

# Training Needs in the Area of Criminal Justice System

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This document explores training needs in key institutions that, formally and through their quasi-judicial powers, form part of the criminal justice system in Nepal.<sup>1</sup> It builds on the earlier piece of work prepared for the National Judicial Academy (NJA) in January 2012.<sup>2</sup> The focus is on priority areas, keeping in view the urgency of the training, its possibility to contribute to accountability system, and oversight of institutions apart from enhancement of service delivery.

## Judiciary at a glance:

S. No	Courts	Number
1.	Supreme Court	1
2.	Appellate Courts	16
3.	District Courts	75
4.	Special Court	1
5.	Labour Court	1
6.	Foreign Employment Tribunal	1
5.	Revenue Tribunals	4

The quasi-judicial authorities, as they exist now as at November 2012, are as follows.

## Quasi-Judicial Authorities

There have, so far, been few studies held at any level of judiciary and public administration about the status of quasi-judicial authorities in Nepal, the uniformity of standards, and how the authorities are exercising their powers. Article 101(2) of the Interim Constitution of Nepal maintains that the law may establish and constitute special types of courts, judicial institutions, or tribunals for the purpose of hearing special types of cases. This provision is inherited from the 1990 Constitution. Laws have been enacted and implemented liberally in this spirit ever since. There is a need to regulate the exercise of judicial powers by administrative authorities by setting down clear policy standards.

The report of the *Committee on Study of Judicial Power of Administrative Authorities* (2012/2069) acknowledges that while the existing system of quasi-judicial institutions may be continued, it is necessary to establish separate thematic tribunals to deal with and dispose criminal cases which could result in imprisonment. Judicial power should be

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<sup>1</sup> There is also one Constituent Assembly Court for CA election related disputes. Although the Supreme Court comes out with the annual update of human resources sanctioned for these courts and tribunals, and the actual human resources available in a given year, it does not have any record of the situation of human resources in the rest of the quasi-judicial authorities. Generally, the later group is not considered as part of the national judiciary in current perception.

<sup>2</sup> See *Training and Orientation Needs Assessment of the Nepali Judiciary on Human Rights and Social Justice* (Lalitpur: National Judicial Academy, January 2012)

exercised through these tribunals in these cases in the long term perspective. Meanwhile, until that happens, all judicial powers given to administrative authorities hitherto this day in cases which result in imprisonment for three years or more should be brought to an end. In its recommendation, these powers should go back to the regular courts of law.

The Chief District Officer of each District in Nepal is the main quasi-judicial authority. He/she enjoys important powers in the criminal justice perspective:

#### **Chief District Officer**

<b>S. No.</b>	<b>Statutes</b>	<b>Relevant Sections</b>
1.	Essential Commodities Control (Power) Act, 1960 (2017)	6, 7
2.	Essential Commodities Protection Act, 1955 (2012)	9
3.	Bonded Labour (Prohibition) Act, 2001 (2058)	17
4.	Prison Act, 1962 (2019)	26(3)
5.	Black Marketing and Other Social Offences and Punishment Act, 1975 (2032)	15(1)
6.	Some Public Offence and Punishment Act, 1970 (2027)	5
7.	Food Act, 1966 (2023)	11
8.	Motion Picture (Production, Exhibition, and Distribution) Act, 1969 (2026)	12
9.	Press and Publication Act, 1991 (2048)	21
10.	Land Acquisition Act, 1977 (2034)	40(1)
11.	Birth, Death, and Other Personal Incidents (Registration) Act, 1976 (2033)	15 (1)
12.	Aquatic Life Protection Act, 1960 (2017)	8
13.	Statistics Act, 1958 (2015)	10 (a)&(b)
14.	Grains Act, 1976 (2033)	15
15.	Nepal Standard (Marks) Act, 1980 (2037)	15
16.	Tourism Act, 1978 (2035)	46(2)
17.	Animal Health and Animal Service Act, 1998 (2055)	22(1)
18.	Solid Waste Management Act, 2011 (2068)	39 (9)&(10)
19.	Communicable Disease Act, 1963 (2020)	4
20.	Society Registration Act, 1977	12

	(2034)	
21.	Local Administration Act, 1971 (2028)	8
22.	Arms and Ammunitions Act, 1962 (2019)	24
23.	Public Security Act, 1989 (2046)	10

The other administrative authorities exercising quasi judicial powers may be summarised as follows.

#### **Quasi-Judicial Authorities – Tax and Fiscal**

<b>S. No.</b>	<b>Statutes</b>	<b>Section No.</b>	<b>Authority</b>
24.	Excise Act, 2001 (2058)	16	Excise Officer
25.	Customs Act, 2007 (2064)	57	Customs Officer
26.	Means of Transportation Tax Act, 1974 (2031)	7	Tax Officer
27.	Building and Land Tax Act, 1962 (2019)	4, 5, 6, 7	Tax Officer
28.	Water Tax Act, 1966 (2023)	10	Designated official
29.	Aviation Tax Act, 1961 (2018)		
30.	Fiscal Procedure Act, 1998 (2055)	33(1)	Designated Official
31.	Tax Settlement Commission Act, 2033	5&6	Tax Settlement Commission
32.	Leakage of Revenue (Investigation and Control) Act, 1995 (2052)	6, 24	Revenue investigation Department
33.	Property Tax Act, 1990 (2047)	26, 27	Tax Officer

#### **Quasi-Judicial Authorities – Health**

<b>S. No.</b>	<b>Statutes</b>	<b>Section No.</b>	<b>Authority</b>
34.	Drugs Act, 1978 (2035)	20(4) & 4(a)	Manager, Supervisor
35.	Nepal Nursing Council Act, 1995 (2052)	30	Designated official
36.	Nepal Veterinary Health Council Act, 1998 (2055)	26	Designated official
37.	Nepal Pharmacy Council Act, 2000 (2057)	30	Designated official
38.	Animal Slaughtering and Meat Inspection Act, 1998 (2055)	21	Designated official
39.	Smallpox Control Act, 1963 (2020)	18	Local Official
40.	Consumer Protection Act, 1997 (2054)	13, 18	Nepal Government

