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## Sentencing System in Nepal: Analysis of Theory, Legal and Institutional Mechanisms

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### Abstract

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*Sentencing is the formal declaration of the judgment and the imposition of the punishment on behalf of the defendant soon after the finality of the conviction of the crime. If a defendant is convicted with the criminal offense by the court of law imprisonment, fine and compensation are imposed as a penalty on the defendant. Nepali legal system has adopted the reformative approach of sentencing i.e., criminals are subject to reformation. But the application of discretionary power of the judges for the imposition of the sentences by taking into the consideration of the mitigating and aggravating factors are not properly utilized for delivering the justice. Qualitative, doctrinal and descriptive research methodology is used in this study as well as content analysis as the tool of research method. The primary objective of this article tries to visualize sentencing philosophies adopted by Nepal, laws, judicial response and practice regarding sentencing and application of quantum of sentences in accordance with the gravity of the offences. Through this study the researchers draw the findings that, there is provision of punishing the poor criminals by the imposition of the imprisonment in case of failure to pay the fine and facility of the bail for the offender having the adequate economic resources are required to be eliminated. Finally, the results and findings of this study are important for future researchers, law practitioners, law students, law teachers, policy makers etc.*

**Keywords:** Sentencing, reformation, rehabilitation, re-socialization

## **Introduction**

The primary purposes of criminal justice system is the punishment (Lamichhane, 2023, p.2). The sentencing is considered as the procedural part of the criminal justice system. Sentencing is a legal process. The punishment of the crimes are authorized by the law. It is imposed in an individual cases after the convictions of the criminals (Mackenzie, 2005, p.2). Punishment is the formal declaration of the judgment and the punishment to the convicted criminals. (Siddique, 1997, p.318). The length of the sentence is fixed by the sentencing process. It begins soon after the conviction hearing of the defendant in specified offense. There are numerous purposes of sentencing viz. punishment of offenders, reduction of crime, reformation and rehabilitation of the offenders, promotion of social defense and implementation of reparation by the offenders. There are several factors such as motive, character and family environment which helps in determining the sentence (Acharya, 2051, p.225). If a defendant is convicted by the criminal offense through the court of law imprisonment, fine and compensation are imposed as a penalty on the defendant. The convicted defendant is brought before the court of law for the imposition of the punishment (Garner, 1999, p.1367). There is strong link between sentencing and punishment.

The sentencing declares the proper punishment after proving the charge of criminal responsibility through the competent court (Manson, 2001). In the past, there were numerous types of formal and informal models of punishment existing in the society. Such types of punishment include the death penalty, exile, degradation of the caste, shaving of the head unevenly, mutilation, fine, force feeding of human excreta, whipping, branding of criminals etc. (Lacey, 2008). The sentencing system begins with the reporting of a crime or keeping the suspect on the custody and decisions of the prison administration to release the prisoner on parole or to withdraw the community order (Ashworth, 2005, p.3). The sentencing process include the declaration of the proper punishment both in the qualitative and quantitative terms. The sentencing system has contribution for the establishment of fairness for the imposition of the penalty upon the offenders. ‘The numerous people are involved in the sentencing process, ranging from the legislators, probation officer and the judges in making decisions’ (Quadri, 2009, p.3778). In the light of above introductory fact and framework the objective of this article is to demonstrate the philosophical idea of sentencing with reference to some notable case laws, prevalent legal and institutional mechanisms. There are number of aspects of sentencing but this article is only limited to explore and analyze sentencing of criminal justice system based on Nepali statutory provisions, judicial precedents and Nepali practice.

