

**CULTURAL TRANSFER IN LEGAL TRANSLATION: DOMESTICATION
OF LEGAL PRACTICES IN NEPALI LAWS AND LEGAL SYSTEMS**

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By

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LETTER OF RECOMMENDATION

We certify that this dissertation, entitled CULTURAL TRANSFER IN LEGAL TRANSLATION: DOMESTICATION OF LEGAL PRACTICES IN NEPALI LAWS AND LEGAL SYSTEMS, is prepared by ACHYUTANANDA BHATTARAI under our guidance. We hereby recommend this dissertation for final examination by the Research Committee of the Faculty of Humanities and Social Sciences, Tribhuvan University, in fulfillment of the requirements for the degree of DOCTOR OF PHILOSOPHY in ENGLISH.

05 May 2026

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APPROVAL LETTER

DECLARATION

I hereby declare that this PhD dissertation entitled CULTURAL TRANSFER IN LEGAL TRANSLATION: DOMESTICATION OF LEGAL PRACTICES IN NEPALI LAWS AND LEGAL SYSTEMS is my own work and that it contains no material previously published. I have not used its materials for the award of any kind and any other degree. Where other authors' sources of information have been used, they have been acknowledged.

05 May 2026

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Achyutananda Bhattarai

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ABSTRACT

Foreign legal apparatuses and values have been appropriated in Nepali laws and the legal system through translation. As a set of skills that help a message travel from the source language (SL) to the target language (TL), translation involves language, values, and cultural perspectives that play a significant role in legal translation as well. Such a transfer involves word-for-word or sense-for-sense appropriation, and this research uses the second one to appropriate foreign legal culture into Nepali laws and legal systems. In the legal field, such an appropriation and transfer is evident. During this process, the SL culture is prominently transferred to the TL. In Nepali laws, foreign culture has been appropriated congruously and incongruously, and this study examines such appropriation through translation, the reasons, and produces textual and practical evidence.

This qualitative research has collected primary data from the *Constitution of Nepal* 2015, the National Civil (Code) Act 2017, the National Penal (Code) Act 2017, the Evidence Act of 1974, and the Act Relating to Children 2018 using the SL and the authorized TL version and has compared and contrasted with the US Constitution, the Marriage Act 1949 of England, Matrimonial Causes Act, 1973 (divorce) of England and Wales, the International Convention on Civil and Political Rights, 1966 (ICCPR), the Convention on the Rights of the Child, 1989 (CRC), and the Rome Statute of the International Criminal Court, 1998 (ICC), the French Civil Code, the German Penal Code, and the Japanese Penal Code to explore the congruities and incongruities. This is descriptive analytical work that has interpreted data using the hermeneutic interpretative method.

As a conceptual framework, this research has used Alex. Fraser Tytler's (1907) principles of translation, J. L. Austin's (1962) speech act theory, and H. Paul

Grice's (1975) cooperative principles to explore the legislative intent of the source text. Hans J. Vermeer and Mary Snell-Hornby's (1980s) concepts of translation as a cross-cultural event, Lawrence Venuti's (1990s) domestication and foreignization strategies for cultural transfer, and Alan Watson's (2006) concept of legal transplant.

This research finds that, due to the influence of globalization and the need for modernization of Nepali law, Nepal has adopted foreign legal culture congruously in principles and incongruously in practices. In the Constitution of Nepal and the national civil and penal codes, Nepal has appropriated foreign legal principles as a cultural compromise. The appropriation of human rights, corporate, and environmental laws is a need to modernize the Nepali legal system. Not only the laws, but also legal maxims and terminologies are appropriated.

This research enriches the readers with new knowledge that legal translation has transferred foreign legal culture to the Nepali legal system, and based on this research, the prospective researcher can explore the cultural identity, policy implications in legislative drafts, future law reform plans, and translation practices in Nepal.

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ABBREVIATIONS

BS	Bikram Sambat
CA	Constitutional Assembly
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CN	The Constitution of Nepal, 2015
CRC	Convention on the Rights of the Child
ICC	International Criminal Court
ICCPR	International Convention on Civil and Political Rights
ICT	International Criminal Tribunal
INTERPOL	International Criminal Police Organization
LG	Local Government
LSP	Language for Specific Purposes
LT	Legal Translation
MCC	Millennium Challenges Corporation
NCA	National Civil (Code) Act of 2017
NPA	National Penal (Code) Act of 2017
SL	Source Language
ST	Source Text
TL	Target Language

TT	Target Text
UDHR	Universal Declaration of Human Rights
UNMIN	United Nations Mission in Nepal

Chapter One

Introducing Legal Translation: A Practice of Cultural Mediation

This research explores the cultural transfer in legal translation (LT) and examines the domestication of legal practices in Nepali laws and legal systems. Nepal domesticates foreign legal practices through translation and regulates internal and external affairs. It brings foreign legal culture to safeguard human rights, conserve the environment and wildlife, manage diplomatic relationships, and ensure consistency between the civil and penal systems. This study compares and contrasts the native legal culture with the foreign practices and examines the congruities and incongruities between them. Further, it explores the need for appropriation and its influence on the indigenous legal practices.

Legal translation mediates between the source language (SL) and target language (TL) legal cultures for intercultural communication. It communicates legal principles, values, norms, behaviors, and real-world legal practices from the SL to the TL as a source of worldwide knowledge transmission. Most countries worldwide incorporate foreign legal practices into their domestic laws to address global issues common to human societies. Comparing and contrasting with general culture, Lawrence M. Friedman defines legal culture as "the ideas, values, attitudes, and opinions people in some society hold, about law and the legal system" ("Is There a Modern" 118). Legal culture in this research denotes the legal principles, practices, values, legalese, terminology, institutions, professions, attitudes, behavior, appointment of judges, fair trial, sentencing, prison system, amicus curiae, bail or jail, probation and parole, rehabilitation, victims' rights, arbitration, and appeal practice as national and international law. LT as a means of communication transfers legal practices to Nepali laws and the legal system for intercultural communication. Mary

Snell-Hornby accepts Vermeer's concept of translation as a cultural transfer and critiques, "Vermeer views translation as a cultural transfer rather than a linguistic one, language being part of culture" (*Turns of Translation* 54). Through the LT, foreign readers gain access to the laws of a country originally written in a foreign language and prepare themselves to work accordingly. LT mediates cultures and facilitates intercultural communication by transmitting SL ideas, norms, and values to TL readers, which can influence the social, cultural, and legal behaviors of the recipients.

Nepal appropriates foreign legal culture, namely from Latin, English, Persian, Sanskrit, and Hindi languages and legal traditions. It incorporates into the native laws and legal system to meet national needs and maintain consistency with universal legal practices, despite challenges in cultural adaptation. The domesticated legal culture is incongruously practiced in the native legal system. For instance, the application of "federalism" in Nepal, as compared to the United States of America (USA), on the autonomy of the states, the division of natural resources between the federation and the states, and the implementation of tax policy are inconsistent. Due to differences in language, culture, and legal systems between Nepal and other countries, the transfer of law through translation is challenging. On this background, this study observes the domestication of foreign legal culture in the *Constitution of Nepal, 2015* (CN), the National Civil (Code) Act 2017 (NCA), the National Penal (Code) Act 2017 (NPA), the Evidence Act 1974, the Act Relating to Children 2018, and some purposively selected legal instruments of Nepal comparing and contrasting with foreign laws and legal systems.

LT introduces alien legal practices into Nepali laws and legal systems, and reforms indigenous legal practices as a need for cross-border communication to regulate diplomatic relations, job placement, abroad study, and more. International

business organizations communicate trade information through TL to expand business, increase sales, and enhance the company's goodwill. Nepal translates foreign bilateral and multilateral treaties, agreements, and contracts into Nepali and makes them understandable to native readers. Admitting the need for LT in cross-border communication, Ingrid Simonnas and Marita Kristiansen critique, "Ever since mankind has needed to communicate across borders, the skills of translation and interpretation have been essential. As a particular kind of specialized translation, legal translation is a communicative activity in the legal domain" (11). As a technical communicator, a legal translator delivers cross-border communication and relocates the SL culture into the TL to meet the purpose of a translation.

The legal principles and practices cultivated through global experience and transcribed into foreign languages are accessible to people of different languages and cultures through translation. As an expert in technical translation, a legal translator needs a basic knowledge of comparative law, translation skills, and cultural awareness to understand the ST and recreate the SL information in the TL. Law does not mean only the collection of rules, but also the cultural rituals encoded in the language. Regarding the comprehension of the meaning loaded in the linguistic signs and transferring it through translation, Le Cheng et al. suggest, "Legal translation, as a type of cross-cultural communication, requires understanding and interpreting signs for decoding messages. Therefore, legal translation, at its core, is a meaning-making process that locates and maps the legal meaning of signs from one language to another" (132-33). The message encoded in the source law needs to be decoded in the TL for cultural communication. In fact, translation is a meaning-making process that recreates the SL meaning in the TL and mediates legal traditions, cultures, and languages in comparative law, as H. M. Kuzenko postulates that LT is a mediation for

interlingual and intercultural communication in which the cultural factor is undeniable (40). He notes that cultural communication is an integral part of LT, despite the obstacles it faces in natural communication.

The domain of LT is not limited to statutory laws and judicial decisions; it extends to legal issues in business, economics, politics, and history. It regulates cross-border business and manages the native economy, science, and technology by exchanging legal information across languages and cultures, thereby making people aware of legal issues in these areas. The mobility of people to foreign lands for employment, education, and commerce necessitates LT for interpersonal and inter-official communication. The business and administrative documents of international organizations are translated into various languages to meet the needs of readers.

LT is not only the need of individuals, the public, and the nation, but also the demand for international affairs, and translating law and transferring the SL culture to the TL is quite a challenge. However, the World Trade Organization (WTO) translates trade and business documents into the languages of the parties to a dispute if one arises. The objective of the translation is to inform the concerned parties about the issues of controversy in their language and culture, and to prepare them to participate in the table discussion.

The meaning of legal terminology goes beyond the discipline. It is influenced by multiple subjects outside the legal domain, leading to inconsistent comprehension of meaning between professionals and non-professionals. The meaning of "bench" differs between lawyers and non-lawyers. The former understands "a court in session," and the latter understands it as "a seat" designed for students. Due to the interdisciplinary nature of law and legal subjects, a translator requires both linguistic and extralinguistic knowledge of comparative law. The meaning of a legal term

depends on the law, history, culture, politics, religion, and economics. On the extension of the meaning of the legal terms from law to economics and the need for the individual to community, V.A. Vernigorova argues, "The need for translating words in a legal context expanded far beyond a courtroom into the global economy, the international world of treaties and agreements, and the dealings of different communities and individuals" (76). The domain of LT extends beyond the law into economics, history, politics, the environment, and business, and it has been an interdisciplinary subject. So, a legal translator must search the meaning of legal terms within and outside the legal domain.

Furthermore, the translation of the political party's constitution, the government's policy, and an annual human rights report fall under LT. The political party's manifesto is translated to communicate its objectives, plans, policies, internal democracy, inclusiveness, and vision for developing the country to international readers. The government's plans and policies are translated into English to inform global readers on current affairs, the country's economic status, and future action. Translating human rights laws and annual reports fosters a human rights culture among TL readers and raises awareness of people's rights and obligations. National and international law guarantee the rights of the accused during investigation and at a fair trial. The accused has the right to receive interpretation and translation services to understand the court proceedings in the language he/she speaks. Under the human rights provisions, the ICC and the UN require State Parties to respect the human rights of people in all circumstances. Part three of the *Constitution of Nepal* (2015) domesticates the human rights culture and includes it as the fundamental rights and duties of people.

In addition, the NPA has the authority to assign a freelance translator and interpreter to the party in the case that the language of the court differs from that of the suspect. This international practice is adopted in the criminal justice system of Nepal pursuant to the European Union (EU), which rules the member states, referring to "the Directive 2010/64/EU, on the right to interpretation and translation in criminal proceedings to ensure this right to suspected or accused persons" (Simonnas and Kristiansen 12). The Criminal Procedure (Code) Act, 2017 of Nepal provides that foreign-language documents must be translated into Nepali for the court's purposes. So, the report of a witness transcribed in a foreign language, the final order of the court in a divorce case, the documents of civil registration, and academic certificates from a foreign university require a Nepali translation before they can be submitted to the Bench as evidence (secs. 115.4 and 173). Section 174 ensures the provision of an interpreter or translator at any phase of the criminal investigation and trial, if necessary. The adaptation and application of international translation and interpretation practices in criminal cases indicate that Nepal has been domesticating and implementing foreign legal practices into its laws and legal systems.

Legal culture differs from general culture, which consists of the common behavior of the masses living in a particular society; legal culture, however, refers to the legal behavior of people who are aware of their rights, duties, equality, justice, and the practices of law in a society. Cultural transfer in law refers to the transmission of legal knowledge, behavior, and the practical application of law across jurisdictions. Culture is an umbrella term, and legal culture governs the legal behavior, norms, values, and attitudes of people in a society. Connecting culture with the translation, Kuzenko asserts:

The notion of culture is essential to considering the implications for translation. Culture refers to the relatively specialized lifestyle of a group of people- consisting of their values, beliefs, artifacts, ways of behaving, and ways of communicating. Also included in culture are all that members of a social group have produced and developed- their language, modes of thinking, art, laws, and religion. (40)

It consists of the overall behavior of general people commonly accepted as members of society, and they act accordingly. Through translation, the culture of one community transfers to another, or, through the migration of people, they carry it to a new place where they settle.

As evidence, the common law practice of appointing judges by the judicial council through open competition among legal professionals with required qualifications and experience is adopted in the Nepali legal system. In England, "the Lord Chancellor appoints those who appeared to him to be the best qualified" (H.J. Fabricius 34). The CN ensures filling forty percent of the vacancy of district court judges, "the remaining forty percent of the vacant posts, based on open competitive examination, from amongst the citizens of Nepal who, having obtained the bachelor's degree in law, have constantly practiced law for eight years as an advocate" (Constitution of Nepal, art. 149.2c). Under Article 140 of the CN, a senior advocate or advocate may be appointed as a judge of the Supreme Court or a High Court after having continuously practiced law for at least 10 years. This denotes that legal translation, as a means of cultural communication, transfers foreign legal culture into Nepali laws and court systems, and modernizes traditional practices. Legal culture differs from general culture, though it comes under the umbrella term of 'culture'.

The difference between general and legal culture is that general culture refers to common attitude and behavior of people on social values and beliefs in their society; however, legal culture consists of the stable patterns of legal oriented social attitudes and behavior that range from facts about institutions, the role of lawyers, and the criteria for the appointment of judges and their functions, the litigation behavior and prison rates (Nelken 1). The culture of foreign legal institutions, professions, practices, investigation, adjudication, and implementation of decisions is transferred to Nepali laws and legal systems.

The "adversarial method" of the common law system for investigating crime is adopted in the Nepali legal system. The judge, as an umpire, does not participate in the investigation process, which the police officer conducts under the supervision of the district court's government attorney, and the investigation report is submitted to the court. Section 8 of the National Penal Code (Procedure) Act 2017 enshrines this provision in the Nepali legal system. The "adversarial method" differs from the "inquisitorial method" of the civil law system, in which a judge actively participates in the investigation alongside the police and the government's court attorney. The traditional way of investigating evidence is replaced in the Western legal system, which demands DNA testing in heinous crimes to establish the facts for justice. The police organization also needs LT for crime investigation and witness reports.

The International Criminal Police Organization (INTERPOL) needs LT. It uses it for the investigation of cross-border organized crimes and the collection of information on terrible crimes such as terrorism, corruption, drugs, organized crimes, financial and high-tech crime, crime against public safety and tranquility, and human trafficking. INTERPOL translates documents from foreign languages into its official languages, despite the challenges it faces in translating cultural terms. INTERPOL

uses Arabic, English, French, and Spanish for its official work; however, a member state can request the translation of a disputed document into one of its working languages. The practical use of TL at INTERPOL, as Muriel Millet reveals, is that "INTERPOL's language departments translate all preparatory documents for meetings of the organization's bodies, which include the General Assembly, the Executive Committee, and regional conferences" (245). People agree that the need for LT spans government and non-government institutions for cross-cultural communication in the field of comparative law and everyday work. Modern legal culture dominates the world and influences the indigenous practices of the developing countries. Nepal adopts foreign legal culture as a cultural compromise in law and the legal system.

Nepal appropriates foreign legal cultures to modernize Nepali laws and legal systems and to update indigenous legal practices. International conventions are generally drafted based on Western concepts. They are open to ratification and domestication into the laws and legal systems of countries, thereby transferring foreign legal culture to third-world countries, including Nepal. LT transfers legal principles and practices worldwide and, consequently, they become part of the common culture over time. In the foreword, Michael Kirby praises Debora Cao's efforts of binding people through her work *Translating Law* stressing on the need of developing a common culture by breaking the barriers of communication to bind people in humanity postulates, "And, as Dr Cao points out, we must also be ready to cross the barriers erected by history, culture, and institutions . . . there will yet be a sufficient commonality to bind humanity together. Law has a part to play in the achievement of this goal" (Kirby x). LT exchanges common culture in the world and unites people together with the public work, such as the practice of civil registration of birth, marriage, migration, and death, investigation of crime for penalizing the

culprit, and compensation to the victim, the rule of law, the desire for a welfare state, the supremacy of the constitutional law, and the like.

Nepal adopts foreign legal culture through its constitution, laws, and bylaws. The CN begins with the preamble and goes with the parts of fundamental rights, the directive principles of the state, the president and vice-president, legislative, executive, and judiciary, power division between federal and state, amendment of the constitution, and state of emergency, which are consistent with the foreign culture of the *Constitution of the United States of America* (USC).

LT is crucial for cross-cultural communication in the domain of law. Without translation, global communication is impossible, as Peter Newmark writes in his essay, "No Global Communication without Translation." He suggests that without translation, global communication across languages and cultures is almost impossible. LT spreads legal ideas, norms, and values from one language and jurisdiction to another; therefore, a translator needs "to be bi-cultural, not only bilingual" (Snell-Hornby, *Turns of Translation* 52). Command over the SL and the TL cultures contributes to exploring the legislative intent of the ST and taking it to the TT. How the translators strive for exploring and transferring the SL meaning to the TL, Komal Prasad Phuyal critiques, "Translators pay adequate attention to the historical circumstances of the production of the source text in order to interpret and understand its meaning. Such reading puts them in a comfort zone while taking the meaning of the source to the target" (126). Extracting the contextual meaning of the ST is the translator's primary concern for a faithful translation.

Nepal has been adopting foreign legal culture since the time of the *Mulukī Aina* of 1854, which was influenced by the Napoleonic Code, which collects French social norms, customs, and values and codifies them as law. The *Mulukī Aina* also

collects the social, cultural, and religious values of Nepali people and codifies them as the general code of the country.

Statement of the Problem

Legal translation is not only the linguistic transcoding but also a cultural transfer embedded in the source languages. Cultural nuances sometimes shape the legal meaning and pose challenges for consistent transfer to the TL culture. Legal concepts are jurisdictional and embedded in the legal history and culture of social development. The meaning of a conceptual word like 'democracy' is influenced by a country's social, legal, and political systems. The language of law is culturally bound, so translating its cultural notions into the TL is a challenge in legal translation.

Many legal translators struggle to maintain fidelity between the SL and the TL and show little concern for the linguistic bases of the languages. Legal texts are designed for normative, informative, and judicial purposes, so only transcoding semantically without pragmatic knowledge does not lead to perfection. Transferring legal effect counts more in LT than mere semantic equivalence. Translation runs through a process of loss and gain, in which the amount of loss increases as the cultural notion of language is left behind. For instance, how can the concept of the Hindu marriage, *kanyādāna*, with reverence and piously offering of a girl child to a boy, be equally transferred to the TL readers who cherish the culture of marriage as a social contract? Additionally, the legalization of marriage by age, sex, relation (incest), and social norms of individual societies differ from one to another. Indicating the complexity of transferring cultural notions from SL to the TL, Anne Wagner et al. remark, "Transferring concepts from one language to another has become a challenge. These concepts can sometimes be fully or partially transferred from the source language to the target language" (27). The complete transmission of legal concepts from one

language and legal system to another poses a challenge because the text is embedded in the history, culture, politics, and economics of the originating system, even when it appears in a unique linguistic system. The true translation of conceptual terms such as "federalism", "secularism", and "democracy" into Nepali, as compared to US practices, poses a challenge not only linguistically but also extralinguistically.

Besides, people get married, and some of them are compelled to divorce if the conjugal life becomes unhappy and stressful. A divorce brings different legal consequences to the life of the divorcee and the dependents. The grounds for divorce are incongruous from one legal system to another. The common law differs from civil and religious laws in the constitution of a divorce, as English and American laws do not apply identically to the Italian *divorzio*, which follows the civil law system. *Talak* and *khula* are the Islamic divorce culture in Pakistan, which is inconsistent with the divorce of common and civil law systems. The *pārapācukē* of Nepal domesticates the common law; however, the grounds for divorce differ from those in England and America.

The English court issues a *decree nisi* as a temporary order. It notifies the respondent to challenge the case reasonably within six weeks, and if not challenged, the final order of *decree absolute* is issued, which dissolves the marriage irrecoverably. On the other hand, the *divorzio* in Italy can be filed in the local registrar's office. In Pakistan, the male initiates the *talak*, whereas the female initiates the *khula*. The NCA demands mental and physical torture of the petitioner for a divorce. The social factors immensely influence the formation of laws and legal systems, as Cao posits, "Legal systems are peculiar to the societies in which they have been formulated. Each society has different cultural, social, and linguistic structures developed separately according to its own conditioning" (24). Most of the foreign

legal concepts that Nepal adopts are drawn from Western cultures and languages, and translating them into Nepali equivalently poses a challenge for legal translation.

When foreign legal culture is incorporated into Nepali laws and legal systems, is it adopted unaltered, or are changes made? If alters, to what extent does the deviation come? Due to the social, cultural, and linguistic differences between the SL and the TL, the transfer of culture in law through legal translation poses a challenge.

Research Questions

I have presented the following research questions related to the problem mentioned above:

1. What cultural congruities and incongruities exist between Nepali and foreign legal practices?
2. Why does the Nepali legal system domesticate foreign legal culture?
3. Under what condition does appropriation produce cultural compromise, and how is it evidenced (textually/practically)?

Objectives

The objectives of the study are:

1. To examine the congruities and incongruities between Nepali and foreign legal culture.
2. To analyze the needs for domestication of foreign legal culture in the Nepali legal system.
3. To evaluate the appropriation of foreign legal culture as a cultural compromise.

Review of Literature

This research reviews cultural transfer in legal translation. It examines which foreign legal cultures are transferred into Nepali laws and legal systems, and how SL

culture is transferred to TL through translation. It explores the literature on cultural transfer, legal translation, and the domestication of foreign legal practices in Nepali law and legal systems. How the culture transfers from one language and legal system to another is reviewed in the primary sources, critical scholarship, and theoretical insights. In the primary sources, it explores what foreign legal culture is domesticated in the CN, the NCA, the NPA, the Evidence Act of 1974, the Act Relating to Children, 2018, and Notary Public Act of 2006 by comparing and contrasting with the US Constitution, the English Marriage Law of 1949, the Universal Declaration of Human Rights (UDHR), the International Convention on Civil and Political Rights, 1966 (ICCPR), the Convention on the Rights of the Child, 1989 (CRC), and the Rome Statute of the International Criminal Court, 1998 (ICC) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), French Civil Code, German, and the US Penal Codes, and the Indian Evidence Act 1872, to find the congruities and incongruities between Nepali and foreign legal culture.

The Law Book Management Board (LBMB) of Nepal, as an institutional translation, translates Nepali laws into English or vice versa. The Nepali laws, bylaws, and the constitution are officially translated into English. The CN is also unofficially translated by the International Institute for Democracy and Electoral Assistance (IDEA) for international TL readers. The preamble begins with "*Hāmī sārvaḥauma sam'mapanna Nēpālī janatā*," meaning "We, the sovereign people of Nepal." This is consistent with the preamble of the USC, which starts with 'We the people of the United States. Both the USC and the CN present the background and objectives of the constitutions and acknowledge the sovereign power of the people. However, the preamble of the US Constitution is concise, coherent, and expressive, whereas the CN

is "unnecessarily lengthy, cosmetic, and vexatious" (Tripathi 123). The objectives of achieving peace, prosperity, and justice through the implementation of the constitution are congruent in both; however, the incongruities lie in the language used, which varies across individual societies, cultures, and legal systems.