#### **Quasi-Judicial Authorities – Education related**

<b>S. No</b>	<b>Statutes</b>	<b>Section</b>	<b>Quasi-Judicial Authority</b>
41.	Scholarship Act, 1964 (2021)	6, 7	Nepal Government
42.	Education Act, 1971 (2028)	17(1)	Case settlement official

#### **Quasi-Judicial Authorities – Land related**

<b>S. No</b>	<b>Statutes</b>	<b>Section</b>	<b>Quasi-Judicial Authority</b>
43.	<i>Ukhda</i> Land Act, 1964 (2021)	6(10 & 20)	Designated Official
44.	Land (Measurement) Act, 1962 (2019)	6, 6B, 12(1)	Designated official
45.	Land Administration Act 1967 (2024)	19(1)	Land Administrator
46.	Land Act, 1964 (2021)	6, 11, 18, 24, 31A, 3,2, 38 & 52	Designated Official
47.	Land Revenues Act, 1977 (2034)	7, 8, 8B, 28, 29, 29A, 30	Land Revenue Office Chief
48.	<i>Jhora</i> Area Land Act, 1971 (2028)	8	Designated Official
49.	<i>Goothi</i> [Religious Endowments] Corporation Act, 1976 (2033)	59	Administrator

#### **Quasi-Judicial Authorities – Forest and Environment related**

<b>S. No</b>	<b>Statutes</b>	<b>Section</b>	<b>Quasi-Judicial Authority</b>
50.	Forest Act, 1992 (2049)	65(1)	District Forest Officer
51.	Environment Protection Act, 1996 (2053)	8(5)	Environment Supervisor
		18	Designated officer
52.	Seed Preservation Act, 1972 (2029)	28	Designated Official
53.	Seed Act, 1988 (2045)	22	Designated Official
54.	Ancient Monuments (protection) act, 1956 (2013)	13(2)(b)	Concerned office

#### **Quasi-Judicial Authorities – Corporate Bodies, Industry and commerce related**

<b>S. No</b>	<b>Statutes</b>	<b>Section</b>	<b>Quasi-Judicial Authority</b>
55.	Corporation Act, 1964 (2021)	15	Concerned

			department
56.	Industrial Trainees Training Act, 1982 (2039)	21	Department of Labour
57.	Industrial Enterprises Act, 1992 (2049)	25	Nepal Government
58.	Companies Act, 2003 (2060)	126	Company Board, Registrar
59.	Privatization Act, 1993 (2050)	28	Nepal Government
60.	Nepal Agency Act, 1971 (2014)	7, 8 & 9	Nepal Government
61.	Private Firm Registration Act, 1971 (2014)	8	Concerned department
62.	Insurance Act, 1992 (2049)	36	Insurance Committee
63.	Bonus Act, 1973 (2030)	20	Department of Labour
64.	Liquor Act, 1974 (2031)	14	Nepal Government, Excise officer
65.	Hotel Provision, Sale of Liquor & Distribution (Control) Act, 1966 (2023)	10	Designated official
66.	Mines and Minerals Act, 1985 (2042)	25 (1) 25(2), (3), (4)	Nepal Government Mine Department
67.	Partnership Act, 1963 (2020)	41	Concerned department
68.	Tobacco Made Commodities (Control and Regulation) Act, 2011 (2068)	17	Official assigned to look into the case

#### Quasi-Judicial Authorities – Labour related

S. No	Statutes	Section	Quasi-Judicial Authority
69.	Labour Act, 1991 (2048)	54, 59	Labour Department
70.	Foreign Employment Act, 1985 (2042)	54	Nepal Government
71.	Bonus Act, 1973 (2030)	20	Department of Labour
72.	Trade Union Act, 1992 (2049)	25	Registration Authority

#### Quasi-Judicial Authorities – Development related

S. No	Statutes	Section	Quasi-Judicial Authority
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73.	Kathmandu Valley Development Authority, 1988 (2045)	21	Authority
74.	Town Development Act, 1998 (2045)	18	Town Development
75.	Greater Janakpur Area Development Council Act, 1998 (2055)	13(30)	Greater Janakpur Area Development Council
76.	Rapti Valley Development Area Land (Sale and distribution) Act, 1972 (2029)	31	Designated Court or Official
77.	Building Act, 1998 (2055)	14	Municipality/Urban Development Office
78.	Joint Residence Ownership Act, 1997 (2054)	28	Authorized Official
79.	Drinking Water Management Board Act, 2006 (2063)	27	Board
80.	Electricity Act, 1992 (2049)	21, 22	Designated Official
81.	Tourism Act, 1978 (2035)	9, 15, 38, 45, 52	Nepal Government
		45©	Designated Official
82.	Electricity Act, 1992 (2049)	38	Designated Official

#### Quasi-Judicial Authorities – Transportation related

S. No	Statutes	Section	Quasi-Judicial Authority
83.	Railway Act, 1963 (2020)	17	Local Official
84.	Public Roads Act, 1974 (2031)	31	Department of Road / Designated Official
85.	Road Board Act, 2001 (2058)	28, 29	Road Board
86.	Vehicle and Transport Management Act, 1992 (2049)	160	Authorized official
87.	Ship Registration Act, 1966 (2023)	10	Designated Official
88.	Nepal Commercial Ship Flags Act, 1970 (2027)	10(1)	Registrar of Ship Office
89.	Nepal Ship (Certification and Daily Movement Record) Act, 1970 (2027)	18(1)	Registrar of Shipping Authority
90.	Nepal Civil Aviation Authority, 1996 (2053)	25	Authority

#### Quasi-Judicial Authorities – Mass Communication related

S.	Statutes	Section	Quasi-Judicial
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<b>No</b>			<b>Authority</b>
91.	Radio Nepal Act, 1957 (2014)	6	Official Designated by Government
92.	Post Office Act, 1962 (2019)	68A	Regional Director
93.	Telecommunication Act, 1996 (2053)	47(1), (2), (3) & (4)	Telecommunication Authority
94.	National Broadcasting Act, 1992 (2049)	17	Designated Official
95.	Shramjeevi Journalists Act, 1994 (2051)	33(3)	Press Registrar