## **Method of Data Collection and Analysis**

This article is a theoretical and normative work. In this paper the authors have applied the research methods namely doctrinal, qualitative and descriptive research method, with the application of the content analysis as the tool of research. This paper used two datasets which are derived from the prevalent Nepali statutory provisions and sentencing decisions and principle propounded by the Supreme court of Nepal respectively. Related statutory provisions such as The Constitution of Nepal, 2015, National Penal Code, 2017, The Criminal Offenses (Sentencing and Execution) Act, 2017 etc. are taken as primary source of data. Secondary data are collected from various literatures such as books, research reports, journals, articles, newspaper articles, Nepal Kanoon Patrika etc. Finally, there is descriptive and analytical examination of the collected data and information.

## **Results and Discussion**

### **Sentencing Philosophy of Nepal**

In earlier days, some of the forms of retributive and physical punishment were hands of the thief were cutt down, damaging the eye of the spy, the rapists were castrated, the prostitutes were disfigured for making them unattractive. In modern times, incapacitation is accomplished through the incarceration (Reid, 1996, p.120). The philosophy of retribution states that the eye is taken for-an-eye doctrine. Generally, deterrence and reformation et.al. are the two major objective of sentencing provisioned by the Nepali Sentencing law. The deterrent theory of punishment is guided through the free-will. The aim of punishment is to punish the offender as well as to frighten the others from committing the crime. There is individual deterrence for the prevention of the potential offender from the commission of the crime. Whereas the general deterrence prevents the people from the engagement in the criminal activities after seeing the punishment that is imposed on the actual offenders. The offenders may be changed through the proper treatment and care through the reformative approach.

Likewise, another doctrine of proportionality states that the punishment must fit the offences committed by the defendant. The punishment must be provided to the offender in accordance with the gravity of the offence. It is mandatory to have uniformity in the sentence for similar crime committed under the similar circumstances. This principle is based on the principle '*let the punishment fit the crime*' (Upreti, 2018, p.41). In contrasts, the concept of individualization of the punishment means that the punishment must suit to the offender. The

judge must restrain the imposition of the imprisonment upon the defendant. In our practice imprisonment is taken as last resort of the punishment and prison as the center for the execution of imprisonment.

In the **legislative model**, the legislative body is the only authorities for the determination of the punishment to the convicted offender. In the **judicial model** of sentencing, the length of the sentence is determined by the judge as per the range. The judges can use the discretionary power only within the range permissible by the legislature. Judges are not provided absolute discretionary power. In the **administrative model** of sentencing, an administrative agency made the decision for the release of the inmate. Usually, administrative agency is a parole board (Paranjape, 2008, p.37). The sentence imposed in administrative model is called the indeterminate sentence. The release of an offender must be made in accordance with the individual cases for deciding whether the offender is in a position for rejoining the society or not.

An indeterminate sentence involves the legislative specifications of the ranges of the sentence which permit the judges for the exercise of discretion for the determination of the actual sentences. The indeterminate punishment varies from one day to the life imprisonment. Usually, it involves legislative specification of the maximum and minimum term of imprisonment for each offense. The determinate sentencing scheme advocate for the mandatory parole after serving the specified portion of the determinate sentence. The mandatory sentences are specified by the legislature and usually it involves the sentence of the imprisonment. In the presumptive sentencing the sentence is particular for each offense, but the judges may deviate from that norm. There must be reason for deviation.

### **Constitutional Provision**

The right to live with dignity is guaranteed by the Nepalese Constitution, 2015. ‘Nepal is against the imposition of death penalty to any category of the offender’ (Constitution of Nepal, 2015, Article 16). In the eye of the law, every citizen is equal. (Art.18). The Constitution of Nepal, states that the person is kept in the custody by providing the information about the cause for the arrest. The detained people have the right to consult the legal practitioner and they are presented before the court within 24 hours of such arrest. They must not be punished for an act which was not punishable by the law in force when the act was committed. Any person must not be punished greater than that prescribed by the law in force while the commission of

the offence. There is a principle in the criminal justice system that an accused is considered to be innocent until proven guilty of the offence. The accused must not be prosecuted twice for the same offence. There is right against self-incrimination. The accused have right to get information about the proceedings taken against them. There is guarantee of fair trial by the independent court of law. The indigent people have right to get the legal aid (Art.20).

