

The Influence of Politics on Law and Its Impact on Good Governance in Nepal

*Santa Bahadur Thapa

drsantabthapa7@gmail.com

Abstract

This paper examines the relationship between politics, law, and governance in Nepal, demonstrating how political interference in law affects the country's governance system. The objectives of this paper are to understand political intervention in law in both historical and contemporary contexts in Nepal, to explore where this intervention is effective and where it is not, and the implications of this for governance outcomes. Using a qualitative research methodology, the paper presents a substantive literature review. It provides a clear delineation of the historical and contemporary contexts that shape political interference in the Nepalese justice system.

The paper concludes that political interference in law consistently hinders good governance in Nepal. Political interference compounds challenges such as corruption, nepotism, and a lack of transparency and accountability. The paper emphasizes that judicial independence and impartiality are essential for maintaining the rule of law and promoting good governance.

Keywords: Good Governance, Governance, Judicial Independence, Law, Nepal, Political Intervention, Politics

1. Introduction

The recent political developments in Nepal have put the sound governance system under challenge. A closer examination of Nepal's political landscape, however, reveals that the promulgation of the new constitution in 2015, which was intended to enhance the balance between politics, governance, and law, has not brought about the desired change. Hence, it is pertinent to study politics, law, and governance in Nepal. Political arrangements have a profound impact on the selection of legal systems, the role of law in politics, and the effectiveness of law in regulating the distribution of political power. In many developing democracies, including Nepal, politics often undermines the law for particularistic interests, which hampers prospects for good governance. Given this background, the central argument of this essay is that, particularly since 2017, politics in Nepal has undermined the law, resulting in poor governance outcomes. This essay will attempt to provide a theoretically informed explanation of this political intervention in law and its implications for governance.

The key questions that will be addressed in this paper are:

- What historical and contemporary factors influence the political intervention on law in Nepal?
- How has political intervention influenced the law?
- What are the implications of this intervention for governance and management?

*Writer Santa Bahadur Thapa is Lecture, work at Trichandra Multiple campus.

The Nepalese case is important to study because, as a post-conflict state that has adopted democratic governance, the recent history and current context of Nepalese politics highlight the efforts to define, reshape, and contest the boundaries and roles of politics and law.

This essay is divided into several sections. The second section discusses the theoretical framework of the nexus between politics, law, and governance. The third section examines how the political context influences the prospects for good governance, with a focus on politically appointed and externally imposed legal systems. The fourth section focuses on the Nepalese case and its historical and contemporary context. The final section summarizes the findings and emerging issues for future research on law within the political landscape. Overall, this essay aims to contribute to the existing literature on law and politics by developing a theoretical framework that systematically analyzes the influence of politics on law and its implications for sound governance systems.

Objectives of the Paper

This paper's objectives are to:

- Examine the historical and contemporary factors that underpin political intervention in law in Nepal.
- Study the impact of political interference on law in Nepal.
- Evaluating the Impact of Political Interference on Law and Governance Outcomes in Nepal.
- Contribute to the literature by developing a theoretical model of how politics intersect with them and their impact on good governance.

This paper examines the interplay between politics, law, and governance, with a focus on the impact of political interventions on the legal system and governance. It will explore the historical and contemporary factors that shape this interaction, analyze the mechanisms through which political intervention occurs, and assess the impact of such intervention on governance. Ultimately, the paper seeks to establish a conceptual framework that clarifies the intricate relationship between politics, law, and good governance.

Research Method

The qualitative approach of this research will involve a detailed examination of the existing body of literature on the relationship between politics, law, and governance, particularly in the context of Nepal. It will further engage with the historical and contemporary processes that have shaped political intervention in law in Nepal, with a focus on major political transitions, governance paradigms, and legal transformation. Such examples will be utilized in the research on political interference in the legal system, including allegations of political meddling in judicial appointments, politically driven legislation, and law enforcement decisions influenced by political considerations. Analyzing these cases aims to provide a realistic perspective on the intertwining of politics and the application of law, including its interpretation and what these cases of politicization mean for good governance. Namely, how political interference with the legal framework can undermine the rule

of law, erode public trust, and hinder accountability, transparency, and fairness in governance.

Conceptual Framework

This paper's conceptual framework is based on the notion that politics, law, and governance are intricately interrelated. Politics influences the law in various ways, sometimes through legislation, sometimes through adjudication, and sometimes through law enforcement. This influence may have a substantial impact on both positive and negative governance outcomes.

Recent efforts also underscore the importance of historical and socio-political factors in shaping the intersection of politics, law, and governance. All such transitions contribute to the legal status of the political rights of Nepalese citizens, with particular regard to the transitions from autocratic regimes to democracy, from parliamentary rule to constitutional monarchy, and from multiparty democracy to the present day. It also examines the relationship between the 2015 constitution and, consequently, the constitutional framework and governance in Nepal.

Moreover, the framework recognizes the threats of corruption and nepotism in Nepal, as well as the absence of transparency and accountability. Political interference in the legal system presents additional challenges, including erosion of the rule of law and a decline in public confidence in governance institutions.