#### **Quasi-Judicial Authorities – Profession related**

<b>S. No</b>	<b>Statutes</b>	<b>Section</b>	<b>Quasi-Judicial Authority</b>
96.	Construction Profession Act, 1998 (2055)	22	Nepal Government
97.	Nepal Engineering Council Act, 1998 (2055)	35	Designated official

#### **Quasi-Judicial Authorities – Justice Sector and Human Rights related**

<b>S. No</b>	<b>Statutes</b>	<b>Section</b>	<b>Quasi-Judicial Authority</b>
98.	Children Act, 1991 (2048)	55	Juvenile Court
99.	Child Labour (Prohibition and Regulation Act, 1999 (2056)	21	Labour Office
100.	Torture Compensation Act, 1996 (2053)	6(1)	Nepal Government
101.	Prison Act, 1962 (2019)	26(2)	Jailor
102.	Police Act, 1969 (2012)	11(a), 36	Police Special Court
103.	Armed Police Act, 2001 (2058)	28	Armed police Special Court
104.	Right to Information, Act, 2007 (2064)	32	National Information Commission
105.	Nepal Citizenship Act, 2006 (2063)	14	Nepal Government

#### **Quasi-Judicial Authorities – Securities related**

<b>S. No</b>	<b>Statutes</b>	<b>Section</b>	<b>Quasi-Judicial Authority</b>
106.	Security Transactions Act, 1983 (2040)	24	Securities Board
107.	Security Investment Trust Act, 1996 (2053)	37	Security Board

108.	Patent, Design and Trademark Act, 1965 (2022)	11,15,19	Department of Industries
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#### Quasi-Judicial Authorities – Election related

S. No	Statutes	Section	Quasi-Judicial Authority
109.	Election (Offence and Punishment) Act, 2006 (2063)	19(1)(a)  1991)(b)  19(1)©	Returning Officer  Returning Officer or Monitoring Team  Election Officer, Returning Officer or Monitoring Team
110.	Voter Rolls Act, 2006 (2063)	34	Election Commission

#### Quasi-Judicial Authorities – Others

S. No	Statutes	Section	Quasi-Judicial Authority
111.	Nepal Petroleum Act, 1983 (2040)	19	Nepal Government and Designated Official
112.	Nepal Rastra Bank Act, 2001 (2058)	99, 100	Nepal Rastra Bank
113.	Nepal Special Service Act, 1985 (2042)	10	Designated Official
114.	National Directives Act, 1961 (2018)	6	Nepal Government
115.	National Service Force, 1970 (2027)	9	Designated Official
116.	Cooperative Act, 1991 (2048)	43, 44	Registrar
117.	Standard Measurement and Weight Act, 1968 (2025)	30	Inspector

**Even some delegated legislation enables certain authorities to exercise quasi-judicial powers.**

S. No	Statutes	Section	Quasi-Judicial Authority
1.	Khaptad National Park Rules 2044	Rule 25(2)	Assistant Warden, Ranger



2.	Chitwan National Park Rules, 2030	Rule 25(2)	
3.	Bardiya National Park Rules, 2053	Rule 26	District Forest Officer, Assistant Warden, Area Forest Conservator
4.	National Park and Wild Life Reserve Protection Rules, 2030	Rule 38	Warden,
5.	Wild Life Reserve Rules, 2034	Rule 23(2)	Assistant Warden and Ranger
6.	Buffer Zone Management Rules, 2052	Rule 40	Warden
7.	Conservation Area Governmental Management Rules, 2057	Rule 50	Warden
8.	Himalayan Area National Park Rules, 2036	Rule 29(2)	Warden, Assistant warden / Warden
9.	Environment Protection Rules, 2049	Rule 51, 58	Concerned Ministry, local bodies
10.	Seed & Grains Rules 2046 (enacted under Seed and Grains Act, 2045)	Rule 21	Director of Agriculture Department
11.	Drinking Water Rules, 2055	Rule 49	District Water Resource Committee
12.	Land Measurement Rules, 2058	Rule 21	Measurement, Committee under the Rules
13.	Land Act Rules, 2021	Rules 12, 17,22,25 & 29	Land Reform Officer
14	Electricity Rules (under Electricity Act, 2049), 2059	Rule 89	Secretary of the Ministry of Water Resources
	Rules made under Hotel Management and Sale and Distribution of Liquor (Control) Act , 2023	Rule 2	CDO

**Responsibility for Training and Capacity Development**

There are three major institutions working in the area of training and capacity development of personnel in these institutions. Nepal Administrative Staff College, established in 1982 under NASC Act is the first such statutory body. It was created to provide necessary training for the employees of the government and public enterprises. Its training policies are to associate training programme as an integral part of personnel administration. It also associates training programme with the development activities. It works to bring improvements in governance and management capabilities for efficient delivery of quality services to the people. It has five core areas of work (governance development, management learning, management services, public service training and research and consultancy), but none of them focus on legal and judicial issues in the justice perspective.

There are two additional public institutions which have been created to cater to the training need of the administration of justice: Judicial Service Training Centre (JTSC) and National Judicial Academy (NJA).

The JTSC, which works as a departmental arm of the Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs (MLJCAPA), is not statutory like NJA. It was established in 1981 as a specialized legal and justice training arm by way of a decree (notice) in the gazette. The original scheme was to conduct pre-service and in-service trainings for government employees in the legal and judicial field, including appellate court judges and gazetted first class officers. Later, the Centre was allowed to include programmes and legal trainings related to quasi-judicial and public enterprises personnel. It does so in both the centre and in the field. When the NJA was established in 2004 by way of ordinance, no decision was taken on how to deal with the overlaps between these two institutions. Apart from meeting training needs, the NJA was also allowed to respond to the research needs of the judges, government attorneys, government legal officers, judicial officers, private law practitioners, and others who were directly involved in the administration of justice. This expanded terms of reference took in the fold not only judges, but also advocates and many others in the justice sector, who were being catered to by JTSC.