The information about the case is given to the victim. The victim is entitled to the compensation and rehabilitation as per the law (Art.21). The privacy of any person relating to the residence, property, document, data, communication and information about the character are kept confidential except as per the law (Art.28). There is guarantee of the juvenile justice. Nepal has adopted the principle of juvenile justice so that all the records of the juvenile offender are kept confidential while imposing the sentence of the reform home and rehabilitation center (Art.39). Nepal has adopted the principle that the citizen of Nepal is not exiled from the country as a result of the punishment (Art.45). There is provision of right to the constitutional remedy for the enforcement of their rights of every citizen (Art.46). Every citizen must follow the Constitution and law of the Nepal (Art.48).

### **Salient Features of Criminal Offences (Sentencing and Execution) Act, 2017**

**Separate hearing:** Generally, the court determines the sentence for any offense only after such person is convicted by the court of law. The sentences are determined within thirty days of the conviction. The separate hearing is conducted for determining the sentence. There is no requirement of separate hearing for the determination of sentence of imprisonment up to three years or fine of up to thirty thousand rupees (Criminal Offences (Sentencing and Execution) Act, 2017, Section 9).

**Pre-Sentencing report:** The probation officer or parole officer must prepare the pre-sentencing report for an offense punishable by the imprisonment for more than three years or fine of more than thirty thousand rupees. It further mentions that the pre-sentencing report must include the personal, social background of the offender, circumstances during the commission of an offence, activities and behavior of the offender before the commission of the crime and the age factor of an offender etc. This pre-sentencing report helps for the application of the individualization of punishment. (Section 12).

**Determination of sentences:** In the criminal justice system, the sentencing is determined on the basis of the gravity of the offence and the intention of the offender. Likewise, while imposing the sentence upon the offender, the circumstances of the commission of an offense along with the aggravating or mitigating factors are considered. The conduct of an offender

and previous activities are taken into consideration (Section 15).

**Imposition of fine:** Another form of sentencing adopted by the criminal justice system of Nepal is the imposition of the fine. The court of the law determines the amount of fine by considering the financial condition and source of income of an offender. The court of law impose the amount of fine on the basis of the amount in controversy (Section 18).

**Imprisonment:** After the enactment of the Muluki Penal Code 2017, Muluki Criminal Procedure Code, 2017 and Criminal Offences (Determination of Sentencing and Execution) Act, 2017 there has been several changes in the sentencing system of Nepal. There is elimination of confiscation of the entire property of an offender. The term of life imprisonment is made twenty-five years. The sentencing of the imprisonment is considered as the last resort if the other sentences are not adequate for the nature of the offences (Section 23). There is suspension of imprisonment if the sentence is less than one year (Section 24).

**Reformation and rehabilitation:** Criminal Offences (Sentencing and Execution) Act, 2017 has advocated for the reformation and rehabilitation of the offender (Section 26). It has adopted the philosophy of open prison as well as the imposition of the prison on the weekend or during the night only (Section 27). There is introduction of open prison and parole for the socialization of the offender (Section 30). There is incorporation of the concept of engagement of an offender in physical labor in lieu of the imprisonment (Section 31).

**Compensation:** In the present context, the criminal justice system has implemented the provision of the compensation for the victim (Shrestha, 2001, p.211). The rights of crime-victim is a fundamental right (Constitution of Nepal, 2015, Article 21). The victim has the right of information about the investigation and adjudication of the case (Katherine, 2001, p.98). The victim has the right to get compensation and right to social rehabilitation. The offender has obligation for the payment of the compensation immediately. In case of inability to pay the compensation immediately, the offender must furnish any property as a security. Generally, the court gives order against the offender for the payment of the compensation within one year in maximum three installments (Criminal Offences (Sentencing and Execution) Act, 2017, Section 42). The compensation must be borne by each offender. There is imposition of the imprisonment for the non-payment of the compensation to the victim. If an offender does not make payment of the amount of compensation within the prescribed period, the compensation is taken by making attachment of property of the offender. Otherwise, the offender is imprisoned by converting the amount of compensation into imprisonment at the rate of three hundred rupees per day (Criminal Offences (Sentencing and Execution) Act, 2017, Section 45).