International perspectives and comparative analyses are also part of the framework, thereby providing a broader understanding of the issues at stake. Learning from the experiences of other countries, particularly those facing similar challenges, may, therefore, offer important insights into possible trajectories of reform and improvement for Nepal.

Findings and Discussions

Historical Background of Politics and Law in Nepal

Nepal has experienced numerous ups and downs in its political and legal landscape. Nepali politics and public law have undergone several changes and transitions, from an autocratic regime to a democracy, from parliamentary rules to a constitutional monarchy, and from multiparty democracy to a failed democratic polity under the now single-party-led regime. Nepal has entered the third decade of the twenty-first century; however, it continues to struggle with establishing a good and effective political system. An understanding of history provides a solid foundation for comprehending contemporary politics. Past events significantly shape the present state of the political system, and it is a fundamental belief of the present inquiry that past governance systems have a more significant impact on present political ideologies (Surya & Prasad, 2012, pp. 149-170). The politics and political systems of the present are shaped and driven by the historical context and prior events that have influenced governance systems. In-depth analyses of past events help to understand current political challenges. Moreover, the historical background of any polity provides a basis for understanding the emergence of a good polity and the possible challenges it may face. An attempt is made here to provide a historical background of Nepalese politics and law, from the nation's creation to its present state.

Prior to the establishment of the modern legal framework in Nepal, the society had governance systems based on its traditions and customs. The socio-cultural practices of the people largely determined the traditional system of governance. However, certain significant events remarkably determined the course and shape of politics and legal practices in Nepal. The development of legal practices in Nepal was influenced by and sometimes interfered with, foreign powers bordering the nation. The disagreements and conflicts with foreign powers significantly influenced the nation's legal framework. The foreign invasions and actions also significantly impacted the political decisions and laws of the land. Nonetheless, the political aspirations and actions of the sovereign head also shaped the law and political consequences. The desire of the then monarch, King Prithvi Narayan Shah, for absolute rule over the land led to the promulgation of a legal code in 1854. Although the Muwa system of land revenue collection was previously formalized by King Jaya Prakash Malla in 1751, the legal code formally established provisions for land ownership, dispute settlement, and revenue collection. However, prior to the promulgation of the legal code, established procedures existed for settling disputes related to land and crimes against property. The political aspirations of the feudal lords also influenced the course of legal development. The historical background of law and politics in Nepal provides a context for the emerging issues in law and politics. There have been attempts to explore the interplay between law and politics in contemporary polity; however, a comprehensive background account of the historical evolution of law and politics is absent. The historical background of the polity and legal framework is discussed here to lay the basis for exploring the relationship between law and politics. Moreover, it also comprises analyses of historical events and their relationship to the emergence of legal institutions.

Constitutional Framework of Nepal

A nation's constitutional framework has a significant influence on the political discourse and legal practices that follow. An effort has been made to explore how the constitutional framework has shaped the legal environment and influenced governance in Nepal while also contextualizing the country's political discourse, legal practices, and socio-historical realities. The focus is on the constitution promulgated in 2015, along with its amendments and the laws that form the foundation of the governance system under this constitution. The constitutional provisions chartering the governance system have been examined in light of political discourse and legal practices to interrogate how effectively this framework has pursued the reduction of political meddling in legal processes. Political discourse and legal practices are deconstructed based on three questions that challenge the concern for good governance in the constitutional design: What political mechanisms undermine the concern for good governance in the constitutional design? What socio-historical factors impede the political mechanism? What role does the Constitution play in regulating the relationship between political entities and legal institutions?

It is argued that the political mechanism undermining the reasonable governance concern of the constitutional design is the federal distribution of power. This political mechanism is found to be compounded by the socio-historical realities of Nepal, which hinder its efficacy. At the heart of federalism, power is constitutionally shared between the center and the constituents, rendering the new governance regimes dependent on the actors of the former. This dependency invites politics into governance regimes designed to offset them, ensuring good governance. Sovereign parliaments create governance regimes as auxiliary authorities to the parliament designed to transcend its political character. However, this design is insufficient for the newly federated states, as the better political considerations of the center do not apply to their constituents. The 2015 constitution, being the first attempt at federalism in Nepal, reflects how the power distribution enshrined in the constitution impacts the concern for good governance in the face of these power abuses. The constitution of Nepal is breached or respected over three terrains: the political discourse apprehended and contested in the political struggle of the constituent assembly promulgating the constitution; the socio-historical commentary on the desire for federalism reshaping the political landscape and thereby the constitution itself; and the legal practices interrogating how the constitution apprehended by the political entities is rendered legally efficacious or moot.

The intersection of Politics and Law

The political framework of a nation encompasses the institutions, processes, and relationships that govern decision-making and resource allocation within a specific territory. In Nepal, politics plays a significant role in shaping economic, social, and legal developments. Law, as the frame of reference for a social system, is susceptible to political influence. Politics and law intersect in legislation, adjudication, and law enforcement. Political priorities and legal frameworks can align or clash, depending on the players. As the law has been politicized, legal frameworks are now used as instruments in political performances. Nepalese politics is pivotal for understanding good governance through the law, as the law must be enforced for justice rather than bending it for political goals. Politics and law shape governance in concert or tension. Doing this fills in the overall picture of democracy and governance in Nepal by analyzing the interface of politics and law.