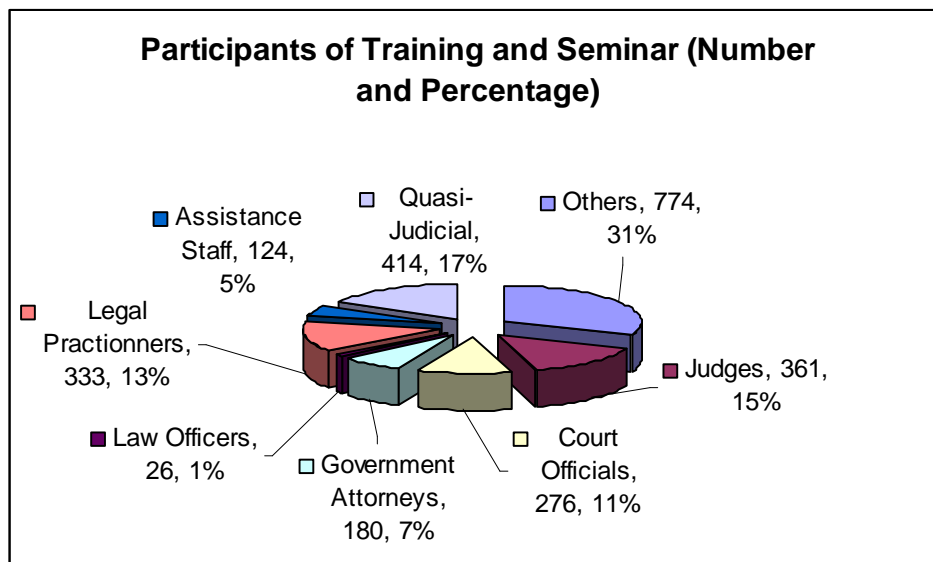
In actual operation, NJA is much more active, organized, resourceful, and methodological than the JTSC in the sphere of its work. Its reports are also regular. This has given it more financial leverage, whether government-allocated or donor funded, than JTSC. NJA is led by the Chief Justice of Nepal. The Council is inclusive in the representation of stakeholders. While Minister of Justice is the member of the Council, the JTSC is not separately represented there. It is only in the Executive Board that the Secretary of the MLJCAPA is represented. However, at a functional level, there are no regular coordination meetings between these institutions.

### **Overlaps across the Responsibilities among Existing Institutions**

The NJA has involved itself in a range of training activities. Some activities have been pursued with international collaboration; most have been planned in advance and have had clear objective. The 2069/70 (2012/13) report of NJA shows that starting from the members newly admitted to the bar, and newly recruited non-gazetted staff members of Judicial Service, the NJA has trained many people across the justice sector. The themes covered are as diverse as forensic science to court archive management, effective

implementation of court decisions to development of skills of bench assistants serving in the hearing. Efforts are made to fill in the requirement of change. During the last year the NJA was quick to provide training to some lawyers in the districts on Appellate Courts' writ jurisdiction, because the writ jurisdiction is new for the Appeal Courts and their practitioners. Newly appointed Appellate Courts judges and District Courts judges were also given training on different aspects of laws and procedures. Following the Supreme Court order in the case of *Amar Bahadur Raut* (2011), the NJA has also worked out judicial skills development training for the Chief District Officers, who exercise quasi-judicial powers more often than many other administrative officers of the government. For many such topics, which call for intensive programming, curriculums have also been developed. For example, the curriculum for the CDO included the concept of constitutionalism and restraints on the government power.

During the Fiscal Year 2069/70 (2011/12), the NJA conducted 136 programmes of different length including trainings, seminar, workshop, orientation, interaction, presentation, and consultations. They were attended by 3565 participants. Three months programmes are usually rigorous. This pie chart explains the general scenario:



NJA has been growing ever since the initiatives to establish it began in 2002 under the Asian Development Bank (ADB) financed project. While the NJA works under the broad policy guidelines of sixteen members' Governing Council headed by the Chief Justice<sup>3</sup>,

<sup>3</sup> The members include Minister for Law and Justice, Vice-Chairperson of National Planning Commission, two justices from among the sitting Justices of the Supreme Court, Attorney General of Nepal, one person from among the retired Justices of the Supreme Court, Dean of Faculty of Law, Tribhuvan University, one judge from among the sitting judges of the Court of Appeals, one person from among the professors of law having at least five years of teaching experience, President of Nepal Bar Association, one judge from among the sitting judges of District Courts, three law graduates representing Women, Ethnic Communities and Dalits having fifteen years of involvement in the field of law and justice, and Executive Director of National Judicial Academy (Member-Secretary).

the JTSC works under the ten member governing board led by Secretary of the MLJCAPA.<sup>4</sup> In hierarchical terms and representation, NJA leaves JTSC far behind as a justice sector entity. Although, as stated above, the Minister for MLJCAPA, who is the line Minister for JTSC is represented in the NJA Governing Board, the governing laws and procedures provide for little in terms of obligatory functional coordination between these two entities. As an example, the Training Chief of JTSC, who also serves as the administrator of the entity, is not linked with the NJA anywhere directly. There is little actual effort for coordination on the part of both these organizations.

Some recently concluded programs of JTSC show just how important they are in their ambit. They include three-months long training on law and justice for District Forest Officers and Wardens of various wildlife conservation areas and national parks under the Ministry of Forest and Chief District Officers, subsequently, under the Ministry of Home Affairs. In addition, the Centre has also formed different steering and organizing committees comprising of experts in different fields, based upon the nature of the program to be organized. The members of different steering committees include Chairperson of Administrative Court, prominent government secretaries, attorneys, and officials, officials from the Nepal Police and other security organizations, experts from different ministries and departments and other concerned authorities. The steering committees perform the tasks of designing and implementing the plan of action of the program concerned, preparing training syllabus and choosing the appropriate resource personnel. The latest yearly programme schedule of the JTSC helps to clear the scenario.

*Judicial Service Training Centre: Yearly Program Schedule - 2070-071*

<b>Subject</b>	<b>Participants</b>	<b>Working days</b>
In-Service Training (Gaz III)	Gazetted III Class Officers of Nepal Judiciary	30
In-Service Training (Gaz II)	Gazetted II Class Officers of Nepal Judiciary	30
Basic Computer and ICT Training	Training Centre Staffs	6
Pre-service Training	Gazetted III Class Officers of Nepal Judiciary	30
In-Service Training (Non-Gaz)	Non-Gazetted Class Employees of Nepal Judiciary and Quasi Judiciary	30
In-Service Training (Non-Gaz)	Non-Gazetted Class Employees of Nepal Judiciary and Quasi Judiciary	30
e-Bidding	Technical Officers of Concerned Offices	3
ICT and e-	Information Officers of all Ministries and	3

<sup>4</sup> The members of the Board include Registrar of Supreme Court, Secretary of Judicial Council, Deputy Attorney General of Office of Attorney General, Executive Director of Nepal Administrative Staff College, Dean of Tribhuvan University Law Faculty, Chairperson of Nepal Bar Association, Director of Nepal Police Training Academy, Training Chief of Revenue Administration Training Centre, and Training Chief of Judicial Service Training Centre (Member Secretary).