***United Nations declaration regarding the basic principles of justice for the victims of Crime and Abuse of Power, 1985:*** It has guaranteed the participation of the victim in criminal proceedings. The victims have right to get information about their rights for seeking the redress.

***Challenges of the implementation of criminal offences (Aentencing and Execution) Act 2074:*** The criminalization of the new acts by the recent criminal codes such as Chhaupadi, Witchcraft, Match Fixing and sentencing the offender in reality are challenging because they were not considered as crime previously. There is increase in the role of police investigation such as keeping the police diary, prosecution by district attorney, constituting the special team for the investigation requires the team work in the establishment of the crime and imposition of the sentences are not implemented effectively. There is lack of proper implementation of conviction hearing and sentencing hearing due to the lack of skilled manpower (Koirala, 2018, p.4).

There is lack of proportionality in quantum of sentence such as fine, imprisonment, forfeiture amount and the loss of life. National Criminal Procedure Code, 2017 has mentioned that, the criminal responsibility of the offender is absolved once the offender is dead. In case of the death of the offender before or pending the trial or before the punishment, that person is released from the criminal liability and the case is quashed immediately (National Criminal Procedure Code, 2017, Section 158). There is remission of the sentence in case the offender dies. The whole sentence of the imprisonment or fine payable by the offender is remitted. Governmental or personal claimed amount and compensation are recovered from the property belonging to that person.

National Penal Code, 2017 has defined the acid attack as the crime. It has made the provision of imprisonment, fine and compensation for the victim (National Penal Code, 2017, Section 193). Likewise, disfiguring the faces and body of any person by the acid attack is subject to the less term of imprisonment for the culprit and monetary compensation is not adequate for the cosmetic surgery of the acid attack victim. The imprisonment up to five years to eight years and fine of one lakh to five lakh is imposed for disfiguring the face by the acid attack. Similarly for the disfigurement of other body parts, the punishment of three years to five years and fine of fifty thousand to three lakh rupees are imposed. The acid attack is included within the physical violence in Article 2 of the Domestic Violence (Offence and Punishment) Act, 2009. There is more emphasis on the imposition of the imprisonment rather than providing the compensation to the victim and medical treatment. It seems sentencing policy in Nepal is not governed by any particular principle. The sentencing system of Nepal

is more focused for the guarantee of the human rights of the offender rather than medical treatment and re-socialization of the victim. There is lack of attention of the law towards the victim and their dependents (*Rattan Singh v. Punjab State, 1979, 4 SCC 719*).

The judge imposes the sentence upon the offender because it is required by the law. The discretionary power of the judge for the reduction of the sentence on the basis of mitigating factors is being misused for protection of the criminals. There is lack of proper infrastructural development for the establishment of Reform Home and Rehabilitation Center for the guarantee of the Juvenile Justice. The reformatory approach is not properly implemented in the existing criminal justice system. The implementation of the Victim Relief Fund for getting the interim compensation by the victim for the medical and psychological treatment in provincial level and local level is challenging (*Criminal Offences (Sentencing and Execution) Act, 2017, Section 48*). There is institutionalization of corruption for the imposition of less sentence such as conversion of the intentional homicide into provocation homicide. It may disturb peace, order and security by increasing the rate of crime in the society. If the offence is punishable only with the fine, the offender has to pay the fine. The government is more concerned in raising revenue through fine rather than punishing the criminals.