The political agenda influences what gets legislated and how the courts interpret the law. Law is made and enforced through a political lens. This maintains the political hegemony but results in the poor implementation of laws framed in pursuit of political objectives. It can also hinder economic growth and social development, as seen in the Land Survey and Measurement Act of 1961. Balancing political objectives with the integrity of the law is a complex task. Legal frameworks and processes in governance must constrain political objectives, but objectives that exceed the law can lead to harmful manipulations. There are instances where the law is politicized or manipulated for the sake of political gain. The 2009 CPN-Maoist-led government's attempt to dismiss the Chief of Army Staff subverted the peace process and undermined military justice. Such manipulations disregard the essence of law, making it an obstacle rather than a means to achieve desired ends. Law must be in harmony with political objectives

for better governance. Political objectives bring progress when they are within the frame of law, but outside objectives lead to manipulation.

Politics and law have always interacted, either in harmony or conflict (Cerar, 2010, pp. 1-23).

Political Interference in the Legal System

Philip Woode Hesse speculated the reason for the growing incompetence of judicial systems around the world. Politics corrupts all institutions, especially public institutions. Politics corrupts all institutions, but the legal system is believed to be more sound, more free of political influence, and more impartial. This belief is wrong. Politics can and does interfere in the legal system. Many political entities are found to be involved in corrupting the legal system, particularly in developing nations. Nepal is also a developing nation with numerous political influences on its legal system. The political agendas of the political parties corrupt the neutrality and impartiality of the legal system. The legal system is politicized and exploited for political gain and personal revenge. This legal system is intended to be free and fair, but it is one of the most corrupt in Nepal (Ayodele, 2014, pp. 2084-2094).

There were many instances of political parties and their leaders interfering in the outcomes of judicial decisions. There appears to be a clear nexus between politicians and a group of lawyers who guarantee favorable outcomes for their clients, namely the politicians. Former Prime Minister Sher Bahadur Deuba was found to have exerted pressure on the then Chief Justice Keshab Prasad Upadhyaya to set aside the Supreme Court verdict ordering the reinstatement of the House of Representatives. Allegations have arisen that Deuba, after becoming Prime Minister, called up Chief Justice Om Prakash Mishra at his residence and asked him to endorse certain appointments to the constitutional bodies. On 12 July 2020, Supreme Court judge Tej Bahadur KC accused then-Chief Justice Cholendra Sumsher JB Rana of taking bribes to influence the verdict on the free distribution of citizenship certificates to the children of Nepali mothers married to foreigners. Accusations of political interference have been leveled when indictments, especially against high-profile politicians, were delayed.

Politically exposed persons indicted by the Commission for the Investigation of Abuse of Authority were either set free or their trials delayed for many years. Many verdicts of the higher courts annulled the decisions taken by the then Special Court against those involved in the Nepal Oil Corporation scam and other similar cases. Political interference has eroded public trust in the legal system. The enemies of the legal system are political interferences. Political imputations hamper the rule of law. The continuous political appointments and promotions within the legal system encourage political interference. The President appoints the chief justices and judges of the Supreme Court on the recommendation of the parliamentary judicial committee, which consists of lawmakers nominated by the political parties in power. Appointing judges politically is like putting the tiger in charge of taking care of the goats. It was discovered that judges in the Supreme Court had promised political leaders that they would ensure a favorable verdict in return for their appointment as chief justices.

Judicial Independence and Impartiality

Judicial independence and impartiality are highly regarded as fundamental principles of any legal system. Judicial independence is defined as a judge's ability to maintain neutrality regardless of any external pressures. Judicial impartiality refers to the structural safeguards in place to uphold the neutrality of judges. These two principles are fundamental to the rule of law and good governance in any democratic state. In Nepal, this paper analyzes the implementation of judicial independence and impartiality within the country's legal framework. It provides insights into the provisions instituted in the constitution to protect the judiciary from the influence of any political forces, as per the focus of this analysis. It expands on the contemporary challenges faced by judges in maintaining neutrality in the face of political influence. One of the pillars of good governance is a strong independent judiciary. Therefore, the judiciary needs to evaluate the relationship between public confidence in the legal system and perceptions of judicial impartiality. A consideration of this relationship question is further elaborated upon through specific examples of successful and failed attempts to maintain an independent and impartial judiciary.

