

Constituent Assembly

Committee on Judicial System

A Report Preliminary Draft with the Concept Paper

2066 (2009)

**Prepared and Submitted by the Committee on Judicial System to the Constituent
Assembly**

Constituent Assembly

Committee on Judicial System

Singhadarbar, Kathmandu

Preface

Hon. Chair Person,

In order to establish peace with definite solution of the inter-conflict of the Nepalese society, we are heading to make a new, modern and scientific constitution through the historical process of the Constituent Assembly. A great exercise and discussion in the Constituent Assembly as well as in the public of Nepal is going on about the framework of the forth coming constitution. Taking in to consideration the reality of Nepalese history, we are intensely motivated to find out the new solution among the worries, recommendations, interests and pressures.

Nepal is a beautiful country of diverse types of racial, regional, linguistic and cultural identities. However, due to a unitary and centralized feudal monarchial system that has presided over the past 250 years, Nepal has not yet been able to get rid of severe race, gender, class and geographical discrimination. In order to eliminate all these forms of discrimination and in order to give a new appearance to the nation, it is necessary to implement a progressive restructuring of the country, by ending the unitary and centralized feudal system and establishing People's Federal Democratic Republic Country based on inclusion and proportionality. Against this background, as we all know, the Committee on Judicial System has been set up by the Constituent Assembly in order to establish a federal-structured, competent, independent, transparent, impartial and accountable judiciary. The aim is to establish a role-model judiciary that functions in order to distribute actual justice and guarantee the right of access to justice for the citizens of Nepal.

It is proved on the basis of the number of recommendations received by this committee from the different sectors of society during the preparation phase of this draft that, while restructuring the country, it is necessary to establish a reformed, independent, transparent and accountable democratic judiciary based on the principles of inclusiveness and proportional representation. There is a need to remove all the irregularities and malfunctions from the judiciary, so as to realize accessible, expedite, effective, and impartial justice to all marginalized groups including those discriminated against on the basis of language, caste, social class, gender, and geographical region.

Subject to the criteria and limitations prescribed by the Constituent Assembly Regulation, 2065 BS (2008 AD), the Committee has prepared a Concept Paper and a Report on the Preliminary Draft of the Constitution. These documents analyze the existing positive and negative aspects, as well as the opportunities and challenges facing the judiciary; it also makes recommendations on the better aspects that could be included in the forthcoming constitution. I have submitted the Concept Paper and the Preliminary Draft of the Constitution to the Constituent Assembly via the Hon. Chairperson.

While preparing this report, we had called on public notice to provide recommendations to the people, and we also had organized various discussion programs and seminars among the concerns. We had also invited many experts to the meetings of the Committee

to put their efforts in the discussion. In addition to this, we had formed 40 groups including comprising of the members of this Committee and had sent them to different parts of the country with subjective questionnaire in order to collect opinions from the people of different status. The groups divided their work and collected 38,256 public opinions visiting all the 75 districts of the country. After that, the Members of this Committee studied and summarized the public opinions. The other 238 opinions received by the Secretariat of the Committee by different means were also reviewed by a Working Group constituted under the Committee.

In this way, in course of the development of the report, the Committee had constituted six Working Groups and the Working Group had sat down for 49 meetings (i.e. 118.15 hours). Similarly, this Committee sat down for 99 meetings (i.e. 253.45 hours) for the finalization of the report including the 50 full meetings of the Committee (i.e.135.30 hours).

I am extremely indebted to all the Constituent Assembly Members of this Committee and employees of the Parliamentarian Secretariat who performed their diligent work to make this report a success. Similarly, I would like pay my respect to the people of Nepal, including all the experts, concerns, journalists, organizations, and individuals in civil society for their valuable recommendations and opinions. Finally, I thank you all for your great contributions.

Thank you

Date : 2066/0/21 (September 06, 2009) (Pravu Shah),

Chairperson,Committee on Judicial System

Constituent Assembly

Committee on Judicial System

Letter No.
Dispatch NO.

Singadarbar, Kathmandu
Phone:014200371,
014200719
Fax: 014222923/4200141
Date: 2066/05/17 (02-09-2009)

Hon. Chairperson
Constituent Assembly,

Ref: Submission of the Report of Preliminary Draft of the Constitution with the Concept Paper of the Committee:

As per the decision of the meeting of the Committee on Judicial System dated 066/05/17 (02-09-2009), we are pleased to submit this Report of Preliminary Draft of the Constitution along with the Concept Paper of the Committee as prepared by the Committee on Judicial System pursuant to Rule (1) (d) and Rule 82 (1) of the Constituent Assembly Regulation, 2065(2008) for the purpose of submission to the Constitution Assembly.

Name and Signature of the Members

S.N.	Name	Signature
1.	Hon. Pravu Shah (Chairperson)	
2.	Hon. Agni Prasad Sapkota	
3.	Hon. Avisek Prasad Upaddayaya	
4.	Hon. Aamod Prasad Upaddayaya	
5.	Hon. Ek Nath Dhakal	Not signed
6.	Hon. Ek Raj Bhanbdari	
7.	Hon. Kamala Thapa	
8.	Hon. Kalyani Rijal	

9.	Hon. Kunti Kumari Shahi	
10.	Hon. Kuber Bahadur Oli	
11.	Hon. Khuma Subedi	
12.	Hon. Gunakar Basyal	
13.	Hon. Govinda Poudel	
14.	Hon. Chitra Bahadur Shrestha	
15.	Hon. Chhiyama Rai	
16.	Hon. Jay Prakash yadab	
17.	Hon. Jogi Lal Yadab	Not signed
18.	Hon. Dambar Bahadur Khadka	
19.	Hon. Dil Bahadur Ghising	Not Signed
20.	Hon. Durga Linkha	
21.	Hon. Devi Khadka	
22.	Hon. Narayani Devi Ghimire	
23.	Hon. Nir Kumari Kunwar	
24.	Hon. Purna Prasad Rai	
25.	Hon. Man Bahadur Mahato	
26.	Hon. Akwal Ahamad Shah	
27.	Hon. Raj Kumar Limbu (Nalbo)	
28.	Hon. Radheshyam Adhikari	
29.	Hon. Ram Krishna Chitrakar	
30.	Hon. Ram Nath Dhakal	
31.	Hon. Ram Bahadur Thapa Magar (Udayapur)	
32.	Hon. Ramananda Mandal	
33.	Hon. Rima Kumari Nepali	Not signed
34.	Hon. Laxmi Lal Chaudhari	
35.	Hon. Lila Kumari Bhandari	
36.	Hon. Lila Devi Mehata	
37.	Hon. Lila Subba	
38.	Hon. Bimala Nepali	
39.	Hon. Shanti Maya Tamang	
40.	Hon. Siva Ram Yadab	
41.	Hon. Shankar Bahadur Khadka	
42.	Hon. Sabitri Singh	
43.	Hon. Sarita Kumari Shah	

Preliminary Draft of the Constitution
Judiciary

Topic	The proposed provisions in the constitution	Which part of the constitution, article or section should include it	The reason why the provision is proposed, or interpretative comment
<p>1. Court to exercise power related to justice</p>	<p>(1) Power relating to justice in the Federal Democratic Republic of Nepal shall be exercised by courts and other judicial institutions in accordance with the provisions of this Constitution, the laws and the recognized principles of justices.</p> <p>(2) All shall abide by the orders and decisions made in the course of the hearing of a suit by courts</p>		<p>According to the principles of the Rule of Law, every citizen is under the constitution and law. The acts to be performed by the judiciary should also be according to the constitution and law. Therefore, the decision of a case or interpretation of any law or the Constitution should be in accordance with the Constitution and the existing principles of law and justice. If the interpretation goes beyond this limitation, it would be against the ethics of the judiciary. Since the judiciary is the final authority to dispense justice, it is the duty of all to respect the decisions or any verdict of the court. From the view point of constitution, jurisprudence and fundamental principles of judiciary that a decision of the court should be the final, it seems necessary to make the decision of the court final.</p> <p>This provision has been proposed taking into consideration the existing practice of all over the</p>

			world that decisions made by the court are binding and it is the duty of all the organs of the state, officials and citizens to abide it.
2. Courts	<p>1) There shall be the following courts in Nepal :-</p> <p>(a) Federal Supreme Court,</p> <p>(b) Provincial High Court, and</p> <p>(c) District /Local Court</p> <p>(2) Except the provisions set forth in sub-article (1), in order to provide accessible justice to all citizens and so as to hear prescribed cases at the local level, as determined by provincial law, a court at Village level, Municipality level or Unit level may be constituted or an institution may be constituted to resolve the dispute through alternative dispute resolution.</p> <p>While constituting the courts pursuant to clauses (1) and (2), a separate court or bench under these courts may be constituted in order to settle family disputes, disputes related to domestic violence, child rights, touchability, dalits, customary practices, religious, and cultural based disputes of indigenous people, muslim, janajatis (ethnicity) and other</p>		<p>To ensure respectful recognition to the backward and underprivileged communities, groups, castes, languages, sexes, cultures, and religions, which did not get access to the mainstream politics due to the unitary ruling system of the country for a long time, and to ensure their representatives in the mainstream mechanisms of the state, the federal judicial structure under the federalism has been necessary. In Nepal, a distinct and fundamental judicial structure is required in order to provide practical justice, rather than a justice based on formality, to those people who have been deprived of their rights of acquiring easy and accessible justice, which is available to the general public, and experiencing injustice due to not being able to come under the justice system. Therefore, while providing special and extraordinary authority and power for the High/Supreme Courts of the province as like the Supreme Court, we have been convinced that the courts of provinces become more powerful and can</p>

	<p>minorities.</p>		<p>exercise power to protect the rights of the people. Furthermore, the people can have access to justice at the provincial level. In addition to that, while establishing the people’s court or counseling center at the local level under the provincial law in order to look after the cases as prescribed by provincial laws, the judicial power is deemed decentralized and the people can settle their disputes at their home and communities, which not only provide accessible justice to the people but also makes easy and affordable justice to them. Therefore, the provision has been incorporated to establish the provincial courts by provincial laws.</p>
<p>3. Specialized Courts:</p>	<p>In addition to the courts referred to in clause (2) above, the law may also establish special types of courts or tribunals for the purpose of hearing special types of cases:</p> <p>Provided that no special court or tribunal shall be constituted for the purpose of hearing a particular case and no law shall be enacted conferring jurisdiction on any other institution other than the courts for the criminal cases that may award punishment more than 6</p>		<p>In the present scenario, the work and scope of the government is expanded. To resolve the especial types of disputes applying specialization-knowledge and skill and so as to provide specialized, expedite, accessible, and inexpensive judicial service to the people, it seems necessary to have been established special types of courts, tribunals and judicial institution. Therefore, we consider that it is necessary to have a provision that delegates an authority to establish courts,</p>

	months.	<p>tribunals or any other judicial institutions to proceed and finalize special types and nature of cases by special bodies, as determined by law. Nevertheless, if the provisions consent to establish a separate court, tribunal or any other judicial institution for a particular case, it would be contrary to the principles of independence of judiciary. Therefore, we do not recommend to a separate court or tribunal or any other judicial institution only for the purpose of hearing of a particular case. At the present context, quasi-judicial bodies are also exercising their jurisdiction to hear different types of cases of higher punishment, i.e. a big amount of fine and longer jail sentences. It is the fact that the person who hears the cases at a quasi-judicial body is an administrator and does not use judicial mind every time. Therefore, taking into consideration the complain raised by the public that the judicial jurisdiction of the administrator has violated individual freedom of citizens, we have recommended not to enact any law designating jurisdiction to any quasi-judicial body other than a court to hear a criminal cases that prescribes more than 6 months jail sentences.</p>
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<p>4. Provision Relating to Martial Special Court:</p>	<p>(1) A Martial Special Court shall be constituted in the chairmanship of the Chief Justice of the Federal Supreme Court for the purpose of hearing of appeals against the decisions of Martial Court. The Federal Supreme Court shall hear appeal against the decision of this court.</p> <p>(2) Law shall determine the provisions relating to the Martial Special Court and its procedures.</p>		<p>As the Army service of the country is sensitive and having discerned nature with the national security, the employees under this service must be heavily disciplined. From the view point of its sensitiveness, the existing provision that refer to punish the employees by the Army (Martial) Court on breach of discipline seems appropriate. However, according to the established principles of justice, it is an inheritable right of a person to appeal at least one level of the court. Therefore, it is appropriate to establish a Martial Special Court in the chairmanship of the Chief Justice of the Federal Supreme Court that hears appeal against the decision made by the Martial Court (first instance).</p>
<p>5. The Federal Supreme Court</p>	<p>(1) There shall be one Federal Supreme Court in Nepal.</p> <p>(2) The Federal Supreme Court, on the matters related to judicial administration and management, may inspect, supervise and give necessary directives to its subordinate courts and other judicial institutions under its jurisdiction. Provided that, the Federal Supreme Court shall not interfere under this clause in the judicial proceedings of these courts.</p>		<p>In the situation where there is disputes between and among the central and provincial governments in regard to division (separation) of power, check and balance, and its implementation, to resolve and finalize the disputes on the basis of the Constitution and laws, and to verify whether or not the states are working under their limitations, the Federal Supreme Court has been proposed as a separate, independent, impartial and reliable body to all the disputing parties. For the purpose</p>