Governance	Constitutional Bodies	
Trainers Training (TOT)	Officer of Nepal Judiciary Service	6
Follow up for ex-trainees	Ex-trainees of JSTC (Home ministry)	3
Case Management and e-Judiciary	Officers of Judiciary and Quasi-Judiciary Sectors	6
In-Service Training (Non-Gaz)	Non-Gazetted I Class Employees of Nepal Judiciary and Quasi Judiciary	30
Corruption Prevention	Officers involved in legal field, decision making process and investigation	3
Case Management and e-Judiciary	Officers of Judicial and Quasi Judicial Sectors	6
ICT and e-Governance	1st Class Officers of Quasi Judiciary Bodies	1
Mind Management and Performance Enhancement	Personnel of Judicial and Quasi Judicial Sectors	6

*Judicial Service Training Centre: Yearly Program Schedule - 2070-071*

<b>Subject</b>	<b>Participants</b>	<b>Working days</b>
In-Service Training (Non-Gaz)	Non-Gazetted Class Employees of Nepal Judiciary and Quasi Judiciary	30
Land Management	Bench Assistant, Judgment Implementing Officer, Personnel involved in case department in quasi judicial bodies	12
Legal Enhancement Training	Officers of Foreign Service	6
Communication and Interpersonal Skills	-	6
Record Keeping	Third Class officers of different district administration offices	3
Contract Management	Personnel involved in contract management	6
Leadership Development	1st Class Officers of Judicial Service	6
Legal Provisions in Market Monitoring and Investigation	Bench Assistant, Judgement Implementing Officer, Personnel involved in case department in Quasi Judicial Bodies	15
Mind Management and Performance Enhancement	Personnel of Judicial and Quasi Judicial Sectors	6
Record Keeping	Third class officers of different district administration offices	3

In-Service Training (Non-Gaz)	Non-Gazetted I Class Employees of Nepal Judiciary and Quasi Judiciary	30
Interaction and Practical Sessions of Right to Information	Information Officers of all Ministries and Constitutional Bodies	3
Common Issues for Civil Service	2nd and 3rd class officers of different organizations, ministries, constitutional bodies and others	6
Proposal and Report Writing Workshop	Officers of Judicial Service	3
Suspect Document and Finger Print	Bench Assistant, Judgement Implementing Officer, Personnel involved in case department in CIAA, NVC, NRB, Insurance Board	6
Sexual Harassment at Workplace - Legal Perspective	Officers of Judicial and Quasi Judicial Sectors	3
Integrity Enhancement Training	Personnel not on the official hierarchy	6

*Judicial Service Training Centre: Yearly Program Schedule - 2070-071*

<b>Subject</b>	<b>Participants</b>	<b>Working days</b>
Establishment day		
Training Workshop related to Alternative Dispute Resolution (ADR)	Administrative Officers, Personnel involved in Commerce and Industrial Sectors, Local Development Officers under Ministry of Federal Affairs and Local Development	35
Legislative Drafting Workshop	Officers of Nepal Judiciary: Law and Government Attorney Groups	35

The above list demonstrates that the JTSC has focused on the law officers of the justice sector for training and capacity development efforts more than anything else. They include both gazetted and non-gazetted personnel. But JTSC includes in its fold assistant staff members, government attorneys and quasi-judicial authorities as well. It continues to train quasi-judicial officers, bench assistants in the courts, and judgment implementation officers. In some cases, it has developed clear syllabus well:

Syllabus for Three Months In-service Training on Law and Justice to Chief District Officers

Syllabus for Three Months In-service Training on Law and Justice to District Forest Officers and Chief Conservation Officers

Syllabus of Land Management Training

Syllabus of Five Week In-service Training of Non Gazetted I and II Class Employees of Nepal Judicial Service

It is clear that these overlaps will continue if both these entities act independent of each other. As of now, the JTSC does not have a long term action plan. This is the situation of the NJA as well. Both these entities have annual calendars. The staffing and funding situation of the NJA is far better than in the JTSC. It has also learnt to deal with the donors. This gives it more manoeuvrability. Even though activities on both sides are being carried out, organizationally, the NJA is institutionalizing faster than JTSC, especially because of stronger organizational prerequisites (land, building, budget, autonomy, leadership, research and development, statutory bases, and long-term perspective, etc). However, the JTSC has advantage in dealing with law officers under the MLJCAPA.

These overlaps do not mean that one of these two organizations should be dismantled. The scope for legal training and research is an ever-expanding issue. The justice sector requirements go beyond the judicial training needs – extending to different line ministries, quasi-judicial authorities, statutory corporations, local government units, etc. The listed authorities, that exercise quasi-judicial powers, only shows the vastness of the challenge of training decision makers on quasi-judicial methods. Even the present combined strength of the National Judicial Academy and the JTSC has been inadequate in addressing the enormous challenge which has been observed. Similarly, the NJA has competitive advantage over strongly conventional judicial training and capacity development needs. Training judges at a non-judicial forum has not been easily accepted in Nepal. This makes a case for separation of area of work for these institutions. For example, there must be a clear case why the MLJCAPA officials be trained on legal issues by the NJA, but not by the JTSC, which is its own departmental organ. However, this means efforts should be made towards specialization, efficient coordination, and long term planning.