Nepal adopts the foreign executive prime minister and ceremonial president system, replacing the constitutional monarchy. Article 74 of the Constitution mentions, "The form of government of Nepal shall be multi-party, competitive, federal, democratic, republican, the parliamentary form of government based on pluralism" (Constitution of Nepal, art. 74). The foreign concept of inventing law through parliament and forming the government from elected representatives of a multi-party system in a federal system is adapted in the Nepali legal system. Subas Chandra Nembang, as the chairman of the Constitutional Assembly, asserts, "We have, however, adopted a reformed parliamentary system with a Prime Minister elected by the parliament, with a ceremonial President as head of the state" (3). The parliamentary system of Nepal is a reformed one, as the president appoints the prime minister, who leads the party that wins a majority in the parliamentary election. If no party has a majority in parliament, the prime minister is appointed from a coalition of two or more parties. The third condition is that any parliamentary member may present grounds to gain the vote of confidence in the House of Representatives (Constitution of Nepal, art. 76.5). The foreign culture of the parliamentary system is domesticated. Still, the practice of forming the government is incongruous and restructured as per the needs of the country. Nepal has its own experience of dissolving the parliament before its term had matured, which the Supreme Court overruled, finding no solid or reasonable grounds.

Nepal appropriates the foreign legal culture in the constitution and codes by ratifying the international conventions. The National Penal (Code) Act, 2017, criminalizes torture of any form (sec. 167), outlaws degrading and inhuman treatments (sec. 168), and enforced disappearance (sec. 206) as an influence of the ICCPR. However, the law needs to be effectively implemented. Article 7 of the ICCPR reads, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Further, an independent report on "Human Rights and the Rule of Law in a Federal Nepal: Recommendations from an ICJ High-Level Mission" adds, "International human rights law has played an undeniably important role in Nepal. It has been incorporated into constitutional and statutory law, as well as in the jurisprudence of the Supreme Court" ("Human Rights" 2). The Supreme Court has issued an order of *Mandamus* in the name of the Government of Nepal to bring the law against "Marital Rape." The writ petition filed in the Supreme Court with case number 0640035 of the year 2063 (2007), including *Jit Kumari Pangeni (Neupane) and Others v Prime Ministers and Council of Ministers and Others* (National Judicial 46-65), criminalizes the forceful sex between husband and wife, which is one of the crucial examples of a cultural transfer to the Nepali legal system. Moreover, it has challenged the traditional concept of marriage, relationships, and sex, and has been redefined according to Western jurisprudence.

The Evidence Act of 1974 domesticates the Western legal culture in the criminal justice system. The burden of proof, such as the documentary and oral evidence, cross-examination of witnesses in the court, facts to be taken or not to be taken as evidence, facts in which evidence may be examined, and facts not required to be examined, are included in the Evidence Act, adapted from the US Law of Evidence for collecting and verifying the evidence.

The Act Relating to Children, 2018, appropriates the foreign legal culture of the CRC, which guarantees children's rights and focuses on their best interests. This Act sets a minimum age for marriage and employment, provides immunity from criminal offenses, separates juvenile justice from the criminal justice system, ensures the right to education, recreation, and protection, and safeguards against torture at home and at school. However, Nepal's efforts to safeguard child rights and welfare still reveal some practical incongruities between the national law and the CRC. In this regard, Uddhav Raj Poudyal critiques, "Despite ratification of international instruments and enforcement of various Acts related to rights of the child, due to absence of a systematic compliance mechanism, cases of violations of child rights are observed to be in an increasing trend in Nepal" (3). The ratification of the CRC can be effectively implemented only through the country's purposefully designed mechanisms.

The CRC safeguards the rights of children at the international level and sets the minimum age limit of children under 18, controls child labor, and limits early child marriage. It requires the state party to avoid discrimination among children available based on origin and social status. As the CRC ensures:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. (art. 2)

These legal provisions are adopted in Nepal and reformulated in the Act Relating to Children 2018 for the special treatment of the child at home and outside. The best interest of the child is guaranteed in the CN and codes. Juvenile offenses are

adjudicated under the juvenile justice system. An independent study on the existing conditions of the children in Nepal, Pradhan et al. reveal:

Mainstreaming the notion of 'Best Interest' into the laws and practice would bring Nepal in line with its international commitments, and ensure a practical application of all the other rights it guarantees for children (Art 3, CRC).

Nepal has not yet adequately developed any such mechanism for ensuring this core value of CRC in its legal framework. (18)

The state mechanism for the protection of children's rights, as guaranteed by the CRC, needs to be updated and implemented in Nepal to ensure real justice for juveniles and the protection of the best interests of the child.

Likewise, international practices of certification, attestation, and translation by notaries public are domesticated in Nepal to prevent fraud in documentation and verify the authenticity of signatories' signatures, as promulgated by "An Act Relating to Notary Public, 2006." This Act adopts the culture of verification and translation of legal documents. The practice of affidavits sworn before the notary public, the code of conduct of the professionals, and the acknowledgment of the notary public as a public officer set the qualifications and experience required to apply for the license. However, the practical implementation is still inconsistent at the international level and lacks. Nepal has not ratified the Apostille Convention yet, which creates difficulties for member states of the convention in accepting notary public translations as authentic.

The provisions of the ICCPR are incorporated into Nepali law to protect and promote the civil and political rights of the native people as fundamental rights. Part three of the CN equates men and women under the law, providing them with equal rights. It ensures the right against discrimination based on creed, color, or caste. The

CN abolishes capital punishment and provides legal remedies against the violations of civil and political rights. Article 248 of the CN forms the National Human Rights Commission, as the Covenant rules the state party. Article 1(1) of the ICCPR safeguards the rights of people and states: "All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development." This legal provision is adapted to safeguard the fundamental rights of Nepali people, in line with international norms. However, some inconsistencies persist in practice, and not all ICCPR rights are guaranteed under the native laws.

The UDHR guarantees human rights, and this is incorporated in the CN and codes. Article 1 of the UDHR reads, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." The adoption of the UDHR has embedded the human rights culture into Nepali laws and legal systems that mitigate discrimination based on race, sex, color, and caste. All the rights mentioned in the UDHR are not guaranteed under Nepali law; however, fundamental human rights are being domesticated and implemented step by step. Pointing to the fragile implementation of human rights in Nepal, Ishwori Prasad Kandel critiques, "Nepal is a party to various international human rights treaties and conventions. However, implementation and adherence to these treaties often fall short" (49). Effective implementation is Nepal's need to ensure and respect the human rights law.

As mentioned above, the principles of the ICC are domesticated in the NPA to determine punishment and execute the penalty for heinous crimes. The ICC transfers the classification of crimes into grievous and non-grievous categories and penalizes based on the gravity of the crimes. Crime against humanity is the most

serious crime referred to in Article 7. It mentions the crimes of murder, extermination, enslavement, deportation, or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity. Nepal classifies such offenses as heinous crimes under the NPA and imposes severe punishment. The domesticated legal culture modifies the traditional criminal justice system and ensures consistency in classifying offenses and penalizing based on the gravity of the crime.

The CEDAW is a convention against discrimination against women and girls that transfers the concept of equality between males and females in all spheres of life. It eradicates the translational practices of male domination over females and develops the concept of equality among human beings. For example, the traditional practice of dividing ancestral property among brothers and depriving sisters of it is discriminatory in Nepal. The early retirement of a girl hostage at the age of 30 and the male crew at 50 was a discriminatory law (National Human Rights 16) that was amended after the ratification of the convention. The landmark Supreme Court decision, *Reena Bajracharya vs. HMG and Others*, decision no. 6898 of the year 2057 BS (2000 AD) issues and orders of mandamus to the government to draft an appropriate bill to end all the discriminatory provisions based on gender.

By law, Nepal acknowledges gender equality by appropriating the foreign legal culture. However, positive discrimination in the recruitment of women for jobs is ensured in Nepali law as a compromise within the legal culture. The equal age of retirement and equal pay for equal jobs are codified in the CN. The right of children to inherit parental property is recognized in Nepali law, in line with foreign legal

cultures; however, the practice remains incongruous in terms of levying tax on the receiver. Clarifying the conditions that bring discrimination against women, the CEDAW states:

For the purpose of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. (art. 1)

The provisions against gender discrimination are domesticated in the CN and the statutes of Nepal as a State party, indicating that LT transfers foreign legal culture into Nepali laws and legal systems, despite the incongruities in practice discussed in the core sections.

The review of these primary sources is crucial to shaping the idea of how the Nepali legal system is compromised by modern legal culture, how globalization and the socialization of law have modernized the native legal system, and what cultural congruities exist in principles and what incongruities appear in practices between the Nepali and foreign legal systems.

As a critical review, I have reviewed Wagner et al.'s research on "Cultural Transfer and Conceptualization of Legal Discourse," which discusses how legal language is culturally bound and differs in providing meaning between the law-in-written and law-in-translation (39). They claim that legal translation transfers source legal ideas, professions, and the due process of decision-making; however, the adoption is partial and adjusted to local culture. They conclude, "If no equivalence

exists in the target language, the role of legal translator becomes even more crucial. He will have to adapt the target language to make room for the source concept" (39). LT is a process of conveying the SL message into the TL, with adaptation and rewriting of the ST into the TT, using the translator's artistic skills as a cultural mediator. Alenka Kocbek searches for the challenges of legal translation and examines whether the differences in language or inconsistencies in legal systems create more interference to transfer the SL concept into the TL, and concludes:

When translating between different legal systems or families, the relatedness of legal systems, rather than the relatedness of the languages involved in translation, will determine the level of translatability of legal concepts

The most difficult task is translating between unrelated legal systems, as well as languages, e.g., translating Common Law texts from English into Slovene.

(57)

The degree of proximity or distance between the legal families determines the smoothness and complexity of transferring SL cultural notions into the TL legal system. The density of complexity increases in the translation of unrelated legal systems and languages. For example, translating Chinese law into Nepali is comparatively more difficult than translating it from the Indian (Hindi) language due to the disparity between the former and the parity of the latter in terms of language, culture, and legal system.

Govinda Raj Bhattarai et al. *argue that translation's* pioneering role is to build a world culture by connecting the literature and cultures of multiple communities before the concept of globalization emerges. Under the title, "Translation and its Role," they claim that translation has played a significant role in connecting people and their culture. Due to the globalization of the English language, the source-

language texts of third-world countries are translated into English, spreading their culture and integrating it into global culture (88). The English translation of the *Mulukī Aina* of 1854, the Hindu-dominant customary law, is an example that conveys Nepal's pre-modern legal system to global readers.

Some foreign scholars in their PhD research have explored issues in legal translation; however, their searches focus on their native languages and cultures. The Chinese scholar Wang Ling's dissertation on *Cultural Transfer in Legal Translation: A Case Study of the Translation of the Common Law into Chinese in Hong Kong* explores how the common law culture, such as legal institutions, behavior, and the attitudes of the legislators and judges on law and legal system, is transferred to Hong Kong as an autonomous region of China after 1997. It examines the need to adopt the common law system in Hong Kong after China's sovereignty over the territory, despite China's socialist legal culture. Further, this dissertation discusses how legal translation has become the source of intercultural communication in law, and explains:

On the one hand, "translation as the cultural transfer" can be understood as "translation as an act of cross-cultural communication effected by matching the cultural, rather than the linguistic, elements of the two languages involved." On the other hand, "translation as the cultural transfer" can be understood as "the translation as a process of importing or even transplanting, the culture of the SL into the culture of the target language." (1)

LT as intercultural communication transfers the SL legal principles, practices, institutions, and professions to the TL. For instance, the common law culture is transferred to Hong Kong, the British colonies, and other modern States after

independence. He sheds light on cultural transfer in legal translation; however, this is beyond the scope of Nepali laws and legal systems.

Binghua Chen's research on *A Corpus-based Study of Chinese and English Translation of International Economic Law: An Interdisciplinary Study* examines the translation of economic law in China and analyzes how international economic trends are transferred to the national legal culture of economics and influence social life.

Ibrahim M Mohamad Ibrahim explores *textual aspects in translating legal texts from Arabic into English, with reference to Libyan Commercial Law*, focusing on lexical, syntactic, and textual features to identify similarities and differences between Arabic and English translations, and concludes that lexical features are the most difficult part of translation. He recommends that translators work with lawyers to translate legal terms.

Orla McGrory's *Legal Translation and Terminology in the Irish Free State (1922-1937)* examines the efficacy and consistency of the translation strategies and Irish legal terms employed by the Irish government's translation section. How the modern translation theory, especially equivalence theory, is applied in the translation of the Irish Free State constitution is discussed. The study examines whether the Irish translation deviated from its English counterparts. It concludes that a functional approach applies to LT, particularly at the level of terminology (138). However, the translation equivalence needs to be maintained not at the linguistic and terminological levels, but rather at the functional and communicative levels.

Emphasizing the importance of LT for Chinese international relationships and communication, Chen Zhang argues that it is crucial for the rapid growth of diplomatic activities and international cooperation in contemporary China through accurate, effective, critical, and clear intercultural communication (5). He examines

the effectiveness of translation in a three-step process: Source text (ST)-Translation-Reception (Effectiveness). He concludes that it is a good challenge for translators to balance between different contexts to make the most effective translation possible (449). Matching cultural elements between SL and TL is difficult in LT.

Ondřej Klabal discusses the English-Czech LT training and highlights the need to develop the specific sub-competencies required of legal translators to secure the translation market. He insists that LT competence develops step by step through training and differs from machine translation or computer-assisted translation, which cannot understand or interpret the complex structure of legal texts. Klabal agrees with the claim of Borja Albi and Martinez-Carrasco, who argue that "machine translation will not be able to solve many of the problems in legal translation" (qtd. in Klabal 130). A machine cannot analyze conceptual differences in comparative law because manual translation is involved. This dissertation also analyzes the linguistic aspects of a translation.

The Nepali scholar Govindaraj Bhattarai analyzes the distinction between sense and word as a unit for exploring meaning in literary translation. However, this research focuses on literary translation and goes beyond legal translation.

Balram Adhikari's doctoral dissertation, *Process-Product Interface in Literary Translation from Nepali into English*, examines how the application of multiple translation processes affects the production to convey true meaning to readers. This research also concerns linguistic equivalence between the SL and the TL and does not discuss cultural communication in translation. No systematic research on Nepali-English legal translation exists to address the intercultural communication purpose of LT and the transfer of foreign legal culture into Nepali laws and legal systems.

This critical review outlines some works on LT from a cultural perspective, suggesting that the modern concept of translation is shifting toward functional equivalence, discarding the literal translation of the past. The very concept of equivalence is modified, and the translator struggles to convey the equal meaning in translation. Now, translation has become a way of cross-cultural communication to convey the SL culture to TL readers, addressing their cultural expectations.

For a theoretical review, I have studied the theories of Marcus Tullius Cicero (106-43 BC) and Quintus Horatius Flaccus on word-for-word or sense-for-sense translation. The concept of Friedrich Schleiermacher and Lawrence Venuti's domestication and foreignization translation methods; either the translator takes the author to the readers (domestication) or sends the readers to the author (foreignization) to transfer the SL culture. Snell-Hornby's cultural theory of translation suggests that the objective of translation is to facilitate cross-cultural communication and to transfer SL culture, norms, and values to TL readers in their culture and legal system.

Furthermore, the *skopos* theory of Vermeer is reviewed, as it proposes that translation is determined by the objectives it seeks to fulfill, the knowledge, and the cultural expectations of TL readers. Similarly, Eugene Nida's formal and dynamic equivalence and Newmark's semantic and communicative approach emphasize the need for translation to be communicative to TL readers, rather than simply using information from the ST. On the other hand, Jeremy Munday's theory of equivalence and equivalence effect suggests that a translation requires equivalence in meaning and effect compared with the ST for SL readers. Not only the above, but also the theory of Susan Sarcevic, the receiver-oriented approach to legal translation, is studied as she advocates that LT should be receiver-oriented. Finally, Allan Watson's concept of

legal transplantation, as compared with the transfer of a human organ to a new body, is analyzed in terms of cultural transfer in legal translation. Against this conceptual framework, this research examines the domestication of foreign legal culture in Nepali law and legal systems.

This review reveals that the major challenges of LT lie beyond linguistic differences and are deeply rooted in the cultural incongruities of comparative law and legal systems. Language, law, and culture are closely related and interdependent for the meaning and effective communication. As Cao affirms, "Law is an expression of culture, expressed through legal language" (31). Law reflects the legal behavior of people as practiced in their society. Translating law from one language and jurisdiction to another is challenging; however, it transfers the source legal culture to the TL.

The specific nature of the source legal culture requires careful transfer to the TL, such as the "contract agreement", which creates rights and duties and is governed by native law, which requires a basic skill to understand the ST and transfer it to the TL equivalently. Maurizio Gotti restates Marta Chroma's concept of exchanging legal information through LT, arguing that translating legal texts involves transferring legal information from one language and culture into another, taking into account differences in legal systems and the purpose of translation (7). Translating legal information from SL to TL requires the translator to have basic knowledge of comparative law, language, and legal systems, including the objectives of translation: normative, informative, and judicial.

Research Gap

LT communicates legal norms and ideas from SL to TL; however, most existing research in LT focuses on linguistic aspects of translation and discusses

semantic equivalence rather than cultural transfer. This research examines LT as a means of transferring foreign legal culture into Nepali laws and legal systems, which is a new approach in the existing scholarship. As it explores the cultural congruities and incongruities between Nepali and foreign legal practices, the need for domestication, and the conditions for the appropriation, it gives evidence (textual and practical) from the selected primary texts. This dissertation, "Cultural Transfer in Legal Translation: Domestication of Legal Practices in Nepali Laws and Legal Systems," is an innovative piece of research that fills a gap in existing knowledge.

Significance of the Study

This research on translation, entitled "Cultural Transfer in Legal Translation: Domestication of Legal Practices in Nepali Laws and Legal Systems," is significant to the readers and the researchers as it provides knowledge on how foreign legal systems influence the Nepali legal traditions, and presents the connectivity of the global and local legal practices. Comparing translation as a bridge to connect language and culture, Elley Margaret Symmes reviews Edith Grossman's book *Why Translation Matters* and quotes the author's view that "translation offers access to the literature originally written in one of the countless languages we cannot read" (230-31). The English translation of native laws multiplies the number of readers and promotes intercultural communication in law. The world is interconnected through interdisciplinary knowledge, and translation enables communication with TL readers who lack SL access. Exploring LT as a cultural transfer into Nepali laws and legal systems contributes to understanding cross-border legal behavior and prepares for drafting new laws and policy-making. The cross-flow of people requires communication about the rights of women, children, and elderly people, including their civil and political rights, as internationally recognized. The fundamental rights of

people listed in the CN must be consistent with the UDHR. The readers critically analyze and explore the conditions that make Nepali laws and legal systems appropriate and compatible with foreign legal culture. This research is significant for new researchers to explore how legal culture transfers from one language and jurisdiction to another and to understand and act consistently with global issues.

Research Methodology

This research compares and contrasts native and foreign legal cultures by analyzing primary and secondary texts. It focuses on the legal principles, practices, concepts, behaviors, institutions, and language of comparative law that are incorporated into the Nepali legal system. I have read the selected foreign laws in the source English and the Nepali laws in the Nepali language, along with their authorized English translations, to identify cultural congruities and incongruities between them in principles and practices. The domestication of foreign legal culture is analyzed and interpreted through the perspective of cultural compromise to reform the Nepali legal system as a need of a modern state.

I have collected primary data from the CN, the NCA, the NPA, and selected native laws that reflect the foreign legal culture in the Nepali legal system. I have compared, contrasted, analyzed, and interpreted the Nepali legal tradition through the lens of the civil and the common law systems. I have examined the foreign law, focusing on the US Constitution, the Marriage Act 1949 of England and Wales, ICCPR, CRC, UDHR, ICC, CEDAW, the French Civil Code, the German Criminal Code, and the Japanese Penal Code to compare and contrast with the legal system.

In this qualitative research, I have read, reviewed, analyzed and interpreted data using the hermeneutic interpretative method for a descriptive analysis. As a researcher, I have given my views and analyzed the data critically. The hermeneutic

principle is used to interpret linguistic signs and derive contextual meanings, exploring the social and cultural elements on which a text is based. M.H. Abrams and Geoffrey Galt Harpham clarify that hermeneutics, as “originally designated the formulation of principles of interpretation that apply specially to the Bible . . . involved in getting at the meaning of all written texts, including legal, historical, and literary as well as biblical texts” (178). According to them, ‘hermeneutics’ is a science of interpretation that is applied to derive meaning from the sign systems encoded in a language. On the connectivity and differences of ‘hermeneutics’ with ‘semiotics’, Oliver Davies argues:

Hermeneutics concerns the Act of interpretation. It is closely related to, though not to be identified with, the science of semiotics, which is the study of meaning. Semiotics reflects upon how meaning comes about; it deals with signs and the ways in which they signify. Hermeneutics, on the other hand, already presupposes that the Act of meaning will be plural, requiring choices to be made. . . and tends towards the question not only of how meaning is constituted but also, and more importantly, how we should seek to find the right meaning in any particular case. (494)

Hermeneutics is an act of interpreting linguistic signs and deriving meaning from among different choices. Legal language is a cultural product, so one needs to interpret words in their socio-cultural context to infer the correct meaning from a text. Words are laden with meaning by language and culture, so the legal translator must understand the text in context to achieve the closest natural equivalence in the TL. The translator has to interpret and analyze the legal text within the framework of comparative law.

The foreign legal concepts are analyzed from linguistic and cultural point of view to examine the congruities and incongruities. Non-English Nepali legal terms are *italicized* and transliterated, with English equivalents. I have used the descriptive analysis method to analyze the data. The translation techniques, including domestication and foreignization, are also used to discuss the foreign legal culture in the Nepali legal system. An overview of a chapter and sub-chapter is summarized with a conclusion.

Conceptual Framework

I have applied general and specific LT theories to discuss how legal culture transfers from the SL to the TL. So, Alex Fraser Tytler's translation principles, Vermeer's *skopos* theory, Snell-Hornby's cultural theory, and Lawrence Venuti's theories are used. Additionally, Watson's transplantation of law for legal development in a new society and Sarcevic's receiver-oriented approach to LT are applied to achieve equal legal effect/response in LT. Venuti's concepts of domestication and foreignization are used to discuss cultural transfer in the Nepali legal system.

Vermeer's *skopos* (purpose) theory is used to support his claim that translation is shaped by the purpose it serves for TL readers. The translation differs from the ST due to changes in the objectives. The normative purpose of the translated law reform report can be informative to the TL readers though it is normative to the SL readers. The same case applies in the translation of advertisements by multinational companies and it varies depending on the text's changing objective.

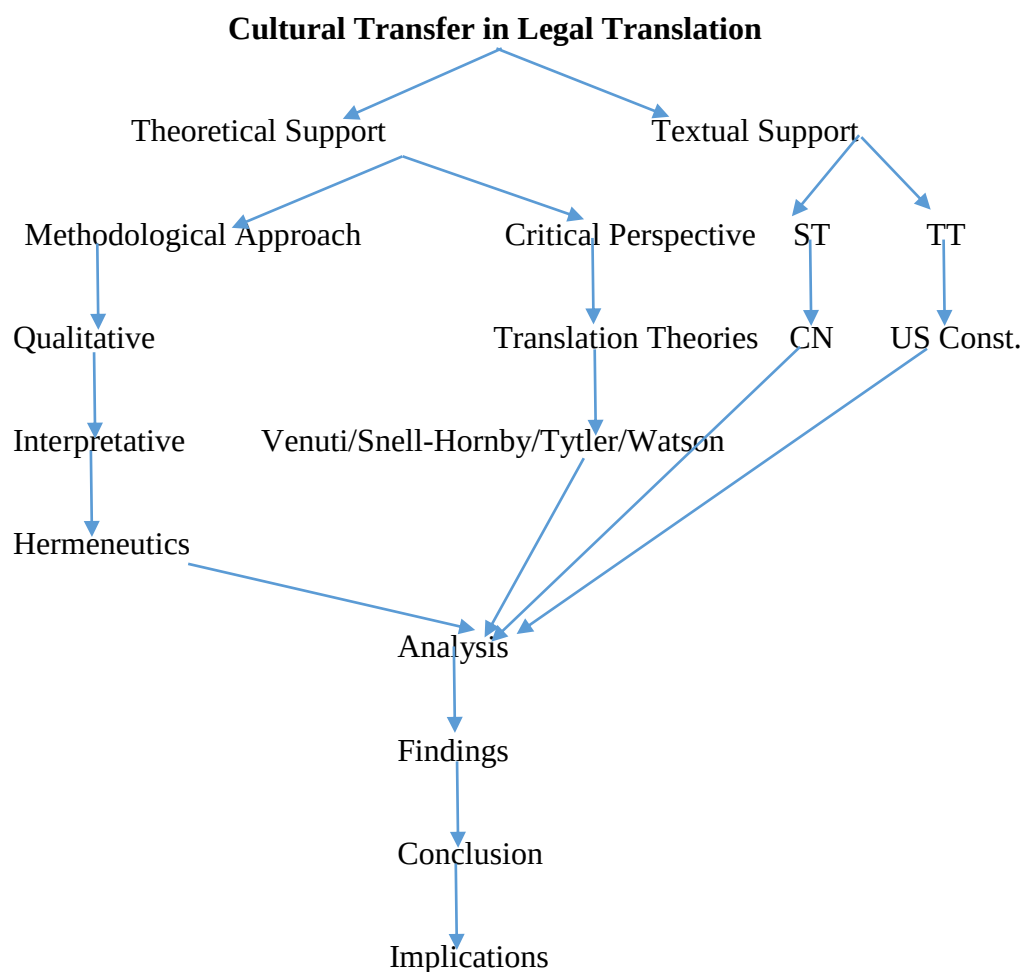


Figure 1

This research, "Cultural Transfer in Legal Translation: Domestication of Legal Practices in Nepali Laws and Legal Systems," has been shaped as outlined above. It begins with the conceptualization of translation theories, supported by textual evidence from primary and secondary texts.

