

# **CURRENT SITUATION AND ISSUES RELATING TO ETHICS AND CODES OF CONDUCT FOR JUDGES, WITH SPECIAL REFERENCE TO THE CRIMINAL JUSTICE SYSTEM OF NEPAL**

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## **I. BACKGROUND**

The independence of the judiciary is a measure of a nation's devotion to democracy and the rule of law. To have an effective and competent criminal justice system, politicians and stakeholders of this system, i.e. judges, prosecutors, and law enforcement officials, should perform their functions legally and ethically.

Among others, detection of corruption and imposing suitable punishment on corrupt public officials, and politicians is one of the pivotal duties of a criminal justice system. If judges, prosecutors and law enforcement officials are involved in corruption the criminal justice system will perish. Where the justice system fails, impunity will prevail, badly affecting society and weakening democracy. The trust of the people depends on judicial performance. Therefore, it is better to prevent such evils rather than provide remedies. So, by using various guidelines, codes of conduct, norms, and standards, the state can run the criminal justice system efficiently. These stakeholders are the main actors of the state, which must maintain the rule of law and promote good governance. If they lack in their duties, society will be victimized by corruption, impunity will increase and the morale of the people and their faith in the justice system will deteriorate.

Each and every nation stipulates legal mechanisms for its criminal justice system. The UN and other international organizations provide international norms and standards for the proper operation of criminal justice systems. Among others, judges, prosecutors and law enforcement officials are vital stakeholders of a criminal justice system. Therefore, the quality of their performance plays a prominent role. To ensure quality performances, their qualifications, selection system, training, and codes of conduct are vital.

## **II. INTERNATIONAL STANDARDS AND NORMS**

Important international standards to address standards and norms for judges, prosecutors and law enforcement officials are outlined below.

1. UN Convention Against Corruption, 2003  
Art 11(1) and (2) opine that State Parties shall take measures to strengthen integrity and to prevent opportunities for corruption among members of judiciary and prosecutorial authorities, i.e. rules relating to conduct of members of judiciary and prosecutors.
2. Basic Principles on the Independence of the Judiciary, 1985
3. Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary, 1989
4. Bangalore Principles of Judicial Conduct, 2002
5. UN Guidelines on the Role of Prosecutors, 1990
6. UN Codes of Conduct for Law Enforcement Officials, 1979

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### III. NEPALESE JUSTICE SYSTEM

The judicial system has existed since the earliest times of Nepal's history. Judges were appointed by the king and they performed their duties as per the ethical norms and customs. After the promulgation of democracy in Nepal in 1950, the concept of an independent judiciary began. An independent judiciary, separate prosecutorial system and separate responsibility of law enforcement official were introduced in the development period of the 1950s. The Nepalese criminal justice system is more or less influenced by the common law system. The criminal justice system operates through investigation, prosecution and adjudication.

#### A. Criminal Justice System Organizations

- (i) *Judiciary*: Supreme Court, Appellate Court and District Court for general cases and Special Court for corruption cases.
- (ii) *Prosecution*: Office of the Attorney General and its other subordinate offices located where Appellate and District Courts are located; Commission of Investigation of Abuse of Authority (CIAA); other authorities as prescribed by law.
- (iii) *Law Enforcement*: Investigation authority; hierarchical organizations of police force; Revenue Investigation Authority; District Forest Office; Land Administration Office; District Administration Office; other Ministries; and other executive offices, along with the execution Branch of the District Court.

#### B. Corruption in Nepal

Corruption is a complex and multifaceted phenomenon with multiple causes and effects, as it takes on various forms and functions in different contexts. The phenomenon of corruption ranges from single acts prohibited by law to a way of life of an individual or groups. It is the misuse of public goods by public officials, for private gain. This private gain is achieved by ignoring prohibitions against certain acts. This is the abuse or misuse of public office and professional rights and duties for personal gain.

Corruption not only undermines ethical values and justice, it damages democratic institutions, national economies and the rule of law. Corruption facilitates other forms of serious crimes, in particular transnational organized crime, human trafficking and fiscal crime such as money laundering.