**The NJA Study of January 2012** focused on training and the orientation needs assessment of the judiciary (judges, court registrars, prosecutors, and lawyers) in the area of human rights and social justice. The general finding is that judicial personnel of all types irrespective of their age, status, educational background, experience, and location need training and orientation on human rights to be effective in their work. Its assessment is that - while all levels of training and orientations are required, the trainees needed opportunity to select the level they need in their typical work context. Some refresher orientations were also advised for all. There is clear need of focused training and orientation on key issues like ‘justiciability’ of economic-social and cultural rights; judicial responses on human rights and social justice and comparative practices of different jurisdictions so that that could be exemplary for Nepali judges; socio-economic rights like the right to food, work, health, education, housing, social security, water, and

environmental rights; rights of marginalized and disadvantaged groups including indigenous people, *dalits*, and other deprived communities, the right to culture and practices, the right to equality and non-discrimination, natural resources, the right to development, and economic and social justice in transition; the rights of women, children and elderly people, and so on. Apart from these priority topics, they also emphasized:

- The basics (a traditional library, law reports, books on recent advancement in law and justice sector, audio-visual facilities, etc) which generally remain unmet.
- The need for an evaluation system as a continuing process.
- The need for development of a band of resource persons for the NJA – the major training arm of the judiciary, to conduct programmes and undertake activities (training to the core members)

Before the NJA report, some recommendations were submitted by the Human Resource Development Task Force Committee which was constituted as part of the first Judiciary Strategic Plan [2004-2009].<sup>5</sup> The second Strategic Plan projected strategic interventions relating to development of human resource on the basis of this report. Under this strategic intervention, the following were the core functions:

- to establish and strengthen human resource division,
- to implement human resource development plan,
- to motivate human resource,
- to enhance capacity of human resource and to coordinate and partnership for development of human resource.

Under the core functions 54, activities were determined. From among the activities prescribed therein, nine activities were to be completed by the time of mid-term evaluation, one activity was projected to be completed during the remaining period of the Plan, and 44 activities were to be implemented continuously during the entire period of the plan. The status of implementation of activities under the strategic interventions is very poor. According to the report, the following seven activities have been completed by the mid-term evaluation period:

- training on execution of judgements
- interaction on execution of summons
- training on revenue, commerce, and banking
- training on human rights and social justice
- training relating to information technology and
- exchange visits with foreign judiciary for the purpose of strengthening and concretizing relationship.

The report mentions that 13 activities have been initiated whereas partial progress has been achieved in eight activities and six activities are in the final phase.

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<sup>5</sup> Available at [http://www.supremecourt.gov.np/download/Strategic\\_plan\\_Final.pdf](http://www.supremecourt.gov.np/download/Strategic_plan_Final.pdf)



There has been no progress in relation to the 19 specified activities:

- to establish and strengthen Human Resource Division for management of judicial manpower involved in the judiciary,
- to update and implement work description of employees,
- to retain posting on non-gazetted employees by one forth,
- to upgrade and integrate officers to the court,
- to conduct study on new appointment and to implement the same,
- to identify and fulfil human resource deemed necessary for central archiving mechanism,
- to implement programmes pursuant to Human Resource Plan ,
- to enhance motivation of judges by linking them with the execution of work,
- to conduct training of trainers on court management,
- to conduct training on archive management,
- to conduct training on capacity development of language,
- to conduct orientation on inspection and supervision,
- to conduct training on research methodology,
- to conduct orientation on management of goods,
- to conduct training on formulation of plans and its subsequent implementation,
- to conduct orientation on security sensitiveness,
- to conduct training on capacity development regarding operation of program budget and
- to conduct training on financial administration and development of calendar relating to appointment and transfer of judges.

The Chart produced by the *Midterm Evaluation Report* on the causes for failure to execute activities and its impact on the strategic intervention is as follows:

<b>Cause</b>	<b>Impact</b>	<b>Activities to be Performed</b>
<b>Failure</b> to establish Human Resource Division	Pursuant to the Human Resource Development Plan, fulfilment of and management of posting could not be achieved, and capacity development could not be conducted effectively.	To establish and strengthen the Human Resource Division
<b>Failure</b> to fulfil the posting of judges and employees according to the scheduled number of staff		To timely fulfil postings of judges and employees
<b>Failure</b> to implement motivational programs by linking works performance by judges and employees		To develop motivational programmes and link them with the work performance of judges and employees.
<b>Failure</b> to link conduction of trainings with work performance of judges and employees		To link training programmes with work performance of judges and employees and conduct training.

They all indicate toward limited management capacity of the Supreme Court to implement programmes identified as interventions in the Strategic Plan. Similarly, the activities identified above also give limited acknowledgement of the need to emphasize leadership role in bringing changes. In the absence of Human Rights Division, there is a clear lack of a mechanism to ensure implementation of the decisions taken. There is

generally no feedback system, which would allow evaluation of performance after the trainings have been given.

The NJA Report on Gender Equality and Social Inclusion Analysis of the Nepali Judiciary (Research Report) of May 2013 is a first research of its kind in Nepal. It has several recommendations to enhance inclusion in the judiciary:

- Removal of legal and procedural constraints,
- inadequate proactive measures,
- lack of GESI friendly institutional structure,
- barriers to becoming judges,
- constitutional provisions, judge appointment process,
- barriers for pursuing legal education,
- law education system,
- limited and centralized colleges,
- associated economic cost and inadequate support,
- limited reserved seats and lack of scholarship, lack of room and board facilities in law colleges,
- traditional societal values and perceptions,
- inherent demands of courses of studies,
- barriers faced by women and excluded groups in pursuing legal professions, and
- allegation of discrimination in the Bar and Bench.

The report highlights the needs of women and socially-excluded groups to enhance their participation and representation in the judiciary. It emphasizes awareness and sensitization, adequate scholarship provisions, capacity development support, required changes in related process and criteria of recruitment of judges, and policy planning with strategic approach.

**Some prioritization may be done for effective and long-term interventions:**

The major problem with the judiciary in Nepal is the delay in enforcement of judgment made by courts or quasi-judicial authorities:

*Enforcement of Judgments:* While the rate of enforcement of judgment is said to be improving, with the establishment of the *Directorate of Judgment Enforcement*, it is still an area where capacity development has never been thought of well.