The provision about the prisoner may be kept in hospital are misused by the powerful. The real objective of this provision is medical care for the prisoner of the unsound mind (*Section 34*). There is politicization of the crime such as the order of a judge for keeping the case on postponement and the remission of the punishment of an offender who are close to the political parties etc. The trend of giving amnesty from the President must not be based on political affiliation of the offenders. As a consequence, it creates threat to peace and security in the society. The provision of giving amnesty is mentioned in the National Criminal Procedure Code 2017. There is provision of pardon by the president. The convicted offender may make a petition to the President, via Ministry of Home Affairs, for the pardon or reduction of the sentence (*Section 159*).

The precedent established by the honorable Supreme Court lacks uniform application of the mitigating factors and there is problem of misuse of discretionary power by the judges. In the murder case of the Gita Dhakal by her husband Ranjan Koirala, The Supreme Court ruled that the life imprisonment of twenty years shall be imposed on him for the commission of the murder of his wife and the confiscation of entire property was not made. It is because of the current Criminal Offences (Sentencing & Execution) Act, 2017 states that lesser punishment will be imposed on the offender at the time of sentencing. (*Section 5*).



The principles of juvenile justice are adopted in Nepal. Whereas the victim of minor age is not getting the compensation by the offender for the crime done against them. There is trend of imposing the crushing sentences even if the offender has committed the minor offences. There is no implementation of the imposition of the lesser sentence if the offender help in administration of the justice. There is lack of justification of sentencing in the judgment of the court so the judges are obliged to mention the reasons for the imposition of such sentence. The imposition of the sentences on the particular offense determines the public confidence in the administration of criminal justice. The several forms of the sentencing such as imprisonment, fine, monetary compensation will not heal the pain, sufferings, physical and mental loss of the victim.

### **Institutional Mechanisms of Sentencing System in Nepal**

**Police:** The police office is the first place to receive the First Information Report either written, oral or via electronic medium. Any first information report is forwarded to the separate investigating authority, if it is specified by the law otherwise it is sent to the concerned district police office ( The National Criminal Procedure Code, 2017, Section 4). Every police officer conducting investigation under have to keep the police diary, in which every proceeding made by in the course of investigation are recorded immediately. It contains the date and time of receipt of information about the offence. The place or scene visited in the course of investigation, proofs, evidence, details of the person arrested, the name and address of each person interrogated in the course of investigation, as well as the nature of the person arrested or inquired etc. are mentioned there (Section 25). The preliminary investigation report is submitted to the office of district government attorney office for the preparation of the chargesheet.

**Government Attorney:** The person may make a complaint to the concerned district government attorney office or the police office higher in level for the registration if the concerned police office refuses to register a first information report. The concerned district government attorney office must keep the records and forward to the concerned police office for taking the necessary action. The person may make a complaint setting out the matter, to the Chief District Officer of the concerned district. The government attorney or court may ask and examine the police diary. The concerned investigating authority may seek advice or opinion of the government attorney on any matter. The government attorney may direct the investigating authority to carry out further investigation or to collect further evidence or to seize any exhibit, evidence or to inquire any person (Section 26). The concerned government attorney may submit the charge-sheet to

the concerned district court within the time-limit (Section 32). The charge made against the accused include the relevant laws to be applied, the demand for the punishment to be imposed on the accused and the amount of compensation to be awarded to the crime victim. If the accused assists the investigating authority in the course of conducting investigation into such offence, the investigating authority may, in consideration for such assistance, recommend to the government attorney for a reduction in the sentence than can be imposed on such accused under the law. There is power of the Attorney General for providing the direction for the adoption of special model in the course of further investigation (Section 27).

**Ministry of Home Affairs:** The person may make complaint to the Ministry of Home Affairs if the Chief District Officer is working as the investigating authority and he refuses to register the information. The Ministry of Home Affairs must make decision, within three days, for registering such information. It must provide direction to the concerned office in order to take action accordingly (National Criminal Procedure Code, 2017, Section 5(4)). A prisoner may make a petition to the President, through the Ministry of Home Affairs for the pardon, suspension, alteration or reduction of the sentence (Section 159). The President must forward the petition to the Ministry of Home Affairs for the necessary action. The Ministry must make a submission to the Government of Nepal for making decisions whether or not to grant the pardon. While granting the pardon nature and circumstances of the commission of the offence, age and criminal background of the offender and the limit of the sentences are taken into consideration.