Nepal's judiciary, particularly the Supreme Court, has made landmark decisions not only to uphold its independence but also to curb the overreach of political power. However, it also examines how political coercion has eroded the judiciary's integrity through failed attempts to uphold impartiality. Furthermore, it is argued that addressing the question of an impartial judiciary cannot happen without reforming the judicial appointment system. As a developing nation, Nepal's constitution must be interpreted in a manner that aligns with international norms and standards. This analysis will reiterate that democracy, justice, and an impartial judiciary are inextricably linked (Pimentel, 2016, pp. 155-186). The courts and the adjudicatory process are expected to be independent and impartial in upholding the rule of law and protecting individual liberties, free from undue influence. Therefore, judicial independence has become necessary for good governance in democratic states. Moreover, an independent and impartial judiciary is central to democracy and the rule of law. In other words, it plays a vital role in promoting good governance, including upholding democracy, the rule of law, human rights, and curbing corruption. Thus, good governance cannot be fully realized without an independent and impartial judiciary. An impartial judiciary is one of the essential prerequisites for achieving good governance in developing nations like Nepal, which are often hindered by political inertia.

Corruption and Nepotism in the Legal System

Nepal's legal system, designed to uphold justice and the rule of law, is deeply afflicted by corruption and nepotism. Various forms of corruption hinder the legal system from functioning correctly, including bribery, favoritism, jobbery, engaging in vendettas, misappropriating state resources, and delaying justice for personal gain. Corruption in the legal system has a detrimental impact on the delivery of justice and access to justice. Dishonest practices by lawyers, judges, and judicial officers significantly impede the public's right to access justice and the legal system's ability to deliver justice (Patrick Madikane, 2013). Corruption can create a vicious cycle of

poverty and inequality, and poor and marginalized groups are most likely to be denied fair representation. Corruption within the legal system severely hinders the poor and underprivileged from attaining their rights and justice.

Corruption has permeated and corrupted the legal system. Public rights and grievances have been utterly compromised and exploited solely for personal gain. The exploitation of one's official position to benefit oneself, directly or indirectly, has rendered the institution itself dysfunctional. The Judiciary and all legal institutions are plagued by and entangled in corruption. The very rights and liberties that need to be safeguarded by the Judiciary and legal institutions have become the most hunted prey (Pyakuryal, 2007, pp. 1-17). The very legal system instituted to deliver justice, uphold rights, and protect liberty has become the most treacherous toils in which the unwary public is entrapped. The corrupt legal practitioners hold the public at the mercy of their whims and caprices. Legal practitioners frequently engage in corrupt practices that undermine justice and infringe upon the rights and freedoms of the public. The deliberations of disputes and grievances are willingly tainted by corruption, transforming the very legal system into an uncontested fiefdom of the corrupt. The corrupt legal practitioners adorn the dispensation of justice with a façade of compliance to conceal their nefarious designs.

There are numerous cases in which a public official, vested with a particular power or authority, has corruptly exploited such power or authority for personal gain. Such corrupt practices ingrained within the critical organs of governance are grievously pernicious to the body politic as a whole. A vital cog in the governance mechanism is the Judiciary, and corruption within it becomes the absolute downfall of good governance. It is imperative to assess the corruption epidemic within the Judiciary and legal institutions and proffer reformative recommendations to combat corruption within these institutions. Various forms of corruption can be and are perpetrated within the precincts of the Judiciary and legal institutions. In one way or another, the Judiciary and legal institutions have been infested with corruption. Nepali society is reeling from widespread corruption, and legal institutions have not remained insulated from the epidemic.

Challenges to Good Governance in Nepal

Good governance is a multi-dimensional concept, including accountability, participation, transparency, predictability, and openness in governance systems and processes. It is also shaped by socio-political and legal systems, which provide benchmarks for assessing governance outcomes. In the case of Nepal, good governance has been severely undermined since the restoration of democracy in 1990. Decrees, laws, and deliberations on the governance framework and economic liberalization have failed to establish an efficient, stable, and accountable governance system. The legal framework and the system of law are essential for good governance to flourish (Surya & Prasad, 2012, pp. 149-170).

It is pertinent to examine the legal framework and the system of law in the context of governance in Nepal, particularly about politics. Political instability, the incongruity

between polity and politics, and corruption have exacerbated issues within the legal and governance frameworks despite the Law Commission's significant legislative contributions. The political party at the center of governance and the state has created electoral, ethnic, and social divisions in society. Ethnic divides have been exploited without due consideration for good governance and development. As a result, poor governance has been perpetuated by the party's monopolization of legal interpretation and contestation. Despite efforts to address political grievances through laws and other means, the ruling party has failed to curtail illegal acts. Attempts to mobilize constitutional means to redress grievances have backfired. There are glaring limitations in the rule of law and the mechanisms of accountability, oversight, and checks and balances that ensure against the arbitrariness of the governance system. The laws are not preventive but remedial, allowing the governance system to fail before the law is applied. Therefore, law and governance are distinct entities. Similarly, the legal system is insufficient to ensure good governance. The activist interpretation and extension of the law have led to judicial encroachment on the executive, legislature, and local governance.