This is qualitative research and uses non-numerical data based on the social norms, values, and legal culture. The data are interpreted using hermeneutic interpretative methods with descriptive analysis. Theoretical perspectives, including translation theories by Vermeer, Snell-Hornby, Tytler, and Nida, are applied, and the discussion draws on research by critical scholars on translation problems. To find the cultural congruities and incongruities between Nepal and the foreign legal practices,

the authorized translation version of the CN, the NCA, and the NPA is compared with the US Constitution, UDHR, ICCPR, CRC, ICC, CEDAW, the German Criminal Code, the French Civil Code, the American Penal Code, and the Japanese Penal Code. The textual data are collected, interpreted, and analyzed to conclude that legal translation is a cultural transfer rather than a linguistic transcoding. I briefly discuss some theorists whose concepts are used, and I point out the future implications of the research based on the findings and conclusions.

In addition, the equivalence theory of translation, as proposed by Nida and Mona Baker, holds that there must be equivalence between the ST and the TT. Nida discusses the formal equivalence and dynamic equivalence based on the nature of the texts to be translated. Formal equivalence is the direct correspondence between the SL and the TL. In contrast, dynamic equivalence is the functional equivalence of texts, i.e., equal response or effect on readers, where the message takes priority over the mechanics.

Baker focuses on pragmatic equivalence and argues for the equivalence of the text-in-context. Snell-Hornby's cultural theory is applied to examine the cultural facets of the ST as they are transferred into the TT. According to her, one of the primary objectives of translation is the transfer of ideas, experiences, and practices from the SL to the TL. Snell-Hornby agrees with Vermeer's insight that conceptualizes translation beyond the words and sentences as Vermeer argues that "translation is not the transcoding of words or sentences from one language to another, but a complex form of action in which someone gives information about a text (SL material) under the new functional, cultural, and linguistic condition in a new situation while preserving formal aspects as far as possible" (qtd. in Snell-Hornby, *Turns of Translation* 53). He suggests that the primary function of a translator is to

transfer SL information to TL, recreating a new text in a novel situation for the TL readers, acknowledging their cultural behaviors.

Acknowledging Schleiermacher's concept, Venuti adds that "domestication method, an ethnocentric reduction of the foreign text to target language cultural value, bringing the author back home, and a foreignization method, an ethno-deviant pressure on those values to register the linguistic and cultural difference of the foreign text, sending the reader abroad" (20). The domestication method brings the foreign author to the native reader, but the foreignization strategy sends the readers to the author. The foreignization method of translation is used to preserve the foreignness of the foreign culture.

Susan Sarcevic's new approach to legal translation advocates literal translation, preserving the sensitivity of law and minimizing translation errors. She argues that the literal/word-for-word translation method can only preserve the spirit of the law and successfully convey it. However, she is criticized for this view, and scholars argue that legal language is a special-purpose language (LSP); therefore, word-for-word translation is not always suitable for conveying legal intent, and they favor sense-for-sense translation. Watson's concept of cultural transfer through legal transplantation asserts that law can be transplanted from one jurisdiction to another for legal development, as human organ transplantation functions successfully in the new body system. The concepts of scholars are used to shape research ahead and examine the ways legal practices are appropriated in Nepali laws and legal systems.

Delimitations of the Study

This research is limited to the study of the CN, the NCA, the NPA, the Companies Act, 2006, the Act Relating to Children, 2018, the Evidence Act, 1974, the Contract Act, 1999, and selected Nepali statutes. The data are compared and

contrasted with the US Constitution, the UDHR, the ICCPR, the CRC, the ICC, CEDAW, English family law, the German Criminal Code, the French Civil Code, the American Penal Code, and the Japanese Penal Code. Some Latin legal maxims, Persian, and Sanskrit legal terms are brought to discuss the ways culture transfers through languages. I have used the authorized institutional translation of the Nepali laws into English or vice versa by the LBMB. This research is limited to the cultural transfer to Nepali laws and legal systems through translation. The data are collected, interpreted, and analyzed to examine the cultural congruities and incongruities between the Nepali and the comparative law.

Organization of the Dissertation

I have divided this dissertation into five chapters. Chapter one introduces the research, provides background information, and discusses the need and importance of LT in Nepal. It discusses the challenges of transferring foreign legal culture into Nepali laws and legal systems, sets research questions, and specifies objectives corresponding to them. The review of literature presents the primary, critical, and theoretical scholarship to identify the research gap, establishes the significance of the study, defines the research methodology, outlines the conceptual framework, delineates the study's delimitations, and outlines the dissertation. The principles, practices, and pragmatics of translation are discussed in Chapter Two, elaborating on the translation principles, use in real-life practice, and the pragmatics analysis of legal texts. Chapter Three discusses cultural transfer in legal translation through domestication and foreignization, and presents data on how foreign legal cultures are transferred to Nepali laws and legal systems. What are the congruous legal cultures, and what are the incongruous is presented with examples from the selected primary texts. The appropriation of legal practices in Nepali laws and the legal system is

discussed in the fourth chapter. The collected data are presented, analyzed, and interpreted with critical and theoretical insights using the hermeneutic interpretative method. It digs out the findings for the conclusion. Chapter Five concludes the dissertation by arguing that Nepali laws and legal systems domesticate foreign legal practices as a cultural compromise to meet the needs of modern Nepal, and recommends further research based on this conclusion.

This introductory chapter explains how LT mediates between different cultures by exchanging legal ideas across jurisdictions. It consists of research questions, specifies objectives, reviews relevant literature, gives the rationale of the study, presents the data collection methods, provides a conceptual framework, delimits the area, and organizes the dissertation. This research on cultural transfer in legal translation, with reference to Nepali laws and legal systems, is significant in the existing scholarship, as it provides knowledge of the transfer of modern legal culture to consolidate local traditions as a cultural compromise.

Chapter Two

Legal Translation: Principles, Practices, and Pragmatics

This chapter discusses translation principles, practices, and pragmatics in the context of transferring foreign legal culture into Nepali law and the legal system. The principles are the general rules of translation that guide the translator in transferring SL cultural information into the TL while maintaining semantic and pragmatic equivalence. Translation principles are applied in real practice as guidelines for delivering the SL message to TL readers, while representing the original text. The contextual meaning of the ST is explored through textual analysis employing speech act theory, presuppositions, and implicatures to transfer the true meaning of the SL to the TL, achieving semantic equivalence and creating an equal pragmatic effect on readers. Translation principles and pragmatics explore the legislative intent of the legal text and translate it into the TL as a practical translation.

Translation principles are the general rules for translating technical, semi-technical, and non-technical texts. The principles guide translators in delivering the complete message of the ST and making the translation easy to understand for TL readers. It directs the translator to overcome the challenges in translation practices. Additionally, knowledge of translation principles helps transfer the SL legal culture to the TL legal system smoothly. Tytler proposes three principles of translation: (1) the translation should give a complete transcript of the ideas of the original work. It means that a translation is a true and comprehensive reflection of the original message, (ii) the style and manner of writing should be of the same character as that of the original, suggesting that translation needs to be consistent with the matter and manner of the original, and (iii) the translation should have all the ease of the original (9). If the original text is easy and graceful, the translation should have the same

quality. The complexity or simplicity of the original needs to be consistently reflected in the translation.

The meaning of the ST is neither to be modified nor to be manipulated arbitrarily, and the register of the language used in the ST (persuasive, dissuasive, formal, and informal) needs to be maintained in translation accordingly. The applications of these principles are further discussed with reference to the translation of the CN and selected Nepali statutes to examine the domestication of legal practices in Nepali laws and legal systems.

No single principle completely transfers the SL culture into the TL, so the translator applies multiple approaches to avoid loss and gain in translation. Internalizing this reality, Nida critiques, "The basic principles of translation mean that no translation in a receptor language can be the exact equivalent of the model in the source language. That is to say, all types of translation involve (1) loss of information, (2) addition of information, and/or (3) skewing of information" ("Principles of Translation" 150). Translation is an approximate communication in which loss and gain occur, which manipulates the real meaning of the original.

Despite these challenges, its practical use in real-life events is immense in communicating and connecting people across languages and cultures. LT is a need today for fair criminal justice, from a police interrogation to a witness inquiry report, and for implementing the decision in cases where the parties speak a language different from the court's official language. So, national and international laws have recognized the importance of LT in regulating the justice system and implementing decisions. The ICC ensures that the accused has the right to obtain information in the languages s/he speaks and understands in investigations and trials, and it provides rules for the provision of translation and interpretation services.

Principles of Translation

Translation is a route of transferring the SL culture into the TL for intercultural communication. It transfers the SL ideas, norms, and values into the TL in bilingual or multilingual legal systems. The incongruities between languages and cultures pose a challenge to fully transferring the SL culture into the TL. Furthermore, the distinct natures of the legal texts composed in the unique language and culture intensify the challenges of LT in transferring the SL legal culture into the TL legal system. Acknowledging the multiple genius and character of languages and their influence in translation communication, Tytler remarks, "If the genius and character of all languages were the same, it would be an easy task to translate from one into another; nor would anything more be requisite on the part of the translator than fidelity and attention. Nevertheless, the genius and character of languages is confessedly very different" (7). It is the translator's craft to understand the spirit of the original text and transfer it faithfully to the TL. The readers demand natural, fluent text, not a translation, but an original. This requires the translator-reader to have comprehensive knowledge of the subject matter. Clarifying the concept ahead, for instance, while translating the "right to labor" (Constitution of Nepal, art. 34) of the CN, the translator needs to develop an understanding of the spirit of the Constitution, which includes not only physical but also mental labor exchanged for the reasonable price of the work or services.

LT translates jurisdictional statutory laws and differs from technical translation, such as in science, engineering, and medicine, which covers global readers and maintains the same meaning. The legal norms and values of one jurisdiction do not necessarily apply in other jurisdictions, even when the language is the same, due to the influence of local traditions and culture. Speaking on the nexus

between translation and language, J. C. Catford asserts, "Translation is an operation performed on languages: a process of substituting a text in one language for another" (1). When translators translate a legal text, they transcode language and transmute legal culture. So, a translation requires "faithfulness," "expressiveness," and "elegance" to the ST.

The "faithfulness" in translation refers to the fidelity between the ST and the TT in content and form. Maintaining faithfulness in content is easier than giving form to identity. However, faithfulness should not be taken to mean matching every word or sentence structure of the ST in the TT, but rather corresponding to the ST's drafting style, preserving its spirit. Wenjuan Wang suggests, "An accurate understanding of the source text is the basic quality required of translators in the translation" (162). The true understanding increases the degree of faithfulness between the ST and the TT. Whether a translation is literary or technical, it requires faithfulness to deliver the source message to TL readers. Tytler compares "faithfulness" at the level of the source author's spirit and reveals that, through the author's soul, a translator speaks through their own organs (114). A translation is the recreation of the original faithfully, like that of the true copy of an original painting that is indistinguishable, not in all aspects, but in colors. Pursuing the skill of the painter, a translator freely recreates the original text, maintaining the closest equivalence in manner, matter, and meaning.

LT demands the highest accuracy, fluency, and expressiveness due to its unique nature and special purpose. The construction of words and sentences requires coherence, clarity, and faithfulness to the original. The general tendency among readers is to avoid complexity in writing and to seek a comprehensive text.

Supporting Yan Fu's perspectives, Xiaoping Tang reiterates, "Expressiveness" means

the target text should be coherent and clear, there being no need to follow the exact order of words and sentence structure of the original language, but reorganize and elaborate to respect the rules of the target language" (1047). The translational act is not a mechanical replacement of the SL by the TL, but a careful selection and switch of meaningful words purposefully designed. For example, *Mulukī Dēvānī Samhitā Aina* is translated as 'National Civil (Code) Act', where the term *Samhitā*, meaning 'collection', is avoided to maintain fluency, accuracy, and expressiveness for TL readers in their language and culture.

The "elegance" means a translation needs to be reproduced in a refined language. While translating, the translator needs to select the formal words and use modern language. "Being elegant means the translation should be perfect in aesthetics. That is to say, only based on loyalty and fluency can the style of the translation be improved" (Miaomiao 35). The beauty of the translation increases with the fluency of the expression and loyalty to the original. In short, a translation needs to be faithful to the ST, meaningful and fluent for TL readers, and beautiful in language for critics. To maintain translation quality, the translator needs to have a command of both the SL and the TL, a comprehensive knowledge of the subject matter, an understanding of the spirit of the ST, and adherence to the stylistic conventions of the TT.

As the first principle, Tytler suggests that translation should reflect the merit of the original and be completely transferred into another language, distinctly understood, and strongly felt by TL readers. The legal translator needs to be familiar with the customs and culture of the SL and TL legal systems. Speaking on the basic requirement in the legal translator, Ahmad Abdelmoneim Youssef Masry Zidan alludes, "Legal translation as a specialized form of translation needs linguistic

command of both source and target languages as well as familiarity with the law and legal system of the law where it originated and the legal system of the country for which the translation is being prepared" (1). The competency in languages and knowledge of comparative law is the fundamental skills for LT. For instance, the English translation of "inheritance" as managed in sections 205 to 226 in the NCA requires command over Nepali and English languages, be familiar with the native and English legal systems on that particular subject. Knowledge of comparative legal systems can be persuasive, making the translation accurate, natural, and smooth for TL readers.

Besides, the translator's command of the specific subject matter encoded in the law can help translate the text accurately. For instance, while translating Nepal's inheritance law, basic knowledge of the law included in the chapter, along with additional information on the effect of concealed property, including self-abandonment by the shareholder, the rights of the widow, fetus, and extramarital birth, can be persuasive. Comprehensive knowledge of the source and target legal systems on the specific subject enables faithful transfer of legal concepts.

Furthermore, cultural transfer in inheritance law can be effectively carried out by comparing and contrasting the native provisions with the foreign legal system. The English Inheritance Act of 1833 provides fundamental insights into the inheritance culture of the Western legal system. Under the act, the beneficiary has to purchase the inherited property, whereas under Nepalese law, only a registration fee is levied on the receiver. In the UK, land property descends to the heirs under limitation as if the property had been purchased (sec. 4). The legal provision of 'inheritance' in comparative law and the embedded culture with it need to be analyzed for the fidelity of the translation.

The extralinguistic knowledge of the source and target legal systems makes it easier to convey legislative intent. If some legal concepts, such as *satī prathā* 'widow burning', do not exist in the TL legal system, the translator should resort to functional equivalence. Translating and attempting to transfer the legal culture in doubt and confusion deteriorates translation quality. As Tytler argues, if a translator wants to add newness to illustrate and strengthen the original, he/she should do so carefully. Deleting or cutting off the original idea to avoid redundancy is a more serious task than addition, as deletion may impair the original (35-6). Deletion and addition are common practices in translation; however, deletion may impair meaning, so the job of deletion requires prudent handling to preserve the spirit of the ST.

Tytler's second principle on the style and manner of writing in a translation should be of the same character as that of the original implies:

The translation must ascertain with precision to what class it belongs; whether to that of the grave, the elevated, the easy, the lively, the florid and ornamented, or the simple and unaffected; and these characteristic qualities he must have the capacity of rendering equally conspicuous in the translation as in the original. If the translator fails to match the style of the original, he is considered a master of the spirit of the original but presents it through a distorting medium that is unsuitable to his character. (110)

Both the content and the form of the original need to be transferred to achieve an equal effect (response) in the readers. The diction of the original needs to match that of the translation. For instance, legal drafts, such as the "power of attorney" in Nepali, begin with the term लिखितम् (*likhitam*) 'it is written', which must be carried over into the translation even if it does not match the English draft. The Nepali legal draft concludes that the day of the deeds, in addition to the year, month, and date, needs to

be transferred to TL identically. If the manner of the original draft is ignored, focusing only on the matters, it deviates from the principle of equal diction of the original in translation. Legal drafts from various fields have their own unique diction, which must be translated into the TL equivalently.

Supporting Tytler's principle of copying style of original in the translation besides the knowledge of language and legal system, Zidan suggests that the legal translator needs to develop a competency in the fundamental knowledge of two legal systems used in translation, specific and accurate terms of the particular legal field that deals with the SL and the TL, and a specific legal writing style in the target language (5). He emphasizes the legal drafting style in translation, as Tytler mentioned in his second principle, stating that maintaining that style is as important as knowledge of comparative law and the language used. The common practice of the past, using complex and long sentences, ambiguous and old-fashioned terms, and the underlying grammatical structure of the ST needs to be present in simplified form in the TT. The use of tense, voice, and other grammatical aspects of the ST requires equivalent in the TT. However, due to linguistic constraints, fully transferring the original style and manner into TT is not possible. For instance, despite the very close relationship between Latin and English, translating everything is a desperate practice. The former prefers brevity over the latter (Tytler 177-78). This is also applicable in English-Nepali legal translation of a court decision, as the former prefer brevity and present the decision directly without providing a brief background of the dispute.

Tytler further states that not only is the merit of the original work completely transfused into translation, bringing an equivalence effect on the target reader, but also the perfect sentiments of the original in style and manner. As he suggests, "The translation should have all the ease of the original composition" (209). By this

principle, he urges maintaining ease in translation style as it equates to the original. He compares translation with the imitation of a painting, which differs from the original, even using the same color. He says even the capital painter cannot preserve all the ease and spirit of the original, but uses precisely the same colors (211). The translation is an imitation of the original; however, it deviates from the original to some extent and does not retain complete originality. Comparing and contrasting the translatorial work of a translator with a painter, Tytler unfolds:

The translator's task is different from the painting. He does not have the same colors as the original, but is required to give his picture the same force and effect. He is not allowed to copy the touches of the original, yet is required by touches of his own. The more he studies a scrupulous imitation, the less his copy will reflect the ease and spirit of the original. If the original is easy and graceful, the copy will have the same qualities, in proportion as the imitation is just and perfect. (211-12)

As a translation is a copy of the original, the source style and manner need to be reflected in the translation. True imitation improves translation quality and makes the text more comprehensive. Translation targets the TL readers whose background differs from that of the SL receivers. However, a translation must provide the same effect for readers in bilingual and multilingual jurisdictions.

Tytler claims that his principle applies both in literary and technical translation and recommends that if the writers of the same species are involved in translation of the same genre, this brings the better result, as he states, "We shall observe invariably that the best translators have been those writers who have composed original works of the same species with those which they have translated" (372). The translation demands equal meaning to that of the original, which is comparatively higher when

the writer of the same genre translates the document. For instance, the lawyer who has actively participated in drafting laws can translate better than those who merely superficially know it, due to their lack of knowledge. To translate legal texts, basic knowledge of comparative law is essential; however, expertise matters more for achieving the intended result. Extralinguistic knowledge of the subject matter explores the legislative intent of the ST and transfers it equivalently to the TT. In addition to these general principles, "accuracy," "consistency," "clarity," "confidentiality," and "cultural sensitivity" are specific to the LT due to the texts' sensitivity and secrecy.

"Accuracy" denotes the clarity of the meaning of the legal language and the terminology. The conceptual terminology of SL requires a clear explanation in SL before it is translated into the TL. The legal meaning of legal terms differs from their everyday use; for example, the meaning of "company" for professionals differs from that of "friend" for non-professionals. In company law, a "company" is an organization or legal body established under the Companies Act of a country to achieve general and specific objectives. The legal words need to be translated in a legal sense with equal effect on the readers. Acknowledging the need for clarity in LT, Sarcevic urges, "The translator needs to avoid unintended ambiguities and divergences in meaning that could lead to conflicting interpretation, thus enabling citizens to rely on their language version" ("Challenges to Legal Translators" 18). Even a minor error in LT may incur significant financial liabilities, social responsibility, and professional ethics; therefore, legal translation needs to be unambiguous and meaningful. Modern readers prefer law and LT in plain language, developed through constant practice and training.

"Consistency" indicates maintaining stability in meaning throughout the translation of an entire text. The meaning of a legal text, whether translated earlier or the current one, requires consistency to avoid confusion for readers. On the true correspondence between the SL and the TL, Jan Engberg insists, "Translating legal terms consists in making several choices among possible alternatives . . . the translator must select parts of the knowledge connected to the legal concept according to relevance in terms of the target as well as source situation" ("Comparative Law and Legal" 39). The SL terms require matching the nearest equivalent in TL to accurately reflect the concept. It needs a conceptual analysis to find the true equivalence, including the word used to represent the particular situation. For instance, section 700 of the NCA permits a foreign national to marry a Nepali citizen, but the candidate must comply with the laws of both their country and Nepal. The American laws require an "affidavit of eligibility to marry", and the law of Nepal requires living at least 15 days in Nepal before solemnization of the proposed marriage (sec. 77). This foreign culture is domesticated in Nepali laws and legal systems as a need of the people who live in any part of the world.

The term "affidavit" means *śapath patra* 'declaration' in Nepali translation, and must be consistent throughout the translation. The other synonymic terms, such as *bakapatra*, *muchulkā*, and *ikarārñāmā*, are also available in the English-Nepali Law Dictionary (Shrestha, *Kanooni* 10); however, they should not be used to represent the particular situation that the term 'affidavit' means in the text to create harmony in the meaning and to avoid confusion for the readers. Once the SL term corresponds to the TL in meaning, its consistency must be maintained throughout the text.

"Clarity" is the principle of elucidation in the text, as a translation must be natural to the readers. Generally, legal language is deliberately complex and dense;

however, the translator must infer legislative intent and rewrite it in plain language. Regarding the nature of legal language, Peter Tiersma asserts, "Legal language by its nature is notoriously difficult and opaque . . . by its use of obscure technical lexicon" (qtd. in Ainsworth 43). The complexity of the legal lexis demands generalization before translation. For instance, the notion of "notary public" is domesticated in Nepali law; however, the meaning and function of a notary public must be consistent with native law, as outlined in the Notary Public Act, 2007. The function of a notary public is broader under foreign law than under Nepali law. So, the key legal terms are defined in each act to shape its meaning. The meanings of legal terms vary by jurisdiction and differ slightly.

The principle of "confidentiality" refers to the sensitivity and secrecy of legal documents. Some legal documents are highly confidential and require the same level of confidentiality from the translator. To guarantee the sensitivity and confidentiality of legal documents, the Institution of Translating and Interpreting (ITI), an organization and the professional body for qualified translators and interpreters in the UK, issues the ITI Code of Professional Conduct for its members. The third principle, "Client Confidentiality and Trust," rules:

Members shall maintain complete confidentiality at all times and treat any information that may come to them in the course of their work as privileged information, not to be communicated to any third party without prior written authority. They shall also require all those assisting them in their work to be similarly bound. (ITI Code, sec. 1)

Conveying privileged information to a third party other than upon a court order is a breach of the code. It is liable for disciplinary action against the translators and their assistants.

As a language and communication mediator, the translator must maintain the confidentiality of the information received. The translation of personal documents, such as academic and character certificates, medical reports, and police reports, requires strict confidentiality. Moreover, the translator has a social responsibility to preserve the confidential information of the vulnerable people that is privileged in the course of translation. Translating government documents on defense and investigative matters requires sufficient confidentiality to protect national and international security.

The CN guarantees the confidentiality of the documents with the provision that "the privacy of any person, his or her residence, property, document, data, correspondence, and matters relating to his or her character shall, except by the law, be inviolable" (Constitution of Nepal, art. 28). The privacy of documents is constitutionally guaranteed. The professional code of ethics for interpreters and translators employed by the International Criminal Tribunal for the former Yugoslavia (ICTY) mentions, "The functions performed by interpreters and translators require them to act faithfully, independently, impartially and with full respect for the duty of confidentiality" (Code of Ethics, pmb1.). Maintaining the confidentiality of the translated document falls under the code of conduct of translators, interpreters, and employees. Article 7 of the Code warns:

Interpreters and translators shall exercise the utmost discretion in all matters relating to their functions and should not communicate at any time to the media or to any institution, person, governmental or non-governmental organization, or other authority external to the Tribunal any information that has not been made public and which has become known to them in the course of their duties. (Code of Ethics, sec. 1a)

Maintaining the confidentiality of the legal documents in translation is guaranteed by national and international instruments. Hence, the legal translator has to maintain the confidentiality of the received information as a matter of professional ethics and social responsibility.