**Law Courts:** The district court has power to make judgments regarding the punishment, fine and compensation against the offender. It has power to issue habeas corpus for the prevention of unlawful detention. Similarly, it has power to issue order of injunction for the enforcement of the legal rights (Administration of Justice Act, 2016, Section 7). It has powers to hear appeals against the decision made by the quasi-judicial body or judicial committee of local level as per the provincial law.

The High Court have the power to issue the necessary order as per the Article 144 of the Constitution. The High Court try and settle the cases under its original jurisdiction. It has power to make decision against the cases tried and settled by the district court under its original jurisdiction. The appeal shall be filed in High Court if the district court has made full or partial reversal of the decisions made by judicial, quasi-judicial body. The appeal is filed on the High Court for the decision made by the district court in the case relating to public property and the cases relating to the punishment of imprisonment or the fine of more than one hundred

thousand rupees is imposed or the claimed amount is more than five hundred thousand rupees. Further it has the power to make review over the reference judgments (Sadhak) (Administration of Justice Act, 2016, Section 8).

The Supreme Court have power to issue the several writs such as writ of habeas corpus, mandamus, certiorari, prohibition and quo warranto etc. It has power to originally settle the cases, hear the appeal, make review or revisions of the judgments (Constitution of Nepal, Article 133). It hears the matters relating to public importance such as interpretation of Constitution and law or cases recommended by the High Court. It has power to hear the appeal against the decision made by the High Court. One can file appeal in the Supreme Court if the punishment of imprisonment is ten years or more. If the High Court has made full or partial reversal in the decision made by the district court if the imprisonment is more than three years or fine of more than five hundred thousand rupees or claimed amount of more than two million five hundred thousand rupees. The Supreme Court may hear appeal on reference cases (Administration of Justice Act, 2016, Article 9). The reference of the case is made to the Supreme Court, if the High Court has imposed the life imprisonment (Article 10). The Supreme Court have power to review its own judgment if it is found that the fact materially affects the judgment only after the settlement of the case. Generally, the review is made, if the decision is contrary to the precedent propounded by the Supreme Court (Article 11). The Supreme Court revise the judgment made by the High Court, if there is constitutional or legal error, precedent of the Supreme Court is mis-interpreted and there is misappropriation of the government or public property. In case justice is affected by the lack of proper representation of women, children, disabled person and elderly people (Article 12). The decision made by the court is final and it is binding to all the parties to the case (Article 18).

***Ministry of Law, Justice and Parliamentary Affairs:*** This Ministry is responsible for the preparing the draft of criminal law which is later on passed by the parliament as the legislation for the prevention of the crime and the imposition of the punishment i.e., imprisonment, fine and the compensation.

***Probation and Parole Board:*** It makes recommendation to the Government of Nepal for the formulation of the probation and parole policy. It develops the standards for keeping the prisoners on probation and parole along with the terms and conditions to be abide by the offenders. It gives direction to the state probation and parole board. It prepares a roster of persons for the appointment as the probation officer or parole officer. It makes the recommendation for the execution of sentences against the offender. It assists in the rehabilitation of the offenders

(Criminal Offences (Sentencing and Execution) Act, 2017, Section 39).

***Sentence Recommendation Committee:*** It has created the standards for the determination of the correct length of the sentence in accordance with the gravity of the offence. It provides suggestions to the government of Nepal after doing research on existing penal policy. It provides the opinion to impose the sentence on any specific type of offence. It analyzes the records of the offender. It gives suggestions to the government of Nepal for making the reforms in laws of punishment of Nepal (Article 47).