The evaluation of the first half of the second strategic plan shows that the objective of disposing applications for judgment execution within a year is still unfulfilled.<sup>6</sup> Delayed

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<sup>6</sup> A total of 35,681 applications had been registered during the evaluation period and from among the applications registered, 13.75 percent of the applications had been disposed within six months and 30.26 percent of the applications have been disposed within one year. The plan had projected to reduce the arrears of the applications by 75 percent during the plan period (2009/10 – 2013/14). During the period of evaluation, arrears of application was projected to be reduced by 37.5 percent but on the contrary the application could not be disposed wherein the number of application due stood at 5978 and by the period of

executions of judgments have rendered justice to paper works only in many cases. It has caused the faith in judiciary to decline.

A study of the yearly reports of the Supreme Court shows that the situation is not encouraging even now. Problems of judgment enforcement in areas like payment of money under default (money judgment), ensuring user's rights, implementation of partition deeds and 'coparcenery' rights, collection of fines and enforcement of imprisonment, and *Tehsil jinsis* (in-kind receivables) are still alive. An increased capacity can help overcome the situation. Such a capacity would be needed in the implementation of relevant provisions on District Court Rules, 2052 and Chapter on Fine and Punishment, the National Code.

There is a need of training on judgement execution and coordination functions with members of the Judicial Sector Coordination Committee at all level of courts. Quasi-judicial authorities must also be brought under the fold of this training, as they also have been grappling with the problems of judgement execution, but have little know-how and resources. These authorities have largely no knowledge of how courts enforce their judgement, and whether single judgement enforcement machinery should be designed at the District Courts to deal with all types of judgements, including theirs – through a single door system.

*Capacity Issues with Quasi-Judicial Authorities:* The report of the Committee on the Study of Judicial Power of Administrative Authorities (2012/2069) has already spoken about several problems with quasi-judicial office and their procedures. An exhaustive consultation in this regard helps to reach the conclusion that the administrative authorities like CDOs, Land Officers or Forest Officers, who exercise judicial powers under several legislations, need comprehensive training on quasi-judicial standards and the rule of law. Many of their shortcomings have gone unnoticed because lawyers are not given the opportunity to present the case of their clients, and hearing systems have not been thought of in the quasi-judicial decision-making. It has been admitted that conventionally many of the decisions were made ready in writing by a junior staff for the authority, who then is entitlement to sign and give clearance. These authorities also need to be trained about equality of treatment, the principle of natural justice, and speaking orders.

*Judgment Standards:* There is general lack of expertise in the judgement writing in Nepal across all levels, including the Supreme Court. While judges do not generally acknowledge it, almost all other partners in the judicial process, including the parties to the dispute, have been very critical about the prevailing standard. The existing standards especially in the lower courts have been helpful to unscrupulous judges in compromising the issues of facts and of law.

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mid-term evaluation this figure rose to 6845 resulting in an increase of arrear by 8.48 percent. Nevertheless, at the time of implementation of the plan, from among 2,130 applications exceeding one year, the total number of applications had been reduced by 33.84 percent wherein the total figure of application stands at 1,490.

The problem is not only with the formulation of issues, narration of relevant evidence, the contentions of the counsels on the points of determination, the grounds of a decree or order, which must be clearly and adequately handled, but also its style, both the civil and criminal suit. A judge must state the facts explicitly and consciously as they are found and the reasons for the decision. Sound judgement standards creates additional basis for judicial accountability. Taking into account the mounting arrears, and the number of cases in the daily cause list, the burden in judgment writing sometimes becomes intolerable. While brief opinions have not been much problem, it must serve the requirement of law without compromising with the quality.

Any training in this regard must also be available to legal practitioners. The quasi-judicial authorities should also be trained on these issues, although separately. This will increase transparency in decision-making.

*Application of Writ Jurisdiction by District Court:* The writ jurisdiction of District Courts must be enhanced and made efficient by necessary training to the judges and lawyers working at the District level.

Nepal started exercise of writ jurisdiction in the British common law fashion only after 1952, when the Supreme Court (*Pradhan Nyayalaya*) Act was enacted, enabling it to issue the writ of *habeas corpus*. When the Civil Liberties Act was enacted in 1956, it recognized the power of the court to issue injunction. The writ jurisdiction has expanded ever since in terms of the number of writs and their qualitative use as orders of the court.

The Interim Constitution of Nepal 2007 created three tier court systems, which the Interim Constitution inherited from the 1990 Constitution. In 2010, the Administration of Justice Act 1991 and Civil Liberties Act 1956 were amended, which enabled even the District Courts – the courts of first instance to hear *habeas corpus* and injunction cases. Before this, except as otherwise provided in the prevailing law, the District Court enjoyed powers to try and settle, in original jurisdiction, all the cases within its jurisdiction.

With this amendment, it is now possible for the petitioners to challenge illegal detention and receive injunctive relief from their own District without going the extra distance to the concerned Court of Appeal and Supreme Court for it. Section 7(2) of the Administration of Justice Act 1991 now states that the District Court can issue the writ of *habeas corpus* against illegal detention, and or give injunction in the application of a petitioner whose rights in law are infringed or violated by any entity or official within its jurisdiction. Civil Liberties Act provides further strong foundation for *habeas corpus* and other injunctive relief. This jurisdiction has been in use by the District Court from March 29, 2011. This is a new experiment. The current situation is as follows:

*Exercise of Writ Jurisdiction by District Courts*

<b>Fiscal Year</b>	<b>Registered entries</b>	<b>Settlement</b>	<b>Case in Progress</b>	<b>Settlement percentage</b>	<b>Remark</b>
2067/68	158	49	109	31.01	March 29, 2011 onwards

2068/69	843	580	263	68.80	
2069/070	537	270	267	50.2	Till January 13, 2013

*The status of habeas corpus cases between Fiscal Year 2068-79 and January 13, 2013 is as follows:*

The number of District Courts where habeas corpus petitioners were not received during the last Fiscal Year	The number of District Courts where habeas corpus petitioners were not received in both Fiscal Years	The number of Districts which received habeas corpus petitions during the last Fiscal Year, but not this Fiscal Year	The number of District Courts which have not received any habeas corpus petition this Fiscal Year	Remark: Current Fiscal Year in this column means the period up to January 13, 2013.
53	47	15	62	

*Details of applications for Injunction between the last Fiscal Year and January 13 of current Fiscal Year:*

The number of District Courts no cases were received	The number of District Courts where injunction petitioners were not received in both Fiscal Years	The number of Districts which received injunction petitions during the last Fiscal Year, but not this Fiscal Year	The number of District Courts which have not received any injunction petition this Fiscal Year	Remark: Current Fiscal Year in this column means the period up to January 13, 2013.
30	28	20	48	

There is massive need for training of the District Judges and lawyers practising there. In order to make sure that rights issues are quickly received and handled well and summary procedures applied in the writ jurisdiction make justice accessible to many in the local jurisdiction, it is imperative that we have competent judges. The existing efficiency level is not satisfactory.