	<p>(3) The Federal Supreme Court shall be a Court of Record. The interpretation of the Constitution and law or precedent produced in course of interpretation of law shall be binding to the Government of Nepal, Provincial Governments and other courts and judicial institutions. It may initiate proceedings and impose penalties in accordance with law in the obstruction of judicial proceeding and not abiding orders of it.</p> <p>(4) Except the position and rights concerning to the Persons of National Importance, and on the matters directly related to the politics and contradiction between the Constitution and laws, the Federal Supreme Court shall have power to interpret the federal laws and provincial laws.</p> <p>Clarification: For the purpose of this clause, the Person of National Importance shall be the Head of the State or the Executive Head or any position elected by the Legislature.</p> <p>(5) The Federal Supreme Court, in addition to the Chief Justice, shall consist of up to</p>	<p>of judicial administration or management, the Federal Supreme Court can supervise, monitor or may issue an order to the courts or judicial institution within its territory or under its jurisdiction, however, the Federal Supreme Court can not intervene in any judicial proceeding that are being proceeded under these courts or judicial institutions.</p> <p>The decisions and activities of the Supreme Court, which also carry a strong legacy, are recorded and kept for a long time for the purpose of evidence. These decisions, and orders are binding to all the subsequent courts as well as other institution and individuals and no question can be raised about legality and rationality of these orders, documents, decisions or records. Therefore, the Supreme Court is projected as a Court of Record and it is provisioned that the all agencies of the government of Nepal including all the courts must abide the decisions and principles laid down by the Supreme Court. Similarly, in order to uphold the reputation, public faith, and maintain its status, the Supreme Court is armed with a power to take action or punish against anyone who does not abide the decision, and creates hurdles in the judicial proceeding.</p>
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	maximum 11 other judges, except added by the Federal Legislature.		
6. Appointment and Qualifications of the Chief Justice and other judges of the Federal Supreme Court:	<p>(1)The Head of the State shall appoint the Chief Justice or other judges of the Federal Supreme Court on the recommendation of the Federal Legislature Special Judicial Committee to which the majority of the total members of the Federal Legislature for the time being have approved.</p> <p>(2) The tenure of office of the Chief Justice shall be four years from the date of appointment, subject to sub-clause (b) of clause (1) of Article 8. Provided that, the Federal Legislature Special Judicial Committee shall only recommend to a person who can bear office for at least two years.</p> <p>(3) Any Nepali citizen who has a Bachelor’s Degree in law and has worked as the Chief Judge or a judge of a Provincial High/Supreme Court for at least seven years; or has a Bachelor’s Degree in law and has practiced as an advocate or senior advocate for at least fifteen years continuously; or for at least fifteen years has worked in the field of law ; or</p>		<p>The procedure of selection of judges may have influence in the quality of judiciary. Furthermore, it may also influence democratic values as integrated by the constitution, concept of economic and social rights, the rule of law, individual freedom, equality and social and economic transformation of the country.</p> <p>It is established that the state has an obligation to maintain the structure of judiciary in accordance with the constitution and law. However, it is believed that it is only possible to build up an independent, impartial and competent judiciary, if we could provide actual freedom to the judiciary, without intervening in any process such as appointments, qualifications, tenure, promotion, transfer etc., of judges.</p> <p>The Principles adopted by the United Nation General Assembly on Fundamental/Basic Principles of Independence of the Judiciary contain that a person who is selected for a judge or appointed as a judge in the judiciary or any judicial institution should be a competent or qualified or well trained in legal issues. The</p>

	<p>has worked at least 12 years as a gazetted first class officer or above than gazetted first class officer in the Judicial Service shall be deemed eligible for appointment as Chief Justice and other judges at the Federal Supreme Court.</p> <p>Clarification: For the purpose of this clause, the tenure of the judges of the Appellate Court before the promulgation of this Constitution shall be counted as worked as a judge of a Provincial High/Supreme Court.</p> <p>(4) If the office of the Chief Justice becomes vacant, or the Chief Justice is unable to carry out the duties of his office due to illness or any reasons, or he can not be present in the office due to leave of absence or his being outside of Nepal, the senior most judge shall act as the Acting Chief Justice.</p>		<p>Beijing Principles has also spelled out that to fulfill objective and motto of the judiciary, the basis of appointment of judge should be determined based on qualification, honesty and independency. Therefore we believed that for the achievement of the objectives of the judiciary and to protect individual freedom of people, the selection of judges should be on the basis of qualifications. Hence we have recommended that to be a judge at the Federal Supreme Court, one should have worked for certain period of time in the judicial sector, or should have practiced law for a particular span of time or should have worked for a particular time period in the field of law. Notwithstanding, as the Provincial High/ Supreme Court is the new practice in our context, we have proposed to appoint the judges of the Federal Supreme Court from the current Appellate Courts, considering as they are the judges of the Provincial Supreme/High Court. In addition, in order to make a stable and permanent leadership at the Supreme Court, we have provisioned only to recommend a person who can spend at least two years tenure as a Chief Justice.</p>
<p>7. Conditions of Service and</p>	<p>(1) If the Chief Justice and any other judge of the Federal</p>		<p>The person who has been appointed as a judge should not work under any type of influence</p>

<p>facilities of the Chief Justice and other Judges of the Federal Supreme Court:</p>	<p>Supreme Court resigns from his position after completion of four years service, or obtains compulsory retirement due to his age, or dies during the service, he/she shall be eligible to obtain pension as determined by law.</p> <p>(2) Except as otherwise provided for in this Constitution, the remuneration and other conditions of service of the Chief Justice and other judges shall be as determined by law.</p> <p>(3) Notwithstanding anything contained in clause (1) and (2), the Chief Justice and judges of the Federal Supreme Court shall not be entitled to obtain pension or gratuity, if he is released from the position after the proceeding of impeachment.</p> <p>(4) Except otherwise provided for in this Constitution, the remuneration, privileges and other conditions of service of the Chief Justice and other Judges of the Supreme Court shall not be altered to their disadvantage. Provided that, this provision shall not be applicable in the case that the country has declared financial emergency.</p>		<p>or intervention. Therefore, it seems sensible to prescribe tenure, remunerations, and other terms and conditions of facilities of judges in the constitution so that judges can dispense justice based on facts and evidences, in free and fare environment. By doing so, there would not be unnecessary influence of anyone on judges in course of hearing of cases, and the tenure of judges is secured that build up a confident to the judges that they would not be worried for their future. If so, it helps the judges to work freely and independently. Therefore, the constitution has enlisted some of the provisions for judges that guarantee of not altering the remuneration, facilities and other terms and conditions of service, and the remaining provisions will be as distinguished by law. This provision helps judiciary to be stable and competent as well as to tackle with the hurdles of current political transition and to work freely and independently. However, considering a judge as a responsible citizenship of this country and he/ she also has to contribute to this country like other citizens in case of financial crisis and if it needed to declare economic emergency in the country, we have provisioned that the remuneration and facilities provided to a judge might not be assured as the same in the</p>
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			situation of the crisis and emergency.
8. Removal of Chief Justice and Judges :	<p>(1) The Chief Justice or other Judges of the Supreme Court shall be deemed to have ceased to hold office in the following situations:</p> <ul style="list-style-type: none"> a) if the Chief Justice or a judge submits his/her resignation to the Head of the State via Federal Legislature Special Judicial Committee . b) if he/she attains the age of sixty-five years. c) if the Federal Legislature passes a resolution of impeachment d) if he/she dies. <p>(2) A motion for impeachment may be presented before the Federal Legislature against the Chief Justice and any other Judge on the ground that he/she is unable to perform their duties for reasons of incompetence, misbehavior, failure to discharge the duties of their office in good faith, punished in a moral turpitude crime, physical or mental condition, and if a two-third majority of members of the Federal Legislature for the</p>		<p>The constitution has to provide functional independency to judges. In case a judge voluntarily tenders a resignation before completion of his tenure, it would be rational to free him/her from service respecting his/her freedom. There should not be any provision that creates lingering to anyone (Judge) in the name of approving the resignation. No one should be forced to work in the judicial proceeding against his/her will. The judicial proceeding is done freely and independently without any influence, and based on one's wisdom. Therefore, if a judge wants to be free from the service and does not want to involve anymore in the judicial proceeding, it would be reasonable to discontinue him from the position.</p> <p>Similarly, according to the principles of separation of power and check and balance, no government office bearer can go beyond limitation of the constitution and law. If one goes, it would be unconstitutional and against the law. Therefore, it would not be justifiable, also may hamper the judicial proceeding of</p>

	<p>time being passes the resolution, he/she shall ipso facto cease to hold office.</p> <p>(3) The Chief Justice or the Judge, against whom impeachment proceeding have been initiated pursuant to clause (2), shall not perform the duties of his /her office until the proceedings are completed.</p> <p>(4) The Chief Justice or a judge who has ceased to hold the office pursuant to clause 2), or has conducted anything contrary to judicial disciplines and reputation shall be subject to punishment in accordance with the prevailing laws.</p> <p>(5) Law shall determine the procedure of the impeachment proceeding.</p>		<p>the court, if the Chief Justice or any other Judges continues their service despite of being charged of incompetence, misbehavior or failure to discharge the duties of his office in good faith, involved and punished in the moral turpitude crimes, violation of code of conducts, not performing his duty because of physical and mental condition. We have provisioned, on the establishment of abovementioned fact, that the Federal House of Representatives may remove the Chief Justice and other judges by entertaining a resolution of impeachment with approval of among available two-third majority of the total members.</p>
<p>9. Chief Justice or Judges not to be engaged in any other assignment</p>	<p>(1) The Chief Justice or Judges of the Federal Supreme Court shall not be engaged in or deputed to any other assignment except that of a judge.</p> <p>Provided that the Government of Nepal may, in consultation with the Federal Legislature Special Judicial Committee, and without disgracing the</p>		<p>As the judicial independency is an essential condition for the fair justice, the person who is dispensing justice should also be fair, competent, capable, impartial.</p>

	<p>judicial independency, assign Judges of the Federal Supreme Court to work concerning judicial inquiry or to legal or judicial investigation or research, for a specified period or to any other assignment of national importance.</p> <p>(2) Except otherwise provided for in this Constitution, any person who has once held the office of Chief Justice or Judge of the Federal Supreme Court shall not be eligible for appointment in any Government Service.</p>		
<p>10. Jurisdiction of the Federal Supreme Court:</p>	<p>(1) The Federal Supreme Court shall, for the enforcement of the fundamental rights conferred by this Constitution, for the enforcement of any other legal rights for which no 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 question involved in any dispute of public interest or concern, have the extraordinary power to issue necessary and appropriate orders to enforce such right or settle the dispute. For these purposes, the Federal</p>		<p>As the court represent to the judicial jurisdiction of the sovereignty, the jurisdiction of the court can be exercised only within the jurisdiction of the sovereignty. The meaning behind the jurisdiction stand for finding out facts in course of regular judicial proceeding, exercising of law, and declaring punishment to the guilt etc. This facilitates the court to hear disputes between the parties in a case and to fix it.</p> <p>Generally, in every country, as the Supreme Court is the highest court in the judicial hierarchy, it, therefore, does not work as a court of first instance. However, in a federal constitution, the power of the state is divided</p>

	<p>Supreme Court may, with a view to imparting full justice and providing the appropriate remedy, issue appropriate orders and writs including the writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto.</p> <p>Provided that, except on the ground of absence of jurisdiction, the Federal Supreme Court shall not, under this clause, interfere with the proceedings and decisions of the Federal as well as Provincial Legislature concerning violation of its privileges and any penalties imposed therefore.</p> <p>(2) Except otherwise provided for in this Constitution, the Federal Supreme Court shall have the jurisdiction to hear original cases as follows:</p> <ul style="list-style-type: none"> (a) Disputes between the center and provinces, (b) Disputes between the provinces, (c) Disputes between the Constitutional Bodies (d) Disputes related to national security, currency, and foreign affairs. <p>(3) The Federal Supreme court</p>		<p>between and among the central and provincial governments, there might be a dispute between the central government and provincial government on the power sharing, disputes may occur between the constitutional bodies of the central and provincial government on or division of power and jurisdiction. In the case of such type of disputes, it is necessary to settle these disputes by the Federal Supreme Court. Therefore, we have proposed the Federal Supreme Court as the court of first instance for these types of disputes. In addition, we have proposed that the Federal Supreme Court should hear the disputes related to national security, currency and foreign affairs, as these matters are under the jurisdiction of federal government.</p> <p>To maintain uniformity on the legal and constitutional questions, if the provincial high/supreme court considers that it is necessary to be heard by the Federal Supreme Court, the case may be presented before the Federal Supreme Court with its (provincial high/supreme court) opinion. This provision helps establish uniformity in the implementation of law and constitution in the country.</p>
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	<p>shall hear appeal on the suits that have been heard by the Provincial High/Supreme Court under their original jurisdiction and the suits related to the interpretation of law and having public importance, or a suit as referred by the Provincial High/Supreme Court with its opinion that it is necessary to hear by the Federal Supreme Court.</p> <p>(4) Subject to this Constitution and the laws enacted by the Federal Legislature, the Federal Supreme Court shall have power to review its own judgment or final orders.</p> <p>(5) The Federal Supreme Court shall have jurisdiction to hear appeals and to examine decisions referred for confirmation (Sadhak Janchne) as determined by law.</p>		
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<p>11. Transfer of Cases:</p>	<p>(1) If the Federal Supreme Court considers that a case of similar nature and having the same substantial question of public importance is under consideration of the Federal Supreme Court and the Provincial High/Supreme Courts, or the parties of the cases or the Attorney General have filed an application, the Supreme Court shall have power to ask so as to present the case before it and make the final decision.</p> <p>(2) If the Federal Supreme Court has considered that due to a special circumstance, questions of judicial impartiality may be raised in the hearing of a suit at the Provincial Supreme/High Court, it may, explaining reasons and bases, give an order to transfer the suit to another Provincial Supreme/High Court.</p>	<p>In a Federal System, similar to executive and legislative, the judicial power is divided between the central and provincial governments (states). To establish uniformity in the interpretation and implementation of law and to grant expedite decision on a case having constitutional and legal question and that is under consideration of one or more than one Provincial High/ Court, the Federal Supreme Court should have power to intervene in the process in which it may order to the particular provincial court to tender this case before it. The Federal Supreme Court should also have power to transfer a case from the one provincial High/Supreme Court to another Provincial High/Supreme Court, if it considers that it is necessary for the purpose of accomplishment of the objective of justice. The objective of justice would not be achieved, if a question arises as to impartiality of the provincial court due to the circumstance of that particular province. Therefore, we have granted such power (transfer of case from one court to another) to the Federal Supreme Court taking into consideration the importance of impartiality and independence of the judiciary. However, the Supreme Court should exercise this power attentively and within</p>
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			the limit of law
12. Not to practice law:	The Judge of the Federal Supreme Court is, after his/her retirement, not entitled to practice law before any court.		The meaning of the independence of judiciary refers not only to be free from intervention in the judicial process by any person, authority or bodies other than judiciary, but also free from influence of any level or office-bearer of and within the judiciary itself. The Supreme Court is the highest court in the judicial hierarchy. Hence, if, a judge, after his retirement from the Federal Supreme Court, appears to any subsequent court to plead a case representing a client, there might be always probability of influence of his personality in the proceeding of the subsequent court. Similarly, if a judge who has served in a distinguish position, as a judge of the Supreme Court, and whose service was secured upto 65 years, and still he appears to any subsequent court for pleading or to practice law after his retirement, it may disgrace the faith and reputation of the