***Department of Prison Management:*** The Prison Act, 1963 (2019 B.S.) is repealed by the current Prison Act, 2022 (2079 B.S.). The Prison Management Department was established at the central level under the Ministry of Home Affairs from the year 2050 in order to make the work related to prison management and administration effective and efficient. It is the responsibility of the relevant Chief District Officer at the local level for the prison management. There is central prison hospital in Kathmandu district. There is another hospital for psychosocially handicapped prisoners in Lalitpur district for the treatment of prisoners who are serving the prison terms. It prepares the records of prisoners based on the monthly reports received from the prison offices. It keeps the records based on the report received from the district from the institutions involved in the reform, protection and rehabilitation of the dependent children, imprisoned children and the freed prisoners. It makes the periodic observation visits to such institutions in order to send the numerical details of incarcerated children and released prisoners regularly to the Department. It directs the prison offices to release the prisoners who have served their imprisonment. It strengthens the physical conditions of the prisons and to develop personality, skills, moral reform and rehabilitation of the prisoners.

### **Judicial Response Towards the Sentencing System in Nepal**

The Supreme Court of Nepal have established number of the precedents regarding the sentencing system in Nepal. The case of Jugat Sada versus Government of Nepal ruled that there was the preparation of a plot by the collection of the pointed weapons with the involvement of more than one person. The Vala was used to cause the murder. The concept of innocent mind must not be applied for the conversion of the intentional homicide into provocational homicide as per the Muluki Ain 2020, Chapter on Homicide No.14. The application of the mitigating factors for the reduction of punishment was rejected by the Appellate court and the defendants were sentenced to life imprisonment along with the confiscation of the entire property. The Appellate Court, do not have power to interfere for the determination of quantum of punishment, except for the miscarriage of the justice. In U.K. there is very wide discretion

for the fixation of the degree of punishment to the judge of trial court except for the offence of murder for which the court must pass a sentence of imprisonment for life. This case states that while fixing the punishment for any particular offence, the court must consider about the nature and the circumstances of the commission of the crime as well as the degree of deliberation shown by the offender (N.K.P. 2063, D.N. 7752). The case of Government of Nepal v. Shanti B.K. states that the justice system must consider the compensation and fine differently. The fine is paid by the offender to the state as a penalty. It is one of the forms of the punishment. The fine is collected as the revenue in the state fund. If the offender is unable to pay the fine, the offender is sent to the imprisonment. The compensation on the other hand goes to the victim directly (N.K.P. 2074, D.N. 9868).

The case of Government of Nepal v. Baijanath Shah Teli states that the purpose of criminal law and justice is to punish the perpetrator as well as to maintain peace and order in the society by the prevention and control of the crime. The punishment must be as per the gravity of the offences. The imposition of the sentence of a single person must not be imposed on the group which shall create lesser sentence to the group members. As a consequence, the purpose of sentencing is less effective. The imposition of sentence in each offender would be more effective. The gravity of the offences committed by the group is heavier than offence committed by the single person (N.K.P. 2068, D.N.8637).

The case of Government of Nepal v. Nawal Kishore Mandal ruled that the application of mitigating circumstances as per the No.188 of the Chapter on Court Procedure. However, from the view of the circumstances of the commission of the offence can be considered as an accident, or the offence has happened in the absence of any plan. The application of No 188 of the Chapter on Court Procedure is made for the reduction of the punishment. The basic objective of CCMCC No 188 is to reform and rehabilitate the offender not to incite criminals for crime. Both the defendant must be liable to life imprisonment as per Chapter on Homicide No 13(4). The judicial privilege and the discretionary power of the judge cannot be used for reducing the punishment of the offender of the cruel and inhumane crime. The offender has killed the deceased by cutting the different body parts. The offenders committing inhumane offences must not be provided with the facility of the reduction of the punishment (N.K.P. 2065, D.N.7993).