##### 1. Current Situation

- In fiscal 2008/09 the Supreme Court had a total 18,564 cases. Among them 5,608 were decided and 12,956 are under consideration. In total, in all courts, there are total 103,651 cases, among them 44,818 were decided and 58,833 are under consideration.
- The CIAA received complaints of corruption totalling 2,732. Among them 2,135 were investigated and 597 are under investigation in fiscal 2008/09. Seventy cases were filed in the Special Court and 28 cases were recommended for departmental action by the CIAA.
- The Special Court, the only the authentic body to hear cases related to corruption, has handled 254 cases related to corruption as of fiscal 2008/09. The Special Court has disposed 102 cases and 152 cases are under consideration. Six hundred and seventy cases of corruption are under consideration in other courts except the Special Court.
- In the judiciary, there are 223 working judges, 242 officers, and 3,247 assistant staff.

##### 2. Corruption and Efforts Made to Control it in Nepal

The criminal justice system related to corruption control in Nepal has long made efforts. Legislation on control of corruption, began in 1957 and legislation was enacted 2002. The main laws relating to corruption control are as follows

###### (i) *Prevention of Corruption Act, 2002*

This Act has defined corruption as the following activities and penalizes it with fine and imprisonment.

- Taking or giving bribes or agreeing to take bribes;
- Public servants preparing wrong documents;
- Making wrong translations;
- Breach of confidentiality of question papers or changing the result of examinations;
- Public servants indulging in illegal trade and business;

- Claiming a position which one does not hold;
- Giving a false description;
- Giving wrong reports;
- Illegal acquisition of property.

(ii) *The Commission for Investigation of Abuse of Authority Act, 1991*

Commission for Investigation of Abuse of Authority Act, 1991 defines the abuse of authority as improper conduct. Improper conduct denotes any of the following acts committed deliberately or through negligence by a person holding public post

- Refusal to undertake any work under one's authority or undertaking any work outside of one's authority;
- Not following mandatory procedures while making any decisions or giving instructions;
- Use of authority vested in oneself for a purpose contrary to the relevant law, decision or instruction;
- Use of discretionary power with a malafide intention or selfish desire;
- Shifting one's responsibility by sending the work to be done by oneself to other officer;
- Abuse of immunity, facility or concession associated with the post.

(iii) *Anti-Money Laundering Act, 2008*

This Act was recently enacted. The Act aims to prevent conversion of proceeds of crime into legal money. It establishes a department to administer the Act.

(iv) *Good Governance Act, 2008*

This Act aims to have good governance in the country.

(v) *Public Procurement Act 2007*

This Act aims to maintain competition and transparency in procurements by public bodies including government bodies and government controlled and funded bodies.

### **3. Institutions involved in Corruption Control**

(i) *Commission for the Investigation of Abuse of Authority (CIAA)*

The Commission for the Investigation of Abuse of Authority, publicly known as the CIAA, is a constitutional body which serves as an investigating and prosecuting authority in corruption cases and the watchdog authority against the abuse of authority. The Interim Constitution of Nepal, 2007, provides for it in explicit terms in part 11, Article 120. According to the constitution, functions, duties and powers of the commission are as follows:

- Inquiry and investigation of improper acts or corruption by a person holding public office;
- Recommendation for departmental action or any other necessary action against the person who has abused authority by committing improper acts;
- Filing a case against a person alleged to have committed corruption.

(ii) *National Vigilance Center*

The National Vigilance Center (NVC) is a governmental body intending to control corruption and bring about good governance in the country. It is established under the Prevention of Corruption Act, 2002. It functions under the direct control and supervision of the Prime Minister of Nepal. The main objective of the centre is to play a preventive and vigilant role to ensure good governance by controlling delays, administrative and financial irregularities, mis-collection of public revenue and other misdeeds that exist in the various steps of the government and public sector organizations.

(iii) *Special Court*

This court adjudicates the corruption cases filed by the CIAA. This is the court of first instance in respect to corruption. Judges are deputed from the ordinary Appellate Court.

### **IV. QUALIFICATIONS FOR JUDGES**

We think judges should be fair, competent, pure, disciplined, energetic, alert, courageous, and independent. A good judge should not be lazy, greedy, over smart, over confident, angry, jealous or have an evil mind. So far as the Nepalese system is concerned, we can mention the following:

**A. Supreme Court Chief Justice**

A judge working as a judge of Supreme Court for at least three years will be qualified for appointment as Chief Justice.