The traditional view of good governance confined to the proper management of public affairs has also failed. The governance system remains mainly oblivious to the issue of social inclusion despite the 2001 census being inclusive of class, caste, and ethnic bases. As socio-religious minorities remain unrepresented, good governance is viewed as the preservation of the status quo, the language of the laws, and the supremacy of the high-caste Hindus. Nevertheless, policies and laws alone will not render good governance. The mass politics of the citizenship question, languages, and socio-economic considerations in devising governance systems and policies for the inclusion of ethnic minorities, women, and marginalized hillside and Tarai populations present predicaments. A political settlement and socio-economic consideration are crucial to formulating constitutions, policies, and an overall socio-political and legal framework for good governance. Nonetheless, citizens also play a crucial role in the governance process. Governance is considered a social process in which citizens are key actors alongside public institutions, laws, and policies. Engagement enables citizens to contribute to shaping rules, rights, and responsibilities. In Nepal, citizen engagement in good governance has been undermined since 1990 despite their participation in the Jana Andolan.

Transparency and Accountability in Governance

Transparency and accountability are crucial for fostering public trust in governance, serving as “norms or principles” that outline how governments should operate (Adagbabiri, 2015, pp. 1-5). Transparency refers to the disclosure of information about government actions, decisions, and policies. Governments must provide information in a way that is accessible, comprehensive, and understandable to citizens to be transparent. Accountability mechanisms can enhance good governance by ensuring that government actions are held to public scrutiny. Checks and balances enable institutions to hold governments accountable for their promises and commitments. Being accountable means that citizens can and should ask questions about the actions of government officials, including politicians. Accountability can take many forms,

including a system of laws that holds government officials responsible for their conduct or a mechanism that enables citizens to challenge the actions of their representatives. Accountability in the legal system is founded on transparency in political processes. As long as political processes are transparent and accountable, the law has the opportunity to hold the government accountable to the public. Likewise, when government actions are readily accessible, citizens can keep their representatives in check. As a result, transparency and accountability are cornerstones of democratic governance.

Legal accountability is at the heart of any democracy, ensuring that government actions are conducted by the rule of law. However, legal accountability is not enough for a healthy democracy. Although the legal system has mechanisms in place to hold government actions accountable to the public, it requires a transparent political process for this to occur. Public access to information on government actions is crucial because citizens need this information to hold governments and their officials accountable for their actions. In this sense, transparency is a prerequisite for accountability. Without transparency, accountability cannot exist because there are no checks on government actions. An accountable government not only conforms to the law but is also transparent to the public regarding its actions and decisions. Despite the separation of powers, access to information remains at the heart of the relationship between democracy and governance and is critical for public participation in a democracy. Good governance is dependent on and measured by transparency in political processes. International organizations have provided substantial support to developing countries, helping them establish democratically elected governments. Countries such as Kenya, Cameroon, and Ghana have experienced a rapid increase in foreign aid following the adoption of democratic governments in the early 1990s. This call for increased transparency to ensure that international funding is being effectively utilized is not unique to Africa.

There are some successes, but in Uganda, there are far more failures. Nepal also demonstrates that while transparency initiatives have been successful in some areas, they have not been as successful in others. Uganda has seen improvements in education sector transparency through the increasing involvement of civil society in monitoring government actions. This success is attributed to civil society's ability to mobilize stakeholders to demand accountability from government officials, as well as the political will to respond to those demands. However, in Uganda, an attempt to monitor the implementation of strategies aimed at reducing poverty has failed to have an impact despite the availability of information and legal frameworks to enhance accountability. Weaknesses in civil society's ability to monitor government actions have limited such efforts, underscoring the point that information alone does not translate into accountability.

Nepal must overcome considerable barriers to transparency if efforts to improve the governance outcome of foreign aid are not to be undermined. Adapting policies designed to enhance accountability and reduce corruption to fit local conditions is critical. If a model democracy is to be emulated, transparency should focus on political processes rather than access to information for monitoring government actions. Grants

should prioritize general parliamentary legislation over specific legislation to improve the transparency of government actions. Civil society's role should be to improve the political climate rather than passively monitor compliance with the law. If compliance monitoring is employed, civil society organizations should be large enough to command the attention of high-level government officials. Ultimately, donor coordination should shift from involving multiple actors to focusing on one or a few key agencies.

Role of Political Parties

Political parties, as vehicles of party politics, play a crucial role in a country's governance system. Political parties are primarily responsible for formulating laws, and their political ideology typically defines the nature and character of the laws they create. The Nepalese political system has been experiencing the influence and dominance of party politics on its governance system since its political opening in 1990. History has witnessed the overwhelming influence of party politics on the formulation of laws and the functioning of the legal system in Nepal, either directly or indirectly (Surya & Prasad, 2012, pp. 149-170).

As the apex body defining the state's political character, political parties in Nepal have played both supportive and obstructive roles in the governance system. On the one hand, political parties are believed to represent the people and are expected to promote good governance. On the other hand, they have been accused of factionalism, corruption, impunity, and obstructing the governance system. The laws enacted by a particular political party typically reflect its political interests and policies. As a result, there has been a broader tendency to view the legal system as favoring a particular political party in disputes or contests. Law and legal systems have often been interpreted and perceived through the lens of political party allegiance in Nepal. Due to such party allegiance, the appointment of various statutory bodies and their functioning has been perceived in a political rather than a professional character. Due to such party loyalty, judicial independence is compromised as judicial appointments prioritize political allegiance over legal merit. Political party factionalism and the influence of senior party leaders have compromised the independence and impartiality of the legal system, leading to widespread public distrust of the law and the legal system in particular. Externally, the legal system has been perceived as either reactive or accommodating, favoring political parties or their factionalism. Political party factionalism has been extensively reflected in the governance system, especially in the public perception and character of law. Internally, law, being the creation of a political party, has been perceived as either favoring or obstructing the interests of a political party.