			Supreme Court. Therefore, the provision to prohibit the retired judge of the Supreme Court from pleading at any subsequent court is incorporated in the constitution.
13. Responsibility of the Chief Justice:	Under the jurisdiction of the Federal Supreme Court and other subordinated judicial institution, the Chief Justice shall have the ultimate responsibility to make the administration of justice effective.		Any organization needs a competent leadership. As the Supreme Court is the highest body in the hierarchy of judiciary and the Chief Justice is the head of the Supreme Court as well as the judiciary, he has an ultimate responsibility to make the courts and other judicial institution effective. Therefore, power to make judicial institution under the jurisdiction of the Federal Supreme Court has been given to the Chief Justice of the Federal Supreme Court.
14. Annual Report:	<p>(1) Each year, the Federal Supreme Court shall submit its annual report to the Head of the State, and the Head of the State shall present the report to the Federal Legislature through the Executive Head.</p> <p>(2) The Federal Legislature may give recommendations, through the Federal Ministry of Law and Justice, to the Federal Supreme Court, if it deems necessary to give some recommendations in course of</p>		As the judiciary is one of the three organs of the state, it will be more accountable if it prepares its annual report like other constitutional bodies. It would be more transparent if the judiciary presents the report to the Head of the State and the Head of the State submit it to the Legislature through the Executive Head. The Legislature may make comments and recommendations on the report. If so, we hope that the general public will be notified about the report of the judiciary

	<p>the discussion on the annual report submitted pursuant to clause (1).</p> <p>(3) Other provisions in regard to the annual report pursuant to clause (1) shall be as determined by law.</p>		
<p>15. Provincial High/Supreme Court:</p>	<p>(1) In each Province of Nepal, the High/Supreme Court shall be the highest court at the provincial judicial hierarchy.</p> <p>(2) All the courts and judicial institutions of the provinces shall be under the Provincial High/Supreme Court. The Provincial High/Supreme Court may inspect, supervise and give necessary directives to its subordinate courts and other judicial institutions.</p> <p>(3) The Provincial High/Supreme Court shall be a Court of Record. It may initiate proceedings and impose penalties in accordance with law on obstruction of the judicial proceedings and disobeying of the decision of itself or its subordinate courts or judicial institution.</p> <p>(4) The Provincial High/Supreme Court shall, in addition to the Chief Judge,</p>		<p>While restructuring the state under the federalism, it seems necessary to fix the Highest Court of a province to entertain the extraordinary jurisdiction. Since this court is the highest court in the province, it is rational to have power to supervise, monitor, direct, as per necessity, to the subsequent courts and judicial institutions within the province, under its jurisdiction. Similarly, as this is the highest court at provincial level, it has been projected as a court of record at the province level. It may initiate proceedings and impose punishment in accordance with law for contempt of itself and of its subordinate courts or judicial institution if someone thwart in the proceeding or does not abide the decision of courts</p>

	consists of a number of judges as determined by provincial law.		
16. Appointment and Qualification of Chief Judge and other Judges of Provincial High/Supreme Court:	<p>(1) The Head of the Province shall appoint the Chief Judge and other judges of the Provincial High/Supreme Court after the approval of the recommendation of the Special Judicial Committee of Provincial Legislature by the majority of the total members of the Provincial Legislature for the time being.</p> <p>(2) The tenure of the Chief Judge shall be four years from the date of appointment, subject to sub clause (b) of clause (1) of Article 18. Provided that , the Special Judicial Committee of the Provincial Legislator shall recommend only to a person who can serve at least two years as a Chief Judge.</p> <p>(3) Any Nepali citizen who has a Bachelor’s Degree in law and has worked as a judge of District/Local Court for at least seven years; or has a Bachelor’s Degree in law and has practiced as an advocate or senior advocate for at least ten years continuously; or for at least 10 years, has either taught law or conducted research</p>		<p>The procedure of selection of judges may influence the quality of judiciary. Furthermore, it may also influence democratic values as integrated by the constitution, concept of economic and social rights, the rule of law, individual freedom, equality and social and economic transformation of the country</p> <p>The Principles adopted by the United Nation General Assembly on Fundamental/Basic Principles of the Independence of Judiciary contain that a person who is selected for a judge or appointed as a judge in the judiciary or any judicial institution should be a competent or qualified or well trained in legal issues. Required measures should be adopted to make the judicial appointment procedure free and fare so that the appointed person will not be a victim of malafide intention.</p> <p>Therefore, we have seen that any Nepali citizen is eligible for appointment as Chief Judge of the Provincial High/Supreme Court, if he having a Bachelor Degree in law, has worked for certain time as a judge in district/ local court</p>

	<p>thereon or worked in any other field of law or justice, or has worked at least seven years as a gazetted first class officer in the Judicial Service, shall be deemed eligible for appointment as Chief Judge and other judges at the Provincial High/ Supreme Court.</p> <p>(4) If the office of the Chief Judge becomes vacant, or the Chief Judge is unable to carry out the duties of his/her office due to illness or any other reason, or he/she cannot be present in office due to a leave of absence or his/her being outside of Nepal, the senior-most Judge of the Provincial High/Supreme Court shall be the Acting Chief Judge.</p>		<p>or worked for the Judicial Service for certain time as a First Class Gazette d Officer or ; has practiced law for certain years as a law graduate advocate or senior advocate; or has taught law or done research or has rendered prominent service in national life as a jurist or legal specialist. While recommending for the appointment of the Chief Judge, in order to make stable leadership, we have provisioned that the term of the Chief Judge in the High / Supreme Court should be at least two years and the appointment is made on the recommendation of the Special Judicial Committee of Provincial Assembly (Parliament).</p>
<p>17. Conditions of service and privileges of the Chief Judge and other Judges of Provincial High/Supreme Court:</p>	<p>(1) Except otherwise provided for in this Constitution, the remuneration, privileges and other conditions of service of the Chief Judge and other Judges of Provincial High/Supreme Courts shall be as determined by law.</p> <p>(2) Notwithstanding anything contained in clause (1), the Chief Judge and Judges of the Provincial High/Supreme</p>		<p>It seems necessary to determine, by enacting laws, the provision related to facilities and incentives of the judges of High/Supreme Court of provinces in order to creates an environment to judges to carry out judicial proceeding independently, impartial and based on the constitution and laws. Similarly, it is also necessary to determine the tenure of judges so that they can perform their duty confidently and without any apprehension. Therefore, we</p>

	<p>Court shall not be entitled to obtain pension or gratuity, if he/she is removed from the position after the proceeding of impeachment.</p> <p>(3) The remuneration, privileges and other conditions of service of the Chief Judge and other Judges of the Provincial High/Supreme Court shall not be altered to their disadvantage. Provided that, this provision shall not be applicable in the case that the country has declared financial emergency</p>		<p>have provisioned to ensure that the existing arrangements of facilities of judges are not reduced while making laws to determine the facilities and benefits. However, considering a judge as a responsible citizenship of this country and he/ she also has to contribute to this country like other citizens in case of financial crisis and in case it is needed to declare economic emergency in the country, we have provisioned that the said existing remuneration and facilities provided to a judge might not be assured in the situation of the crisis and emergency.</p>
<p>18. Removal of the Chief Justice and Judges</p>	<p>:</p> <p>(1) The Chief Judge or other Judges of the Provincial High/Supreme Court shall be deemed to have ceased to hold office in the following situations:</p> <ul style="list-style-type: none"> a) if the Chief Judge or a judge submits his/her resignation to the Head of the Province via Special Judicial Committee of the Provincial Legislature. b) if he/she attains the age of sixty-five years. c) if the Provincial 		<p>No one should be forced to work in the judicial proceeding against his/her will. The judicial proceeding is accomplished freely and independently without any influence, and based on one's wisdom. Therefore, if a judge wants to be free from the service and does not want to involve anymore in the judicial proceeding, it would be reasonable to discontinue him from the position. In case a judge voluntarily tenders a resignation before completion of his tenure, it would be rational to free him/her from service respecting his/her freedom.</p>

	<p>Legislature passes a resolution of impeachment d) if he/she dies.</p> <p>(2) A motion for impeachment may be presented before the Provincial Legislature against the Chief Judge and any other Judge on the ground that he/she is unable to perform their duties for reasons of incompetence, misbehavior, failure to discharge the duties of their office in good faith, punished in a moral turpitude crime, physical or mental condition, breach of the code of conducts, and if a two-third majority of members of the Provincial Legislature for the time being passes the resolution, he/she shall ipso facto cease to hold office.</p> <p>(3) The Chief Judge or the Judge, against whom impeachment proceeding have been initiated pursuant to clause (2), shall not perform the duties of his /her office until the proceedings are completed.</p> <p>(4) The Chief Judge or a judge who has ceased to hold the office pursuant to clause (2), has conducted anything contrary to judicial disciplines</p>		<p>Similarly, the Chief Judge and other judges at the Provincial High/Supreme Court should always be within the limitation of the constitution and law. It would not be justifiable, also may hamper the judicial proceeding of the court, if the Chief Judge or any other Judges continues their service despite of being charged of incompetence, misbehavior or failure to discharge the duties of his office in good faith, involved and punished in the moral turpitude crimes, gross violation of code of conducts, not performing his duty because of physical and mental condition. We, therefore, have provisioned based on the establishment of abovementioned fact, that the Provincial House of Representatives may remove the Chief Judge and other judges by entertaining a resolution of impeachment with approval of among available two-third majority of the total members</p>
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	and reputation, shall be subject to punishment in accordance with the prevailing laws.		
19. Chief Judge and other not to be engaged in any other assignment	<p>(1) The Chief Judge or any other Judge of the Provincial High/Supreme Court shall not be engaged in or deputed to any assignment except that of a Judge.</p> <p>Provided that the Government of Nepal may, in consultation with the Special Judicial Committee of the Provincial Legislature, and without disgracing the judicial independency, assign a Judge of the Provincial High/Supreme Court for a specified period to work concerning judicial inquiry, or to any legal or judicial investigation or research, or to any other work of national concern.</p>		<p>The judicial independency is an essential condition in order to carry out judicial proceeding according to law. Therefore, the person who is working as a judge should be able to establish a fact that he is competent, capable, honest, and impartial and treats equally. As the task of judicial proceeding is sensitive and complicated, judges should not be assigned for other responsibilities other than judicial proceeding. This may disgrace the skill and impartiality of a judge.</p> <p>To materialize the principle <i>Justice and its realization</i> (Naya gareko ra pareko), the conduct and behavior of a person involved in judicial service is very much important. Therefore, if a judge is assigned for other task (such as favoring one political party or another political party in reference to a case or assigned to work for the interest of the nation or government etc.), other than the judicial proceeding, question may arise to his honesty and impartiality because he has</p>

			<p>already been committed to be under the principles of independence of judiciary, which may also affects the judicial proceeding negatively. The judges should not be involved in any act that affects the judicial morals, status of judiciary, and judicial proceeding in accordance with law. Rather, it would be beneficial to the judiciary if the judges are involved in research, investigation on the matters related to judicial administration, legal systems and justice</p> <p>.</p>
<p>20. Jurisdiction of the Provincial High/ Supreme Court:</p>	<p>(1) The Provincial High/Supreme Court shall, for the enforcement of the fundamental rights conferred by this Constitution, for the enforcement of any other legal rights for which no 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 question involved in any dispute of public interest or concern, have the extraordinary power to issue necessary and appropriate orders to enforce such right or settle the dispute.</p>		<p>As the Provincial High/ Supreme Court is the highest court at the provincial level, it is necessary to confer power and ultimate responsibility on in to bestow effective justice to the people by protecting the fundamental rights or by enforcing the rights for which no other remedies has been provided and the remedy even though provided appears to be inadequate and ineffective. Therefore, it is prudential to provide power to the Provincial High/Supreme Court to issue appropriate orders and writs including the writ of <i>habeas corpus</i>, <i>mandamus</i>, <i>certiorari</i>, <i>prohibition</i>, and <i>quo-warranto</i> for</p>

	<p>For these purposes, the Provincial High/Supreme Court may, with a view to imparting full justice and providing the appropriate remedy, issue appropriate orders and writes including the writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto.</p> <p>Provided that, except on the ground of absence of jurisdiction, the Provincial High/ Supreme Court shall not, under this clause, interfere with the proceedings and decisions of the Federal as well as Provincial Legislature concerning violation of its privileges and any penalties imposed therefore.</p> <p>(2) The Provincial High/ Supreme Court shall have jurisdiction to hear original and appellate cases, to examine decisions referred for confirmation [Sadhak janchne], review cases and hear petitions as defined by law.</p> <p>(3) The Provincial High/ Supreme Court may review its own judgments or final orders subject to the conditions and in the circumstances prescribed by this Constitution, Federal</p>		<p>the enforcement of fundamental rights of citizens conferred by the constitution. Provided that, except on the ground of absence of jurisdiction, the court shall not interfere under this provision as it creates an otherwise situation with the proceedings and decisions of the Federal Legislature or Provincial Legislature, which would also be against the principle of separation of power.</p>
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	<p>and Provincial law</p> <p>(4) Other powers and procedures of the Provincial High/ Supreme Court shall be as prescribed by Procedural Law.</p>		
21. Transfer of Cases:	<p>(1) If the Provincial High/Supreme Court considers that a particular suit is under consideration at its subordinate courts or judicial institutions having a constitutional question, and without addressing this question it is not possible to resolve the suit, the Provincial High/ Supreme Court may ask the respective court or judicial institution to present the suit before it, and the court itself may make a final decision on it or may send back the suit to the respective court or judicial institution after addressing the constitutional question.</p> <p>(2) If the Provincial High/ Supreme Court deem that questions of judicial impartiality may be raised in the hearing of a suit at the District/ Local Court of the province due to a special circumstance, it may give an order to transfer the suit, mentioning the reasons and bases, from one District/Local</p>		<p>While the Provincial High/Supreme Court has to play the role of the Supreme Court at provincial level, it has seemed necessary to confer power on the High/Supreme Court at provincial level like other ordinary Supreme Court. Under this power, the Provincial High/Supreme Court may ask the subordinate court to present a suit before it, in which the subordinate court or judicial institution has not been able to decide due to a legal or constitutional question. The Provincial High/Supreme Court, after the tender of the case to it, may make the final decision or may send back, after necessary settlement of the dispute, to the respective subordinate court in order to carry out further proceeding. Similarly, the Provincial High/Supreme Court should have power to transfer a case from one subordinate court to another subordinate court within its jurisdiction, in case, due to a circumstance, a subordinate court or judicial institution in the province is</p>