**B. Supreme Court Judge**

- Worked as a judge of the appellate court or in any equivalent post of the judicial service for at least seven years; or
- Worked as a gazetted first class or above of the judicial service for at least 12 years; or
- Practiced law for a minimum of 15 years as a law graduate advocate or senior advocate; or
- Is a distinguished jurist who has worked for at least 15 years in the judicial or legal field.

**C. Appellate Court Judge**

- Nepali citizen having a bachelor's degree in law;
- Work experience as a district judge or gazetted first class of judicial service for at least seven years;
- Practiced law as a senior advocate or advocate for at least ten years; or
- Has teaching experience or conducted research thereon, or has worked in any other field of law or justice for at least ten years.

**D. District Court Judge**

- Nepali citizen having a bachelor's degree in law;
- Work experience as a gazetted second class officer of judicial service for at least three years, or
- Practiced law as an advocate at for least eight years.

**E. Constituent Assembly Court Judges**

It shall be constituted to resolve the complaints regarding elections. On the recommendation of the Judicial Council, the Nepali Government will depute judges from among the Supreme Court judges.

Other judges of the Special Court and Tribunal should have a minimum of a bachelor's degree in law and specific experiences as prescribed by law.

**V. SELECTION OF JUDGES**

Judges should be individuals of integrity and ability with appropriate training or qualification in law, without discrimination on the grounds of race, sex, religion, political or other opinions. According to Nepalese legal provisions, the selection system is as follows:

1. Chief Justice: The President shall appoint the Chief Justice (CJ) on the recommendation of the Constitutional Council. Before his or her appointment, he or she has to face a parliamentary hearing.
2. Other Judges of the Supreme Court: The Chief Justice shall appoint other justice of Supreme Court on the recommendation of the Judicial Council.
3. Chief Judge and other Judges of Appellate Court: The Chief Justice shall, on the recommendation of the Judicial Council, appoint the Chief Judge and other Judges of the Appellate Court and District Court Judges.
4. District Judges: The Chief Justice shall, on the recommendation of the Judicial Council, appoint District Court Judges. In appointing a law graduate advocate to the post of District Court Judge, only a person who has passed the written and oral examination conducted by the Judicial Council shall be appointed. This provision is inactive due to lack of legal provisions.
5. Judges and Members of Other Special Courts and Tribunals: They will be selected on the recommendation of the Judicial Council by the Nepal Government.

Before appointment, the Judicial Council fulfills various procedures i.e. collecting information of eligible candidates from different concerned offices, screening, making their roster and submitting it to the meeting of the Judicial Council. The Judicial Council Act and Regulations of 1990 stipulate procedural matters to be followed.

## VI. CODES OF CONDUCT FOR JUDGES

There is one Supreme Court; 16 Appellate Courts; 75 District Courts; one Special Court; one Labour Court; one Administrative Court; five Revenue Tribunals, two Debt Recovery Tribunals; and other quasi-judicial bodies which are involved in delivery of justice. Now, there are 223 judges working all over the nation in different tiers of the court system. The Interim Constitution of Nepal, 2007, the Judicial Council Act 1990 and Rules, 2000 and Codes of Conduct for Judges, 2009 are a few significant laws and norms compelling judges to work within their legal and ethical boundaries.

Delivering is a justice very respectable and honorable profession. People place a great deal of faith in judges. If any question against arises in judges' integrity, people's belief will in justice will fail. Therefore, preventive measures are more favorable than remedial treatment. For this reason the Nepalese judiciary introduced a Code of Conduct for Judges in 1999. It was first effort to regulate the behaviour of judges. Though it functioned, it couldn't meet international standards and national necessities. Therefore, a national conference of judges held in 2009 adopted a new Code of Conduct for Judges 2009, replacing old one. It is mainly based on The Bangalore Principles of Judicial Conduct 2002. The main provisions of this Code can be mentioned as following:

- Protection and promotion of the rule of law, human rights, constitutional values;
- Practical assurance of a fair, impartial and transparent justice system;
- Fair trial for protection of citizen's rights;
- Increase public faith in the justice system and place high value on the dignity of the judiciary;
- To establish a respectable system of judicial duty as a responsible position;
- The protection of personal and legal interests of judges.