International Perspectives on Good Governance in Nepal

Good governance has emerged as a dominant global benchmark and framework of governance in recent decades, continuously evolving. Nepal's post-1990 efforts at good governance are examined from a global perspective. Nepal is situated within the broader context of global efforts at governance reform, drawing general insights from experiences in other countries facing similar governance challenges to those of Nepal. The focus is on how global models of governance reform provide insights into Nepal's

governance predicament. Attention is also paid to the influence of international organizations and treaties on the legal reforms in Nepal.

Following the 1990 popular movement, political and legal reforms in Nepal were primarily influenced by international organizations and treaties, with a focus on protecting civil and political rights. The legal framework was amended to provide for an independent judiciary, constitutionalism, the separation of powers, civil liberties, the rule of law, and checks and balances. However, the guarantees of rights and governance structures provided by the legal framework are undermined by the politicization of law. The ongoing effort to implement international norms at national levels has been complicated by the political contexts in which these processes occur (Lutfor Rahman, 2016, pp. 40-50).

As in many other developing countries, foreign aid and investments in Nepal are closely tied to the implementation of specific governance standards. The 1991 structural adjustment program included reforms aimed at fostering accountability, transparency, and openness in the public sector. The conditions attached to international financial assistance, combined with the growing influence of the donor community on nationally determined policy choices, have led to the rise of the so-called "Washington Consensus" on governance standards. However, the external imposition of specific standards and governance arrangements is often resisted by the local socio-political context. Despite the adoption of internationally promoted governance principles, challenges persist in translating them into practical applications, particularly in aligning local practices with global standards. The emphasis on good governance has yet to result in its broader acceptance as a vehicle for meaningful change.

Comparative Analysis with Other Countries

This section undertakes a comparative analysis of governance in Nepal and other countries. It identifies the main areas that Nepal can learn from countries with similar experiences. Nepal has recently adopted democracy, but it remains to be seen whether it can achieve good governance, which is a primary concern and challenge. Meanwhile, countries with similar challenges have shown some success in governance, developmental, and democratic practices. The comparative analysis demonstrates the political dynamics that have influenced the law in various contexts. In doing so, it helps to understand the successful strategies and mechanisms of governance. Efforts will also be made to assess how countries have addressed concerns related to corruption, the independence of the judiciary, and participation in governance. Such reflection will help to analyze Nepal's political scenario in comparison to the global context. The question of whether the so-called best practices can be applied to the Nepalese context is also raised. Ultimately, this comparative lens aims to identify the pathways to reform governance in Nepal.

In this comparative scrutiny, good governance is examined in terms of accountability, transparency, rule of law, participation, and responsiveness (Hossen & Anwar, 2011, pp. 8-21). The above-mentioned principles of governance are seen to be violated, providing a basis for comparison. Nepal's governance scenario is examined in detail, and then it is compared to that of other countries according to specific thematic concerns. Along with the thematic approach, the significance of the polity in shaping

the governance structure is also central to the discussion in this section. Countries outside Europe and North America are often grouped as "developing" or "third-world" countries. Many of these countries share common characteristics such as colonialism, poverty, political instability, ethnic fragmentation, and the challenge of nation-building. This comparison emphasizes the developing nations in Asia, Africa, and Latin America.

Reform Initiatives and Best Practices

Successful strategies adopted in various sectors have been identified as reform initiatives and best practices to improve governance. These efforts are seen as important means to enhance governance, given the challenges ahead for Nepal. However, it is crucial to note that best practices must be adopted and adapted to fit the social, cultural, and political context of a country, as a solution that works in one place may not necessarily work elsewhere (Gautam, 2008, pp. 1-16). Nevertheless, highlighting potential paths that have proven successful in other contexts may inspire actors to take action in the right direction, and it is hoped that this will be the case for Nepal.

Reform efforts that have been successful in promoting effective governance in the bureaucracy and public service delivery systems of South Asia, Africa, and Central America, as well as the experience of civil society and international organizations in these reform efforts, are elaborated here. These successfully piloted reform efforts are good practices that may offer practical solutions to some of Nepal's most pressing governance challenges. By focusing on past successes rather than current failures, hope is generated that a better future is possible. Case studies from Bangladesh, India, and Uganda demonstrate how bureaucratic institutions and public agencies have successfully implemented reforms to enhance transparency, accountability, and public participation in service delivery. These countries faced similar challenges to Nepal, and the steps they took to overcome the hardships may help address Nepal's obstacles to good governance.

In the course of highlighting this recently compiled good practice documentation, the governance reform initiatives undertaken before and after the restoration of democracy in 1990 are examined. Despite being a relatively recent phenomenon, the hurdles hindering the successful application of good governance practices are also noted. In other words, while the Nepalese bureaucracy continues to grapple with the pernicious impacts of patronage politics, graft, and indifference, efforts are being made to expose the barriers that have hindered the implementation of good governance practices.