	Court to another District/Local court.		unable to decide a case in accordance with law, or it seems that questions may be arose in regard to the impartiality of the case. Therefore, we have considered incorporating this provision.
22. To practice law:	The Judges who have been retired from the Provincial High/Supreme Court are entitled to practice law before the Federal Supreme Court and Provincial High/ Courts other than the one from which he got retirement.		The meaning of independence of judiciary refers not only to be free from intervention in the judicial process by any person, authority or bodies other than judiciary, but also free from influence of any level or office-bearer of and within the judiciary itself. Since, the Provincial High/ Supreme Court is the highest court in the hierarchy in the province, if, a judge, after his retirement from the Provincial High/ Supreme Court, appears to any subsequent court to plead a case representing a client, there might be always probability of influence of his personality in the proceeding of the subsequent court. Therefore, this provision is incorporated to restrict a judge, who has served in a distinguish position as a judge of the High/Supreme Court, for pleading at the High/ Supreme Court or practicing law at any subordinate courts after his retirement from the Provincial High/ Supreme Court. We believe that it may also disgrace the faith and reputation of the court. However, the judge is allowed to

			practice law at the Federal Supreme Court.
23. Responsibility of the Chief Judge:	The Chief Judge of the Provincial High/Supreme Court shall have an ultimatum responsibility to make the judicial administration efficient in the Province. For this purpose, the Chief Judge may give necessary orders and directives to its subordinate courts or judicial institution subject to this Constitution and other existing laws		Since the Provincial High/Supreme Court is the highest court in the province, it is common to all that the Chief Judge of the Provincial High/Supreme Court shall be the head of judiciary of that particular province. However, such leadership should play crucial role in order to make the judicial administration effective, rather than making unnecessary influence in the judicial proceeding of the subordinate courts. For this purpose, power has been conferred on the Chief Judge of a province to make necessary orders to the subordinate courts or judicial institutions under the constitution and laws.
24. Annual Report:	(1) Each year, the Provincial Supreme Court shall submit its annual report to the Head of the Province, and the Head of the Province shall present the report to the Provincial Legislature through the Executive Head of the Province. (2) The Provincial Legislature		It seems more effective and transparency if the Provincial High/ Supreme Court prepares its annual reports and submits to the Head of the Providence, and the Head of the Providence presents the report to the Provincial Legislature for discussion. The Legislature can make comments and recommendations while conducting a discussion on the report. The submission and discussion of report at the

	<p>may give recommendations, through the Provincial Ministry of Law and Justice, to the Provincial High/ Supreme Court, if it deems necessary to give some recommendations in course of the discussion on the annual report submitted pursuant to clause (1).</p> <p>(3) Other provisions in regard to the annual report pursuant to clause (1) shall be as determined by provincial law.</p>		<p>Legislature means the general public will be notified about the report of the judiciary.</p>
<p>25. District/Local Court:</p>	<p>(1) Every District/Local Unit shall have a District/Local Court.</p> <p>(2) All the courts at village, municipal and local unit level shall be under the District/Local Court.</p> <p>(3) The District/Local Court may inspect, supervise and give necessary directives to its subordinate courts and other judicial institution at village, municipal and local unit level.</p>		<p>While reconstructing the nation under the concept of federalism, the judicial institutions should be decentralized down to the local level. Therefore, it seems necessary to establish a unit or district local court as a subsequent judicial structure to the national level. In addition to that, to provide access to justice to the people, it seems necessary to establish courts, by enacting laws, at village as well as municipal level to settle small and minor cases. By doing so, the objective of federalism is accomplished and increases access to justice to the local level. People feel access to justice as they find accessible court to settle small disputes nearby their home</p>

<p>26. Appointment, Qualifications, Conditions of service and privileges of Judges of District/Local Court:</p>	<p>(1) The Head of the Local House of Representative shall appoint the Judges of the District/Local Court on the recommendation of the Special Judicial Committee the Local House of Representative to which the majority of the total members of the Local House of Representative for the time being have approved.</p> <p>(2) Any Nepali citizen who has a Bachelor's Degree in law and has worked as a gazetted second class officer for at least three years in the Judicial Service; or has a Bachelor's Degree in law and has practiced as an advocate for at least eight years continuously; or for at least eight years, has either taught law or conducted research thereon or worked in any other field of law or justice, shall be deemed qualified for appointment as Chief Judge and other judges at the Provincial High/ Supreme Court.</p> <p>(3) The remuneration and conditions of service of the judges of District Court shall be as determined by law.</p> <p>(4) The remuneration, privileges and other conditions of service of the Judges of</p>		<p>District/Local Court is a very important body for the preliminary hearing of cases. Therefore, the appointment of a judge in these bodies should be fair, impartial and independent. The quality of the judiciary always depends on the selection procedure of judges. In case an unqualified or incompetent person is appointed based on political or any other types of unnecessary interests and influence, the rule of law, individual freedom and equality might also be under influence. Therefore, the person who is going to be appointed as a district court judge should have necessary qualification and competency.</p> <p>Therefore, any Nepali citizen is eligible to be appointment as a Judge of district/local court, if he having a Bachelor Degree in law has served the Judicial Service for certain span of time as a Second Class Gazette Officer or, has practiced law for certain years regularly as a law graduate advocate; or has taught law or done research in the field of law regularly for a particular span of time.</p> <p>Based on the principle of federalism, to make division of power to the local bodies, the power to appoint a judge at the District/local Court has been conferred on the provincial House of Representatives. To dispense justice independently and</p>
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	<p>District/Local Courts shall not be altered to their disadvantage. Provided that, this provision shall not be applicable in the case that the country has declared financial emergency.</p> <p>(5) Notwithstanding anything contained in clause (3), the Judges of the District/Local Court shall not be entitled to obtain pension or gratuity, if he/she is released from service pursuant to sub-clause (c) of clause (6).</p> <p>(6) A Judge of District/Local shall be deemed to have ceased to hold office in the following situations:</p> <ul style="list-style-type: none"> a) if the Judge submits his/her resignation to the Head of the District/Local House of Representatives via the Special Judicial Committee of the District/Local House of Representatives. b) if he/she attains the age of sixty-five years. c) if the District/Local House of Representatives presents a motion for impeachment before the District/Local 		<p>impartially, a constitutional provision has been stated in order to guarantee the remuneration and other facilities related to service of the local/district judge, so that the remuneration and conditions of services are not amended reducing existing facilities.</p>
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	<p>House of Representatives on the ground that he/she is unable to perform their duties for reasons of incompetence, misbehavior, failure to discharge the duties of their office in good faith, punished in a moral turpitude crime, physical or mental condition, breach of the code of conducts, and if a two-third majority of members of the District/Local House of Representatives for the time being passes the resolution, he/she shall <i>ispo facto</i> cease to hold office.</p> <p>For the purpose of this clause, the judge against whom the impeachment proceeding is carrying out shall get reasonable time to defend himself. To accomplish this, a sub-committee may be constituted under the Special Judicial Committee of the District/Local House of Representatives which shall submit its opinion after collecting evidence, and taking description with him/her. The procedure of</p>		
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	<p>the sub-committee shall be determined by law.</p> <p>d) if he/she dies.</p> <p>(7) The Judge, against whom impeachment proceeding have been initiated pursuant to sub-clause (c) of clause (6), shall not perform the duties of his /her office until the proceedings are completed.</p> <p>(8) The judge who has ceased to hold the office pursuant to sub-clause (c) of clause (6), has conducted anything contrary to judicial disciplines and reputation, shall be subject to punishment in accordance with the prevailing laws.</p>		
<p>27. Judge not to be engaged in any other assignment</p>	<p>(1) The Judges of the District/Local Court shall not be engaged in or deputed to any assignment except that of a Judge.</p> <p>Provided that the Government of Nepal may, in consultation with the Special Judicial Committee of the District/Local House of Representatives, assign a Judge of the District/Local Court for a specified period to work concerning judicial</p>		<p>As the task of judicial proceeding is extremely sensitive and having distinctive nature, persons who carry out the judicial proceeding need to have strong professionalism, study and dedication. Therefore, the judicial person should not be involved in any other business other than judicial proceeding, because it may have negative impact on his judicial professionalism, and also might disgrace his competency and skill. Provided that, it might have a positive message if a judge is assigned for investigation and</p>

	<p>inquiry, or to any legal or judicial investigation or research, or to any election.</p>		<p>research of law, judicial investigation, or for the things that requires impartiality at national level work such as election. Hence we have recommended stating provisions in the constitution that foster the legitimacy of the assignment of a judge of a Local/District court for the purpose of judicial investigation, or for any legal research or investigation for a particular time.</p>
<p>28. Jurisdiction of District/Local Court:</p>	<p>(1) Except otherwise provided for in the prevailing laws, the District/Local Court shall have an original jurisdiction to hear all the cases of its territory, to issues an order of s habeascorpus, to hear appeal against the decision made by quail-judicial bodies, to hear appeal against the court of village, local unit, and municipality level as constituted by provincial laws, and shall have power to initiate proceedings and impose penalties in accordance with law on the disobeying of decisions and making hindrances in the judicial proceeding of itself and its subordinate courts or judicial institutions .</p>		<p>Though the District/ Local Courts are court of first instance, they has power to make a final opinion on the fact of cases. Therefore, except otherwise provided for in the law, the District/ Local Courts exercise their power as a court of first instance within its territory. This Constitution has upheld the provision of the previous Constitution that had empowered the District/ Local Court by providing jurisdiction to hear all the cases within their territory. As has been structured by the state to establish judicial institutions at the village and municipal level in order to entertain small disputes, it seems necessary to provide appellate jurisdiction to the District/ Local Court to hear appeals against the decisions of its subordinate institutions. In</p>

	(2) Other matters related to jurisdiction and procedure of District/Local Court shall be as prescribed by Law.		addition to that, in order to maintain public faith on judiciary, it has also been considered necessary to provide jurisdiction to the District/ Local Courts to initiate appropriate actions or punish to anyone, in accordance with law, in case someone obstructs the judicial proceeding, or the decision of the court is not abide or implemented.
29. Federal Legislature Special Judicial Committee, Provincial Legislature Special Committee, District/Local House of Representative Special Judicial Committee:	<p>(1) <u>Federal Legislature Special Judicial Committee:</u> There shall be a Special Judicial Committee in the Federal Legislature to make recommendations and give advice in accordance with this Constitution concerning the appointment of, transfer of, disciplinary action against, and dismissal of the Chief Justice and other Judges of the Federal Supreme Court, and other matters relating to judicial administration, which shall consist of as follows:-</p> <p>(a) The Vice-Chair of the Federal Legislature – Chairperson</p> <p>(b) The Federal Minister of Law and Justice – Member</p> <p>(c) Not exceeding nine</p>		The foundation of Democracy is the Civilian Supremacy. As the legislature is a representative body and also exercises the sovereignty of the people, the voice of people should only be reflected via this body. One of the major reasons behind the judiciary in the past that the people never realized ownership over it was lack of judiciary's responsibility to the people. Therefore, it is necessary to democratize the judiciary according to the present context. Therefore, we have provisioned that the Head or Chief of the respective level (provincial or central) shall appoint the judges in all the three tiers of courts after approval of the respective legislature on the recommendation of special judicial committee of the legislature. Hence, while constituting special judicial body at the respective legislature, it shall be done according to the concept of proportional and inclusiveness i.e. having