The principle of 'cultural sensitivity' focuses on the sensitivity of legal language. Knowledge of SL and TL cultures is a fundamental requirement for LT. Language and culture are closely associated and need to be acknowledged. As Susan Bassnett affirms, "Language is the heart within the body of culture, and the interaction between the two results in the continuation of life energy. In the same way that the surgeon, operating on the heart, cannot neglect the body that surrounds it, so the translator treats the text in isolation from the culture at his peril" (23). She compares language and culture to the heart and body, which function effectively when combined. For instance, the CN declares the cow as the national animal (Constitution of Nepal, art. 9.3), but simply translating the term गाई (*gāī*) as "cow" does not convey the Hindu cultural significance it represents. In Hindu society, the cow is considered sacred and worshipped as equal to a mother. Even her urine and dung are taken as sacred and used for ritualistic work for internal and external purity. So, the SL's cultural sensitivity needs to be acknowledged in translation, and it should be explained in a footnote or the glossary.

In addition to these principles, translation theories support understanding translation; this section discusses some theories from a cultural transfer perspective. This section brings Catford's linguistic theory to discuss the linguistic equivalence between the SL and the TL, Snell-Hornby's cultural theory that advocates translation as a cross-cultural communication, and Vermeer's *skopos* theory as it argues translation is shaped by the objectives it has taken to the TL readers, Nida's theory of

formal and dynamic equivalence for its view that no exact translation is possible due to the linguistic and cultural disparities, Sarcevic's receiver-oriented approach for legal translation, Newmark's semantic and communicative approach to emphasize on the communication aspects of language, and Venuti's domestication and foreignization methods to transfer SL culture to TL.

Cao suggests translators observe translation from interdisciplinary perspectives, whereas Bassnett views translation as the combination of language and culture, like the body and the soul. Munday's theory of equivalence and the equivalent effect/response between the SL and the TL readers is worth noting in legal translation as a form of cultural transfer. Furthermore, the word-for-word (literal) and sense-for-sense (functional) translation theories are relevant to the transfer of foreign legal culture into Nepali laws and legal systems.

LT is the intercultural communication that transfers legal knowledge, skills, and terminologies from one jurisdiction to another. While translating constitutions, statutes, regulations, and public documents, the SL culture transfers to the TL simultaneously. On the benefits of translation theory, Anthony Pym argues, "Awareness of a range of theories can help the translation profession in several ways. When arguments occur, theories provide translators with tools to defend their positions and potentially to find out about other positions" (28). The translator uses the theories to justify why one prevails over the other.

The translation theories that focus on literary texts are sometimes inapplicable to LT because of the legal language for special purposes (LSP). Even the legal translation strategies applicable in one genre become less relevant to another due to the specific linguistic features of the languages. However, basic knowledge of

comparative law is essential for LT in bilingual and multilingual jurisdictions, such as Hong Kong, Switzerland, and Canada.

Regarding the application of the general translation theory in LT, scholars differ. Rafat Y. Alwazna agrees with Sarcevic that "the application of translation theories to legal translation is still a disputable matter. While some legal translators see the validity of applying translation theories to legal translation, others argue that translation theories are not applicable to legal translation" (238). Vermeer suggests that *skopos* theory applies to all translations and in all situations, implying that LT does not need a special theory. Giuliana Garzone argues for applying general translation theory to legal texts (1). He states that LT does not need a special theory.

Legal translation enables intercultural communication by conveying information on global issues in law, business, economics, science, and technology across languages and cultures. LT transfers legal principles, practices, justice systems, and legal behavior of people and their countries. Legal translation in Nepal domesticates foreign legal culture into the native legal system, modernizing and reforming laws. How the translation transfers the linguistic and cultural meaning of a sign, Bassnett notes, "Translation involves the transfer of 'meaning' contained in one set of language signs into another through competent use of the dictionary and grammar; the process involves a whole set of extralinguistic criteria also" (22). Understanding SL grammatically and lexically by consulting a good dictionary is not enough for translation; it also requires extralinguistic cultural knowledge. The legal translator must convey the message, preserving the same virtue (meaning, effect, and intent) for TL readers as the SL readers gain. So, Sarcevic states, "Since the success of an authenticated translation is measured by its interpretation and application in practice, the ultimate aim is to encourage interaction between translators and the

judiciary" ("Legal Translation"). Her theory of LT emphasizes interaction and communication among legal practitioners. The real success of a translation lies in its practical use within the legal system. Sarcevic claims that LT shifts from a strict literal translation to a co-drafting system in Canada and other bi-jurisdictional or multijurisdictional countries. In this approach, textual fidelity between the ST and the TT is maintained.

How the fidelity is maintained between the ST and the TT, Sarcevic reminds, "Fidelity to the source text was to be achieved by literal translation" (*New Approach* 37). She insists on the fidelity of the message, not on a word-for-word replacement. The central message of the ST needs to be communicated in the TT as the spirit of the law prevails over the letter. Legal texts are more normative than informative, so they prefer literal translation. The theory of translation shifts from literal to free translation method; however, Sarcevic recommends a literal translation for legal texts due to the normative nature of legalese. Rather than relying on a single theory, legal translation applies multiple theories to achieve an equivalent legal effect across languages and cultures, as seen in the translation practices of UN and EU laws.

Due to the unique nature of legal text, Sarcevic reiterates G. Cesana's "three guidelines for the translation of legislative text: literalism, no paraphrases, and no deletions. Firmly believing that the individual words of a legislative text are sacrosanct, Cesana regarded the literal translation of statutes and codes as essential (*New Approach* 37). However, scholars critique the literal translation as primitive and require no creativity on the part of the translator.

Different scholars express different views on the translation methods of legal texts. It varies from strict literalism to free translation and co-drafting systems. On the rejection of the strict translation method, Sarcevic writes:

In the seventeenth century, Pierre-Daniel Huet raised his voice and rejected strict literal translation as 'primitive,' insisting that interlineal translation requires no intellect on the part of the translator. In his opinion, the translator must respect the basic rules of grammar and syntax in the target language, yet not 'adulterate' the source text by producing a free translation. (*New Approach* 30-31)

This suggests that the legal translator should comply with the basic rules of the target language without making a poor-quality source text by using a free translation method. For instance, Nepali legal drafts address the court by using the term "śrī" before the name as a sign of tribute that needs to be conveyed to the TL, denoting equal respect.

Although the plain language movement insists on equal status of all languages and does not look at legal language for special purpose (LSP) as considered in the past, Garzone claims, "Legal Translation is no longer regarded simply as a particular case within the general framework of LSP, a certain reluctance has emerged to accept the application of a general translation theory to include the translation of legal text" (1). It indicates that general translation theory is not suitable for all legal translation cases and requires a specialized theory.

The translator aims to convey the SL information into the TL despite linguistic and cultural incongruities. Cultural disparities can be effectively addressed with appropriate translation strategies. Translators use domestication, foreignization, or both simultaneously to transfer the source legal culture into the TL. The interdisciplinary turn of the 1990s shifts translation from interlingual to intercultural communication. Scholars such as Snell-Hornby, Vermeer, and Venuti insist on the communicative function of translation and emancipate it from the linguistic theory of

the 1960s. The *skopos* (purpose) for the TL readers is the determining factor in the way a text is translated. The communicative function of translation for readers plays a crucial role in achieving equal effect (response), which is more important than linguistic equivalence. LT transfers the source culture, including the legal institutions, to the emerging societies to develop their legal systems.

The delivery of source legal culture and institutions requires similar objectives and functioning in the TL culture. For instance, the translation of the SL institution निर्वाचन आयोग (Nirvāchana Āyōga) 'Election Commission,' must be consistent with the objective and functioning of the TL legal system. So, cultural transfer in law requires delivering the source legal culture to the TL. Snell-Hornby remarks, "Not the linguistic features of the source text are then the central issue, but the function of the *translation in the 'target culture'*" (*Turns of Translation* 49). She means that Catford's linguistic theory did not pay sufficient attention to translation as a cultural transfer, which is incomplete in itself. Hence, the cultural turn emerges to fill the lacuna.

When one-to-one correspondence is lacking between the SL and the TL, functional equivalence serves to transfer SL information to TL readers. No reader can receive the full message of the author and interpret the words in ways that make sense to his/her circumstances. Michael Richardson argues, "No one receives the exact message I wish to convey. Each interprets the words in ways that make sense to their own circumstances" (267). The extralinguistic culture of the readers is crucial to understanding a translation.

Understanding legal translation does not depend solely on linguistic competence but also on extralinguistic knowledge and readers' intuition. Snell-Hornby agrees with the view of Gideon Toury that a translation has to fill the cultural interest of the TL readers and explicates his concept of TL culture as "the entire social

context involved in translation, along with the norms, conventions, ideology, and values of the society or 'receptor system'" (*Turns of Translation* 49). The meaning of a source text depends on both linguistic and paralinguistic elements, which need to be transferred into the TL. For example, the objective of translating the *Constitution of Nepal* into English is not only to replace SL with TL, but also to convey the message of the Constitution's legalization of social and political transformation. It conveys the message that Nepal domesticates federalism, secularism, and the rule of law into its native legal systems.

However, the objective of translating the CN will be achieved if it succeeds in informing TL readers about Nepal's constitutional provisions. In some cases, translation extends beyond the text to capture the contextual meaning equivalently. How the meaning is influenced by extralinguistic factors that a translator needs to pay enough attention to, Hasan Ghazala adds:

The translator is not strictly constrained by the type of text or context, or the direct and available meaning of words and phrases. He goes outside texts and out of contexts, behind and beyond words and phrases, looking perhaps for the spirit, or the message. He can translate something the way he understands it. His way of understanding is confined by text and context variably to some or great extent. It is perhaps the only restriction on him. He cannot translate the way he likes, but the way he understands. (12)

Translators are free to translate a text as they understand the ST and as it corresponds to the TT, incorporating the source text's context. The only restriction on the translators is that they cannot translate what they like, ignoring the principle of fidelity. They should remember that SL is translatable, but the culture associated with the language is only transferable.

Nepal translates the CN, the NCA, the NPA, and other domestic laws into English to convey Nepali legal culture to the TL readers. The translation of the family law of marriage, adoption, and inheritance reveals that Nepal domesticates foreign legal culture, drawing on both Hindu and Western legal systems. The NCA assumes a marriage between the couple, even if they are not formally married, in a situation where a baby is born by the biological relationship of the two, except incest (sec. 74.1). This indigenous culture of marriage, based on the birth of a baby without a formal wedding, is communicated through the LT.

To deliver such cultural notions of a society, Natalie N Uchina suggests to the translator, "Legal and culture-bound terms refer to concepts and institutions specific to the national law system and culture, a translator needs to reflect the cultural and other features of a source text (ST) in a target text (TT) accordingly" (1136). Culture, as an extralinguistic notion of language, needs to be assessed and transferred to the TL, with the unique conceptual differences defined. While translating Nepali law, its historical and social context should be reviewed to ensure the closest correspondence.

The concept of "secularism" is incorporated into the CN (Constitution of Nepal, art. 4); however, it is inconsistent with the secularism practiced in many secular countries. The CN defines secularism in Nepal by adding a sub-clause to protect the Hindu and Buddhist religious cultures handed down from the past. So, the translator had better not seek the formal but the dynamic or functional equivalence of the term "secularism" to transfer this unique Nepali legal culture. Though the legal culture of secularism is a foreign concept domesticated in the CN, it is applied in an incongruous way to suit Nepali society. Further, the legal culture of the rule of law, right, liberty, and equality, no double jeopardy, crime dies with the criminal, fair trial, the doctrine of separation of powers, the ordinary and extraordinary jurisdiction of the

Supreme Court, the victim's right, juvenile justice, and federalism, is domesticated in Nepal from the foreign legal traditions.

Foreign legal culture is transferred to Nepali laws and legal systems by globalization and the socialization of law. However, the Nepali legal system adopts foreign legal culture at both congruous and incongruous levels, posing a challenge for readers to infer the legislative intent of the source law. Pointing to the challenges of LT, Agnieszka Doczekalska states that the main problems of LT are that it involves not only translation from one language into another but also from one legal language to another and from one legal system to another (120). The legal terminology that represents the SL legal cultural meaning is somewhat limited to their native institutions and professions. However, the meaning of legal terminology needs to be communicated to TL readers in line with the SL concept. For example, the practice of *writ* petition in the Nepali legal system and the human rights principles of the UDHR. Legal terminology collected from different legal sources must correspond semantically and pragmatically to the target legal system.

Nepali legal terminology is derived from both Eastern and Western legal philosophies, so finding a one-to-one correspondence between Nepali and foreign legal terms is not possible. The incongruities in language, social structure, and culture imply that the meanings of legal terms are interpreted differently between the SL and the TL, thereby affecting the transfer of legal culture. The linguistic sign that signifies an object is interpreted differently across languages due to cultural differences. To mitigate such challenges, Newmark forwards the concept of technical and institutional translation.

Newmark states that technical translation is non-cultural and, therefore, universal; the meaning of terminology is not culturally loaded and is the same

everywhere. On the other hand, institutional translation, such as LT, is embedded with cultural meaning and is typical for a particular culture (*Textbook* 151). Legal meaning is culturally embedded, so the translator needs to probe the SL's cultural cues and transfer them to the TL. A translator hesitates to directly transfer the source law into the TL legal system due to differences in legal mechanisms between the SL and the TL. The civil, criminal, constitutional, commercial, and other domains of law have their own terminology that needs to be translated into the TL. The critical analysis of the source text helps identify equivalent concepts in the TL.

When the author delivers a text, the readers' intelligence determines, to some extent, the text's comprehension. The translator translates an ST using knowledge he/she acquires from the text and reconstructs it in the TL; however, the TL readers' cultural knowledge affects the meaning the text conveys, creating a communication gap between the sender and the receiver. To address such difficulties, the translator can use appropriate translation strategies, such as borrowing and adaptation. The system-bound legal terminology poses an obstacle to conveying the corresponding cultural meaning. So, the translator's extralinguistic knowledge of the socio-cultural context of the source and target legal systems helps to place the nearest equivalence.

A lawyer-linguist can better understand the legal meaning of law than a non-lawyer linguist. To explore the contextual meaning of law, the knowledge of comparative law and legal systems is a basic requirement. Internalizing the need for knowledge of comparative law and legal systems for LT, Udina reveals that comparative studies of different legislative systems can be taken as a cognitive approach to translation studies that provides an effective method for finding the true equivalent of the SL legal concept (1136). The translator with no legal background or

basic knowledge of comparative law and legal systems faces the challenges of achieving true equivalence between languages.

Udina further insists on a cognitive approach to LT and argues that LT must be understood within a particular legal system and culture. It is necessary to bear in mind the characteristics of the relevant background and its differences from the target situation, as well as the special forms at the text level regarding terminology, text genre, and formulaic style (1137). This suggests that the translator requires knowledge of the legal genre, background knowledge of the ST, an understanding of the translation's function for TL readers, and other non-linguistic factors that influence the translation. As the reader, the translator must analyze the linguistic and extralinguistic determinants of the text to convey the text's true message to the reader.

The translator uses linguistic and extra-linguistic knowledge to transfer the SL legal culture to the TL legal system. The writ petition culture of *habeas corpus*, *mandamus*, *certiorari*, prohibition, and *quo warranto* is transferred to the Nepali legal system as *bandīpratakṣikaraṇ*, *paramādeś*, *utpreṣaṇ*, *pratiṣedha*, and *adhikārapṛcchā* with corresponding concepts. The conditions for the application of this legal provision require analysis to identify the cultural congruities and incongruities. Generally, a writ petition is applied in the case law to settle those cases for which the statutory laws are either lacking or insufficient. So, the translation of law is not just a linguistic transcoding but a cultural transfer in the TL legal system.

The knowledge of letter vs. spirit needs to be transferred through translation, reflecting the cultural representation of language. Whether linguistic equivalence or cultural transfer takes priority in legal translation is still under debate. An Italian proverb, *traduttore traditore*, the 'translator, traitor,' doubts on the faithful transference of the message. The letters of law- the words, syntax, and sentence

structures- are the visible, whereas the spirit of law or the legislative intent is invisible. The letter is the body in which the spirit rests as a soul. Whether a body prevails over the soul or vice versa is difficult to say; however, we can safely conclude that they are complementary.

Some scholars favor the letter over the spirit, while others prioritize the spirit. Anyway, the crux of the SL culture needs to be transferred to the TL. For instance, the investigation of the suicide of a young lover starts from personal love letters. It ends with the suicide note, where the spirit of the writing is more crucial for the investigation and decision. As Alfred Mwenedata suggests, the lawyer's ethical responsibility is achieved by going beyond the letter of the law and complying with its 'spirit' or 'purpose' (67). For LT, only letter-level transcoding is insufficient; a systematic transfer of legal spirit is needed. The American Constitution, which ensures the "free exercise of religion according to the dictates of conscience" (Witte 390), is transferred to the CN as the "right to freedom of religion" (art. 26) and must be exercised by pursuing the mother culture. It safeguards the liberty of conscience, free exercise of religion, pluralism, equality, separatism, and disestablishment of religion (388). The spirit of American law is that people can adopt any religion with their free conscience. The meanings of legal terms are conceptualized differently across extralinguistic contexts.

Even in countries that use the same language, legal terminology can differ in meaning across jurisdictions. For instance, the meaning of "domicile" differs in the UK from the USA. Domicile means legal residence and the address where one can register his/her name as a voter, issue a driving license, and pay income tax. Rich men have multiple homes in many places and live for the comfort of their business and lifestyle, but they have a single domicile for voting. One cannot be domiciled in more

than one State. The question of "domicile" affects the acquisition of inheritance by the children through a testament after the parents' demise.

The domicile law in the UK allowed a married woman to adopt her husband's permanent residence until the 1973 changes, and now she can register a different domicile from her husband if necessary. "Since 1 January 1974, the acquisition of her husband's domicile on marriage is no longer automatic. A married woman may retain a different domicile from that of her husband" (Reed and Vos 2). The acquisition of a minor's domicile is a choice, either the country of birth or the dependents. A child can decide on it, attaining legal maturity at 18. The jurisdiction influences the meaning of legal terms; therefore, Mwenedata notes, "Due to the personal domain of a country, legal terms differ in meaning, and this poses the translator's problem of correspondence between languages . . . law is built on authority and tradition" (68). The transfer of cultural meaning from one jurisdiction to another is influenced by the native legal system and people's perceptions of law. The letters that represent the spirit of the law need to be transferred to the TL legal system. So, Mwenedata suggests to the translator that if both the letter of the law and the spirit of its content are not transferred in the target language, the work of translation is incomplete (68). The translation that reflects the true legal spirit of the source law comes close to perfection. Equivalence of the legal spirit or the equal effect of the source law prevails in LT.

Equivalence is the crux of translation, whether it is literary or technical. Bringing true equivalence is worth evaluating in legal translation. Laws are the product of social norms, values, traditions, and experiences shaped by a nation's history, culture, politics, economics, and the like. Transferring concepts from SL to TL equivalently is challenging; however, it is not impossible. It requires sufficient

sensitivity from the translator due to the law's sensitive nature. Even minor mistakes may invite major legal consequences. The error in translating corporate law and bilateral or multilateral treaties can lead to disputes between the parties to the agreement. LT requires translating the legal facts, focusing on the legal effect. It is not like the literary translation, which aims to produce aesthetic effects on the TL readers. The translator who prefers a word-for-word translation but ignores the law's pragmatic effects may produce a mistranslation.

LT needs semantic and pragmatic equivalence. The erroneous translation has the opposite effect on readers. Regarding the correspondence between language and legal response, the second takes priority, as Sarcevic affirms: "When attempting to balance 'linguistic purity' and 'legal equivalence', the latter must always prevail' (*New Approach* 47). The translation of bilateral and multilateral treaties and agreements demands legal equivalence rather than linguistic purity. Bilateral treaties are easy to draft in the native language and to translate into English as a lingua franca, as Nepal has done in the Sino-Nepal border treaty agreement.

Although the theory of equivalence is unavoidable, scholars also critique it. Some support it, while others think it is unnecessary in TL. Here, the equivalence refers to the legal effect for TL readers, not to semantic equivalence. The LT of court decisions, for informative purposes, does not need equal legal effect on TL readers but is persuasive to them. Sarcevic insists on translation equivalence in law, but Janny HC Leung thinks that translation equivalence is a legal fiction (57). The equivalence in LT needs to have the same effect on TL readers as the translation of international laws. Nida asserts that translation equivalence is either formal or dynamic. The formal equivalence is the equivalence of the form and content, whereas dynamic equivalence

is the equivalence of the legal effect or response ("Principles of Correspondence" 129-30).

In dynamic equivalence, the relation between the translation and the TL readers, and the message, must be equal to that between the SL reader and the message (Bassnett 34). Bassnett claims that the full equivalence, or equivalence across all variables, is impossible, as it is not a matter of finding but of creating (33). The opposing view is that law is an act of appropriation from foreign legal traditions. The transfer of law, like the mother tongue and system, interferes with the host country's national legal system, as Sarcevic critiques, "While lawyers cannot expect translators to produce parallel texts which are equal in meaning, they do expect them to produce parallel texts which are equal in legal effect. Thus, the translator's main task is to produce a text that will lead to the same legal effects in practice" (*New Approach* 71). She believes that LT requires an equivalence with equivalent effect at every level of translation. The equivalence in LT is judged linguistically, paradigmatically, stylistically, and textually. The challenges of equivalence arise when the source legal culture or concept lacks counterparts in the TL system (Cao 33). According to Cao, no translation can ensure that all the legal and institutional concepts of the SL correspond to those of the TL, and calls for cultural appropriation. Translation equivalence is a relative rather than an absolute (33). The legal concepts are connected to culture, the development of law, and people's legal behavior. The translation equivalence in law is an approximation. For example, the notion of *bibāha* 'marriage' and the concept of *ardhānginī* 'half organ of husband' as believed in Hindu marriage do not correspond to the common law systems. Despite the differences in marriage, the culture of void and voidable marriage is congruous.

Connecting people through language and culture is greater than dividing; therefore, translation plays a role in unifying people across languages and cultures. Human behaviors are more or less alike across the world, so translation preserves the patterns of human behavior despite differences in language and culture. People pass through the same life cycle of childhood, youth, and old age, and go through education, work, and marriage. They gain the same kinds of experiences in their life, though they use different languages and cultures. On the common experience of people in their lives and societies, Cao notes, "Common sense tells us human societies share many things in common" (34). So, transferring similar things from one language or society to another is possible despite the differences in language and culture. The common social problem of crime has led people to draft a national and international penal code to prevent crime and punish offenders. So, the translation and comprehension of the penal code are consistent. The civil code is more native-based and drafted to meet the needs of the individual country. Cao suggests that the precise equivalence or complete identity of understanding is neither expected nor necessary for LT (35). The functional equivalence, having a correspondence effect on the TL readers, is the need for LT.

Given the purpose of cultural transfer across languages and cultures, a translator can explore the hidden aspects of a legal text. The degree of closeness and distance of equivalence between the ST and the TT depends on the parity and disparity of the languages, cultures, and legal traditions. Nida asserts that the translator struggles not just with word equivalents but also "must clearly reflect the meaning and intent of the source" ("Principles of Correspondence" 136). The intention and aims of the author are to transfer the knowledge and culture of his/her time equivalently.

In translating the CN, CNA, and NPA, the corporate translators have maintained both formal and dynamic equivalence. The content, grammar, punctuation, and paragraphs are arranged following the TL convention. The noun is equated with a noun, and the verb with the verb. For example, the Constitution's preamble "*hāmī, sārvaḥaumasampanna Nēpālī janatā*" is translated into "We, the Sovereign People of Nepal," bringing formal equivalence. The first-person pronoun *hami* is translated as "we," equating it with the pronoun. The adjective "*sārvaḥaumasampanna*" is translated as "sovereign," equating an adjective with an adjective, and *Nēpālī janatā* is translated as "People of Nepal," which equates a noun with a noun. The definite article is added before "sovereign" to pursue a TL-oriented translation strategy. The stylistic flavor of TL is achieved by rearranging the words to "People of Nepal," without using the alternative "Nepali people."

The practice of dynamic equivalence is used to provide TL readers with an equal legal response and effect. The contextual meaning of the SL with the closest natural equivalence is maintained. For instance, the fundamental right against exile "*kunai pani nāgarikalāi dēśa nikālā garinē chaina*" is translated into 'no citizen shall be exiled', maintaining dynamic equivalence in the CN. The verb 'shall' is used to denote the normative nature of the legal text. The fundamental requirements of dynamic equivalence: closeness, equivalence, and naturalness, are maintained. The principles of the UDHR guide the fundamental rights guaranteed in the CN in fidelity to the ST. Venuti argues that fidelity cannot be interpreted as mere semantic equivalence. The foreign text is likely to invite many interpretations, even at the level of individual words. The translator's interpretive choices respond to a domestic cultural situation (37). He points out more than mere semantic equivalence and

focuses on the meaning of the words and sentences that bring domestic cultural flavor, which need to be transferred to the TL.