*Case management:* Training on case and record management is a crucial area for capacity development at all levels including quasi-judicial.

*Baitanik Lawyers:* The area of *Baitanik* Lawyers (Court Appointed Salaried Lawyers), which has been one of the distinguished features of Nepal's judicial system, needs consolidated intervention to increase capacity and ensure cost-effective delivery. *Baitanik* lawyers are provided to litigants who are unable to hire legal aid on their own.<sup>7</sup>

The enhanced capacity of *Baitanik* lawyers is a great contribution to justice process. During the last three years – Fiscal Years 065/66, 066/67 and 067/68 – the statistics of the legal aid provided by different levels of courts through the *Baitanik* lawyers were as follows:

*Number of cases on which legal aid were provided*

<b>Court</b>	<b>Fiscal Year 065/66 Number of Cases</b>	<b>Fiscal Year 066/67 Number of Cases</b>	<b>Fiscal Year 067/068 Number of cases</b>
Supreme Court	79	346	273
Appellate Courts (16)	249	213	366
District Courts (75)	1057	1472	1664
Total	1385	2031	2303

The *Baitanik* lawyers posted at the Supreme Court have been provided with the salary at under secretary level (Second Class Officer). The amount payable is Rs 21080 per month. The Appellate Court *Baitakink* lawyers are given the salary of Third Class officers (known as section officers). The amount payable is Rs 18970. The expenditure pattern is as follows:

*Expenditure pattern in Nepali Rs (Fiscal year 067/068)*

<b>Court</b>	<b>Per Baitanik lawyer every year</b>	<b>All Baitanik lawyer every year</b>	<b>Cost Per case</b>
Supreme Court (2 Baitanik)	2,52,960	5,05,920	1853
Appellate Courts (16 Baitanik)	2,25,480	36,07,680	9857
District Courts (75 Baitanik)	2,25,480	1,69,11,000	10162
Total	1385	2,10,24,600	Rs 7290.66 (per case average cost)

The figures above show that during the Fiscal Year 2067/68, while the Supreme Court spent Rs 1853 per case on an average, the Appellate Courts spent Rs 9857, and District Courts Rs 10162. The accumulative average per case is Rs 7290.66. The understanding of the courts officials is that the return on this investment is less than what is being expected. In the overall context, it is true. There are different reasons behind. One apparent reason is the lack of professionalization of *Baitanik* lawyers by way of training and capacity building.

<sup>7</sup> Article 24 (10) of the Interim Constitution of Nepal provides: "Any indigent party shall have the right to free legal aid, as provided in law."

The system of *Baitanik* lawyers has many uses at the grassroots level. Clients at the courts usually plead for *Baitanik* lawyers on the grounds of poor income and lack of substantial funds to pay the expenses incurred during litigation. In light of modern human rights norms, right to a fair trial has been accepted as an important and fundamental human right and, the concept of *Baitanik* lawyer fits into that category as the legal aid to ensure the implementation of the right in exceptional circumstances. Furthermore, it was initiated by the Supreme Court of Nepal in B.S. 2015 (1959) to assist the poor, marginalized and the illiterate population with limited access to state resources.

The state has made plenty of legal and institutional arrangements to organize and develop *Baitanik lawyers*. Subsequent to B.S. 2046 (1989), the assistance program, which was limited to the Supreme Court, was introduced countrywide. To further institutionalize legal aid, it was incorporated into the Supreme Court Regulations 2049 (1992), Appellate Court Regulations 2048 (1991), and District Court 2052 (1995), respectively. In addition, to further develop the legal aid process, the judicial strategic plan have ascertained and conducted various programs countrywide. Despite such efforts, the legal aid program has been deemed inadequate in many regards. The research studies based on the effectiveness of the legal aid provided through *Baitaniks* have highlighted the shortcomings of both the *lawyers* and the procedures. In addition, the studies have provided various suggestions to improve the legal, institutional and administrative aspect of the legal aid program.

The process of selecting a *Baitanik* by a court is not preceded by a selection examination. It poses questions as to the credibility of the lawyer. Further, it takes away from the system of merit based recognition, whereby the candidate who deserves to provide legal aid should be the one appointed. Similarly, *Baitaniks* have a relatively short tenure of a year, which has been criticized by the legal community. It has led to them being disinterested and noticeably less committed *Baitaniks* in litigations. Moreover, the process of appointing *Baitaniks* on the basis of recommendations from the Nepal Bar Association has also hampered the legal aid process. More often than not, such appointments are not merit based. Plus, the appointed *Baitaniks* are often recent graduates with substantial lack of experience and training. The lack of due recognition of *Baitaniks* from the courts has further hampered their reputation in the legal community. As a result, Senior Advocates or experienced lawyers are reluctant to take up the mantle, leaving the playground for their inadequate and inexperienced counterparts. Moreover, there is a lack of adequate training programs for the appointed *lawyers*.

It is due to the lack of training that the current state of legal service aid has been criticized as merely an avenue to provide employment to incompetent lawyers, unable to sustain a regular legal practice rather than a mechanism to provide relief to the poor, vulnerable and marginalized. It is recommended that the National Judicial Academy provide, at a minimum, seven days' training to the appointed *wakils*. Further, it is recommended that there should be grooming programs in all the districts for future prospects. It is mooted that the Judicial Academy should train five candidates in every district as prospective *Baitanik lawyers*. Subsequently, the appointed lawyers should be appointed from the pool of the trainees. This would provide continuity and assurance to both the *lawyers* and their respective clients. Moreover, non-governmental organizations such as "Rastriya Kanooni

Sahayata Sanjal" and "Kendriya Kanooni Sahayata Samiti" should work together, through seminars or interaction programs, in prescribing ways to make this legal aid system more approachable and effective.