	<p>members, as elected by the Federal Legislature amongst its members, based on the number of population represented in the Legislature, proportionally and on the basis of the principle of inclusiveness- Members</p> <p><u>(2) Power, Rights and Duties of Federal Legislature Special Judicial Council:</u> The power, rights and duties of the Federal Legislature Special Judicial Council shall be as follows:</p> <p>(a) Subject to this Constitution, the Federal Legislature Special Judicial Council shall, in the case of contradiction, has power to interpret the Constitution and Federal Laws and the matters relating to the Positions of the Persons of National Importance and the matters directly concerning to politics.</p> <p>Clarification: For the purpose of this clause, The Position of National Importance shall include the Head of the State, or the Executive Head or any position that is elected by the Legislature</p> <p>(b) Shall prepare a required list of the candidates for the Chief Justice and other Judges of the</p>		<p>proportional representatives from different classes, regions, gender etc. We believe that such body will recommend the judges based on these principles and it will help to maintain civilian supremacy that will enhance and ensure judicial responsibility.</p> <p>This Special Judicial Committee at the Federal Legislature is proposed for the recommendation and consultation on the appointment, disciplinary actions, and removal from services of the Chief Justice and other Judges of the Federal Supreme Court and other matters related to the Judicial Administration. The Vice- Chair of the Federal Legislature shall chair the Special Judicial Committee and the Federal Minister for Law and Justice shall be one of the members at the Committee. In addition to that, not exceeding 9 in number, the Federal Legislature shall elect other members of the Committee among its members proportionally and based on the principle of inclusiveness. This provision is incorporated in order to regulate these above mentioned provisos, and to determine function, power and duties of the Special Judicial Committee, and to adopt the principle of inclusiveness and proportion in the appointment of judges in all</p>
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	<p>Federal Supreme Court, on the basis of the principle of inclusiveness and proportional representation, and submit to the Federal Legislature for the approval. The Head of the State shall appoint the Chief Justice or any other Judge of the Federal Supreme Court to a person amongst the list as has been approved by the Federal Legislature.</p> <p>(c) Shall recommend to the Head of the State to remove or dismiss from the post, if a complaint against the Chief Justice or any other Judge is lodged on the ground that he/she is unable to perform their duties for reasons of incompetence, misbehavior or breach of code of conducts, or if it is established by available information, action taken or behaviors. The Head of the State shall approve the recommendation so presented.</p> <p>Provided that, while dismissing on a charge of corruption, there shall be in accordance with the decisions of the Special Court that is constituted by the Special Judicial Committee of Federal Legislature. The Federal Law shall determine the provision relating to the Special Court</p>	<p>the courts.</p> <p>This Special Judicial Committee at the Provincial Legislature is proposed for the recommendation and consultation on the appointment, disciplinary actions, and removal from services of the Chief Judge and other Judges of the Provincial High/Supreme Court and other matters related to the Judicial Administration. The Vice- Chair of the Provincial Legislature shall chair the Special Judicial Committee and the Provincial Minister for Law and Justice shall be one of the members at the Committee. In addition to that, not exceeding 9 in number, the Provincial Legislature shall elect other members of the Committee among its members proportionally and based on the principle of inclusiveness. This provision is incorporated in order to regulate these above mentioned provisos, and to determine function, power and duties of the Special Judicial Committee</p> <p>This Special Judicial Committee at the Local House of Representatives is proposed for the recommendation and consultation on the appointment, disciplinary actions, and removal from services of Judges of the</p>
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	<p>(d) The Special Judicial Committee of Federal Legislature shall constitute sub-committees as per necessity. The power, rights duties and procedure of the Special Judicial Committee of Federal Legislature and other sub-committees shall be as determined by law.</p> <p>(e) The functions carried out and the decision taken by the Special Judicial Committee of Federal Legislature and the decisions of the Special Court constituted pursuant to clause (b) shall be final. No appeal, complaint or writ can be lodged at any court against this.</p> <p><u>(3) Proportional method and principle of inclusiveness to be followed in the appointment of Judges:</u> The proportional method and the principle of inclusiveness on the basis of population shall be followed in the appointment of judges. Women, indigenious and ethnics, madhesies, dalits, muslims etc., shall also be included while appointing judges following the proportional method and principle of inclusiveness.</p>		<p>District/Local Court and other matters related to the Judicial Administration. The Vice- Chair of the Local House of Representatives shall chair the Special Judicial Committee. The Local House of Representatives shall elect other maximum 8 members of the Committee among its members proportionally and based on the principle of inclusiveness. This provision is incorporated in order to regulate these above mentioned provisions, and to determine function, power and duties of the Special Judicial Committee.</p>
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	<p>(4) The power, rights and duties of the Special Judicial Committee of Federal Legislature shall be as determined by Federal Law.</p> <p>(5) <u>Special Juridical Committee of Provincial Legislature</u>: There shall be a Special Judicial Committee in the Provincial Legislature to make recommendations and give advice in accordance with this Constitution concerning the appointment of, transfer of, disciplinary action against, and dismissal of the Chief Judge and other Judges of the Provincial High/ Supreme Court, and on other matters relating to judicial administration, which shall consist of as follows:-</p> <p>(a) The Vice-Chair of the Provincial Legislature – Chairperson</p> <p>(b) The Provincial Minister for Law and Justice – Member</p> <p>(c) Not exceeding nine members as elected by the Provincial Legislature amongst its members, based on the number of population represented in the Legislature, proportionally and on the basis of the principle of</p>		
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	<p>inclusiveness- Members</p> <p><u>(6) Power, Rights and Duties of Special Judicial Committee of Provincial Legislature:</u> The power, rights and duties of the Provincial Legislature Special Judicial Council shall be as follows:</p> <p>(a) Shall prepare a required list of the candidates, on the basis of the principle of inclusiveness and proportional representation, for the Chief Judge and other Judges of the Provincial Supreme Court and submit to the Provincial Legislature for an approval. The Head of the Province shall appoint the Chief Judge or any other Judge of the Provincial Supreme Court to a person amongst the list as has been approved by the Provincial Legislature.</p> <p>(b) Shall recommend to the Head of the Province to remove or dismiss from the post, if a complaint against the Chief Judge or any other Judge is lodged on the ground that he/she is unable to perform their duties for reasons of incompetence, misbehavior or breach of code of conducts, or if it is established by available information, action taken or behaviors. The Head of the</p>		
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	<p>Province shall approve the recommendation so presented.</p> <p>Provided that, while dismissing on a charge of corruption, there shall be in accordance with the decisions of the Special Court that is constituted by the Provincial Legislature Special Judicial Committee. The Provincial Law shall determine the provision relating to the Special Court</p> <p>(c) The Special Judicial Committee of the Provincial Legislature shall constitute sub-committees as per necessity. The power, rights duties and procedure of the Special Judicial Committee of Provincial Legislature and other sub-committees shall be as determined by law.</p> <p>(d) The functions carried out and the decision taken by the Special Judicial Committee of Provincial Legislature and the decisions of the Special Court constituted pursuant to clause (b) shall be final. No appeal, complaint or writ can be lodged at any court against this</p> <p>(7) Other power, rights and duties of the Special Judicial Committee of Provincial</p>		
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	<p>Legislature shall be as determined by Provincial Law.</p> <p>(8) <u>Special Juridical Committee of District/ Local House of Representatives:</u> There shall be a Special Judicial Committee in the District/Local House of Representatives to make recommendations and give advice in accordance with this Constitution concerning the appointment of, transfer of, disciplinary action against, and dismissal of the Judges of District/Local Courts, and on other matters relating to judicial administration, which shall consist of as follows:-</p> <p>(a) The Vice-Chair of the District/Local House of Representatives – Chairperson</p> <p>(b) Not exceeding eight members as elected by the District/Local House of Representative amongst its members, based on the number of population represented in the Legislature, proportionally and on the basis of the principle of inclusiveness- Members</p> <p>(9) <u>Power, Rights and Duties of the Special Judicial</u></p>		
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	<p><u>Committee of District/Local House of Representatives:</u> The power, rights and duties of the Special Judicial Committee of the District/Local House of Representatives shall be as follows:</p> <p>(a) Shall prepare a required list of the candidates, on the basis of the principle of inclusiveness and proportional representation, for judges District/Local Court and submit to the District/Local House of Representatives for an approval. The Head of the District/Local House of Representatives shall appoint Judges of District/Local Court to a person amongst the list as has been approved by the Provincial Legislature.</p> <p>(b) Shall recommend to the Head of the District/Local House of Representatives to remove or dismiss from the post, if a complaint against the any Judge is lodged on the ground that he/she is unable to perform their duties for reasons of incompetence, misbehavior or breach of code of conducts, or if it is established by available information, action taken or behaviors. The Head of the District/Local House of Representatives shall approve</p>		
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	<p>the recommendation so presented.</p> <p>(c) The Special Judicial Committee of the District/Local___House of Representatives shall constitute sub-committees as per necessity. The power, rights duties and procedure of the Special Committee of the District/Local___House of Representatives and other sub-committees shall be as determined by law.</p> <p>(d) The functions carried out and the decision taken by the Special Judicial Committee of District/Local___House of Representatives shall be final. No appeal, complaint or writ can be lodged at any court against this.</p> <p>(10) Other power, rights and duties of the Special Judicial Committee of the District/Local___House of Representatives shall be as determined by Provincial Law.</p> <p>(11) Proportional representation of provincial states and political parties, on the basis of castes, gender, class, and region, shall be integrated while constituting the Special Judicial</p>		
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	Committees pursuant to clause (1), (5) and (8).		
30. Federal Judicial Service Commission:	<p>(1) In appointing, transferring or promoting gazetted officers of the Judicial Service or in taking departmental action concerning such officers in accordance with law, the Government of Nepal shall act on the recommendation of the Federal Judicial Service Commission.</p> <p>Provided that, for the purpose of permanent recruitment to gazetted posts of the Judicial Service from persons who are not already in the Government Service or from persons being promoted from non-gazetted to gazetted posts within the Judicial Service, the Government of Nepal shall act on the recommendation of the Federal Public Service Commission.</p> <p>Clarification: For the purpose of this Article, the Federal Public Service Commission shall take open or internal examinations for the appointment to gazetted posts of the Federal Judicial Service.</p> <p>(2) The Federal Judicial</p>		<p>This provision is incorporated in order to recommend for the appointment, transfer, promotion or taking departmental action to the Gazetted Officer of the Federal Judicial Service and to conduct external and internal exams by the Federal Public Service Commission while making appointment for the post of Gazetted officers in the Federal Judicial Service. This provisions is proposed by upholding the existing provisions in regard to the Chair of the Judicial Service Commission, and to frame a necessary law for the composition, management and fixing the terms and conditions of the services of the Gazetted Officers of the Judicial Service.</p>

	<p>Service Commission shall consist of the following as its Chairperson and members</p> <p>(a) The Chief Justice of the Federal Supreme Court - Chairperson</p> <p>(b) The Federal Minister of Law and Justice - Member</p> <p>(c) The Senior-most Judge of the Federal Supreme Court - Member</p> <p>(d) The Chairperson of the Federal Public Service Commission - Member</p> <p>(e) The Federal Attorney General - Member</p> <p>(3) Other functions, duties, powers and procedures of the Federal Judicial Service Commission shall be as determined by law.</p>		
<p>31. Provincial Judicial Service Commission:</p>	<p>(1) In appointing, transferring or promoting gazetted officers of the Judicial Service or in taking departmental action concerning such officers in accordance with law, the Provincial Government shall act on the recommendation of the Provincial Judicial Service Commission.</p> <p>Provided that, for the purpose of permanent recruitment to gazetted posts of the Judicial Service from persons who are not already in the Government</p>		<p>This provision is incorporated in order to recommend for the appointment, transfer, promotion or taking departmental action to the Gazetted Officer of the Provincial Judicial Service and to conduct external and internal exams by the Provincial Public Service Commission while making appointment for the post of Gazetted officers in the Provincial Judicial Service. This provisions is incorporated to facilitate to make an Act in order to constitute, run and determine the terms and conditions of</p>

	<p>Service or from persons being promoted from non-gazetted to gazetted posts within the Judicial Service, the Provincial Government shall act on the recommendation of the Provincial Public Service Commission.</p> <p><u>Clarification:</u> For the purpose of this Article, the Provincial Public Service Commission shall take open or internal examinations for the appointment of gazetted posts of the Provincial Judicial Service.</p> <p>(2) The Provincial Judicial Service Commission shall consist of the following as its Chairperson and members</p> <p>(a) The Chief Judge of the Provincial High/ Supreme Court - Chairperson</p> <p>(b) The Provincial Minister of Law and Justice - Member</p> <p>(c) The Senior-most Judge of the Provincial Supreme Court - Member</p> <p>(d) The Chairperson of the Provincial Public Service Commission - Member</p> <p>(e) The Provincial Attorney General - Member</p> <p>(3) Other functions, duties, powers and procedures of the Provincial Judicial Service Commission shall be as</p>		<p>services to the provincial judicial gazetted officers and to fix the Chief Judge of the Province as the Chair of Provincial Judicial Service including four other members - the Provincial Minister for Law and Justice, Senior most Judge of the High/Supreme Court of the Province, Provincial Attorney General, and Provincial Public Service.</p>
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	determined by Provincial law		
32. Transitional Provision:	<p>(1) The existing Supreme Court, at the time of the commencement of this Constitution, shall be deemed to have been the Federal Supreme Court under this Constitution, and all the cases undergoing in the Supreme Court shall be transferred to the Federal Supreme Court. The Federal Supreme Court shall finalize these cases pursuant to prevailing laws.</p> <p>(2) The existing Appellate Courts of Nepal constituted pursuant to the Interim Constitution of Nepal 2007 shall be continuing until the Provincial High/Supreme Courts are constituted pursuant to Article 14, and after the constitution of the Provincial/High Courts, all the cases of under consideration of the Appellate Courts shall be transferred to the Provincial/High Court according to the jurisdiction. The Provincial High/Supreme Court shall finalize these cases pursuant to prevailing laws</p> <p>(3) The existing Districts Courts of Nepal shall be continuing until the District/Local Courts are</p>		<p>For the period between after promulgation of the new Constitution and until the new judicial institutions are constituted, the currently undergoing proceedings, activities and the judges need to be managed. Therefore, until the new mechanism is established, it is necessary to continue the currently existing judicial proceedings run by the current judges. We have to make this transitional arrangement paying attention into the transitional situation after dissolution of the current constitution and promulgation of the new constitution. All the ongoing cases at present in the Supreme Court will be transferred to the Supreme Court , all the ongoing cases at the Appellate Courts will be transferred to the Provincial High / Supreme Court in accordance with the suitable and appropriate jurisdiction, and the ongoing cases at the current Districts courts shall be transferred to the District/ Local courts according to the new arrangement of the jurisdiction. The respective courts shall finalize these cases as per the existing laws. Considering that it would be realistic to have a provision in this constitution on the re-incorporated constitutional bodies by this constitution and the procedure and bases of the appointment of the office-bearer in these bodies, we have provisioned that the Chief Justice and other Judges of the Federal Supreme Court shall be , ispo</p>