### A. Article 3: Independence

#### *Principle*

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

#### *Code of Conduct*

- 1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- 2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute, which the judge has to adjudicate.
- 3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free there from.
- 4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
- 5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.
7. A judge shall be fully aware from the avoidance of humanitarian effect of criticism and praise while delivering justice

### B. Article 4: Impartiality

#### *Principle*

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

*Code of Conduct*

- 1 A judge shall perform his or her judicial duties without favor, bias, or prejudice.
- 2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession, and litigants in the impartiality of the judge and of the judiciary.
- 3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
- 4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.
- 5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where
  - 5.1 The judge has actual bias or prejudice concerning a party;
  - 5.2 The judge has prior personal knowledge of disputed evidentiary facts concerning the proceedings;
  - 5.2 The judge previously served as a lawyer or was a material witness in the matter in controversy;  
or
  - 5.3 The judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other judge can adjudicate the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

**C. Article 5: Integrity**

*Principle*

Integrity and its implementation are essential to the proper discharge of the judicial office.

*Code of Conduct*

- 1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

**D. Article 6: Propriety**

*Principle*

Propriety, and the appearance of propriety, is essential to the performance of all of the activities of a judge.

*Code of Conduct*

- 1 All activities of judge shall fully consistent with integrity. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
2. As a subject of constant public scrutiny, observation, and supervision, a judge must accept personal restrictions on his or her activities that might be viewed as unnecessary burdensome by a citizen or community. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
3. A judge shall, in his or her personal relations with individual members of the legal profession who practice regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favoritism or partiality.
- 4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant as a lawyer or is associated in any manner with the case.
- 5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
- 6 A judge, like any other citizen, is entitled to freedom of expression, belief, association, and assembly,

but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

- 7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.
- 8 A judge shall not allow the judge's family, social, or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
- 9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
10. Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
11. Subject to the proper performance of judicial duties, a judge may:
  - 11.1 Write, lecture, teach, and participate in activities concerning the law, the legal system, the administration of justice or related matters; or appear or participate in the discussion at a public program relating to such subjects in own country or out of the country.
  - 11.2 Serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or
  - 11.3 Engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
- 12 A judge shall not practice law whilst the holder of judicial office. A permanent justice of Supreme Court shall not represent any client at any level of court after his/her retirement.
- 13 A judge may form or join associations of judges or participate in other organizations representing the interests of judges.
- 14 A judge and members of the judge's family, shall neither ask for, nor accept any hospitality, donation, gift, bequest, financial or physical benefits, and loan or favor in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.
- 15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
- 16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

## **E. Article 7: Equality**

### *Principle*

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

### *Code of Conduct*

- 1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, nationality, caste, disability, age, marital status, social and economic status and other like causes.
- 2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.
- 4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or

control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.

- 5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

## **F. Article 8: Competency and Diligences**

### *Principle*

Competence and diligence are prerequisites to the due performance of judicial office.

### *Code of Conduct*

1. The judicial duties of a judge take precedence over all other activities.
2. A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations i.e. court and its operation or management, judicial instruction and research.
3. A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
4. A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
5. A judge shall deliver reserved decisions in written form as possible, and perform all judicial duties efficiently, fairly, and with reasonable promptness.
6. A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
7. A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

Nepal's Code of Conduct for Judges is very comprehensive. It has adopted all modern values and norms. The main question relating to code is its' implementation that there is no mention of inequality on the basis of sexual orientation, participating in public hearings, having no right of presenting in court on behalf of parties to Supreme Court justice after their retirement can be considered drawbacks. So, we can say that to some extent it is different from the Bangalore Principles.

## **VII. ORGANIZATIONS INVOLVED IN MAINTAINING GOOD CONDUCT FOR JUDGES**

The following institutions are involved directly and indirectly in maintaining good conduct by judges, which will help to enhance the criminal justice system.

- Parliament: to take action of impeachment against the Chief Justice and other Justices of the Supreme Court;
- Judicial Council: duties appointment, transfer, and taking disciplinary action;
- CIAA: investigation and prosecution of corruption cases;
- Judicial Service Commission: duties appointment, transfer, and taking disciplinary action against judicial officers;
- Concerned Ministries and Police Headquarters: taking action against law enforcement officials in breach of professional ethics.