Newmark classifies equivalence into "semantic" and "communicative," asserting that semantic equivalence is SL-oriented, and communicative equivalence is TL-oriented (*Textbook* 45). Repeating Newmark's view on equivalence, Bhattarai et al. argue, "Communicative translation attempts to render the exact contextual meaning of the original in such a way that both content and form are readily acceptable and comprehensible to the readership" (*Across Languages* 96). Newmark's semantic equivalence resembles Nida's formal equivalence, and the communicative equivalence with the dynamic equivalence. However, Newmark is silent to the equivalent response/effect of translation and defend his position claiming that, equivalent effect is the desirable result, rather than the aim of any translation, bearing in mind that it is unlikely to result in two cases: (a) if the purpose of SL is to affect and the TL is to inform or vice versa, (b) if there is a remarkable cultural gap between the ST and the TT (*Textbook* 48). For instance, a modern English translation of the 'Twelve Tables' of Roman law does not have the same effect on modern readers as it would have had on ancient Greeks, and this is also applicable in Nepal for the translation of the *Mulukī Aina* of 1854, in the gap of one and a half centuries.

The English version of the *Mulukī Aina* of 1854 does not create the equal effect on modern readers as it would have in the past. According to Newmark, in some special cases, such as the translation of vocative texts, such as notices and instructions, the equivalent effect is not only desirable but also essential (*Textbook* 48). So, the principle of equivalence depends on the type of text and the translation's purpose. Regarding translation equivalence, Jeremy Munday reiterates Werner Koller's concept of five types of equivalence: denotative, connotative, text-normative,

pragmatic, and formal equivalence (47). The denotative translation equivalence denotes the equivalence of the extralinguistic elements of the text. The connotative equivalence focuses on the lexical choices from the near equivalence. Text-normative equivalence concerns text types, as different texts behave differently and affect the choice of equivalences. Pragmatic or communicative equivalence depends on the receiver's perception of the message, as in Nida's dynamic equivalence. Indeed, the whole question of equivalence inevitably entails subjective judgment on the part of the translator or analyst (43). However, the notion of equivalence holds a key position in translation, enabling it to transfer SL legal culture with equal effect in the TL.

Practices of Legal Translation

The practice of legal translation involves translating individual, public, and government documents to deliver SL information to TL readers for academic, administrative, investigative, informational, and job-placement purposes. Translation and interpretation are necessary in the process of investigation and in a fair trial in the court of justice to facilitate the work of judgment. Foreign-language documents must be translated into the court's language. The national and international tribunals guarantee the right to communicate in the language the accused understands.

The European Convention on Human Rights provides regarding *habeas corpus* guarantees that "everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him" (European Convention, art. 5.2). This ensures the right to a fair trial guaranteed in Article 6 of the Convention. Article 6 (3a) declares that everyone charged with a criminal offense "has to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him." This article also guarantees that those charged with a criminal offense "have the free assistance of an

interpreter if he or she cannot understand or speak the language used in court. The practical use of LT is to safeguard the accused's right to information and the victim's right to communicate in the language they understand during court proceedings. The NPA rules for translation and interpretation, if necessary, to the court and the conflicting parties in section 115 (4) state that the inquiry of a witness, if recorded in other languages, must be translated into Nepali.

Translation expands knowledge confined within a particular language and culture and provides access to the language people commonly speak and understand. The concept of globalization of law, language, commerce, and technology unites people of various languages and cultures in one. LT is used to exchange information on common global issues, including fighting hunger, cross-border terrorism, protecting the environment, and human rights. The practical use of LT is normative, informative, and judicial purposes (Cao 10-11).

For normative purposes, domestic laws are translated into two or more languages in bilingual and multilingual jurisdictions in Hong Kong, Switzerland, and Canada. The translation version is equally binding and authentic in these countries.

The practical use of the informative purpose of LT is to inform on native laws, court decisions, and legal provisions to the target readers, particularly foreign lawyers, judges, and officers of multinational companies. The translation of Nepali laws into English aims to inform the TL readers on domestic laws and the legal system without any normative effect. Nepal uses LT to acquire legal information for drafting native legislation or modifications. The judicial purpose of LT practice is to translate foreign-language legal documents and submit them to the court as evidence. The witness inquiry reports, contracts, business agreements, letters, personal correspondence, certificates, and expert opinions are translated for submission to the

court. LT is a need for judicial purposes to collect evidence produced beyond the court's language.

The LT of Nepal translates international conventions from English into Nepali to domesticate the international provisions into Nepali statutes as a state party, to inform the native people. The UDHR, CRC, and WTO are translated into Nepali for public information and to draft native laws consistent with these legal instruments. The conventions are normative and prevail over the native laws if the national laws are inconsistent. The translation of international laws requires equal legal effect for the TL readers. On the translation of normative law, Cao remarks, "Legal translation for normative purpose refers to the equally authentic legal text in bilingual and multilingual jurisdictions of domestic law and international legal instruments and other laws" (10). International normative laws are translated into the native language for domestication and incorporation into the foreign legal culture. Nepal translates the constitution and statutory laws into English to communicate Nepali legal culture to global readers. The annual report on human rights in Nepal is translated into English to submit to the UN.

The LT for "judicial purpose" complies with the universal principles of law in the native legal system. The decisions related to *habeas corpus*, *mandamus*, *certiorari*, *quo warranto*, and prohibition are translated to inform the TL readers on legal issues. As Sonia Asmahene Halimi notes, LT is necessary for the defendant's pre-trial phases in police interrogation, and the translator or interpreter facilitates the defendant's interaction with judicial authorities; individuals who belong to immigrant or refugee groups (54). The practical use of LT is necessary for individuals, professionals, and legal practitioners to communicate with people whose language

differs from that of the court. Similarly, addressing the need for LT for judgment, Sylvie Monjean-Decaudin and Joelle Popinean-Lauvray allude:

Translation is a procedural safeguard for suspects/defendants speaking a foreign language. It is more obvious in criminal than in civil matters, and in oral than in written translations. However, in all cases, translating a document aims at safeguarding the right to a fair trial for individuals who do not understand the language of the proceedings. (119)

Legal translation and interpretation are necessary to the court for the investigation of an offense involving a foreign defendant. Directive 2010/64/EU of the European Parliament and the Council of 20 October 2010 guarantees the right to interpretation and translation in criminal proceedings and directs the provision of interpretation and translation services in such proceedings when needed.

The CN guarantees translation and interpretation as the fundamental right of the accused (Constitution of Nepal, art. 20). If the defendant does not understand the language of the proceedings, he has the right to get the services of a translator and interpreter from the court. The NPA has a provision for translation, and interpretation in criminal charges deserves practical use in the judiciary.

The mobility of people outside the country for study, employment, business, and tourism extends connectivity beyond borders. "Vast diasporas exist outside the nation-state. Tourism is fostering new cross-cultural encounters. More people are working or studying outside of their countries of birth" (Wolff, "Legal Translation" ch. 16, p. 3). The practical use of LT is to connect people who work outside the national border.

Further, the major vital events of a person, such as birth, marriage, divorce, and adoption, are translated from SL to TL for legal, judicial, and administrative

purposes. The marriage solemnized abroad, and the certificate issued in a foreign language must be translated to register it with the local registrar's office in Nepal. The NCA translation of foreign-language certificates into Nepali. A decree of divorce issued by a foreign court is translated into Nepali if the divorcee wants to marry a Nepali. Similarly, the Nepali legal documents are translated into English to meet the official requirements of foreign countries.

Foreign nationals need the 'Certificate of Eligibility to Marriage' and 'affidavit' to declare the prospective groom's marital status, which must be translated into Nepali. As Wagner et al. reiterate, D.J. Gerber's view that "translation is often seen as a mere process of transferring the source language to the target language. However, jurilinguistics is a more globalized transfer, which brings law and legal culture into more direct, frequent, intimate, and often complicated and stressed contact" (39). Nepali LT appropriates foreign legal culture in the administration of justice and in legal language. Foreign legal practices highly influence Nepal's judicial system.

The application of LT is a need for intercountry adoption to translate the native law of Nepal and the foreign country where the child is being adopted into English as a lingua franca. The intercountry adoption law is guided by the Hague Convention 1993, which requires that the sender and the receiver must know the legal provisions of intercountry adoption. The laws written in foreign languages are to be translated into English (sec. 194.2). Emphasizing the need for LT for judicial purposes, Monjean-Decaudin and Popineau-Lauvray affirm, "Judicial translation as a communication tool for the judicial system. . . . Where there is a cross-border dispute, the translation travels to the foreign country. Legal translation is carried out to help judicial cooperation when exchanging acts and information between judicial

authorities" (119). LT exchanges legal experiences, ideas, and practices and uses them in the administration of justice. It expands judicial cooperation in investigation, providing information to solve cross-border disputes.

The practical usage of LT is at the national and international levels. The international culture of the EU and the UN laws is communicated to its member states through translation. LT multiplies the readers by translating national laws, legal systems, bilateral and multilateral treaties, decisions on public interest litigation, and government policy. The use of legal translation serves to harmonize law and legal systems (Gotti, "Translating International" 206). LT opens a way to adopt international legal culture into the national legal system to reform it. International laws are translated into the local languages to establish and operate international business companies. Speaking to the practical use of LT, Kayokio Tekeda and Yasuhiro Sekine state that legal translation can serve as a basis for legal drafting and for deriving legal terms and writing styles, thereby developing the national legal language (225). The local laws are globalized through LT, which communicates legal messages to global readers. It helps to exchange legal ideas and practices across languages and cultures. As Chroma states, "Translating legal texts means transferring legal information from one language and culture into another language and culture, considering the differences in the legal systems and the purpose of translation" (2). Translating laws provides information on legal issues to those interested in the subject of source law but lacking SL knowledge. Few people understand the language of developing countries, so foreign laws are translated into English to expand readership.

Language reflects social reality, and translation unites people across different languages and cultures. How language represents society and guides people, Bassnett examines, "Human beings live under the mercy of language, and language guides

social reality. No two languages are sufficiently similar to be considered as representing the same social reality" (22). Neither of the two languages sufficiently represents social realities; correspondingly, even though the issues are the same. The practical use of LT is to address common global issues such as internal peace, justice, liberty, equality, public order, freedom of speech, religion, terrorism, environmental protection and wildlife conservation, cross-border crime, and fair trial. However, they are regulated differently across languages, depending on each country's legal culture. Exchanging legal ideas on global issues between SL and TL is the practical use of LT.

So far as the use of LT in Nepal is concerned, it provides the government with guidelines to draft laws consistent with international conventions on the one hand and to communicate the national policy to the international community on the other. Legal translation brings foreign legal culture into Nepali laws and legal systems. As a member of the UN, Nepal translates the UN Charter, the UDHR, and many other international conventions into Nepali for domestication and implementation. The Nepal Treaty Act of 1990 authorizes the implementation of international law as effectively as national law. It provides that supranational law and treaties prevail over national law if inconsistent (sec. 9.1). The practice of one-way translation from English to Nepali has changed, and Nepali laws are now translated into English. It promotes foreign investment and tourism in Nepal by providing readers with knowledge of companies, taxes, and the government's policy on foreign investment. Translation builds a common understanding of global issues and prepares people to work together.

For the translation of public documents, the Act Relating to Notary Public 2007 is effective in Nepal. Besides, the Supreme Court of Nepal translates and publishes its landmark decisions into English to communicate to TL readers about the

role of the judiciary in the administration of justice. The United Nations Mission in Nepal (UNMIN) has translated "The Comprehensive Peace Accord Concluded between the Government of Nepal and Communist Party of Nepal (Maoist), 2006" to communicate its role in restoring the peace process in Nepal.

The Millennium Challenge Corporation (MCC), one of the most controversial agreements, is translated into Nepali to inform people about the pros and cons of the bilateral treaty between Nepal and the USA for economic support. It clarifies the project's objective, functions, and implementation to the Nepali readers, who are the beneficiaries.

Legal translation is meant to promote peace and harmony, but it can sometimes spark war through mistranslation. As Sarcevic asserts, "Translation of the legal text leads to legal effect and may even induce peace or prompt a war" (*New Approach* 1). Mistranslation is a root of miscommunication that brings adverse effects on the readership. A lack of background knowledge of the legal text and incompetence in translation skills invite miscommunication among readers.

After the Rāṇā regime, Nepal established diplomatic relationships with international communities by exchanging ambassadors and consular officers. Nepal's bilateral and multilateral treaties with foreign countries are translated into Nepali. The Sugauli Treaty (1816) between Nepal and the British India Company, the Treaty of Nepal-Tibet (1856), and the Treaty of Peace and Friendship between Nepal and India (1950) were first drafted in English and translated into Nepali. Nepal's membership in the UN, SAARC, and WTO requires LT to provide comprehension of international laws in the native language.

LT has become a means of legal communication for countries where Nepal has established diplomatic missions. Nepali legal documents are co-drafted in English

for international legal purposes. On Nepal's international relations, Sukh Deo Muni points out, Nepal has diplomatic relations with Britain and the United States during the King Tribhuvan period, as well as with India and China (72). Since the establishment of diplomatic relations with foreign countries, Nepal has been translating foreign-language documents into Nepali and vice versa.

Because of Nepal's monolingual policy on the official language, the country does not translate its internal laws into other native languages. However, Nepali laws are translated into English for global communication. LT contributes to modernizing and modifying Nepali domestic laws and the legal system, consistent with international legal culture. The practice of LT in Nepal is to harmonize between native and international law for common legal goals. Assessing the practical use of LT to import foreign legal culture, Clara Ho-yan Chan comments, "Entering the twenty-first century, the role of legal translation is becoming even more important with the intensifying trend towards globalization and the ongoing trend towards Westernization" (2). The globalization and Westernization of law affect the Nepali legal system by promoting Western legal jurisprudence and practices, thereby compromising native legal systems. How globalization has affected the world universally, Chan further remarks, although globalization's primary concern is the economy, it covers virtually all major human activities (7). The corporate and finance laws on trade and commerce, including company, banking, labor, and intellectual property laws, are derived from foreign legal cultures and incorporated into Nepali law. The appropriation of the criminal and juvenile justice systems from Western legal culture is a practical use of LT.

The practical use of LT is crucial for communicating the native laws to foreign readers and investors who can operate multinational companies and set up offices in

Nepal. It provides knowledge on company and commercial laws to foreigners and helps them prepare to start trade and business in Nepal. Besides, it contributes to legal drafting by domesticating foreign legal culture for use in Nepali law and legal systems.

Pragmatics of Legal Translation

The context of a text reconstructs meaning and poses challenges in transferring the ST into the TT. The context of a text gives it special meaning for readers. Pragmatics in language or translation concerns the contextual meaning of the ST and its transmission into the TT with equivalent effect. Syntax, semantics, and pragmatics deal with the sign system, collectively known as semiotics, which explores how meaning is created in a text. Syntax is the relation of one sign to another in linguistic order. Semantics correlates signs with the objects they represent in the real world, and pragmatics concerns the relationship between signs and their users. The pragmatics analysis begins when the semantic relation ends.

In the legal context, pragmatics is what the legislator/judge intends to convey in a legal text, and how a reader understands it based on their background knowledge. It explores the individuals' mental state, the preceding dialogue, the immediate sentences, and the culture that the text represents. As Abdullah Ali Al-Eryani suggests, "Language is used not simply to report events in the world. It is used also to convey the rich mental models that individuals and cultures bring to bear on the communication process" (288). The legal translator needs to explore the author's intent in legal writings, the spirit of statutory law, and the decision in a case to convey the intended meaning of the ST into the TT. The translator's background knowledge of the subject, as a reader, contributes to reconstructing meaning and transferring it to the TL. The selection of words and their arrangement in sentence structure also add

meaning to legal language. Illustrating the concept of pragmatics, Je Anna Burn argues, "Pragmatics is the study of language from the point of view of users, especially of the choices they make, the constraints they encounter in using language in social interaction, and the effects their use of language has on other participants in the act of communication" (198). It connects text to users, considers how an expression (oral or written) is responded to in a particular context, and infers meaning from the communication.

The meaning of a text changes when the situation alters, including the communicative partners, the time of communication, and the context of text creation. The same text is meant differently in different communicative events. A change in context can give a text different meanings. In short, pragmatics concerns the linguistic signs and how people use them differently across communicative situations. It is more than the understanding of syntactic codes, the forms and structure of a language, but rather attempts to identify an appropriate contextual meaning and apply it in a communicative function.

Language jointly forms from syntactic and grammatical structure, and the right combination of these linguistic elements gives meaning to a text. The messy assembling of words, or only the individual word, does not give complete meaning. They need to come together and conventionally to function a language in proper order and load the words with meaning within a socio-cultural background. In linguistics, Peter Fawcett views pragmatics as "Pragmatics studies how grammar and semantics are put together to do something with language" (123). A text runs according to its particular language style, with grammatical and syntactic structures. When the text is translated, the syntactic and grammatical patterns of the SL are replaced by the TL's corresponding patterns to achieve naturalness, expressiveness, and elegance. For

instance, the Nepali legal drafts use Nepali legal language style in grammar and lexical selection, but they must follow the TL grammatical and syntactic order after translation. Otherwise, the translation fails to achieve equivalence with the same effect on TL readers. Furthermore, pragmatics links a text to its context within a sociolinguistic background.

Cultural cues in language influence the production of meaning in a text, as language and culture are closely intertwined. If a language does not represent a culture, it fails to convey the intended meaning to readers from that culture. How a language gives meaning to the user in a social context, Abdel Karim Mohammad et al. affirm, "If we take legal language to be the sign and the society as the user of that sign, we will be looking at elements like function, context, and comprehension" (7). The reader needs to examine how legal language functions in a text and connect it to a particular context. Law arises from history, politics, and social movements, so the contextual meaning of the law that legal terminology represents needs to be explored to convey the true sense of a source legal text. For example, the preamble of the CN aims to eliminate all existing social discrimination by adopting an inclusive participatory system of democracy, which stems from the 12-point agreement signed between the government of Nepal and the rebels (Maoists) in the "Comprehensive Peace Accord" in Delhi, India.

When exploring the pragmatics of Nepal's national anthem, it requires a contextual analysis of the past and the unity in diversity among Nepalese. The anthem begins with *Sayāṃ thungā phūlakā hāmī ē'utai mālā Nēpālī* [we people of many creeds and cultures are like multiple colorful flowers in a garland] (my translation). The context of the anthem roots to the concept that Nepal is a common land for all Nepali people, known as *chāra jāta chattīsa varṇakō sājhā phūlabārī* in the local

language. This signifies that the meaning of a text results from its context and needs to be explored and delivered in a way that is equivalent to the TL readers. Admitting the importance of pragmatic analysis of a text, Maciej Denc and Jowita Denc agree, "Without pragmatics, the target receiver may either not know what a person truly means when he/she is speaking or writing, or may miss the whole point of the communication" (648). Lack of pragmatic knowledge, a reader derails from the text's context, and meaning is interrupted somewhere in a communicative event.

It can be justified more taking an example from the CN, which constitutionalizes for the appointment of the Prime Minister with the provision that "In cases where the Prime Minister appointed under clause (3) fails to obtain a vote of confidence under clause (4) and any member under clause (2) presents a ground on which he or she can obtain a vote of confidence in the House of Representatives, the President shall appoint such member as the Prime Minister" (Constitution of Nepal, art. 76.5). The background of this provision is to discourage the Prime Minister from dissolving the parliament, not by reason but by emotion that he feels disturbed in the business of the government. Before this constitution, it repeatedly occurred that the prime minister misused this prerogative power under the Westminster model of governance. Pragmatics explores the reasons for legal provisions, examining their current and historical contexts.

The spirit of the source law needs to be transferred to the TL. The superficial linguistic and semantic correspondence of the text is insufficient to deliver the true meaning of the text. Meaning connects with the social reality, and to this reality, Denc and Denc state:

In order to produce a context-adjusted text or utterance in a foreign language, it requires adaptation to the prevailing reality and conditions in which the

target communication person functions. It should be remembered that languages differ from each other in the way they describe reality and by the bank of words, sayings, expressions, and idioms they offer, so everyone undertaking translation needs to be aware of existing constraints and differences. Sometimes it does not suffice to stick to literal translations. (648)

The context of the ST is to be reproduced creatively and transferred into the TT, as literal translation fails to convey the author's underlying meaning. The pragmatic equivalence urges the translator to reproduce the TT, examine the different social realities of the SL, and ensure close correspondence. Why a text is formulated and how readers perceive it in their social context are crucial for inferring meaning. For example, the CN guarantees the elected democratic government in Nepal and writes, "The form of government of Nepal shall be a multiparty, competitive, federal, democratic, republican, parliamentary form of government based on pluralism" (art. 74). The pragmatic analysis of this article is that the CN envisions a democratic and republican government that gets a mandate from Nepali people through periodic election. The CN is promulgated after a lengthy discussion and establishes a consensus among the parties that multiple ideologies be represented in the Constituent Assembly (CA) through election. They discuss the issues and gain a general understanding. How the members of the Assembly discuss for the formation of the CN is a crucial that Neeru Shrestha states, "Discussions and debates must take place on outstanding issues to reach a consensus, as to date, political parties are still struggling and taking various positions on such key issues as the federal framework, system of governance, election model, constitutional court and the number of constitutional commissions" (373). Despite their differing ideologies, legislators constitutionalize socialism within democratic norms and values as a common

understanding. Hence, the translation of the CN and national codes needs to convey their contextual meaning in the TL.

The translator presupposes the paralinguistic determinants to explore the meaning of the ST. Nepali laws address Nepali social issues, so background knowledge of these issues helps find the true equivalence in TL. For instance, the ten-year armed conflict conducted by the Nepal Communist Party (Maoist) and the mainstream political party alliance, the people's second movement, is the background of the CN, which guarantees the rights of *Dalit*, *Janajāti*, *Muslims*, and backward people, and makes them participate in the state mechanism. The knowledge of Nepal's previous feudalistic socio-structure, which marginalizes and deprives many people of opportunities, also adds to this knowledge and makes it easier to transfer Nepali constitutional provisions into the TL English legal culture.

Linguistic signs are not always enough to generate meaning and require a critical analysis of the cultural affiliation with the signs. How meaning is generated through the knowledge of pragmatics, Baker articulates, "Pragmatics is the study of language in use. It is the 'study of meaning' not as generated by the linguistic system but as conveyed and manipulated by participants in a communicative situation" (217). Meaning is not limited to linguistic signs but sometimes extends beyond the linguistic system to the communicative events of the interlocutors. For instance, the right of a "natural person," as set out in section 30 of the NCA, states that this right begins at birth and ends at death, indicating that the law defines the meaning of a legal concept. The presupposition clarifies that this right is not for the legal person. The presuppositions, "implicature, and speech acts are the basic components of pragmatics that are analyzed to find the true intention of the legislator (speaker) to transfer to the TL.

Presupposition is an effective means of investigating the underlying meaning of SL, which helps to transfer SL cultural notions to the TL. The contextual meaning is presupposed in the ST and is equivalent to the TT. James F. Ehrman writes:

Because it is constituted by a relationship between text and context, presupposition is a powerful means to investigate contextual factors impacting upon the process of translation. This investigation will use presupposition to measure the epistemological context and its influence on the translation process. Accordingly, this investigation will focus on the structures of knowledge in both the original text and its translation. (152)

The contextual meaning that a legal text carries is presupposed to investigate the legislator's intent in the original and to transfer it to the TL in the process of translation. For example, if A says, "Girija Prasad Koirala regrets not being the first President of Nepal", the truth-conditional inference is that Girija Prasad Koirala could not become the President of Nepal. The verb 'regret' indicates that Koirala wanted to be the first President of Nepal; otherwise, it would be inappropriate. By analyzing presupposition, linguistic and nonlinguistic information is explored. A translator or writer presupposes that his/her readers have a basic knowledge to understand a text. In this example, the readers are presumed to have additional knowledge of the Congress leader Girija Prasad Koirala, who led the establishment of Nepal as a federal, democratic republic. He has repeatedly served as Prime Minister and expects to be the first president of the Federal Democratic Republic of Nepal. This justifies the claim that the meaning of the SL text is context-based, and the presupposition is explored to be transferred to the TL.