	<p>constituted pursuant to Article 23, and after the constitution of the District/Local Courts, all the cases of under consideration of the District/Local Courts shall be transferred to the District/Local Court according to the jurisdiction. The District/Local Court shall finalize these cases pursuant to prevailing laws.</p> <p>(4) The Martial Special Court constituted pursuant to existing laws shall be continuing until the Martial Special Court is constituted pursuant to this Constitution, and all the cases of under consideration of the previous Martial Special Court shall be transferred to the Martial Special Court constituted pursuant to this constitution. The Martial Special Court shall finalize these cases pursuant to prevailing laws.</p> <p>(5) The Chief Justice and other Judges working in the Supreme Court shall be ceased to hold office, if they are not reappointed within three months of the commencement of this Constitution.</p> <p>(6) The Chief Judge and other Judges working in the existing</p>	<p>facto, considered terminated from their service, in case they are not reappointed within 3 months of the promulgation of this constitution, and, similarly, if the Chief Judges and judges of the Provincial High/Supreme Courts or District Courts shall be , inspo facto, deemed terminated from their service if they are not reappointed within three months of the promulgation of this constitution.</p>
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	<p>Appellate and the District Courts shall be ceased to hold office, if they are not reappointed within three months of the formation of provincial mechanisms, after the commencement of this Constitution.</p>		
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Attorney General

Topic	The proposed provisions in the constitution	Which part of the constitution, article or section should include it	The reason why the provision is proposed, or interpretative Comment
<p><u>1. Attorney General</u></p>	<p>(1) There shall be an Attorney General in Federal Democratic Republic Nepal.</p> <p>(2) The Head of the State shall appoint the Attorney General on the recommendation of the Executive Head. In case the Head of the State is also the Executive Head, he shall appoint the Attorney General. The Attorney General shall hold office during the pleasure of the Executive Head.</p> <p>(3) The person who is qualified to be a Judge of the Federal Supreme Court shall be eligible to be appointed as the Attorney General.</p> <p>(4) The office of the Attorney General shall be deemed vacant under the following</p>		<p>According to the principle of the rule of law, the state must perform everything in accordance with law. For this, the government has to make its functions transparent, responsible, and under the principle of the due process of law. According to the jurisprudence of constitutional supremacy, the activities of the government can be examined anytime by the judicial review. In order to make the government's functions accurate and without mistake, it is appropriate to perform any act of the government based on the opinion of a legal expert since the persons in the government might not necessarily be a legal person always. Therefore, to make the acts of government free from mistake, to take decision by the government only based on legal opinion, to represent in the court on behalf of the government for pleading, defense</p>

	<p>circumstances -</p> <p>(a) if he/she submits a resignation in writing to the Head of the State through the Executive Head,</p> <p>(b) if the Head of the State removes him on the recommendation of the Executive head/ and in case the Head of the State is also the Executive Head, if he removes him/her from the office.</p> <p>(c) if he/she dies.</p> <p>(4) The remuneration and other facilities of the Attorney General shall be at par with that of a judge of the Federal Supreme Court. The other conditions of service of the Attorney General shall be as determined by law.</p>	<p>and for the protection of public interest, to secure state's interest, the provision of the Attorney General has been incorporated.</p> <p>The Attorney General should be a professional person having sufficient knowledge and skill in law, because he has to give legal opinion and advice on Constitutional matters to the Head of the State, the Federal Government, and the Legislature. Likewise, he holds final authority to make a decision as to whether or not to initiate proceeding in any case on behalf of the government in any court or judicial authority. Furthermore, he should take responsibility to represent in a court on behalf of the Government of Nepal in suits wherein the rights, interests and concerns of the government are involved, and he should also show his professional skills to run the criminal justice administration smoothly.</p> <p>To materialized the concept of the rule of law, and to provide legal opinion on constitutional and legal matters to the government of Nepal, the Attorney General has been projected (constitutional office bearer) as a legal advisor of the government, the head of the</p>
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		<p>prosecutors, and the final authority of the criminal justice administration. As a professional expert of constitution and law, the role of the Attorney General will be an adherent, and prominent legal and constitutional advisor to the Executive head. Therefore, we have provisioned that the Executive Head will decide, as per necessity, the tenure of the Attorney General. Taking into account the role and function of the Attorney General and considering that he should have certain skills and experiences on law, we have provisioned that the qualification of a person to be the Attorney General should be equivalent to the qualification of a judge of the Federal Supreme Court. Taking into consideration the magnitude and prominent status of Attorney General, the qualifications, remuneration, and conditions and facilities of services is prescribed equal to a judge of the Federal Supreme Court.</p>
<p>2. Functions, duties and powers of the Attorney General:</p>	<p>(1) The Attorney General shall be the Chief Legal Advisor to the Government of Nepal. It shall be the duty of the Attorney General to give opinions and advice on constitutional and legal matters to the Head of the State, the Government of Nepal and to such other authorities as</p>	<p>While the role of the Attorney General is provisioned in the constitution in order to develop a mechanism that gives opinions and advises on constitutional and legal matters to the Head of the State, the Federal Legislature, the Federal Government and to the persons and bodies to whom the government has prescribed to</p>

	<p>the Government of Nepal may specify.</p> <p>(2) The Attorney General or officers subordinate to him/her shall represent the Government of Nepal in suits in which the rights, interests or concerns of the Government of Nepal are involved. Unless this Constitution otherwise requires, the Attorney General shall have the right to make the final decision to initiate proceedings in any case on behalf of the Government of Nepal in any court or judicial authority.</p> <p>(3) Opinions of the Attorney General may be taken while withdrawing the suits prosecuted by the Government of Nepal.</p> <p>(4) The Attorney General shall have the power to appear and express his/her opinion on any legal question in the Federal Legislature, or any committee meetings.</p> <p>Provided that he/she shall not have the right to vote.</p> <p>(5) In the course of discharging his/her official duties, the Attorney General shall have the right to appear before any court, office or authority of Nepal</p>	<p>give legal opinion or advice, the duty of the Attorney general will be to provide legal and constitutional opinions to the aforesaid authorities as per necessity. Similarly, the Attorney General shall have power to represent in a court on behalf of the Government of Nepal in suits wherein the rights, interests and concerns of the government are involved and also he has power to decide as to whether or not to initiate proceeding in any case on behalf of the government in any court or judicial authority. Considering the fact that the Attorney General himself and his subordinate/ junior employees /bureaucrat are expert in constitution and law, the power whether or not to initiate proceeding in any case on behalf of the government in any court or judicial authority has been conferred on the Attorney General so that they all exercise their expertise and analyze the legal aspects of the case before they make a final decision. We have provisioned that the Attorney General might delegate its power to subordinates as per necessity.</p> <p>As the Attorney General holds final authority as to whether or not to initiate proceeding in any case on behalf of the government in any court or judicial authority, it would be more rational if the government takes legal opinions with the Attorney General while making a decision of withdrawal</p>
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	<p>(6) While discharging duties under clause (2), the Attorney General shall have authority as follows -</p> <p>(a) to appear on behalf of the Government of Nepal when the latter is bringing or defending litigation.</p> <p>(b) to monitor or cause to be monitored the interpretation of law and implementation of the legal principles propounded by the Supreme Court in the course of litigation.</p> <p>(c) on the basis of complaints or information received by him by any means, to investigate allegations of inhumane treatment of any person in custody, or that any such person was not allowed to meet his/her relatives directly in person or through legal practitioners, and give necessary directions under this Constitution to the relevant authorities to prevent the recurrence of such a situation.</p> <p>(7) In addition to the functions, duties and rights as set out in this Article, the other functions, duties and rights of the Attorney General shall be as determined by this Constitution and other laws.</p> <p>(8) The Attorney General may delegate his functions, duties</p>		<p>of a case. We also have seen a supportive contribution of the Attorney General if he holds a power to monitor regarding the implementation of precedents of the Supreme Court, investigate on the application filed as to inhuman treatment and denial of counseling with an attorney or meeting with relatives in custody. The Attorney General may give an order to the involved officer or authority to stop such inhuman treatment and unconstitutional attitude in the custody. By providing such authority to the Attorney General, we believe, it may make a special contribution to the protection of human rights.</p> <p>Since the Attorney General is the chief legal advisor of the government and holds final responsibility to the criminal justice administration of the country, there would be effective implementation of the decisions and precedents of the Federal Supreme Court if the Attorney General holds authority to monitor and supervise the implementation status of the decisions by the government and government agencies. As the Attorney General has made a constitutional body in order to give legal opinion to the President and the Government, he might have to be present in the discussion in the Federal</p>
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	and power under this Article to his/her subordinates, to be exercised in compliance with the conditions specified.		Legislature in the different situations to make clear on legal and constitutional matters in the Federal Legislature. If so, there would be easier to be present a legal expert and clear the issues. Therefore we have provisioned to allow the Attorney General to be present at the joint or single session of the Legislature present legal opinions.
3. Prosecutor General:	<p>(1) There shall be a Prosecutor General, as determined by law, under the control and direction of the Attorney General.</p> <p>(2) The appointment, qualification, conditions of service, and functions, duties and right of the Prosecutor General shall be as specified by law.</p>		The state is solely responsible to maintain peace and prosperity in the country. While talking about the serious crimes, it seems that the state has to be proactive to prohibit such crimes and maintain peace and prosperity. It is also duty of the state to prosecute the criminals in the court after necessary investigation and punish them as per law. For this, the Criminal Jurisprudence requires certain qualifications, skills, and experiences of the prosecutors. Therefore, in order to make the criminal justice administration efficient, we have provisioned for appointment of the Prosecutor General among the persons who have gained professional expertise, and the prosecutor will be working under the Attorney General, as specified by law.
4. Annual Report:	(1) The Attorney General shall, every year, prepare an annual report on the works he/she has performed in accordance with this constitution and other laws,		However, the Attorney General exercises executive power, it remains as an independent body like other constitutional bodies. In order to enhance transparency,

	<p>and submit it to the Head of the State, and the Head of the State shall present the same to the Federal Legislature via the Executive Head.</p> <p>(2) The report under clause (1) shall, in addition to other matters, cover the number of instances of constitutional and legal advice given in the year by the Attorney General, a discussion of cases prosecuted by the government, a summary of cases involving the government as either plaintiff or defendant, a report of crimes, and recommendations for future improvements in cases brought by the government.</p>		<p>the Attorney General is required to prepare its annual report and submit it to the Head of the State. Then, the Head of the state presents the report in the Federal Legislature through the Executive Head. It seems appropriate to incorporate a provision for public notice by the Office of the Attorney General once in a year in regard to opinions and advices presented before the government on legal and constitutional matters, the number of cases in which the government has been prosecutor or defendant, the reforms to be carried in the future and other activities</p>
<p>5. Provincial Attorney General:</p>	<p>1) There shall be an Attorney General in each province of Federal Democratic Republic Nepal.</p> <p>(2) The Head of the Province shall appoint the Provincial Attorney General on the recommendation of the Executive Head. In case the Head of the Province is also the Executive Head, he shall appoint the Provincial Attorney General. The Provincial Attorney General shall hold office during the pleasure of the Executive Head.</p> <p>(3) The person who is qualified to be a Judge of the</p>		<p>Under the framework of the Rule of Law, the state must perform everything in accordance with law. For this, the government has to make its functions transparent, responsible, and under the principle of the due process of law. In order to make the government's functions accurate and without mistake, it is appropriate to perform any act of the government based on the opinion of a legal expert since the persons in the government might not necessarily be a legal person always. Therefore, to make the acts of government free from mistake, to take decision by the government only based on legal opinion the provision of the Provincial Attorney General has been incorporated.</p>

	<p>Provincial/High Supreme Court shall be eligible to be appointed as the Provincial Attorney General.</p> <p>(4) The office of the Provincial Attorney General shall be deemed vacant under the following circumstances -</p> <p>(a) if he/she submits a resignation in writing to the Head of the Province through the Executive Head,</p> <p>(b) if the Head of the Province removes him on the recommendation of the Executive head/ and in case the Head of the Province is also the Executive Head, if he removes him/her from the office.</p> <p>(c) if he/she dies.</p> <p>(5) The remuneration and other facilities of the Provincial Attorney General shall be at par with that of a judge of the Provincial High/Supreme Court. The other conditions of service, functions, duties and rights of the Provincial Attorney General shall be as determined by provincial law.</p>		<p>The provision for the Provincial Attorney General is necessary in order to give legal opinions on constitutional and legal matters, as a Chief Legal Advisor, to the Head of the Province, the Provincial Government, and the Provincial Legislature and to other bodies or officers under the government. Moreover, it is also necessary to project the Provincial Attorney General as a chief prosecutor, and responsible constitutional office bearer for the criminal justice administration. Given the situation that the Executive Heads appoints only a constitutional and legal expert of his pleasure, the tenure of the Provincial Attorney General exist until the pleasure of the Provincial Executive Head. Therefore, this provision is developed in this line. The person who gets appointed as the Attorney General shall have certain knowledge and skill. Therefore we have provisioned that only a person who is qualified to be the Chief Judge of the Province can be appointed as the Provincial Attorney General. Taking into consideration the magnitude and prominent status of Attorney General, the qualifications, remuneration, and conditions and facilities of services is prescribed equal to a</p>
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			judge of the Provincial High/ Supreme Court.
6. Functions, duties and powers of the Provincial Attorney General:	<p>(1) The Provincial Attorney General shall be the Chief Legal Advisor to the Provincial Government. It shall be the duty of the Provincial Attorney General to give opinions and advice on constitutional and legal matters to the Head of the Province, to the Provincial Government and to such other authorities as the Provincial Government may specify.</p> <p>(2) The Provincial Attorney General or officers subordinate to him/her shall represent the Provincial Government in suits in which the rights, interests or concerns of the Provincial Government are involved. The Provincial Attorney General shall have the right to make the final decision to initiate proceedings in any case on behalf of the Provincial Government in any court or judicial authority.</p> <p>(3) Opinions of the Provincial Attorney General may be taken while withdrawing the suits prosecuted by the Provincial Government.</p> <p>(4) The Provincial Attorney</p>		<p>The provision in regard to the Provincial Attorney General is developed in order to give legal opinions and advises on constitutional and legal matters to the Head of the Province, the Provincial Legislature, and the Provincial Government and to the persons and bodies to whom the government has prescribed to give legal opinion or advice. Similarly, the Attorney General shall have power to represent in a court on behalf of the Provincial Government in suits wherein the rights, interests and concerns of the government are involved and also he has power to decide as to whether or not to initiate proceeding in any case on behalf of the government in any court or judicial authority. Considering the fact that the Attorney General himself and his subordinate/ junior employees /bureaucrat are expert in constitution and law, the power whether or not to initiate proceeding in any case on behalf of the government in any court or judicial authority has been conferred on the Attorney General so that they all can exercise their expertise and analyze the legal aspects of the case before they make a final decision.</p> <p>As the Provincial Attorney General is the Chief legal advisor of the provincial government, it is appropriate to give him</p>