Case Studies and Examples

Many incidents have occurred in Nepal, both recently and currently, in which the law has become merely a means to fulfill the political objectives of political parties, their leaders, and associated groups, raising serious concerns. A collection of such incidents has been compiled to analyze how politics influences law in Nepal. Growing up in a post-conflict, fragile, and transitional democracy, I have witnessed some law and governance-related incidents involving high-level political figures and serious crimes during my academic pursuits, which may have shaped my perspective on law and politics. Like many other developing countries, Nepalese politics has been dominated primarily by parochialism, populism, and faux liberalism, alongside the

gross misuse of law for political ends, particularly in governance-related laws. Despite the growing attention of both local and global academia, donors, and human rights watchdog agencies on observing and ensuring the role of law in good governance, many recent incidents concerning law and politics raise serious concerns (Sapkota, 2014). For example, in July 2009, the then Prime Minister of Nepal, Madhav Kumar Nepal, expressed his distrust in the judiciary and threatened to resign from the post of Prime Minister if the judiciary intervened in the political decision-making of bringing the then Chief of Army Staff Rookmangud Katawal under the purview of law, who was accused of various governance-related crimes.

Similarly, in February 2010, one of the ruling party's senior leaders, Kiran, publicly threatened Supreme Court Justice Durga Prasad Shrestha with dire consequences if he did not decide a sensitive case involving Maoist leaders in his favor. The defense of the nation's sovereignty against India, the alleged involvement of India-supported agents in public decision-making, and publicly capitalizing over the nation's woes by questioning the law and political decision-making relating to politics and the peace process are some of many incidents involving former Prime Minister Surya Bahadur Thapa that can raise eyebrows over his intent, in 1991 and even in 2001 (Ayodele, 2014, pp. 2084-2094).

The Supreme Court's judgment regarding cases against lawmaker Gyanendra Shah, unresolved high-profile murder cases, including one against lawmaker Bal Krishna Khand, and the political-executive interference in the appointment of the national anti-corruption chief commissioner are recent incidents that illustrate how politics influence law. The then Prime Minister K.P. Sharma Oli's insistence that he had dismissed his opponent from the position of Chief Justice in light of the law was an attempt to question the credibility of the law about the sensitive political decision of his appointment, even with a death penalty charge being provisioned against him. The desire and attempts of the then Chief Justice to become a call or founding chair of the National Natural Justice Forum are indicative of a flagrant attempt to capture public polity for parochial gain. The desire of political leaders to establish public tribunals for justice against the social malice of conflict-era impunity, in contrast to the then Chief Justice's attempt to establish a tribunal by the law, is illustrative of parochially capitalizing on the public polity. These examples are not intended to be exhaustive but rather reflect some broader governance issues faced by the country. From a formal perspective, the scrutiny of the intent behind some illustrative successful and unsuccessful incidents of law being influenced by politics attempted here should be insightful in generating lessons for remedial actions to enhance the country's politico-judicial governance capacity.

15. Future Prospects and Recommendations

The preceding assessment and ideas generate possible prospects for governance and law in Nepal. Building upon these analyses, it outlines some possible paths for reform and development in the political and legal arenas. Additionally, thoughts on the role emerging technologies and innovative practices could play in bettering governance are included. Nepal stands at a pivotal juncture in law and politics, particularly in terms of governance. Generally, crucial recommendations for good governance, informed

consent, and inclusive political participation have been provided (Sapkota, 2014). Similarly, some thoughts on the future of the law and political course have been outlined, primarily focusing on the need for reform, innovation, and proactive engagement among various stakeholders.

Governance entails a complex interplay of principles, policies, institutions, and actors, encompassing the decision-making process and the execution of decisions. The New Public Governance approach views governance as the cooperative arrangements through which public goods are delivered, emphasizing the roles of networks in public policy-making and the collaborative approach to service delivery. Transparency, accountability, participation, and responsiveness are vital elements of governance. Additionally, governance can be viewed as a multi-tiered framework encompassing global, national, and local governance systems. As a post-liberal state, Nepal continues to pursue a liberal democratic order, with good governance at the center of national and local political discourse. With deep-rooted political instability, socio-political strife, and a prolonged sense of impunity, the law has underpinned governance, offering hope for stability, order, development, and prosperity.

Innovative and open political governance channels, tools, and spaces for deliberation and policy-making should be developed to enhance participatory policy-making. Such deliberation mechanisms should include innovative online platforms and periodic face-to-face engagements with marginalized groups involving civil society organizations. An innovation policy for open political governance, participatory policy-making, and deliberative democracy should be developed and adopted. The role of civil society in law and public policy should be re-envisioned, considering civil society currently comprises diverse entities with different natures, goals, and modes of engagement. It should take a holistic form of pro-poor advocacy, empowerment, capacity enhancement, rights protection, policy oversight, and deliberative engagement with political parties and local government institutions while strengthening civil society collectives.