Translation challenges arise when the TL receiver lacks the same background knowledge as the ST author, either due to cultural differences or a time gap between

the ST and TT, so the context of the source information is lost. Regarding the changes in presuppositions and their effects in SL and TL, Ehrman adds:

Changes in presupposition rather indicate changes in the conceptual frameworks which contextualize both original text and translation . . . if certain background concepts which contextualize the original text are no longer operative in the historical context of the translation, they might well be deleted . . . new presuppositions may be introduced into the translation. (153)

If the presuppositions change, the conceptual framework also changes in the original and the translation. Deleting the non-operative presupposition and adding new ones changes the conceptual meaning of the original, as does the translation. However, the translator needs to make a careful decision about deletion rather than addition, as it alters the meaning. Fawcett mentions, "In fact, when you start taking a sentence apart to find out just what presuppositions it contains, you will find there are lots of triggers, both linguistic and non-linguistic (contextual and cultural), that show that when we talk or write we make a very large number of presuppositions" (124).

Presuppositions are interconnected and exists in the text that needs to be analyzed before transferring to TT. In addition, the meaning of a text does not only exists in the "presupposition" but also the "implicature" as a part of the pragmatics analysis.

Implicature explores the implied meaning of a text that the author intends to deliver to the readers, i.e., what is expressed and what it implies to the receiver. Sometimes, an unexpressed thing is more meaningful than a verbally presented one. Due to the exploration of implicit textual meaning, it is named as "implicature" and matters in translation. The translator must understand the intended meaning of a text before transferring it to the TT. Implicature explores what the author wants to communicate through the inscription of the text, but is not directly expressed.

Implicature is embedded in culture, as the same utterance/text means something different to the listener or reader from a different cultural background. Mohammad Saleh Sanatifar and Mona Na'eem Cha'bi take Implicature as the situational context that enables listeners to infer and understand culturally embedded meaning. Misinterpreting implicature (typically based on the source culture) or literal translation can make translations awkward for the target audience (120). Implicature analyzes the situation of the utterance or text-production; what a speaker/author intends to convey implicitly to the listener/readers.

As far as the LT is concerned, implicature explores the legal draft's context, the law's objectives, the composition of parliament at the time of drafting, the targeted groups, and nonlinguistic factors that influence the formulation of the law. As H. Paul Grice uses the term "implicature" to describe the situation, the speaker's words, and what he has implicated (118). Implicature is an interaction of linguistic meaning with its social determinants. An explicitly presented text is comprehended in the context of an implicit context. Regarding this, Grice argues that discourse takes place with basic features, such as connection, purpose, and cooperative communication, collectively known as the "General Principles of Communication" or "Cooperative Principles." These 'rules' or 'maxims' operate in normal cooperative conversation. In other words, Grice's "Cooperative Principles" are quantity, quality, relevance, and manner (26-27). These principles are crucial for exploring the meaning of the ST and for transferring it accurately to the TT.

The principle of "quantity" governs the provision of only the necessary information, neither less nor more. "Quality" means providing information you believe to be true with evidence. "Relevance" limits giving information relevant to the conversation, and "Manner" suggests avoiding obscurity and ambiguity in expressions

and presenting information in an orderly, brief manner. These principles of conversation are also applicable to writing, making communication more meaningful by exploring the implicit meaning of a discourse. For instance, the NCA legalizes marriage in Nepal with the provision that "if a man and a woman accept each other as husband and wife through any occasion, ceremony, formal or other act, a marriage shall be deemed to have been concluded" (sec. 67). The implied meaning of this law is against same-sex marriage in Nepal. It explicitly states that only the marriage between a man and a woman is legal if they formally accept themselves as husband and wife on an occasion by speech or act.

Though designed primarily for conversation, Grice's maxims of quantity, quality, relevance, and manner are used in writing to explore a text's implicit meaning. For example, solemnizing "marriage" while pursuing NCA meets the maxims for providing information as necessary and avoids obscurity and ambiguity. Baker makes it clear that the maxims of discourse are general principles, not strict rules that language users must follow. The maxims can be refused in some situations (225). These maxims help the translator be aware that a translation needs to be both semantically and pragmatically equivalent. The maxim of "manner" assures that the translator, as a text reproducer, has the right "to improve on" the original; however, this is not a matter of criticism. Niclas von Wyle brings Rolf Kloepe's opinion that the translator has no right to improve the original, and "even the misprint in the original should appear in the translation (qtd. in Fawcett 132). The challenge of translation is to convey the implicit meaning of a legal text that does not appear in its words and sentences; however, contextual inferences help derive meaning to some extent.

The translator's work is to convey the SL message to TL readers in a manner that is equivalent to the ST author's intention. In general, the translator first decodes the text's implied meaning and encodes it into the TL. In other words, the translator must first understand the text's implied meaning in the mother language and then transfer it to other languages. The Gricean cooperative principles can be applied differently across languages to analyze various discourse situations and understand textual information.

These principles suggest the translator's effort to avoid obscurity and bring the implied meaning in translation. The implicature transfers the SL culture to the TL, exploring the implied meaning in the text. For example, the principles of fair trial and obedience to court decisions are implicitly transferred from Western legal culture into Nepali legal practices. Clarifying the process of culture transfer, Chunxu Qian affirms, "Culture transfer refers to the process of passing ideas, experiences, skills, and other cultural characteristics from one society to another, from one place to another. Culture transfer can also be named after cultural diffusion or transmission" (6). The implicature contributes to transferring the real intent of the ST to the TT. The communicative situations between the author/speaker and the reader/listener shape the text's meaning and warrant examination.

Austin suggests exploring the meaning of a speech by connecting with an act. He explains this by stating that an utterance performs locutionary, illocutionary, and perlocutionary acts. A speaker utters something for the listener to act as the utterance suggests. "He, who says something, does something. Certainly, when a judge or court makes a decision, he or it says something. He performs some (locutionary) acts by uttering or writing some sentences" (Bernal-Pulido 1). Writing the decision of a case or speaking a few words to manage the courtroom is being carried out as per the

order. For example, the judge's utterance while the court is in a motion, producing the words "order!" order!! changes the courtroom noise into silence. Due to the performative nature of law for creating rights and projecting duties, the legal speech or writing consists of a pragmatic property. Every legal document is rule-producing, creating legal effects by uttering or writing something like "regulation X is now revoked" (Visconti 393). When a judge decides a case, they take steps to implement the decision and impose legal consequences on the parties. Hence, the speaker's or author's intention needs to be analyzed before translation to determine the speaker's or author's intention in the text.

The major objective of an utterance is to perform the act that the word or sentence refers to. Speech acts are designed for 'promising,' 'questioning,' 'threatening,' 'lying,' 'soliciting,' and 'agreeing.' It is relevant to language, law, and translation, as legal texts are performative and convey legislative intent. The analysis of the speech act is crucial for LT to establish semantic and pragmatic equivalence between the ST and the TT.

Austin's locutionary, illocutionary, and perlocutionary acts are designed to perform an act by speech and convey a message, creating an effect on the receiver. The "locutionary act" creates a meaningful utterance. The "illocutionary act" shapes the intended meaning of the sender to the receiver, and the "perlocutionary act" assesses the effects of the utterance on the receiver (100-01). When a sentence is articulated purposefully, it is intended to elicit an act from the listener and to create a responsibility toward the receiver. If a lawyer informs his client, "I have no time today, but I promise to file your case tomorrow," the lawyer performs an act of promising by his words. The speaker/writer often engages in performative speech acts using explicit verbs, such as ask, 'order, and promise. However, in the sentence, "I

will file your case tomorrow," the lawyer promises without using the word 'promise.' How the contextual information is crucial in a sentence, Fawcett claims, "The act being performed by a particular sentence is not necessarily given by its form alone but requires contextual information; a corollary of this is that the same speech act can be performed in many different ways" (127). The contextual meaning of a text is important for inferring the intended meaning and accomplishing the task as designed by the writer or speaker. The verbs used in the illocutionary act give direction to perform an act as instructed, and the receiver acts accordingly as he/she infers the meaning. The locutionary act is connected to semantics, while the perlocutionary act falls largely outside linguistics (127). In translation, the illocutionary act is important for determining what the text intends to communicate to readers.

If a judicial officer requests a witness, "Would you mind giving me some evidence, Ram?" This speech performs the locutionary act of uttering a meaningful sentence to the addressee, intending to produce some evidence (illocutionary act) to support the case, and its legal effect on the witness (perlocutionary act) is not to reply but as a request to produce some evidence to justify the case. This means that meaning does not always lie in the form of the sentence alone, but rather in the context or circumstances in which the sentence is produced. This also applies to translations, in which the linguistic signs and their interpretation are crucial for conveying the author's meaning.

The components of pragmatics, presupposition, implicature, and speech acts contribute to exploring the implied meanings silently inherent in a text of translation. If not examined, the implied meaning of the ST remains invisible to the translator and cannot be transferred to the TT. So, pragmatics is a receptor-oriented approach that focuses on the speaker's immediate communicative intent and its effect on the listener.

The legislator's/author's intent comes by interpretation of a text critically, so David Farwell and Stephen Helmreich argue:

Language, however, is used not simply to report events in the world. It is also used to convey the rich mental models that individuals and cultures bring to bear on the communication process. It is the claim of a pragmatics-based approach that texts do not have meanings, but rather that in producing texts, people intend meanings. Thus, a text can only be approached through an interpretation. That is to say, the translator attempts to understand the author's intent in creating the source text for the original audience and then recreates, to the extent possible, that intent for the target audience using the target language. (2)

The basic requirement for a translator is to understand the author's intent in the source language and then reconstruct it equivalently in the target language, semantically and pragmatically. The meaning of a language is produced by the interpretation and investigation of the text producer's rich mental modes, shaped by the language and culture one possesses.

To translate Nepali law, the legislators' intent in the law must be examined critically before reconstructing and translating it into the TL. For instance, while translating a contract paper to understand the intention of the contracting parties. The complete comprehension of the contract paper arises from the interpretation of its linguistic and paralinguistic levels. Snell-Hornby gives an example that a Finnish client/firm needs an English version of the instructions for a washing machine originally written in Finnish to boost the market of washing machines and commissions an English translator, instructing not to reproduce the exact sentences and grammatical structures of the Finnish text, which can be understood even by a

diagram or sketch. If the translation enables the user to operate the machine, its immediate purpose is achieved, and the ultimate purpose will be achieved if the translation boosts the sales (*Turns of Translation* 58). So, every translation has a purpose that needs to be met and conveyed to the TL. The writing style of a legal text needs to be equally effective in translation. The source text's writing style, register, and tone need to be maintained equivalently in the TL.

Pragmatic equivalence is necessary for LT readers to explore the author/legislator's meaning and intent. The purpose of the translation goes beyond the linguistic transcoding. As Snell-Hornby claims, "Translational action is not a linguistic transcoding, but consists of a whole complex of actions involving teamwork among specialists, including the client or initiator and the translator, who has the role of a professional expert in text-design and as such assumes the responsibility for his/her product" (*Turns of Translation* 58-59). The result of a good translation depends on the collective work of the participants, including the readers, and the translation house that provides information to the translator as an expert. The translator is a part of the whole, so the collective efforts of all parties are necessary to explore the legislative intent of the text.

The issue of pragmatics in LT concludes that the meaning of a translation of a legal text is not confined to the linguistic parameters of an ST but extends to extralinguistic factors that must be analyzed to convey the true intent of the legislator. The letters in legal texts are like an iceberg in the sea, where only the tips are visible on the surface, hiding the large parts. The more we examine the extralinguistic parts of a text, the better the spirit of the law results. Every text is formulated in a specific situation to serve a specific purpose, which the translator must grasp. The legal terms used in a sentence carry the culture they represent, and the cultural aspect of the SL

needs to be transferred to the TL as a primary function of a translation. The traditional trend of linguistic equivalence has turned to cultural communication at present.

The main challenge of LT is to transfer culture in a way that is equivalent to the TL. Culture as a social property is connected to language. Catford asserts that meaning, which is the property of a language, is manifested through language and embodied in culture (35). Legal concepts, on the other hand, are legal system-bound (Cao 54) and pose a challenge to transfer from SL to TL. Some social practices are universal and smoothly transferable. For instance, the concept of "theft" is universal and transferable across countries, including Nepal, as *corī* 'theft'; however, its definition and legal consequences may differ from one country to another and are largely influenced by local laws and legal systems. Stealing someone's property with the intent to change its ownership is the general meaning of theft, and this concept needs to be transferred equivalently to the TL legal system.

Due to variations in language, culture, and legal practices, the same concept is understood differently across comparative law. The legal system of a country more or less fixes the meaning of a legal word. For instance, the German concept of *Ehescheidung* does not fully correspond to French 'divorce', Italian *divorzio*, or Nepali 'pārapāchukē' for dissolving a marriage, nor to the legal consequences for the parties in partition, share, or alimony. So, native legal practices shape the equivalence of universal concepts of marriage, divorce, and adoption. Pointing to the challenges to transfer the SL conceptual meaning, Wagner et al. argue:

Concepts are part of the social phenomenon as they are units of meaning that can vary in their finality. Concepts serve as instruments for thinking and communication and allow the expression of human thoughts, conclusions, and suppositions in the source language. Consequently, the transfer process is not

easy, and the translators have to distill a reasonable knowledge of the SL in the TL. (37)

When universal concepts are combined with local culture, they enrich readers from diverse linguistic and cultural backgrounds with multiple meanings. So, fundamental knowledge of SL and TL cultures is required in the LT. Knowledge of translation principles, practices, and pragmatics is crucial for transferring SL culture into the TL with semantic and pragmatic equivalence.

Chapter Three

Cultural Transfer in Legal Translation: Congruities and Incongruities

This chapter examines how LT transfers foreign legal culture, both congruously and incongruously, into Nepali laws and legal systems, and compares and contrasts Nepali laws, institutions, professions, legal drafts, cases, and justice delivery mechanisms with the foreign legal system, focusing on the Common law system. Besides, it discusses the domestication and foreignization methods proposed by Schleiermacher and Venuti for transferring foreign legal cultures into Nepali laws and legal systems.

The Nepali legal system domesticates foreign legal traditions to meet the challenges of modern society and apply the rule of law in the country. However, this chapter proposes that foreign legal principles are appropriated congruously and applied incongruously. Here, legal culture refers to the legal practices of a particular society, including counseling, documentation, litigation, the profession, training, and the implementation of laws and legal systems.

Legal Translation and Cultural Transfer

LT, as a means of communication, transfers SL legal principles and practices across languages and cultures. Etymologically, the word "translation" derives from the Latin *translatio*, meaning "carrying across." Culture transfer, in this research, refers to communicating legal principles, practices, values, norms, institutions, professions, litigation, the appointment of the judge, justice delivery mechanism, drafting constitution and statutes, human rights concerns, the prison system, rule of the law, legal conscience, victim's rights, rehabilitation of prisoners, liberty and equality, contract, torts, accused and victim's rights, fair trial, the structure of courts, and the like. As a cultural transfer, LT transmits legal information from one

jurisdiction to another, though the language of law is culturally embedded.

In Nepal, LT transfers foreign legal culture to Nepali laws and legal systems. The foreign concept of rule of law, equality before the law, fit the punishment suit the crime, crime dies with the criminals, ignorance of the law is not excusable, the supremacy of law, positive discrimination for vulnerable and weaker section of people, the doctrine of separation of powers among executive, legislative, and Judiciary, social security, punishment to the offences against public tranquility are some of the foreign legal cultures transferred to Nepal. For instance, the concept of "civil disorders" of section 231(3) of the Crimes and Criminal Procedure 1948, also known as US Federal Criminal Law, is transferred to the NPA congruously under '*sārvajanika śānti viruddhako kasura*' offences against public tranquility' (ch. 2.2). The US provision of the "civil disorder" that Davidalan Jordan puts:

Whoever commits or attempts to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in . . . obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function. (126)

The principle of punishment for the offender who commits the offense of "civil disorder" or obstructs the law enforcement officer to maintain peace and tranquility, and obstructs the smooth flow of any goods or fireman's services is liable for the punishment. This culture of punishment to the public peace breaker is transferred to NPA which prohibits to assemble more than five persons with the objective "to prevent any public servant from exercising the lawful functions or duties. . . to deprive any person of the enjoyment of the right of way, use of water, public transport or communication or similar other utilities" (sec. 60). The incongruity provision is

that the US federal penal code delimit the number not more than three. In contrast, the NPA increases it by not more than five persons.

LT delivers intercultural communication and bridges the cultural knowledge gap that exists between the SL and the TL readers. For example, the concept of 'saṅghīyatā', 'federalism', and 'dharma nirapēkṣatā' 'secularism' in Nepal, is derived from the federal US Constitution. However, the practice differs between the US and Nepal. The US States exercise a higher degree of autonomy than the Nepali Provinces, which are constitutionalized with certain powers. On the autonomy of the US State government, Earl M. Maltz reveals:

The idea that state governments should enjoy substantial autonomy is a central tenet of the American constitutional system. For example, in *The Federalist Papers*, James Madison famously declared that powers delegated by the proposed Constitution to the federal government are few and defined, while] [t]hose which are to remain in the State governments are numerous and indefinite. (57)

The US federal system acknowledges full power-sharing between the federal and state governments and affirms that state power is numerous and unlimited, whereas federal power is limited and few. The US federal system allows the states to manage their internal affairs, except for the rights reserved to the federal government in the Constitution. The federal government uses the power of defense, foreign policy, and the currency. The State exercises all its reserved powers under the US Constitution. Nepal's federalism features federal and state governments, but the central government exercises unlimited power contrary to the spirit of federalism. The Provinces are given few powers, such as drafting state laws and monitoring activities within the State. Article 162 of the CN provides for the state executive and grants some absolute

power (Constitution of Nepal, scheds. 6, 7, 9). In addition, States have to coordinate with the federal government for the use of the concurrent power that the CN reads:

The executive power of the State shall be as mentioned in Schedule-6, Schedule-7, and Schedule-9, subject to this Constitution. Provided that the State Council of Ministers shall exercise the executive powers in coordination with the Government of Nepal, except as explicitly mentioned in this Constitution and in the Federal law in relation to concurrent powers of the Federation and the State. (Constitution of Nepal, art. 162.4)

So, the practice of federalism in Nepal is not concurrent with the federal norms of the federal system. Sometimes, disputes arise over the sharing of power and the use of natural resources, and the provincial government publicizes the matter by filing cases in the Supreme Court against the federal government. The case, *Chief Minister Lal Babu Raut v. Ministry of Law, Justice and Parliamentary Affairs et. al.*, case no. 077-CC-0001 of the year 2020 filed by the Chief Minister of Province No. 2. The dispute arises on the ground of violation of the constitutional provisions by the federal government. The CN has conferred the power to the state government to adjust and transfer civil servants within the state. However, the federal Act permits the transfer of officers to inter-provincial. The writ petitioner claims, "The policy decision made by the Central Government on 2075/05/01 to allow inter-province transfer of officers under the Officers Adjustment/Integration Act, 2075 is unconstitutional" (Bhattarai et al., "Intergovernmental" 15).

Next, the foreign concept of secularism as guaranteed in the US Constitution neither intervenes nor protects any religion (art. VI, amend. 1); however, the CN indirectly defends the Hindu and the Buddhist religions by clarifying 'secularism' as the "religious, cultural freedoms, including protection of religion, culture handed

down from the time immemorial" (Constitution of Nepal, art. 4). Secularism is translated into '*dharma nirapēkṣatā*' in Nepali and the CN constitutionalizes it with the provision that, "Nepal is an independent, indivisible, sovereign, secular. . . federal democratic republican state" (art. 4); however, the practice of secularism is incongruous. Still, Hinduism and Buddhism are deeply ingrained in the minds of Nepali lawmakers. For instance, the cow, a sacred and worshipped animal in Hinduism, is protected in the CN by being designated as the national animal (art. 9.3), and any inhumane act against the cow is punishable by law. Section 298 of the NPA also prohibits killing and beating the cow and ox, with the provision of sentencing to jail not exceeding three years. However, the Nepali Muslims, Christians, and Kirat are reluctant to obey this law as their ritualistic culture demands the sacrifice of cows and oxen. Anyway, the culture of secularism is carried over to the CN and native laws, though some legal and ethical questions arise in their implementation.

Furthermore, the Western concept of "secularism" is guided by the principle that the state and religion are two different concepts that keep the state from religious closeness or distance and treat all religious beliefs equally. A state has no religion of its own but protects all the religious faiths of its citizens. The implementation of the Western concept of "secularism" at present is challenging in Nepal due to the Hindu-based social, cultural, and religious background of the past. The American concept of "secularism" clarifies that neither the state intervenes nor favors any religion. As Surya Prasad Koirala and Rewatiraj Thripatheer argue, "The American concept of secularism believes in the nonintervention of the state in religious matters. It is the noninvolvement of the state in religious matters. The state neither compels a citizen to observe any particular religion nor prohibits him from doing so" (172). Despite the

incongruous implementation, the foreign culture of "secularism" is transferred to Nepali laws and legal systems.

As a practical incongruence, a public interest case was litigated in the Supreme Court in 2012, seeking a mandamus order against the Government of Nepal to implement secularism in its original sense. The writ petition *Chirbahadur Gahatraj et. al. v. Prime Minister and the Council of Ministers et al.* demands that the concerned government agencies facilitate the establishment of the cemeteries by allocating lands for the burial of Christians, who had been burying their dead body in the forest known as Shleshmantak /Mrigasthali forest. It was prohibited by the Pashupati Area Development Trust, a public trust established by the Nepali Government pursuant to the Pashupati Area Development Trust Act, 1987 (2044), and the burial was prohibited from 29 December 2010.

Regarding the case, the Supreme Court issued a verdict (decision no 8707/2012) and is reluctant to grant the order the petitioner prays for. The decision reads, "In a secular state, the Government and its agencies should be separate from religion; however, this does not imply that there shall not be any role of the State apparatus in the protection and preservation of places of religious and historical importance" (qtd. in *Challenges to Freedom* 22). Nepal's secularism is unique and Hindu-based, which is incongruous with the Western concept and practice.

The foreign culture of the "Constitutional Court" is transferred to the CN. Article 137 ensures '*samvaidhānika ijalāsako gathan*', 'formation of the constitutional bench' in the Supreme Court under the chairmanship of the Chief Justice with four SC judges. The function of this Bench is to settle the disputes between the jurisdictions of the Federation and a State or between the State and the State or between a State and the Local Level or between the Local Levels (Constitution of Nepal, art. 137.2a).

However, this Article lacks in specifying the jurisdictions that bring constitutional disputes. It only mentions the "disputes relating to election to members of the Federal Parliament or State Assembly and matters relating to disqualification of the member of the Federal Parliament or the State Assembly" (art. 137.2b).

Although the CN acknowledges the necessity of the "Constitutional Bench," the Bench's jurisdiction is not consistent with international practice. The Constitutional Court, as established in Australia, Canada, India, Malaysia, Nigeria, and the United States, reviews the constitutionality of a legislative Bill before parliamentary discussion and determines whether it violates an individual's fundamental rights. Pointing to the needs and objectives of the Constitutional Court in a country, Andrew Harding writes:

The main motivation for establishing a constitutional court is to create a strong, specialized judicial body capable of enforcing a new constitution or a new constitutional deal. Reforming an existing apex court or giving it powers of constitutional review, as in the diffused system, has not generally been considered adequate to the task. A major and influential example is Germany's Federal Constitutional Court, established in 1949 under the post-war Basic Law. (2)

The primary objective of the Constitutional Court is to review the law of the land and void it if it is inconsistent with the Constitution. In the diffused system, any court has the power to declare a law unconstitutional and is not compelled to enforce any part of the law that is inconsistent with the Constitution. The Constitutional Court empowers the Supreme Court to review existing regulations and oversee new drafts based on constitutional or unconstitutional aspects, in addition to ensuring the constitution's implementation. For instance, in the Constitutional Bench case

Lokendra Bahadur Oli vs. Provincial Parliament of Province 2 et al., the Bench held that the law governing the increase in the salaries of local-level representatives, enacted by the representatives themselves, is unconstitutional.

The culture of impeachment to control the misuse of state power by constitutional bodies is transferred to the CN, with the provision *mahā abhiyoga* 'impeachment'; however, the system of removal is incongruous. The members of the constitutional bodies are removed because they have "seriously violated the Constitution, or incompetence, or misconduct, or failure to discharge the duties of office honestly, or serious violation of the code of conduct by the person receiving office on impeachment under clause 2. . ." (Constitution of Nepal, art. 101.5). However, it generalizes the area of violation of the constitution and the misconduct without specifying it. The US Constitution specifies that the grounds for impeachment in the parliament are corruption, treason, or bribery. Nevertheless, officials of Nepal's constitutional bodies easily escape impeachment, even though they are indirectly involved in unconstitutional activities.

According to the CN, the complaint of impeachment is first investigated by the committee of eleven members of the House of Representatives and "at least three members of the House of Representatives certify and submit the petition that the received information, notice or petition is admissible on the grounds of serious violation of the constitution. . ." (art. 101.4-5). In the US Constitution, the impeachment of the President is filed on the ground that he/she has been involved in a misdemeanor or other high crime (art. I, sec. 3).

In Nepal, the power of impeachment is more closely aligned with the Judiciary and constitutional bodies than with the legislative and executive officers. It is used as a political weapon by the legislative and executive branches to control the Judiciary.