	<p>General shall have the power to appear and express his/her opinion on any legal question in the Provincial Legislature, or any committee meetings.</p> <p>Provided that he/she shall not have the right to vote.</p> <p>(5) In the course of discharging his/her official duties, the Provincial Attorney General shall have the right to appear before any court, office or authority of Province.</p> <p>(6) While discharging duties, the Provincial Attorney General shall have authority as follows -</p> <p>(a) to appear on behalf of the Provincial Government when the latter is bringing or defending litigation.</p> <p>(b) to monitor or cause to be monitored the interpretation of law and implementation of the legal principles propounded by the Provincial High/ Supreme Court in the course of litigation.</p> <p>(c) on the basis of complaints or information received by him by any means, to investigate allegations of inhumane treatment of any person in custody, or that any such person was not allowed to meet his/her</p>		<p>authority to monitor the decisions or precedents of the Provincial High/ Supreme Court to be implemented by the Provincial Government. Similarly, it is also appropriate to give him the final authority for the protection of human rights of the persons in police custody.</p> <p>Since the Provincial Attorney General is the chief legal advisor of the Provincial government, he might have to be present in the discussion in the Provincial Legislature in the different situations to make clear on legal and constitutional matters. If so, there would be easier to be present a legal expert and clear the issues. Therefore we have provisioned to allow the Attorney General to be present at the joint or single session of the Legislature present legal opinions.</p>
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	<p>relatives directly in person or through legal practitioners, and give necessary directions under this Constitution to the relevant authorities to prevent the recurrence of such a situation.</p> <p>(7) In addition to the functions, duties and rights as set out in this Article, the other functions, duties and rights of the Provincial Attorney General shall be as determined by this Constitution and other laws.</p> <p>(8) The Provincial Attorney General may delegate his functions, duties and power under this Article to his/her subordinates, to be exercised in compliance with the conditions specified.</p>		
<p>7. Provincial Prosecutor General:</p>	<p>(1) There shall be a Provincial Prosecutor General, as determined by provincial laws at need, under the control and direction of the Provincial Attorney General.</p> <p>(2) The appointment, qualification, conditions of service, and functions, duties and right of the Provincial Prosecutor General shall be as specified by provincial laws.</p>		<p>The state has responsibility to prosecute the criminals in the court and to punish the criminals in order to maintain peace and prosperity in the society. Therefore, for the first time in the history of Nepal, the constitution has given mandate, as per necessity, and based on the Criminal Jurisprudence, to the government to appoint a competent, skillful, qualified and experienced person as a Prosecutor General. Furthermore, we have provisioned that the law will determine the appointment, qualification, terms and conditions of the service, and</p>

			power, rights and duties of the Provincial Prosecutor General.
8. Annual Report:	<p>(1) The Provincial Attorney General shall, every year, prepare an annual report on the works he/she has performed in accordance with this constitution and other laws, and submit it to the Head of the Province, and the Head of the Province shall present the same to the Provincial Legislature via the Executive Head.</p> <p>(2) The report under clause (1) shall, in addition to other matters, cover the number of instances of constitutional and legal advice given in the year by the Provincial Attorney General, a discussion of cases prosecuted by the government, a summary of cases involving the government as either plaintiff or defendant, a report of crimes, and recommendations for future improvements in cases brought by the government.</p>		<p>The Constitution has required that the Provincial Attorney General shall prepare and present its annual report to the Head of the State and then the Head of the state presents the report in the Provincial Legislature through the Executive Head for discussion. By this, we expect that it helps establishing the role of the Provincial Attorney General to run the criminal justice administration efficiently and to control crimes in the province. Similarly, we also expect that the publication of the annual report brings out the criminal activities of the province and that helps maintaining peace and security in the province</p>
9. District/Local Prosecutor:	<p>(1) Every District/Local unit shall have a District/Local Prosecutor.</p> <p>(2) The appointment, qualification, conditions of service, and functions, duties and right of the District/Local Prosecutor shall be as specified by provincial laws.</p>		<p>The major responsibility for the investigation of crime and prosecution lies on the prosecutor at local level. According to the principles of the Criminal Jurisprudence, if the situation is created that the investigation and prosecution of crime is carrying out by a non-qualified, incompetent and inexperienced person, it will not only promote the impunity and</p>

			<p>chaos in the society but also might raises a question to the government on its effectiveness. Therefore, we have provisioned that every local unite shall have a competent, skillful and experienced local/ district prosecutor. The provincial law shall determine the appointment, qualification, facilities and terms and conditions of services of the prosecutor.</p>
<p>10. Provisions relating to conditions of service of the Government Prosecutors</p>	<p>The remuneration and other conditions of service of the Government Prosecutors shall be as determined by laws, at par, on age of retirement, remuneration, service, conditions and facilities, with that of a judge of the Federal Supreme Court, Provincial High/Supreme Court and District/Local Court</p>		<p>The government prosecutors are directly linked up with the criminal justice administration and they are working purely as a professional and an expert. In the absence of efficient criminal justice administration, the society can not maintain peace and security, consequently the impunity gets promoted. Therefore, to make this profession more professional, efficient, respectful and responsible, the constitution has contained the provisions in regard to the government prosecutors. The prosecutors are not only legal advisors of the government but also they represent in a court on behalf of the Government in suits wherein the rights, interests and concerns of the government are involved and also decide as to whether or not to initiate proceeding in any case on behalf of the government in any court or judicial authority. In this way, the position of the government prosecutors is highly professional and specialist. This provision in the constitution is incorporated looking at the professional sensitivity, and to</p>

			<p>promote professional skills of the prosecutors and make them honest, responsible and to be proud of their profession and also to make responsible to the criminal justice system Furthermore, this provision also focuses on to make equivalent provisions, by making laws, for the appointment, qualification, remuneration, retirement age, terms and conditions of service and facilities of prosecutors like a judge of the Federal Supreme Court, Provincial High/Supreme Court, and local courts.</p>

Hon. Chair Person,
Committee on Judicial System
The Constitution Assembly

Ref: Submission of Dissenting Opinions

We, the following Constituent Assembly Members, have submitted our dissenting opinions, within the prescribed timeframe, on the heading of Transitional Provision of the proposed provision of the Constitution. We hereby request to record our dissenting opinions with the Concept Paper prepared by the Committee on Judicial System.

Name and Signature of the Constituent Assembly Members:

Name of the Constituent Assembly Members	Signature	Name of the Constituent Assembly Members	Signature
1. Aamod Prasad Upadhyaya		10. Radheshyam Adhikari	
2. Kamala Thapa		11. Ramkrishna Chitrakar	
3. Kalyani Rijal		12. Ramnath Dhakal	
4. Kunti Kumari Shahi		13. Rima Kumari Nepali	
5. Jogi Lal Yadab		14. Laxmi Lal Chaudhari	
6. Dambar Bahadur Khadka		15. Lila Subba	
7. Durga Linkha		16. Bimala Nepali	
8. Narayani Devi Ghimire Aryal		17. Shanti Maya Tamang	
9. Man Bahadur Mahato		18. Sabitri Singh	

Dissenting opinions on the re-appointment of judges or oath to be taken to the new Constitution under the heading of the Transitional Provision

In order to make consensus, the above-mentioned matter was presented in the working schedule of the meeting of the Committee on the Judicial System for discussion, however, the decision was taken without proper management of the procedure. Therefore, we hereby would like to notify that we have produced our dissenting opinions against the decision.

While the matter of reappointment of judges is also connected with the other constitutional posts, decision should be taken for all the constitutional posts together, and we hereby mention our dissenting opinions that this committee does not have jurisdiction to take a decision on this matter as this subject matter does not fall under the jurisdiction of the Committee on Judicial System, rather it falls under the jurisdiction of the Constitutional Committee of the Constituent Assembly.

Name and Signature of the Constitution Assembly Members :

Name of the Constituent Assembly Members	Signature	Name of the Constituent Assembly Members	Signature
1. Aamod Prasad Upadhyaya		11. Radheshyam Adhikari	
2. Eknath Dhakal		12. Ramkrishna Chitrakar	
3. Kamala Thapa		13. Ramnath Dhakal	
4. Kalyani Rijal		14. Rima Kumari Nepali	
5. Kunti Kumari Shahi		15. Laxmi Lal Chaudhari	

6. Jogi Lal Yadab		16. Lila Subba	
7. Dambar Bahadur Khadka		17. Bimala Nepali	
8. Durga Linkha		18. Shanti Maya Tamang	
9. Narayani Devi Ghimire Aryal		19. Sabitri Singh	
10. Man Bahadur Mahato			

Hon. Chair Person,
Committee on Judicial System
The Constituent Assembly

Ref: Submission of Dissenting Opinions

We, the following Constituent Assembly Members, have submitted our dissenting opinions, within the prescribed timeframe, on the heading of Chief Justice of the proposed provision in the Constituent. We hereby request to record our dissenting opinions with the Concept Paper prepared by the Committee on Judicial System.

Name and Signature of the Constitution Assembly Members:

Name of the Constituent Assembly Members	Signature	Name of the Constituent Assembly Members	Signature
1. Aamod Prasad Upadhyaya		11. Radheshyam Adhikari	
2. Eknath Dhakal		12. Ramkrishna Chitrakar	
3. Kamala Thapa		13. Ramnath Dhakal	
4. Kalyani Rijal		14. Rima Kumari Nepali	
5. Kunti Kumari Shahi		15. Laxmi Lal Chaudhari	
6. Jogi Lal Yadab		16. Lila Subba	
7. Dambar Bahadur Khadka		17. Bimala Nepali	
8. Durga Linkha		18. Shanti Maya Tamang	
9. Narayani Devi Ghimire Aryal		19. Sabitri Singh	
10. Man Bahadur Mahato			

Dissenting opinions on the qualifications of Chief Justice

The opinions of the members in the Committee have been divided on whether or not the qualification of the Chief Justice should be limited similar to the qualifications of other judges of the Supreme Court, or should have some additional qualifications such as, has worked certain years as a Judge at the Supreme Court. We, the following Constituent Assembly Members, hereby would like to mention our dissenting opinion as follows:

1. It has been argued that the Chief Justice of the Supreme Court should be appointed from outside, who meet the qualifications of a judge of the Supreme Court, in order to apply the proportional representation and inclusiveness. Whereas the Chief Justice is the single post, and for the single post it is not possible to appoint from different level, communities and groups applying the proportional and inclusiveness method. We agree, however, that there should be proportional and inclusiveness method used for the appointment of multiple posts (such as judges at the Supreme Court). While the proportional and inclusiveness method adopted by the new Constitution opens a door for the appointment of judges from different sectors, it will also opens a door to the judges to be the Chief Justice from all the sectors on the basis of inclusiveness and proportional method.
2. While appointing the Chief Justice directly from outside, and if he/she is appointed under the political inspiration and favoritism, it may not only bring an awful result to the entire judiciary but also makes an irreparable loss to the whole administration of justice. Underlying this fact the concerns of the Judiciary have drawn attention in order to consider on this matter. The Committee should take these opinions seriously and get decision with proper attention.

3. There is also a next question connected with this. The person who is appointed as a Judge of the Supreme Court is not necessarily to be free from political allegation, and why the Chief Justice cannot be appointed on the same basis? The question is considerable!

Even if in the past someone might have political affiliation, however it is natural to expect after the appointment of a judge that he /she performs his/her new role independently and impartially. In this situation too, the philosophical aspiration of a person and his background is still affecting in his/her present work. There are many judges in the Supreme Court. If the judges, even having different background and philosophy, make a collective decision or dispense justice collectively, it helps creating a balance. By doing so, even the person who has political color may be converted himself into judicial culture and if someone is appointed as the Chief Judge amongst them, the culture of political color would be reduced and the judicial culture would be enlarged.

The provision that contains appointing Chief Justice directly from outside does not support to make the judiciary stable. Rather, it creates a situation that the leadership of the judiciary may be altering with every political change in the country. There might be a long term effect of political liquidity. Due to these reasons too, the Chief Justice of the Supreme Court should be appointed from amongst the judges of the Supreme Court.

4. There is equal status between the Chief Justice and any other judges of the Supreme Court while they are performing a judicial act. There is a general consensus of the people that the new Constitution also continues the same standard. Considering the fact that the Chief Justice of the Supreme Court has additional and grave responsibility to lead and administer the judiciary, we see prudent to appoint the Chief Justice from among the Judges of the Supreme Court who has been already used to with the judicial culture. Therefore we have presented these dissenting opinions.

Hon. Chair Person,
Committee on Judicial System
The Constitution Assembly

Ref: Submission of Dissenting Opinions

We, the following Constituent Assembly Members, have submitted our dissenting opinions, within the prescribed timeframe, on the heading of Appointment of Provincial High/Supreme Court in the proposed provision of the Constitution. We hereby request to record our dissenting opinions with the Concept Paper prepared by the Committee on Judicial System.

