execution) Act, 2017 (2074 BS) and Section 159(4) of the *Muluki* Criminal Procedure Act, 2017 (2074 BS) have listed offences involving punishment of life imprisonment under the negative list, detainees imprisoned before the enactment of this new Acts should not be deprived from receiving the facilities entitled to them pursuant to the previous laws. It is a universal principle of criminal justice that the law cannot have retrospective effect. Article 20(4) of the Constitution of Nepal states that “[N]o person shall be liable for punishment for an act which was not punishable by the law in force when the act was committed nor shall any person be subjected to a punishment greater than that is prescribed by the law in force at the time of the commission of the offence.” Thus, an order of Mandamus is issued in the name of the Department of Prison Management and Ministry of Home Affairs to grant pardon to prisoners convicted of offences not listed under the negative list before the enactment of the current laws.

(Paragraph No. 57)

- The world now recognizes detainees and prisoners as high-risk groups and has accepted that “prison health is public health.” During this time, as the COVID-19 pandemic impacts the world, physical distancing is a strategy being used to fight the virus. As such, it is imperative that the lives of detainees and prisoners be protected by ensuring that they have access to healthcare and treatment without any discrimination, which could lead to further spreading the infection in Nepal’s overcrowded prisons. Thus, since the present situation is high-risk, in the pretext of various orders and decisions being currently issued by the Government of Nepal, a directive order is hereby issued pursuant to Section 2 of the Infectious Disease Act, 1964, (2020 BS) to immediately release or reduce sentences or to take any other appropriate special decisions to immediately reduce overcrowded prisons in order to protect the lives of prisoners and detainees. This should be done by giving priority to children in critical conditions, pregnant women, breastfeeding women, and inmates with complex health issues

while also maintaining a balance between protecting vulnerable prisoners and public safety. Within two months of this decision, the Office of Attorney General must submit a report to the Research and Planning Department of the Supreme Court that reflects on the implementation of this order.

(Paragraph No. 62)

Date of Order 2020/08/05	Case No./Writ No. WO-0962 of the Year 2019	NLR/Year/Decision No. Not Available
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Division Bench

Honorable Justice Ms. Sapana Pradhan Malla
Honorable Justice Mr. Prakash Kumar Dhungana

Subject: Certiorari/Mandamus

Advocate Roshani Poudel, et al. v. the Government of Nepal, Secretariat, the Prime Minister and Office of the Council of Ministers, et al.

- Due to the lockdown prompted by the global COVID-19 pandemic, the police, courts, the National Women Commission, local government bodies, and various other institutions providing services have not been able to fully function. This has, in turn, affected victims' rights to access justice. Since police, court, and local body services were suspended for some time, the registration and hearing of domestic violence cases were postponed. However, these services have now recommenced. Since these services have yet to fully and effectively come into operation, an order of Mandamus is issued in the name of the Government of Nepal to resume the services immediately and with interruption. To ensure this happens, the government must adopt measures, including online case registration, a hearing service for registering complaints and domestic violence cases. They must also ensure immediate interim relief and protection to the victims and establish a special fund by setting up a coordinated system.

(Paragraph No. 33)

- Regarding the issue that the Joint Attorney raised about the Supreme Court's lack of jurisdiction to formulate laws on managing the COVID 19 pandemic, as it is a matter of legislative wisdom, it is indeed true that the power to formulate law is vested with the legislature. It has come to the Court's notice that, despite the absence of unified laws, the Government of Nepal has moved forward to manage the crisis by formulating and implementing several standards on par with Nepal's existing laws and executive orders. In spite of the above-mentioned initiatives of the Government of Nepal, the present crisis and its terrible outcomes have still not been properly managed. Although the Court lacks jurisdiction to formulate laws to mitigate the *non-liquet* situation, the Court is acquainted with these matters as a result of various petitions wherein the extraordinary jurisdiction of the Court was invoked. With regard to the writ petition (registration No. 076-RE-0392) seeking an approval on the resolution of legal confusion and the writ petition (registration No. 076-WO-0944) requesting for an order of Mandamus, a larger Full Bench consisting of 19 Justices of this Court issued an order on 28/5/2020 pursuant to Article 126, 128, and 133 (2) of the Constitution of Nepal. That order addressed the *non liquet* situation in a judicious manner by

acknowledging the fact that various provisions concerning the law of limitation stipulated in the *Muluki* Civil Procedure Code, *Muluki* Criminal Procedure Code, and other various laws have not adequately addressed the legal complexities that have emerged due to the pandemic. Thus, there is a judicial practice of issuing directive orders in the name of the Government of Nepal in various petitions, or issuing directives to temporarily fill the vacuum in the laws to make necessary arrangements to enact laws on issues where the law is absent or inadequate. With regard to the present writ petition, an order in the name of the Government of Nepal is issued to prepare a study on whether existing laws are adequate and effective. This includes whether the Infectious Disease Act, 2020 can mitigate and tackle the current challenges posed by the pandemic. The order also stipulates that the Government of Nepal must formulate the necessary laws with high priority given to gender- sensitive and high-risk groups.

(Paragraph No. 77)

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National Judicial Academy, Nepal
Manamaiju, Nepal

Phone No. 977-1-4027449/4027451, Fax No. 977-1-4027140
Post Box No. 24865
Email: info@njanepal.org.np
URL: www.njanepal.org.np

City Office:
Harihar Bhawan, Lalitpur
Phone No. 977-1-5549057