Findings

The paper examines the complex relationship between politics, law, and governance in Nepal, with a particular focus on how political intervention influences the law and, in turn, impacts good governance. The paper reveals that politics in Nepal often undermines the law for the sake of specific interests, hindering the prospects of good governance. This has been evident, especially since 2017, when political influence has led to poor governance outcomes. When it comes to the dynamics among politics, governance, and law, Nepal's political landscape remains unsettled, and the situation persists even after the 2015 constitution was promulgated.

There are historical and contemporary factors that have significantly influenced the political intervention in the law of Nepal. The paper highlights several mechanisms by which this intervention occurs, as well as its implications for governance and policy. It illustrates how the federal distribution of power exacerbates socio-historical realities that are detrimental to good governance. Corruption, nepotism, and a lack of

transparency and accountability pose significant challenges to good governance in Nepal, which is further hindered by political interference in the legal system. Add to this the pressures and influences of political parties and their policies, which only serve to erode the law's neutrality and impartiality in the process. As such, it underscores the necessity of judicial independence and impartiality for the rule of law and good governance, exemplified by instances where political coercion undermines the integrity of the judiciary.

Conclusion

This paper examines the intricate relationship between politics, law, and governance in Nepal. The outcome was likely due to poor governance conditions resulting from political interference in judicial practice. As a result of political clout and undue influence, the law has been manipulated to serve particularistic interests, thereby undermining the prospects for good governance.

The paper highlights extensive problems of good governance in Nepal, including a decline in control over corruption, nepotism, and a lack of transparency and accountability, all of which are exacerbated by political interference in the justice system. This further complicates the neutrality and impartiality of the legal system with the influence of political parties and their agendas.

These findings underscore that judicial independence and impartiality are crucial drivers of the rule of law and good governance. It also highlighted examples in which political coercion had compromised the judiciary's integrity. This paper adds another piece to the puzzle of mainland China's good governance theory, as it theorizes the impact of politics on law and its impact on good governance, thereby contributing to the literature on "law as a tool." It also highlights potential avenues for reform and improvement in Nepal, with an agenda for minimizing political misgovernance through proactive engagement among policy actors in the country.

References:

- Adagbabiri, M. (2015). Accountability and Transparency: An Ideal Configuration for Good Governance. *Developing Country Studies*, 5(21), 1-5. <https://core.ac.uk/download/234682642.pdf>
- Ayodele C., M. (2014). Law and Politics in Nigeria: The Political Functioning of the Judiciary in Colonial Nigeria, 1940–1960. *Mediterranean Journal of Social Sciences*, 5(20), 2084-2094. DOI: 10.5901/mjss.2014.v5n20p2084
- Cerar, M. (2009). The Relationship Between Law and Politics. *Annual Survey of International & Comparative Law*, 15, 3, 1–23. DOI: [10.5040/9781472558947.ch-014](https://doi.org/10.5040/9781472558947.ch-014)
- Gautam, B. R. (2008). Factors Affecting the Application of New Public Management-Oriented Reforms for Reforming Nepalese Public Administration. [Himalayan Research Papers Archive](https://digitalrepository.unm.edu/nsc_research/29), 1-16. https://digitalrepository.unm.edu/nsc_research/29
- Hossen, M. M., & Anwar, K. A. (2011). Problems and Possibilities of Good Governance in Bangladesh: Hurdles to Achieve Sustainable Development. *Public Policy and Administration Research*, 1(1), 8-21. <https://core.ac.uk/reader/234668790>

- Lutfor Rahman, M. (2016). Governance and Good Governance: A Theoretical Framework. *Public Policy and Administration Research*, 6(10), 40-50. <https://core.ac.uk/download/234669976.pdf>
- [Malagodi, M.](#) (2019). The Rejection of Constitutional Incrementalism in Nepal's Federalisation. *Federal Law Review*, 46(4), pp. 521-540. doi: [10.1177/0067205x1804600403](https://doi.org/10.1177/0067205x1804600403)
- Pimentel, D. (2016). Balancing Judicial Independence and Accountability in a Transitional State: The Case of Thailand. *UCLA Pac. Basin, L. J.* (33), 155-186. <https://core.ac.uk/download/217442021.pdf>
- Pyakuryal, S. (2007). Retainer bureaucracy: an impediment to the process of democratic governance in Nepal. *Himalayan Research Papers Archive*, Vol. 2, No. 2, 1-17. https://digitalrepository.unm.edu/nsc_research/16?utm_source=digitalrepository.unm.edu%2Fnsr_research%2F16&utm_medium=PDF&utm_campaign=PDFCoverPages
- Sapkota, K., Dennison, L., & Room, V. (2014). Exploring the emerging impacts of open aid data and budget data in Nepal. *Freedom Forum*, <http://hdl.handle.net/10625/55356>
- Surya P. P. & Prasad P. S. (2012). Political Instability in Nepal: Examining the Roles of the Parties and Monarchy in the Second Democratic Period (1990-2002). *The Journal of Social Science*, 73, 149-170. <https://core.ac.uk/reader/234715670>