For instance, the impeachment of Chief Justice Shushila Karki and Cholendra Shumsher Rāṇā resulted from political bias rather than any professional incapacity to discharge their duties. By the impeachment, the executive sought to postpone the justice from the duty, so the motion of impeachment could not proceed in the parliament. Article 101(6) of the CN reads, "After the commencement of impeachment proceedings under clause (2), the Chief Justice of Nepal or Judge of the Supreme Court, member of the Judicial Council, chief or official of the Constitutional Body shall not be allowed to discharge the duties of his or her office pending the settlement of such proceedings." The impeachment impedes officials from performing their daily duties due to ethical and moral issues.

On the other hand, the provision on impeachment and its consequences for the discharge of daily duties of the President, Vice-President, the Speaker of the House of Representatives, and the Chairperson and Vice-Chairperson of the National Assembly is soft, as they can continue to work until the motion is passed in parliament. Besides, parts 21 to 27 of the CN form the "Constitutional Body" in accordance with the country's needs. These are the Commission for the Investigation of Abuse of Authority (CIAA), Office of the Auditor General, Public Service Commission, Election Commission, National Human Rights Commission, National Natural Resources and Fiscal Commission, National *Dalit* Commission, Muslim Commission, National Women Commission, National Inclusion Commission, Indigenous Nationalities Commission, *Madheśī* Commission, and *Tharū* Commission. The impeachment also applies to the commissioners if they have seriously violated existing laws and are unable to discharge their duties.

Still, the officers under the legislative branch retain their privileges, even though they are criticized for being incapable and for misuse of power, as they can continue their jobs until the impeachment is passed in the House of Representatives.

The legal culture of the speaker and deputy speaker of the House of Representatives, the appointment of the attorney general as the chief government's legal advisor, formation of an election commission as the constitutional body for the fair and periodical elections, and the foundation of the 'public service commission' to recruit qualified manpower by free and fair competition, the promulgation of civil code and penal code separately for the investigation and prosecution of the civil cases and criminal offences are congruously transferred to Nepali laws and legal systems; however, the practice is somehow incongruous. The transfer of foreign legal culture has influenced Nepali laws and legal systems, making them more consistent with global trends.

As far as the provision of "arrest" is concerned, foreign legal culture is incorporated into Nepali laws and legal systems, despite some differences in the rights of the accused. The UDHR, ICCPR, and ICC have guaranteed the rights of an accused during pre-trial, trial, and post-trial proceedings. While arresting, the warrant notice must be handed to the accused and should include the name, address, the crime committed, the specific law violated, and the reason for the arrest.

One of the primary objectives of arrest is to deprive one's personal liberty, which the State should not forget. Fundamental human rights are non-violent, even in jail or outside, and must be consistent across the global legal system. As M.L. Bhargava reminds, "The word 'arrest' when used in its ordinary and natural sense means the apprehension or restraint or the deprivation of one's personal liberty. The question whether the person is under arrest or not depends not on the legality of the

arrest, but on whether he has been deprived of his personal liberty to go where he pleases" (7). An arrest deprives the accused of their fundamental rights by preventing them from going to places they like, whether the arrest is legal or illegal. So, the human rights laws prohibit arbitrary arrest and provide compensation if challenged in court and proven illegal.

Article 9 of the UDHR prohibits arbitrary arrest and declares such acts illegal, stating, "No one shall be subjected to arbitrary arrest, detention, or exile." The State has no right to deprive a person of personal liberty and happiness by an arbitrary arrest. The violation of a specific law of the land is a must for the arrest and detention.

Besides, the ICCPR prohibits arbitrary arrest and detention, and states, "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law" (art. 9, sec.1). The system or culture of arbitrary arrest is prohibited by the Convention, and makes it obligatory to the State party. Furthermore, Article 9(2) guarantees the accused the right to information in a language the accused understands. As it affirms, "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him." The State is obliged to justify the arrest and the deprivation of a person's freedom in a reasonable manner. Article 9(3) elucidates:

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody.

However, release may be subject to guarantees to appear for trial, at any other

stage of the judicial proceedings, and, should the occasion arise, for execution of the judgment.

The accused must be presented promptly before the judge or an officer authorized by law for trial, or released. The place of arrest and the taking of the accused before the judicial authority are determined by the distance and available transportation facilities, but the delay must be reasonable. The accused of minor offenses should not be compelled to stay in detention, but can be released on the assurance of reappearing at the pre-trial and prosecution. This culture is transferred to the NPA, which rules that the accused must be presented before the judge within twenty-four hours, except for the time required for travel.

The international legal culture of arrest and detention, known as *pakrāu* and *thunacheke* in Nepali, is incorporated into the National Penal Code (Procedural) Act, 2017, in Chapter Six. Section fifty-eight of the Code states, "A warrant for arrest to be issued by the court pursuant to this Chapter shall clearly state the full name and address of the person to be arrested and the reason for arrest." This provision is consistent with the ICCPR, as both acknowledge that the cause of the arrest must be legally documented in writing before the arrest. The NPA writes, "A warrant for arrest to be issued by the court. . . shall be signed by the concerned authority and bear the seal of the court" (sec. 58.1.2). This provision of the native law discourages the culture of arbitrary arrest by the police personnel and respects the human rights of the accused.

Sub-section six of section fifty-eight obliges the officer to produce the accused before the judge as soon as possible and states, "A person who has been arrested under a warrant for arrest shall immediately be produced before the concerned court as soon as possible but not later than twenty-four hours, excluding the time required

for journey." The incongruities between the NPA and the ICCPR are that the latter requires the State party to bring the accused before the judge within a reasonable time, whereas the NPA fixes it within twenty-four hours. The ICCPR safeguards that "the victim of unlawful arrest or detention shall have an enforceable right to compensation" (art. 9, sec. 5). The NPA remains silent on this provision; however, the CN rules for the compensation to the unlawfully arrested person given mental and physical torture with inhuman behavior in the custody or jail (Constitution of Nepal, art. 22.2).

The rights of the arrested person, as set out in the CN, are consistent with the ICCPR. Article 20 of the CN guarantees that "any person who is arrested shall have the right to consult a legal practitioner of his or her choice from the time of the arrest and to be defended by such legal practitioner." Taking legal advice and being represented by a lawyer are recognized in both native and foreign law. Article 20(1) prohibits arresting a person without violating a law or a warrant, as it reads: "No person shall be detained in custody without informing him or her of the ground for his or her arrest." Further, article 22 of the CN is consistent with the ICCPR against torture and inhuman behavior which reads, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (International Convention, art. 7). The CN is congruous with this provision as it states, "No person who is arrested or detained shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment" (Constitution of Nepal, art. 22.1). To some extent, the culture of respecting the rights of the accused is congruously transferred to Nepali laws and legal systems.

The arrested person has the constitutional right to a hearing before the competent court of law. The impartial judgment to the accused is the core principle of

the criminal justice which the CN congruously domesticates from the Article 14 of the ICCPR which rules, "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." In accordance with the provisions of the Convention, the CN ensures that "Every person shall have the right to a fair trial by an independent, impartial and competent court or judicial body" (Constitution of Nepal, art. 20.9). This provision applies to both civil and criminal cases.

A comparative analysis of national and international provisions on arrest suggests that the culture of 'arrest' and the 'rights of the accused' are congruously incorporated into Nepali laws and legal systems, despite minor incongruities in practice. For instance, the accused's right to health in detention, as provided for in Article 9 of the ICCPR, is absent from the NPA. The ICCPR ensures that the "arrested or detained persons' access to a lawyer, doctors and family" (Centre for Civil 18). The NPA remains silent on this issue and keeps these rights at the mercy of the judicial or quasi-judicial justice administrators.

Independent research shows that Nepal's arrest culture is moving towards arbitrary arrests. A report of the US Department of State notes Nepal's fragile human rights condition that "human rights groups claimed security forces conducted arbitrary arrests and abused their 24-hour detention authority by holding persons unlawfully for longer periods without filing formal charges, in some cases without proper access to counsel, food, and medicine, or in inadequate facilities"(12). This is one of the representative cases of the arbitrary arrest in Nepal, where security forces arrest people with less attention to the international provisions of the conventions that the State party must pursue. The unlawful detention continues till now, even after the

country has entered into a republican state. The arbitrary detention of the Tibetan refugees and their release after the Supreme Court's order is a landmark decision.

Against the unlawful detention of the Tibetan refugees, the Supreme Court issues an order of *habeas corpus* to the District Administration Office, Kathmandu. The case is registered under the title of *Lopsang Sherpa et al. vs. District Administration Office, Kathmandu et al.*, and bears no. 067-WH-0084 of the year 2011. The order of *habeas corpus* is issued in favor of the writ petitioners, as their detention was unlawfully extended. The case briefly summarizes that the refugees are charged with roaring and shouting in a religious and public place. However, when the Police warn them to stop, they argue and misbehave towards the security personnel (6). The petitioners claimed that they were arrested without a warrant and for doing nothing wrong but for worshipping at the Budhanath Stupa. The Supreme Court orders:

The Act of repeatedly extending remand time against the persons mentioned in the petition and holding them in prolonged detention in an offense under the Some Public (Crime and Punishment) Act, 1970 has been perpetuated without adhering to the mandatory statutory process prescribed by the Constitution and laws. Thus, an order of *habeas corpus* is issued to release the petitioners. (6)

This arbitrary arrest by the police personnel and reluctance to follow the mandatory provisions of the law of the land implies that the principle of 'arrest' as directed by the UDHR, ICCPR, and the Rome Statute ICC is transferred to Nepali laws and legal systems; however, the cultural congruity of the arrest principle turns to incongruity in practice.

As the English translation of the Bible introduced Hebrew culture to English-speaking people, the Nepali translation of the UDHR introduces human rights culture

to the Nepali people. Legal translation transfers culture, i.e., the norms, values, ideas, institutions, professions, legal behaviors, and ways of thinking and behaving as per the law, avoiding the unsocial and unlawful.

The word "culture" is used as an umbrella term that covers both general and legal cultures. Many subcultures co-exist within the "culture." As Datta G. Sawant clarifies, "Culture, in its broader sense, includes a set of beliefs, customs, views, festivals, routine behavior, and way of living, manners, values, rituals, clothing, and a lot of things which affect human beings living in a well-constructed society or community" (4). The general culture is the culture that all people experience and express. However, legal professionals, i.e., the professors of law, judges, lawyers, Police, attorneys, court employees, and legislators, use legal culture in practice.

Legal culture is transferable, so the French legal culture of the "natural person" and the dignity of the natural person are transferred to Nepali law. The French Civil Code mentions, "Legislation ensures the primacy of the person, prohibits any infringement of the latter's dignity and safeguards the respect of the human being from the outset of life." (Civil Code, art. 16). This means that the law guarantees the value of a human life by birth, non-violated, and continues throughout the life. The NCA has the provision to save the life and dignity of a person and guarantees, "Every person shall have the right to defend his or her name, reputation, and prestige, and such right shall not be transferable to others. No person shall be allowed to abuse another's name" (sec. 31.2). The FCC and NCA both recognize the culture of giving value to the human life with dignity and guarantees for the non-violence of it.

As discussed above, this section explores how foreign legal practices are transferred to Nepali law, both congruously and incongruously, and how they have influenced the indigenous Nepali legal tradition. It compares and contrasts the

processes of legal drafting, documentation styles, the application of legal principles, the structures of the courts and justice mechanisms, the legal profession, and training, and focuses on how these legal traditions are domesticated in Nepali laws and legal systems.

The cultural notion of SL law does not transfer to the TL legal system in the same way at all times and situations, as the meanings of conceptual terms differ based on people's experiences and surrounding environments. For instance, the human rights of the accused, as exercised in Europe and America, are not conceptualized and practiced in the South Asian countries. When TL does not substitute the SL cultural notions, the source culture is borrowed into the TL to implant the SL meaning (Bassett 16). So, the terms 'translation' and 'transference' are keywords practiced in translation, and transference occurs when translation fails to convey the intended meaning. The contract of "Hire-purchase" is borrowed from the English term and transliterated as "*hāyar parchéj*" in Nepali. According to Peter Newmark, when the SL word does not translate into the TL, translation attempts to transfer the SL culture to the TL through "appropriated descriptive-functional equivalence" (*Textbook* 95). The cultural nuances embedded in SL are transferred to TL, maintaining functional equivalence. Regarding the connectivity of translation and culture and their interdependency, Asalet Erten argues:

The words culture and translation have been increasingly linked since translation first appeared in the world. Questions about whether translators can account for culture and to what extent culture is relevant are at the center of the debate. The two opposing views are that either everything can be translated without loss or that nothing can be translated without loss, and they are at the two extremes. (345)

Translation involves cultural communication, with a loss or gain; however, the degree of loss is greater than the gain if the cultural aspect of language is not properly acknowledged. The translator, as an intercultural mediator, compensates for the loss using their translation skills and interdisciplinary knowledge. However, the cultural affiliation of language affects translation for natural communication. Newmark reveals ahead, "Where there is cultural focus, there is a translation problem due to the cultural gap or distance between the source and target languages" (*Textbook* 94). So, culture transfer poses a challenge in translation, though it is inseparable from translation. The closer the SL and TL cultures are, the easier it is to transfer the culture.

A translator interacts with languages and cultures and transfers the SL culture to the TL for intercultural communication. Legal practices from one language and culture are transferred to people living in a different language and culture. When SL culture is transferred to the TL, it becomes part of the TL speakers' culture, as when English law is translated into Nepali, English cultural norms are communicated and transferred to Nepali readers. For instance, the concept of English "Contract Law" is transferred to the Nepali legal system as the later acknowledges the core elements of a contract: agreement (offer and accept), intention (legally bind by the agreement), consideration (must have some exchange between the parties), capacity (legal capacity to do the contract such as beyond minor, unsound mind, drunken stage, etc.), and certainty (terms of agreement should not be vague or incomplete) (Elliott and Quinn 9). In addition to these, the capacity of the contracting parties, the conditions for void and voidable contracts, and the renewal and termination of a contract are also transferred to the Contract Act 2000 and the NCA of Nepal.

Under part five of NCA, the "Provisions Relating to Contracts and Other Liabilities" is managed. Chapter two of this section speaks on the formation of a contract and states, "If an agreement enforceable by law is concluded between two or more persons to do or abstain from doing any act, a contract shall be deemed to be concluded" (sec. 504.1). This means that there are at least two parties who offer and accept to do or not to do something, which creates liabilities to the contracting parties. The contract or other existing laws must govern the contract. Minors and persons of unsound mind are not considered capable persons for the contract. A person under 18 lacks maturity and is too immature to enter into a contract. Any contract with a minor is void; however, a contract with a capable person for the benefit of the minor is valid. Regarding the incapacity of the contracting parties as practice at the international level, Catherine Elliott and Frances Quinn assert, "There are some categories of people whose power to make contracts is limited by law. The main categories are minors and people considered incapable of contracting because of mental disorders or drunkenness" (70). They are not capable of the contract due to the tender mental stage of the minors or mental disorder of a mature person, or the influence of the drinks leads beyond a reasonable man's mind to the contracting parties.

Section 505 of the NCA mentions that the parties should know that the contract binds them, have the capacity to conclude the contract, have a certain matter for the creation of an obligation, and have a lawful obligation. Section 506 prohibits a contract with a minor and a person with an unsound mind. Section 508 states the procedures for establishing an offer and acceptance and states, "Once the offeree comes to the knowledge of an offer, the act of making the offer shall be deemed to have been completed." On the part of the acceptance by the concerned party, the law rules, "The act of giving acceptance shall be deemed to be completed, in case of the

offerer, if the offerer receives the acceptance forwarded by the offeree to the offerer having indicated his or her acceptance to the offer, and in case of the offeree, if the offerer comes to know that the offeree has accepted the offer." So, the foreign legal provisions of a valid contract with a legitimate person are congruously transferred to the Nepali legal system to modernize the contract and agreement culture. It forecasts the conditions for breach of contract and the consequences for the parties.

Despite congruence in the core principles of English and Nepali contract law, some incongruities remain. The contract law of Nepal remains silent on the rights of third parties, whereas the Contracts (Rights of Third Parties) Act 1999 ensures this and acknowledges, "Subject to the provisions of this Act, a person who is not a party to a contract (a "third party") may in his own right enforce a term of the contract. Contract if- (a) the contract expressly provides that he may, or (b) subject to subsection (2), the term purports to confer a benefit on him" (sec. 1.1). The right of the third party is governed by English law if the third party becomes a beneficiary of the contract concluded between the two parties or the contract gives some rights to the third party. However, this legal culture is incongruously transferred to Nepali contract law.

Legal culture is the behavior relating to law that people follow in a certain territory and take with them when they settle in a new place. Culture is transferred partially or fully through language and legal behavior. For instance, the culture of "juvenile justice" is partially transferred to the CN (Constitution of Nepal, art. 39) and managed in accordance with the country's needs and capacity. The Act Relating to Children, 2018 of Nepal, is in harmony with the juvenile justice system that I will discuss in the following section. The foreign influences of commercial law, environmental law, human rights law, and the criminal justice system are incorporated

into Nepali law and legal systems.

The legal translation transfers the functions of legal institutions to the TL legal systems and attempts to build a universal culture in law. The foreign legal culture of establishing the institutions, such as the President and Vice-President (Constitution of Nepal, arts. 61-73), the Legislative (arts. 83-108), Executive (arts. 74-82), and Judiciary (arts. 126-56), Election Commission (arts. 245-47), National Human Rights Commission (arts. 248-49), National Natural Resources and Fiscal Commission (arts. 250-51), Commission for the Investigation of Abuse of Authority (arts. 238-39), Auditor General (arts. 240-41), Public Service Commission (arts. 242-44), State Executive (arts.162-74), State Legislature (arts. 175-96), Local Executive (arts. 214-20), and Local Legislature (arts. 221-27) are transferred to the CN. The appropriation of the legal institutions is consistent with the federal democratic systems of foreign countries. Despite acknowledging the core principles, some institutional practices differ according to the needs of individual countries. Legal translation in Nepal has domesticated foreign legal culture, institutions, and behavior into Nepali law and seeks to harmonize with global systems. The pros and cons of the transfer of foreign legal institutions in place of indigenous legal systems are a matter for further investigation, which the prospective researcher can pursue based on this research.

In Nepal, foreign legal culture, including legal institutions and customary law, has been intertwined. The NCA has continued the traditional practice of family and property laws. For instance, the division of ancestral land property is limited only to the children under "Trust" in chapter six and "Gift and Donation" in chapter ten of the NCA.

Nepal adopts foreign legal culture through LT and modernizes its laws and

legal system in line with the country's needs. It substitutes traditional practices of litigation, investigation, and adjudication, adopting foreign legal culture. The witnesses are examined under oath in the court before the justice. The petitioners and respondents are given time to present their evidence to the Bench, and the parties' lawyers are heard before the final judgment. The party that is not satisfied with the decision of the first instance court can appeal to the higher court.

The Common Law system is transferred to the Nepali legal system, as the State power is divided into the legislative, executive, and Judicial Branches. The culture of an independent judiciary, the rule of law, the supremacy of the constitution, the government of the majority of parliamentarians, and remedies for breaches of fundamental rights are transferred to the CN and statutes. However, the domestication of foreign practices replaces indigenous laws, thereby undermining cultural variation in comparative law and legal systems. LT transfers the SL ideas, experiences, and institutions to the TL legal system.

If the SL and TL differ in the grammatical structures for denoting gender and number, this creates a problem in transferring the SL culture into the TL. "Translation problems arise not only from deficiencies in the receiving society but also from a surfeit of linguistic options. For example, in certain societies, the language of men is different from that of women" (Brisset 344). Nepali is also a gender-based language that uses nouns, verbs, and pronouns differently for males and females. The noun *Nivedak* 'applicant' is used for males, and *nivedikā* 'applicant' is for females. The verb *khāncha* 'eat' is for males, and *khānche* 'eat' is for females. The pronoun *ū* 'he' for male and *unī* 'she' for female. The linguistic and cultural differences interfere with the transfer of SL culture into the TL, creating a knowledge gap. Observing the challenges of legal translators, Sieglinde E Pommer remarks, "Legal translators are

confronted with the asymmetry of legal systems, the relativity of concepts, and have to deal with inconsistent categorizations and classifications" (17). SL legalese is often loaded with extralinguistic cultural meaning, so these are not conceptualized identically in the TL system.

The cultural notion of "federalism," as understood and implemented in Canada and Switzerland, differs somewhat from that in Nepal and India. The "right of self-determination" of the provinces is lacking in Nepali and Indian federalism. The reception of the foreign concept is shaped by readers' pre-existing social and cultural knowledge. So, whether a translation is right or wrong matters little; rather, which is least wrong matters in legal translation. Transferring the source legal culture to TL is merely a matter of fiction, without any factual basis.

Translating Nepali laws into English or vice versa is a cultural transfer that communicates the legal norms and values of the SL to the TL readers. To emancipate translation from linguistic theory, the "interdiscipline" of the 1990s opens multiple fields that consist of "not only language and literary studies, but also semiotics, ethnology, sociology, and psychology" (Snell-Hornby, *Turns of Translation* 70-71). The field of translation extends to the interdisciplinary area of cross-cultural communication. To understand culture, one needs to comprehend the complementary functions of legal institutions. One is better understood by the other, as Pommer states, "The roles of legal institutions cannot be fully comprehended if not seen as part of their culture, and at the same time a culture cannot be fully understood without attending to its form of law" (17). LT and cultural transfer are two sides of a coin, and a misprint on one side devalues the currency. The translation of international laws into Nepali introduces foreign legal culture into Nepali law and legal systems.

Translation mediates various cultures for intercultural communication and

enriches the TL culture. Translator bridges the SL and the TL cultures, as Ahmad Al-Hassan puts it, "A translator is a cultural mediator, who may move from the source culture to the target culture, choosing as much as he/she thinks appropriate to serve the aim of the translation. One basic purpose of translating from language A into language B is to enrich linguistically and culturally language B" (97). The primary purpose of translation is to transfer the SL culture and enrich the TL culture. As far as the LT of Nepal is concerned, foreign legal culture is incorporated into Nepali law and legal systems, existing alongside native law as a cultural compromise.

Cultural Transfer through Domestication and Foreignization

This section overviews how legal culture transfers from one jurisdiction to another using domestication and foreignization translation methods. By domestication, a translator brings foreign legal ideas to meet the cultural expectations of the TL readers, integrating them into the TL legal system. Even foreign ideas are presented as the native author's original writing. On the other hand, the foreignization method transfers SL legal culture into the TL, resisting the cultural narcissism of TL speakers and the politics of translation, and compelling the recognition of the foreignness of the foreign language and culture.

Friedrich Schleiermacher introduces the concepts of domestication and foreignization in his lecture series on translation methods, in which he explains how translation transfers SL culture to the TL. Vermeer and Snell-Hornby focus on the source culture alone to understand how the source text is constructed. A translational work is shaped by the purpose it seeks to communicate to TL readers in their languages and cultures. To transfer the SL culture into the TL, the translator uses multiple translation techniques and materials. As Venuti argues, "the translator consults many different target language cultural materials ranging from dictionaries

and grammars to texts, discursive strategies, and translations, to values, paradigms, and ideologies, both canonical and marginal" (24). These materials help the translator to transfer the cultural properties of the SL into the TL.

Pursuing Schleiermacher's concept of translation, Venuti employs foreignization and domestication to convey cultural notions. Schleiermacher postulates that either a translator leaves the author in peace as much as possible and moves the reader towards him, or he leaves the reader in peace as much as possible and moves the author towards him (49). The translator in the foreignization method foreignizes the source culture by registering it in the TL, whereas the translator in the domestication method domesticates the foreign culture into the TL as far as possible and transfers the culture. The English translation of NCA foreignizes the legal culture of divorce by providing that, upon the divorcee's death, her property transfers to the children. If she has no birth, the property she received from her husband returns to him, and the rest of her property returns to her mother's side. The NCA ensures, "On the death of a divorcee woman, her son, daughter, if any, shall be entitled to her property, and if not, the previous husband shall obtain the property received by her from such a husband, and the successor on her mother's side shall obtain the other property" (sec. 103). So, this provision of Nepali law governing the property of a childless divorcee on her death is translated by applying the foreignization method.

The translation also domesticates the foreign legal culture of divorce in Nepali law. As the party of the divorce must file the divorce case in District Court by a divorce application (sec. 96). The NCA grounds the conditions for divorce: if the husband marries another woman, does not provide food and clothes, and kicks his wife out of home, leaves her more than three years without any consent, tortures her mentally and physically, and indirectly plans for such works (sec. 95). The court is

obliged to divorce the relationship of husband and wife if the parties disagree to compromise to continue the married relationship even after the court's mediation (secs. 97-98). The NCA has domesticated the culture of alimony and the division of the partition share and the maintenance costs to the applicant and the minor children in deciding divorce cases (secs. 99-100).