The case of Krishna Bahadur Gole v. High Court Patan, states that the court should take into consideration regarding the principle of additional punishment. The court must impose the suitable sentence neither less nor more to the offender of the crime. The court

have to consider the circumstances of the commission of the crime and it must focus on the reformation of the criminals. The strong punishment must not be provided to the offender. It is not like mathematical calculation for imposing the sentence. The judges imposing sentence and the judges hearing the judicial review are obliged to apply their wisdom while imposing the sentences. In the present context there is maximum punishment of life imprisonment and the confiscation of entire property is eliminated by the enactment of National Penal Code, 2074 B.S. Some Act has the provision of additional punishment for the recidivist criminal. There is provision of lower and upper limit of sentencing to the criminals (N.K.P. 2074, D.N. 9846).

The case of Government of Nepal v. Radhika Shrestha, has cited the definition of Battered Women Syndrome. L.E. Walker states that Battered Women Syndrome is a woman who is repeatedly traumatized by the man by his forceful behavior in order to coerce her for doing something unwillingly. The rights of the woman are neglected here. Battered women involves the female, wives or intimate partners who is in relationship with men. The battering cycle must be least twice. Any woman find herself in an abusive relationship once and again if it occurs for the second time, she is called the battered woman. A woman should experience at least two complete battering cycles. The cycle has three distinct phases. Firstly, tension building phase followed by the exploitation or act of loving referred to as honeymoon phase. There are three components of the battering in cycle theory of violence. The tension building phase indicates the heavy battering of the woman. Further it includes calm, loving at the initial phase as well as the physical battering and verbal harassment. Secondly the batterer loses the control of the emotions as a consequence of that lethal battering occurs. The woman is abused in an intimate relationship physically, sexually and emotionally etc. in intimate relationship. Thirdly when the partner exerted power to force her for doing whatever the boy wanted without considering the rights or feelings of the victim. At the core of battered woman syndrome, there is helplessness and cycle of violence to the victim. The Battered Women Syndrome is considered as one of the mitigating factors for the reduction of the sentence of the homicide by the Supreme Court of Nepal (N.K.P 2071, D.N. 9242).

The Supreme Court in the case of Government of Nepal v. Kumar Prasad ruled in the favor of juvenile justice stating that there shall be no imposition of any sentence to Kumar Prasad as he has not committed any other crime after the imposition of the first sentence. If the juveniles are also treated under the criminal justice system, then the objective of the juvenile justice system cannot be achieved (N.K.P. 2075, D.N. 10127). This case is relevant to

sentencing because juveniles are kept in the Reform home and the Rehabilitation center.

From this study, above discussion and analysis it is found that, it is very difficult for the victim of crime to get the medical expenses as well as the compensation either from the offender or from the Victim Relief Fund. The state needs to be serious in this matter and make proper management of it.

### Conclusion

The administration of sentencing system of Nepal is still traditional. The Criminal Offences (Sentencing and Execution) Act, 2017 is the specific landmark legislation for the development of the Nepalese criminal justice system. Only the offenders who have committed the grave offences are kept in custodial sentence because of threat to the society. It has been found that this Act has advocated for the participation of victim while determining the sentences. Further it has advocated for the reformation, rehabilitation and the re-socialization of the offenders. It motivated that the punishment of the imprisonment is considered as the last resort. Several criminal sentencing decisions have indicated the misuse of discretionary power of the judges. It is required to be regulated by the Judicial Council for the proper administration and dispensation of justice. The adequate efforts must be made for the implementation of impeachment process of chief justice and other supreme court judges in the case of misinterpretation of the Constitution and the prevailing laws which truly affects the criminal justice system. Otherwise, there might be miscarriage of the justice. There is provision of punishing the poor criminals by the imposition of the imprisonment in case of failure to pay the fine and facility of the bail for the offender having the adequate economic resources are required to be eliminated. The practice of bail must be regulated properly, otherwise there is chance of misuse of the bail by the elite class of people. The state must be more concerned about the reformation and re-socialization of both the victim and offender rather than imposing heavy fine upon the offender.

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