Nepal is now in the process of peacekeeping and is in a transitional phase. After the second movement of the people, the desires of the people are increasing. The nation is suffering from impunity. Obviously, in this situation, to maintain the criminal justice system, conduct of judges, prosecutors, and law enforcement official must be satisfactory. We have no separate codes of conduct for law enforcement officials and other prevailing codes of conduct for judges and prosecutors are not implemented effectively.

## VIII. EDUCATION AND TRAINING OF CRIMINAL JUSTICE PERSONNEL IN NEPAL

Education and training are required to impart the knowledge of jurisprudence and to enable the person to apply the knowledge in delivery of justice. Training is learning method that improves ability to perform a job. It is skill oriented and remedial in nature. Technological changes are making the job more complex and demanding. The judicial system needed to raise skill levels and make employees versatile and adaptable through training and education. So, training is an important part of HRD efforts which provides positive changes in knowledge, skills and attitudes. Training improves knowledge, skill and attitudes and enriches employees' moral and quality of performance. Training signifies the process of learning by practice the skills necessary to discharge the functions.

Only after attaining a Bachelor of Laws degree from any recognized university, along with other specified qualification and experiences, are persons eligible for appointment as judges, prosecutors, and law enforcement officials. Our LLB curriculum is developed so that students learn various subject matters along with justice and ethics. After appointment as judges they are taught about ethics and norms in the NJA. If any judge shows interest in achieving any further degree in law, they are promoted from any university of Nepal and out of the country.

### (i) *Kinds of Training*

These are main types of training followed to achieve judicial excellence:

- (a) Pre service or orientation training;
- (b) Refresher training;
- (c) Job training;
- (d) Promotional training;
- (e) Remedial training;
- (f) Safety training etc.

### (ii) *Training Process and Features of Training*

Determining training needs, specifying training objectives, making curricula and determining training methods, conducting training of trainers, selecting trainees, developing training budgets, conducting training, and evaluating training are the main training processes followed by concerned training centres and the National Judicial Academy. According to the nature of the job, various types of tools and techniques are used in training. Discussion, presentation, workshops, seminars, instruction, lectures; field visits, active participation and study tours are a few mentionable features of training which enrich the quality and skill of judges and officers.

### (iii) *Role of Training Institutions*

The National Judicial Academy is a statutory body charged with the task of improving the justice system in Nepal through judicial education, training research, and dissemination of legal information. Much of its efforts revolve around the training and education of judges, court staff, government attorneys and private lawyers. Other institutions i.e. the Judicial Service Training Center, Administrative Staff College, National Police Academy, Forensic Science Department and National and International Training Institutions are involved to provide training to judges, prosecutors and law enforcement officials in justice related different issues.

## IX. PROCEDURAL LEGAL MECHANISMS TO REGULATE JUDGES' ACTIVITIES IN NEPAL

The Interim Constitution of Nepal, 2007; the Judicial Council Act, 1990; and Rules, 2000; and Codes of Conduct for Judges, 2009 are some vital laws and norms to guide judges' activities and help them to act ethically.

The Interim Constitution of Nepal, 2007 has specified responsibility to the Judicial Council for the recommendation of appointment, evaluation, transfer and removal from the job. Article 105(2) of the constitution stipulates that a motion of impeachment may be presented before legislator parliament against the chief justice or any other judge on the ground that he or she is unable to perform their duties for reasons of incompetence, misbehaviour, failure to discharge the duties of their office in good faith, physical or mental condition, and if a two thirds majority members passes the resolution, he or she shall ipso facto cease to hold

office. The Chief Justice or judge shall not be deprived of the opportunity to defend him or herself.

According to Article 109(10) (C) The Chief Justice can remove a judge of the Appellate and District Court in accordance with a decision of the Judicial Council for reasons of incompetence; misbehaviour; failure to discharge the duties of his her office in good faith; incapacity to discharge those duties due to physical or mental reasons; or for deviation from the task of dispensing justice. Such a judge shall be given a reasonable opportunity to defend him or herself. For this purpose, the Judicial Council may constitute a committee of inquiry for recording the statement of the judge, collecting evidence and submitting its findings thereon.