Name and Signature of the Constitution Assembly Members:

Name of the Constituent Assembly Members	Signature	Name of the Constituent Assembly Members	Signature
1. Aamod Prasad Upadhyaya		11. Radheshyam Adhikari	
2. Eknath Dhakal		12. Ramkrishna Chitrakar	
3. Kamala Thapa		13. Ramnath Dhakal	

4. Kalyani Rijal		14. Rima Kumari Nepali	
5. Kunti Kumari Shahi		15. Laxmi Lal Chaudhari	
6. Jogi Lal Yadab		16. Lila Subba	
7. Dambar Bahadur Khadka		17. Bimala Nepali	
8. Durga Linkha		18. Shanti Maya Tamang	
9. Narayani Devi Ghimire Aryal		19. Sabitri Singh	
10. Man Bahadur Mahato			

Dissenting opinions on the mechanism of appointment of Chief Judge and other Judges of Provincial High/ Supreme Court

The committee has been divided on the appointment of the Chief Judge and other Judges of the Provincial High/Supreme Court that whether they should be appointed from the central mechanism or the provincial mechanism. We, the following Constituent Assembly Members, hereby present our dissenting opinions on this matter as follows:

1. While the new Constitution has given power to Provincial High/Supreme Court to hear writ and to interpret the Constitution and laws under the extra dictionary jurisdiction, there has to be uniformity in the interpretation of the Constitution and laws. The uniformity of the interpretation can only be established; if the interpretation is taken place taking into account the decisions produced by the different provinces. Otherwise, there would be judicial anarchy. The same law cannot be interpreting differently in the two provinces of a State. Therefore, to expect uniformity in the decision between the two Provincial/High Court is not unnatural. Therefore, it is more rational to appoint judges of Provincial/High Courts from the same central mechanism.
2. If a judge is appointed in the Provincial High/Supreme Court by the provincial mechanism, it is difficult to transfer him to a next province. In this situation, judges of one province will deprive of collecting experiences from other

provinces. We should not restrain the rights of judges to be transferred and work in the different provinces.

3. The judges of the High/Supreme Court are the major human resources bank for the appointment of the judges of the Supreme Court. The Supreme Court will be more matured with the maturity of these Judges. We should not limit the judges from being the judges of all the High/Supreme Courts of the country rather than being a Judge of only one Provincial High/Supreme Court. We, now, have to pay our attention to this matter.
4. There is a consensus at the public that Judges or employees of Local Courts will be appointed by the Provincial Mechanism. Similarly, it is also undisputable that the employees of the Provincial High/Supreme Courts are appointed by the Provincial Mechanism. Therefore, if, only the Judges of the Provincial High/Supreme Courts are appointed by the Central Mechanism, (a) it may help bringing the uniformity in the interpretation of law, (b) to have a provision in order to transfer the judges across the country, (c) to make easy for the appointment of the Judges of the Supreme Court from other provinces of the State, which are the major human resources. Therefore, we have decided to present our dissenting opinions.

Hon. Chair Person,
Committee on Judicial System
The Constitution Assembly

Ref: Submission of Dissenting Opinions

We, the following Constituent Assembly Members representing our party Madheshi Janaadhikar Forum, have submitted our dissenting opinions on the Concept Paper of the Committee on Judicial System as follows:

1. Regarding the interpretation of the Constitution
2. The issues related to national concerns
3. The issues related to human rights and citizen's concerns
4. The issues related to political matters

For the interpretation of above-mentioned matters, a separate Constitutional Court should be constituted, and the status of this court should be made equal to the Supreme Court.

The establishment of the Constitutional Court should be fully based on inclusiveness and proportional representation including from the provinces.

Name and Signature of the Constitution Assembly Members:

1. Hon. Akbal Ahamad Shah
2. Hon. Abhisek Pratap Shah
3. Hon. Surina Kumari Shah

Madheshi Janaadhikar Forum

Hon. Chair Person,
Committee on Judicial System
The Constitution Assembly

Ref: Submission of Dissenting Opinions

We, the following Constituent Assembly Members, have submitted our dissenting opinions, within the prescribed timeframe, on the heading of Appointment and Proceeding of Actions to Judges in the proposed provision of the Constitution. We hereby request to record our dissenting opinions with the Concept Paper prepared by the Committee on Judicial System.

Name and Signature of the Constitution Assembly Members:

Name of the Constituent Assembly Members	Signature	Name of the Constituent Assembly Members	Signature
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1. Aamod Prasad Upadhyaya		11. Radheshyam Adhikari	
2. Eknath Dhakal		12. Ramkrishna Chitrakar	
3. Kamala Thapa		13. Ramnath Dhakal	
4. Kalyani Rijal		14. Rima Kumari Nepali	
5. Kunti Kumari Shahi		15. Laxmi Lal Chaudhari	
6. Jogi Lal Yadab		16. Lila Subba	
7. Dambar Bahadur Khadka		17. Bimala Nepali	
8. Durga Linkha		18. Shanti Maya Tamang	
9. Narayani Devi Ghimire Aryal		19. Sabitri Singh	
10. Man Bahadur Mahato			

Dissenting opinions presented against the mechanism of appointment and Proceedings of actions of Judges

The members of the committee have been divided in regard to the appointment and proceedings of actions to judges that whether the Judicial Council or the Legislature should appoint judges or actions proceed against judges. We, the following Constituent Assembly Members, hereby present our dissenting opinions on this matter as follows:

1. There is no doubt that the Judiciary should be independent, competent, effective and accountable in a democratic system. Independency of the Judiciary is the pre-condition of establishment of the Rule of Law and Constitutional Supremacy. The involved persons should play a role to keep the judiciary independent, competent, effective and accountable who work in the Judiciary should. Furthermore, the performance of the judiciary lies on the judges.

2. To keep the judiciary independent, it is very much important to know, in addition to the service, conditions, and facilities, that by which mechanism the judges are appointed. If the parliament hearing is effectively carried out in addition to the existing tradition, in which the Judicial Council appoints the judges, the appointments of judges becomes accountable, and also the dismissal or actions to be proceed to judges can be regulated by making laws. On the contrary, if judges are recommended by the legislature or any committee at the legislature, and approval or ratification of the appointment by the legislature on the recommendation, the judiciary becomes likely a body under the legislature. In a democratic system under the principle of separation of power, the power of the states is divided in which the legislature makes laws, the executive implements the laws and the judiciary interprets the laws. Provided that, if the legislature holds the sole power of the State to form an organ of the state or holds power to supervise, control and monitor the state organs, the judiciary can not be imagined as an independent and competent. Consequently, the country heads toward dictatorship and anarchism.
3. The Constituent Assembly has to make the proposed Constitution. This Constitution sets up the legislature, executive and judiciary. The importance and value of the Constituent Assembly would only be realized; in the case the new Constitution could uphold the Constitutional Supremacy. While writing a written Constitution, if the legislative is made more powerful than the Constitution itself, there is highly a chance of centralizing the power at the legislature, which we never have wished.

Furthermore, today the Country is heading toward federalism. The Constitutional Supremacy is more required in a federal system. Only the judiciary resolves the disputes between and among the provinces. In this situation, if judges are appointed by the legislature, it may always invite political bias in the appointment of judge and it also affects the independent judicial proceeding. If so, it would be against the federal system.

4. The first meeting of the Constituent Assembly, with an unprecedented majority, declared Nepal as a Federal Republic Democratic Country. The Federal Republic Democratic means a system of pluralism, decentralization and always responsible to the people. Keeping the political party on the background, by centralizing power in the legislature and making a provision to appoint judge by the legislature, limiting the rights of judiciary working independently and

competently, it seems that this is the first step of a plan to impose dictatorship in the country.

5. Therefore, due to the above-mentioned reasons, we, the following Constituent Assembly Members have presented our dissenting opinions stating that the appointment of judges should be carried out on the recommendation of the Judicial Council and following the parliamentary hearing.

Hon. Chair Person,
Committee on Judicial System
The Constitution Assembly

Ref: Submission of Dissenting Opinions

We, the following Constituent Assembly Members, have submitted our dissenting opinions, within the prescribed timeframe, on whether the Federal Supreme Court or the Committee of the Legislature should interpret the Constitution and laws. We hereby

request to record our dissenting opinions with the Concept Paper prepared by the Committee on Judicial System.

Name and Signature of the Constitution Assembly Members:

Name of the Constituent Assembly Members	Signature	Name of the Constituent Assembly Members	Signature
1. Aamod Prasad Upadhyaya		11. Radheshyam Adhikari	
2. Eknath Dhakal		12. Ramkrishna Chitrakar	
3. Kamala Thapa		13. Ramnath Dhakal	
4. Kalyani Rijal		14. Rima Kumari Nepali	
5. Kunti Kumari Shahi		15. Laxmi Lal Chaudhari	
6. Jogi Lal Yadab		16. Lila Subba	
7. Dambar Bahadur Khadka		17. Bimala Nepali	
8. Durga Linkha		18. Shanti Maya Tamang	
9. Narayani Devi Ghimire Aryal		19. Sabitri Singh	
10. Man Bahadur Mahato			

Dissenting opinions presented on whether the Federal Supreme Court or the Committee of the Legislature should interpret the Constitution and laws

The members of the committee have been divided on whether the Federal Supreme Court or the Committee of the Legislature should interpret the Constitution and laws. We, the following Constituent Assembly Members, hereby present our dissenting opinions on this matter as follows:

1. The function of the legislature is to make laws, whereas the function of the executive is to implement it. Similarly, the judiciary interprets the laws. In democratic countries, the power of the state is separated in this way under the

principle of separation of power. Leaving this principle aside and making all the organs of the state under the parliament, the entire power of the state should not be centralized in the parliament at any cost.

2. If the legislature itself is involving in making laws, interpretation of laws, hearing complaints and making decision on the complaints, it acquires centralized power of the state. Conferring too much power on any organ of the states invites anarchism and dictatorship. Through the Constituent Assembly, the Nepalese people never wished to see such centralized power in the state.
3. The consensus was made to go for federalism as the Kathmandu based unitary ruling system did not address the problems of people. The Nepalese people have always desired to see political, economic, social, and cultural progress of the country and people from the local level. The same political parties, that had strongly stood in their election manifesto during the election campaigning, are now of the opinions that the central government should form, direct, and supervise all the organs of provincial governments. In this situation, if the jurisdiction to resolve disputes between the central and provincial governments or between or among the provincial governments of the court is removed and placed under the Federal Legislature, it definitely extends the role of the central government. It seems that the power of the Federal Legislature has been unnecessarily increased cutting the roots of the federalism itself.
- (4) The task to interpret laws belongs to the judiciary; the legislature cannot do it. The legislature has always power to amend or correct laws in the case that the judiciary interprets inappropriately. In this situation, knowing everything, if the legislature has been made unnecessarily powerful, we cannot support it, as if the same person becomes witch and witch- doctor at a time.
- (5) Therefore, the following Constituent Assembly Members, who have been standing for giving power to the judiciary in order to interpret laws independently and to make a final decision on the disputes presented before it, have presented this dissenting opinions.

Hon. Chair Person,
Committee on Judicial System
The Constitution Assembly

Ref: Submission of Dissenting Opinions

We, the following Constituent Assembly Members, would like to submit our dissenting opinions on the Concept Paper of the Committee on the Judicial System and Preliminary Draft of the Constitution.

Name and Signature of the Constitution Assembly Members:

Name of the Constituent Assembly Members	Signature	Name of the Constituent Assembly Members	Signature
1. Aamod Prasad Upadhyaya		11. Radheshyam Adhikari	
2. Eknath Dhakal		12. Ramkrishna Chitrakar	
3. Kamala Thapa		13. Ramnath Dhakal	
4. Kalyani Rijal		14. Rima Kumari Nepali	
5. Kunti Kumari Shahi		15. Laxmi Lal Chaudhari	
6. Jogi Lal Yadab		16. Lila Subba	
7. Dambar Bahadur Khadka		17. Bimala Nepali	
8. Durga Linkha		18. Shanti Maya Tamang	
9. Narayani Devi Ghimire Aryal		19. Sabitri Singh	
10. Man Bahadur Mahato			

Dissenting opinions presented on the Concept Paper of the Committee on the Judicial System and Preliminary Draft of the Constitution

We, the following Constituent Assembly Members, would like to submit our dissenting opinions on the Concept Paper of the Committee on the Judicial System and Preliminary Draft of the Constitution as follows:

1. We have already presented our dissenting opinions at the meeting of the Committee on Judicial System on the various issues. We also would like to reiterate to include our dissenting opinions in the Concept Paper.
2. While pointing out, we would like to replace the word phrase in the fifth line of the last paragraph of page 2 : " this type..., to " moving for movement... with the phrase " before 2007 B.S.(1950 A.D.) until today, time and again the people of Nepal have been compelled to carry on historical struggle and people' movement. "
3. Instead of the paragraph of Page 25, we have recommended the following paragraph: Hence the Constitution of 1990 had endeavored to reform the judicial system in Nepal, however, there had also been many negative comments raised against the judiciary from the different angles. For instance, the complaints against the judiciary's involvement in corruptions could never be detached from the scene during this time. The judges themselves, lawyers, and other concerns with the judiciary have been publicly **speaking** that the judiciary has always been suffered from rampant favoritism and outside influences. The general public believes that due to lack of capacity of the responsible institutions or officers, the judiciary could not play an effective role to tackle with these problems. Similarly, justice became more expensive than being accessible to everyone. The appointment procedure and transfer of judges was neither transparent nor inclusive.
4. In the last paragraph of page 38 , we have dissenting opinions from " The Supreme Court ... up to it is seen sensible"
5. In the last paragraph of page 78 from " For it in the Legislature"...to the first paragraph of page 79 or " it is reasonable to arrange a provision to appoint judges..., we have dissenting opinions.
6. Similarly we have dissenting opinion for the clause of sixth sentence of the last paragraph of page 79 " for it a Special Judicial Committee in the Legislature..... to ..."helps ensure the judicial responsibility"
7. We disagree with the provision that is mentioned in 6.9 at page 86 that states against our understanding that judges of Provincial High/Supreme Court shall be appointed by central mechanisms. We disagree with the third paragraph of page 88 or the clause from " as per the Federal Structure of the State.....to has seen reasonable.

8. We present the following dissenting opinions in the preliminary draft of the Constitution :
- (a) In section 6(1) of the draft,
 - (b) In section 8(1) (a)of the draft,
 - (c) In section 16(1) of the draft,
 - (d) In section 18(1) of the draft,
 - (e) In section 26(1) and (a) and (b) of section 26 (1) of the draft,
 - (f) In section 29 of the draft,
 - (g) In section 32 of the draft