Judicial misconduct stipulated in the Judicial Council Act, 1990 Section 4A, looks similar to conduct stipulated in Codes of Conduct. According to Section 9A, if any judge of an appeal District Court is found guilty of corruption, cases will be filed against him or her in appellate court on behalf of the council by the Secretary and other deputed officers of the council. We have one example of filing case in corruption. It is how under consideration by Supreme Court of Nepal.

Article 120 (2) of the Constitution stipulates that an inquiry and investigation may be conducted, or caused to be conducted by CIAA, against any official of a Constitutional Body removed from their office following an impeachment resolution on the ground of misbehaviour, any judge removed by the Judicial Council on similar charges after they are removed from office, in accordance with law. Judicial Council Rules, 2000 Rule 24 says at the time of appointment, performance evaluation and transfer of the judges, the codes-abiding attitudes of judges shall be taken into consideration.

#### **X. CHALLENGES RELATING TO CODES OF CONDUCT FOR JUDGES**

- **Monitoring of Codes of Conduct:** When we observe all provisions of this code, it has included all prevalent modern provisions. It lacks one thing relating to its implementation. For its effective implementation, the national judiciary should have to adopt effective mechanisms. No any single word is mentioned in this code about its implementation. Rational observers show doubts about its implementation. However, Judicial Council Rules, 2000 Rule 24 says at the time of appointment, performance evaluation and transfer of the judges, the codes-abiding attitudes of judges shall be taken into consideration. In another way, we can assume that law has recognized the implementation mechanism to some extent.
- **Self Monitoring:** Commitment alone is not sufficient. Compliance must be visible. Rational observers should see that these are fully applied. Judges must monitor and evaluate thier activities daily and improve if any mistakes are made.
- **Who can monitor?** Monitoring of implementation of codes of conduct is a challenging issue. Persons having a judicial mind or another judge are suitable personalities to monitor. The Judicial Council headed by the Chief Justice is also proper institution. Section 4B of the Judicial Council Act shifts the duty of monitoring and evaluation of judicial duties and conduct of appellate and district court judges to the chief judge of the Appeal Court and the Supreme Court judges. Monitoring and evaluation duties relating to codes of conduct also should be shifted to those judges as stipulated by law.
- **Weak situation of security:** In Nepal the security situation of judges, prosecutors, and judicial officers is very weak. People give unnecessary pressure on a regular basis. Power, money and muscle are used to avoid the law.
- Due to parliamentary hearings, there is increase in- unnecessary flattering of political leaders.
- Due to isolated life, to maintain life, sufficient facilities with adequate finances are needed.
- All people should be aware of the role and duty of the judiciary and its performance style.
- Knowledge and skill of judges and judicial officers should be updated through modern legal education and training.
- Misuse of discretionary power for fulfillment of their unethical desires.

#### **XI. EXPECTED REFORM**

1. Introduce separate codes of conduct for law enforcement officials and update already existing codes of conduct for judges and prosecutors;

2. Establishment of effective mechanisms to monitor, supervise and strictly implement laws, rules and codes of conduct;
3. Improvement in the selection system of judges, prosecutors and law enforcement officials from competent, highly moral, qualified, trained and experienced persons;
4. Provide sufficient professional education and training on profession-related matters with proper learning methods;
5. Civil society and bar associations can have a beneficial role in bringing transparency to judicial processes, including judicial discipline;
6. We need an effective, transparent, open, rigorously fair mechanism for immediate disciplinary proceedings;
7. Sensitize judges, prosecutors and law enforcement officials to the concept of self-discipline as the best discipline;
8. Strengthen institutions involved in corruption control, maintaining good conduct and training for judges, prosecutors and law enforcement officials.

## **XII. CONCLUSION**

Legal provisions alone may not be sufficient to control corruption. Public awareness and collaboration and co-operation with the international community are also important. A strong legal regime against corruption, strong enforcement of general laws; development of a law-abiding culture; the end of impunity; improvement of the socio-economic condition of government officials and also of the general public are pre-requisites for corruption control.

Like other developing and under-developed countries, Nepal is facing different types of ethical problems in its criminal justice system. First of all, we have to update the codes of conduct of judges and prosecutors and introduce separate codes of conduct for law enforcement officials. Weak implementation mechanisms and lack of regular monitoring and evaluating systems are vital problems. If we succeed to correct the present errors, the criminal justice system will be improved to some extent.