While selecting translation strategies, Venuti advises translators to choose the foreignization method, as it preserves the foreignness of the foreign culture by making the translatorial work visible to readers. Schleiermacher advocates that the translator "seeks to communicate to his readers the same image, the same impression that he himself has gained through his knowledge of the original language of the work as it stands, and therefore to move the readers to his viewpoint, which is actually foreign to them" (6). The impression and pleasure the translator receives from reading the ST needs to be delivered to the TL readers. So, a translation should be "bend toward foreign likeness" without escaping the cultural values inscribed in the target language (Venuti 101). For instance, *mantrīparīṣadako gaṭhana* 'formation of the council of ministers' (Constitution of Nepal, art. 76) is consistent with the Westminster system in which the Prime Minister forms the government with the majority of a single party or with the coalition of two or more parties. If this process fails, according to the CN, the President can appoint any member of parliament to the position of Prime Minister who presents reasonable grounds to obtain the vote of confidence in the House (art. 76.5).

There are two ways to transfer SL culture into TL and become familiar with foreign authors and their works. The German Philosopher and translator Johann Wolfgang von Goethe suggests receiving the foreign author as a native, or going across and adapting to the unique conditions of a foreign language and culture as a

native would. As he argues:

There are two maxims in translation: one requires that the author of a foreign nation be brought across to us in such a way that we can look on him as ours; the other requires that we should go across to what is foreign and adapt ourselves to its conditions, its use of language, its peculiarities. The advantages of both are sufficiently known to educated people through perfect examples. Our friend, who looked for the middle way in this, too, tried to reconcile both, but as a man of feeling and taste, he preferred the first maxim when in doubt. (qtd. in Venuti 104)

He suggests that the translator can use both translation methods; however, he prefers the first one if asked. Domestication naturalizes and adapts the foreign author to appear like a native. However, readers need to go abroad to understand the unique nature of foreign languages and cultures to adapt to these conditions. Both have pros and cons, but can be used prudently as a complement. For example, the foreign writs of *Habeas Corpus*, *Certiorari*, prohibition, *Mandamus*, and *quo warranto* are domesticated into the Nepali legal system, adopted from the common law, and are now ours. The Nepali terms *Devanāgarī*, *Pichāḍā*, *Guṭhī*, *Ayurveda*, *Kamalarī*, *Haruwā*, and *Caruwā* are foreignized in the CN translation by transliterating them.

Transferring cultural notions and finding their equivalents at the sentence level is challenging; however, by exploring the spirit of the sentence, they can be translated with equivalent cultural notions in the TL. For instance, the sentence "*jahām aparādha huncha tyahām daṇḍa huncha*" can be equivalently translated into "where there is a crime, there is a punishment" in English, which implies "any cause brings result" and maintains dynamic equivalence with equal effect for TL readers in their culture. The message the text wants to deliver to the SL and the TL readers is that

"Every cause brings a result." The translation does not require linguistic adjustment in the TL, and the cultural meaning of the ST is transferred to the TT by domesticating the text to the TL culture.

Unlike the domestication method, foreignization transfers SL culture to the TL at the linguistic and conceptual levels. The translation of *satī prathā* is functionally equivalent to the "widow burning in the pyre of her husband." Moreover, it requires a thorough translation to clarify the religious, historical, and cultural background of this widow-burning system in ancient Nepal. The foreignization of the term *satī prathā* emphasizes the peculiarity of SL culture, which lacks true correspondence in the TL. The translator can explain the concept in detail in a footnote, an annotation, or a glossary section, as was the Hindu widow-burning cultural practice in pre-modern Nepal.

Legal translation, as a means of cultural transfer, transmits social, cultural, ideological, political, and economic issues to the TL. The CN ensures that local financial procedures prevent the local government from imposing any tax without law (Constitution of Nepal, art. 228.1) and keeps the Local Government (LG) in economic discipline. This culture is transferred to the CN by the experience of the federal countries. The primary function of translation is still debated: whether it is for cultural transfer or linguistic transcoding; however, the modern trend in translation advocates cultural transfer. Cultural transfer in translation conveys the legal culture of SL into TL, moving it from one jurisdiction or system to another.

LT disseminates legal ideas worldwide and develops legal concepts from local to global contexts, and vice versa. Supranational UN laws are transferred to the national level. Many provisions of international law on trade, transit, crime, finance, the environment, and arbitration are incorporated into the national legal system. Even

the family and property laws of countries are drafted in accordance with international provisions. The domestic laws of Nepal on marriage, divorce, adoption, partition, inheritance, trusts, lease agreements, land registration, and the transfer of property titles are drafted to be consistent with international legal culture.

Through the Act Relating to Children, 2018 the culture of the best interest of the child (sec. 6.2), the child correction home (sec. 43), the government of Nepal becomes the plaintiff for the child case (sec. 76), case not to be heard and disposed of without a legal practitioner (sec. 80), and no punishment under the age of ten and half punishment under the age of sixteen (sec. 36) is transferred to the Nepali legal system. Most of the Act's provisions are consistent with the CRC's provisions on the welfare of children.

To establish, promote, and regulate industrial activities, Nepal has promulgated the Companies Act, 2006, which promotes economic and industrial development in the country. The Company Act adapts foreign legal culture to establish and operate companies. The law covers private and public companies, which are classified by the number of shareholders, paid-up and authorized capital, and the company's objectives as stated in the articles of association and memorandum. The company is registered, administered, and regulated by the company registrar's office (secs. 3-5). The company conducts the annual and special general meeting (sec. 67) to develop its plan and policies, and to form the board of directors. The procedures and criteria for membership on the board of directors (secs. 86-88) are consistent with international provisions of the company.

Furthermore, the foreign legal practices of banking and financial institutions law are congruously transferred to the Nepali legal system. To promote and regulate the financial activities of public and governmental institutions, Nepal has introduced

the Banks and Financial Institutions Act 2017, which replaces traditional practices of borrowing money from landlords at high interest rates and encourages people to conduct financial activities through the banking system. The culture of current, savings, and fixed accounts is adapted to deposits. The foreign legal culture of the board of directors, consisting of five to seven members (sec. 14), is incorporated in Nepali law. The legal culture of conducting financial transactions through banks and financial institutions, with a license from the central bank, is transferred to the Nepali legal system. The Act restricts a person from engaging in financial activities without a license and from investing at high interest rates. Section thirty-one of the Act reads "No one, except the bank or financial institution having obtained a license pursuant to Section 34, shall carry out banking or financial transactions according to this Act." Section thirty-four rules for receiving a license from Nepal Rastra Bank, the central bank of Nepal, for banking and financial activities.

LT transfers legal culture from the place of origination to the destination and spreads legal knowledge across languages and jurisdictions. The Roman laws were transferred to the Common law and Civil law systems, which were, in turn, adopted worldwide in different legal systems after the fall of Roman civilization and British colonization.

Not only is the modern legal culture of the Western World transferred to Nepali laws and the legal system, but also the traditional Hindu legal culture of the *Manu Smṛti* 'Rules of Manu' exists in the family law of Nepal, such as marriage, adoption, women's property, and partition shares. For instance, the House of a married woman shall be of her husband. Section eighty-seven of the NCA mentions, "Except where a separate residence is fixed by mutual understanding of the husband and wife, the husband's home shall be considered to be the wife's residence." Generally, a wife

is considered the representative of her husband, and vice versa (sec. 88). The practice of treating the husband's home as the married woman's home dates back to the era of the *Rāmāyaṇa*. In the *Rāmāyaṇa* (Turner xvi), the sacred epic of Hinduism, Sītā, the daughter of King Janaka, goes to Ayodhyā to resume her married life with her husband, Rāma. So, translating law is not only the transcription of rules and regulations into other languages, but also the imparting of social knowledge and experiences from the mother language into other languages, from one jurisdiction to another, to shape people's social and cultural life.

Through the cross flow of people or migration to different places, legal culture moves with them, and their legal behavior is transferred to new places, either fully or partially. As Lockert states, cultural transfer in laws and legal systems occurs when a law or set of rules from one jurisdiction is moved, fully or partially, to another jurisdiction (202). When people travel for study, work, or business, they encounter new societies with distinct cultures and come to accept these cultures as their own over time. LT transfers legal practices for cultural homogeneity. Bandia argues that cultural homogeneity can be preserved by transferring the source-language culture into the target-language culture with minimal distortion of either language or culture (60-61). In legal transfers, some procedural incongruities are likely to arise in the host country; however, the substance remains unchanged. For instance, the culture of determining the qualification for the appointment of judges through open competition among legal practitioners in Nepal (Constitution of Nepal, art. 140.2) and the provisions for appointing justices in England and Wales from the bar may have minor procedural incongruities despite the congruities in principle for appointing judges from the court practitioners.

The cultural transfer in law can be compared to organ transplantation into a

new body for the body's effectiveness. Comparing legal transfer with the transplantation, Watson states, "A successful legal transplant, like that of a human organ, will grow in its new body and become part of that body just as the rule or institution would have continued to develop in its parent system. Subsequent development in the host system should not be confused with rejection" (27). The adopted legal culture adjusts to the new society, functions as per the parent system, and attempts to address the additional challenges it poses. The provision for a federal democratic republic state (Constitution of Nepal, art. 4), with the President and the Vice-President (arts. 61-73) in the CN, is a legal transplantation adopted from the federal legal system in Nepal.

Legal norms and rules are likely to transfer to new societies because, on the one hand, law is easier to transfer than to formulate. On the other hand, fundamental social issues are common worldwide. Despite the common nature of social issues, the adapted rules are modified in the receiving country as per the needs of the society. The superficial similarities break down when scrutinized minutely, as cultural transfer is influenced by country-specific ideology, culture, economics, and politics. Watson argues, "Legal transplant- the moving of a rule or a system of law from one country to another, or from one people to another. . ." (*Legal Transplants* 21). So, LT transfers part of the mother culture to the host country, and the needs of people in that society shape the rest of the culture. For instance, the US federalist system is partially transferred to the CN, which restructures Nepal into 7 States to implement federalism.

Watson presents his argument that legal transplantation can be oriented to achieve different legal effects in the new society than those of the original. As he affirms, "It cannot be doubted either that a rule transplanted from one country to another, from Germany to Japan, may equally operate to different effect in the two

societies, even though it is expressed in apparently similar terms in the two countries (*Legal Transplants* 20). The appropriation of rules does not mean the same as those that were in previous homes. It is the rules - not just statutory rules - institutions, legal concepts, and structures that are borrowed, not the 'spirit' of a mother legal system. The new society can apply legal culture, adjusting and catching the spirit of the people. Rules, institutions, principles, and structures are tangible, can be easily reduced to writing, and are accessible (3). The private legal culture of the citizen is easier to transfer than the public legal cultures of the state. The private legal culture, such as birth, migration, marriage, and contract, is easier to transfer than the public legal culture of education, employment, and punishment for a crime.

The adversarial system of the common law for the investigation of crimes is transferred to the Nepali legal culture, in which the investigation is conducted by police personnel with the coordination of the attorney. The parties debate, explore, and present evidence to the court. The judge serves as an umpire and delivers justice in accordance with the statutes, precedents, and evidence, following due process of law.

Despite Watson's opinion, Pierre Legrand strongly argues that legal transplantation is impossible. He criticizes the use of the word "transplant," which itself implies the "impossibility" of the work, and claims, "To transplant, according to the Oxford English Dictionary, is to remove and reposition, to convey or remove elsewhere, or to transport to another country or place of residence. Transplant, then, implies displacement" (111). According to him, 'transfer' and 'transplant' represent two different concepts, and one cannot be used for the sense of the other. Where legal culture is transplanted, it replaces the existing culture, which is quite opposed to legal adjustment. Legrand further argues that the law is culture-bound and that cultural

phenomena cannot travel from one language to another without changing the culture, so legal transplantation is impossible (114). He is quite strong in his argument against legal transplantation, which demands changing people's culture and behavior as well. Without changing the legal culture of people and the rulers, legal transplantation is difficult in practice. This condition also applies in the political party of Nepal, as they are going against the spirit of the CN, which rules that "the political party must submit a yearly audit report. . ." (Constitution of Nepal, art. 271.2). However, this is not implemented in the true spirit of the constitution due to the mismatch between the principle and the practice of the political parties. This legal culture of monitoring and maintaining economic discipline within the political party is derived from the Western legal traditions, despite its incongruous practices.

Watson defends himself against Legrand, arguing that no word means the same thing, even for people who speak the same language in the same country. "Bread" for a poor village housewife does not have the same meaning as for the wealthy Parisian businessmen ("Legal Transplant" 2). The same is true for the law within the same country. The meaning and provision of 'citizenship' in the CN differ for the cardholders based on the types of citizenship provided to them, as descendants, naturalized, and honorary, as it limits the use of civil and political rights. The meaning of a word is not fixed and final, and neither does it mean the same to all, as extralinguistic determinants influence it. How the same thing means differently to the people of different societies or even within the same society, based on their occupations and professions, Watson postulates:

The possession of cocaine is. . . illegal. That means one thing to the petty dealer who sees it as his sole hope of escaping from his ghetto, quite another to the recreational user, quite another to non-criminals who live on the same

street as the gangs, and quite another to law enforcement officers. It is banal to notice that the same legal rule operates differently in two countries: it produces different effects even within a single country. ("Legal Transplants" 2)

People hardly believe that a legal rule works the same way within a jurisdiction, or that the meaning of a legal word is fixed and interpreted identically. Legal transplant allows for interpreting the meaning of a word differently in two countries, depending on the conditions and legal systems in each. It acknowledges borrowing legal ideas from the mother system and placing them in the other systems with adjustments. Hence, legal transplant refers to the transfer of law from one jurisdiction to another.

The laws drafted to address global social issues, such as environmental protection, crime control, and human rights, should be transferable and spread through the globalization of law. Discussing the possibilities of legal transplant on global social issues to new jurisdictions inheriting some differences, Watson opines, "Through transplants, the law becomes similar, even if not identical, in many jurisdictions, and that lawmakers rely heavily on foreign law for their own changes, whether as legislators, judges or jurists" ("Legal Transplant" 5). He insists that legal transplant is part of the globalization of law, cannot be ignored, and must be managed as required. He does not claim that the law need not be identical to the parent system; rather, it must be identical in the processes of formation, implementation, and decision-making. Borrowing law is a common practice that contributes to passing SL culture to the TL for legal development. As Watson claims,

I have shown that massive successful borrowing is commonplace in law. . . borrowing is usually the major factor in legal change. Legal borrowing, I would equate with the notion of legal transplants. I find it difficult to imagine

that anyone would deny that legal borrowing is of enormous importance in legal development. Likewise, I find it hard to imagine that anyone would believe that the borrowed rule would operate in exactly the way it did in its other home. ("Legal Transplants" 9)

Legal borrowing plays a key role in the development of laws and legal systems of a receiving country. It shapes people's attitudes and behavior consistent with the borrowed law. New laws are enacted and implemented to improve the indigenous legal system. For instance, due to the incorporation of contract law into the Nepali legal system, business entrepreneurs register partnership deeds to promote their businesses and bind themselves by their agreements under law. The legal culture of contract is acknowledged in the Nepali legal system to encourage and ensure that the public conducts business and industry, binding themselves in law. On the importance of translation for changing the native culture, Lefevere alludes, "translation is a channel opened, often not without a certain reluctance, through which foreign influences can penetrate the native culture, challenge it, and even contribute to subverting it" (2). LT introduces foreign legal culture into native laws and aligns existing practices with the borrowed idea. For instance, the Foreign Exchange (Regulation) Act, 1962, introduces foreign legal culture to regulate and manage the exchange of foreign currency in Nepal by borrowing foreign legal provisions into native law.

In sum, cultural transfer in Nepali law is necessary to promote indigenous laws and legal systems. So, Western legal culture is introduced into Nepal to modernize the native legal system, compromising with the indigenous legal tradition. Nepali legal translators can use both domestication and foreignization methods to transfer foreign legal culture into Nepali laws and legal systems.

Cultural Transfer and its Effects on the Nepali Legal System

This section discusses the causes of cultural transfer and their effects on the Nepali legal system. As an independent country, Nepal initially practiced indigenous laws. However, when the UN and the WTO came into existence, international laws on human rights, cross-border business, transnational crimes, the global environment, and several common issues of the world were codified at the international level and opened for ratification and adoption in the domestic legal systems. When Nepal becomes a member of the UN, multiple international conventions are domesticated, and their provisions are incorporated into the native legal system. The domestication of international law is spreading as a global trend, influencing the Nepali legal system to align with it.

The common law dominates Nepali legal culture as a legacy of the British Empire. Nepal adopts the common law system, which is in compromise with the indigenous native legal system. The CN acknowledges the three tiers of courts, including some special courts under the supervision of the Supreme Court, and delivers justice through the court system. The parliamentary system of government is adopted with a written constitution and many statutory laws. Besides, the French Napoleonic Code became a model for the collection and codification of Nepal's diverse customary laws, as seen in the first promulgated *Mulukī Aina* of 1854 by Janga Bahadur Rana. Foreign legal terms and maxims are borrowed into Nepali law as a form of cultural transfer. Even the word *Ain* of the first Nepali country code is borrowed from an Arabic word meaning *darśanaśāstra* (philosophy) in Sanskrit, Hindi, and Nepali, and "eye" or "source" in English.

Why does the foreign legal culture transfer to the Nepali legal system? How does it transfer? These are the crucial questions that require systematic investigation

to explore the needs of cultural appropriation and how it emerges through translation. The common law legal system enters the Nepali legal system through the appropriation of Indian legal practices developed under British colonial rule. As Lukas Heckendorn Urscheler states, "the first Nepali lawyers were educated in India. . ." (98). Nepali lawyers who graduated from Indian Universities bring the common law culture and introduce it in Nepali laws and legal systems.

When democracy was restored in 1990, the traditional legal practices of Nepal began to be replaced by the Western legal system. The Constitution of the Kingdom of Nepal, 1990, divides the state power into legislative, executive, and judicial bodies (Thapa 925). Nepal accepts the principle of equality before the law and abolishes the caste-based system of rewards and punishments. The transference of foreign legal culture changes indigenous legal practices, as evidenced in the CN by the provision of federalism and secularism (Constitution of Nepal, art. 4). The modern practice of gender equality appears in the Nepali legal system after ratification of the CEDAW and attempts to eliminate all forms of inequality by gender. The foreign legal culture of positive discrimination to safeguard the children, senior citizens, women, and vulnerable people is constitutionalized in the CN (Constitution of Nepal, art. 38).

The Nepali legal system adopted the Western model of a written constitution and the rule of law, as reflected in the country's first Constitution, promulgated in 1947. The rule of law allows people to seek justice in court. As part of the cultural transfer, Nepal begins drafting laws in parliament and passing them with a majority vote. The Supreme Court of Nepal develops precedent through its case law and binds the lower courts to be consistent with its decisions. Separate civil and penal codes are promulgated to prosecute civil and criminal offenses. The laws on court proceedings, property, inheritance, crime against a person, and the state are adopted. The accused's

fundamental rights to remain silent and to be presumed innocent until proven guilty are acknowledged. The court system comprises the Supreme Court, High Courts, and District Courts, as well as certain special courts or tribunals, and is codified in the CN (Constitution of Nepal, art. 127), deriving from the common law system. The principle of justice under the supervision of the court is congruously adopted, though there are differences in the courts' structures and jurisdictions.

The common law system adopted Roman law in England in the twelfth century, during the reign of King William I, and changed English legal practices. "William established a feudal legal system, with the King as the supreme lord, in which he took the exclusive jurisdiction over all serious crimes. . . . Three permanent central courts, i.e., the royal courts, were established in Westminster, leading to the centralization of justice in England and the unification of English law" (Soriano-Barabino 31). When the Anglo-Saxons were defeated in 1066, their practices were replaced by those of the conqueror, the Normans. Again, the common law system spreads and influences the native legal systems of many countries under the British colony, including the law of the United States of America, Australia, India, Pakistan, Bangladesh, Hong Kong, large parts of Africa, New Zealand, Singapore, Canada (except Québec), and Malaysia, and affects their indigenous practices.

The laws of colonizer and colonized countries coexisted, ultimately producing a hybrid legal culture worldwide. Nepal has a mixed legal system that adopts foreign legal systems and Hindu religious laws. How the mixed legal system came into practice, George Mousourakis asserts, "In many of these countries, this uniquely English set of legal sources, institutions and norms coexisted with indigenous cultural, religious and legal traditions, and what may be described as 'hybrid' systems often emerged" (251). After independence, the formerly colonized countries use their native

laws and English legal practices as a compromise. Nepal adopted English legal practices in the judiciary as the King appointed the judges as his representatives. "The common law was administered largely by the monarch and his or her representative courts. This law is typically identified with case-based law, a body of legal principles developed through the decisions of judges" (252). The CN has the provision of developing the legal principles in case law as the "precedent," which are binding to the lower courts (Constitution of Nepal, art. 128.4).

To understand a legal culture properly, one needs to know its origins, development, and practice in society. The common law culture dates back to the twelfth century in England and was designed to address the issues of the common people. Mousourakis traces the development of the common law courts and the courts of equity that:

Furthermore, common law, understood as the body of law created by the royal courts, or common law courts, and developed as case law in England from about the twelfth century, is distinguished from the body of rules and principles of equity, as established by decisions of the courts of equity, which began to be developed from around the fourteenth century. (252)

The common law courts focus on the precedents of the higher courts, known as case law, which originated in the twelfth century, while the court of equity developed around the fourteenth century and emphasizes fairness and individual justice.

In the 13th century, the common law system recognized taxation disputes. The circuit court began hearing the cases, moving from place to place. Many English laws were developed outside the legislative body and issued as decrees of the royal courts, with their decisions serving as precedents during this period (255-56). It developed the *writ* culture that coexisted alongside substantive law and precedent. Each new writ

developed a new legal principle and functioned as a judge-made law. The common law system recognizes local customs and culture and grants judges discretionary power to ensure justice. On deciding cases by the application of common law, Mousourakis reveals:

At first, the circuit judges decided cases by applying local customs, which they discovered with the help of a jury. However, the judges could refuse to apply customs they considered unreasonable and would discuss the merits of the various customs in existence at Westminster, approving some and condemning others. When a court recognized a local custom as valid, it became a general rule of law. Through this process, the judges eliminated customs deemed inappropriate or outdated. They gradually brought about the unification of customs, thus creating a new body of law common to all in application, the common law. (255)

English social customs continue as tradition and are recognized by English law if reasonable. These social customs are recognized by law to promote peace, progress, and harmony among people. Once recognized, customs become the customary law of a society, and people use them as part of their social culture. English legal culture recognizes English social customs as customary laws. This legal culture is reflected in Nepali laws and legal systems in *Kapālī Tamasuk's* 'public loan deeds' and *Sarjamin Muchulkā's* 'witness report'.

The grievous offenses against a person, such as rape, murder, kidnapping, human trafficking, drugs, arms, and ammunition, are defined and penalized as per the provisions of the international criminal justice system. The severity of the punishment for an offense is determined by the type of crime an offender commits and its consequences for the victim and society. It ranges from a monetary fine and single-

day imprisonment to a lifelong sentence, which is transferred to the Nepali criminal justice system. Chapter five of the NPA on "Provisions Relating to Punishment and Interim Relief" mentions, "The punishments for the offences outlined in this Act shall be as follows: (a) Imprisonment for life, (b) Imprisonment, (c) Fine, (d) Imprisonment and fine, (e) Compensation, (f) Imprisonment for the failure to pay a fine or compensation, (g) Community service in lieu of imprisonment" (sec. 40.1). In chapter four, sections thirty eight and thirty nine mention the factors aggravating and mitigation the gravity of offence.

The modern legal culture to address marital rape, including the rape of a minor, sex within a family relationship and daily caregiver, and sex with a mentally ill person, is transferred to the NPA that is consistent with the English Sexual Offenses Act 2003. The foreign legal culture of abortion and against the miscarriages of the fetus is transferred to the NPA, which reads, "No person shall, except in the case referred to in Section 189, commit abortion, or do any act with intent to cause, or with the knowledge that, or having reason to believe that, such act is likely to cause, abortion" (sec. 188.1). Any work for the forceful abortion is prohibited by the law. Section one hundred ninety-eight allows for abortion up to twelve weeks by the consent of the pregnant woman, on the recommendation of a licensed holder doctor if the health, mental, or physical condition of a woman is in danger, or a handicapped child will be born, or the woman was conceived by rape. Her pregnancy is running in the eighteen weeks, or the pregnant woman is affected by HIV positive or other incurable diseases. The consent of the pregnant woman is a must. The foreign legal culture also prohibits terminating the abortion, but allows for some health conditions. The Abortion Act 1967 of England and Wales allows the medical termination of the pregnancy, as it reads:

That the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or (b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or (c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or (d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped. (sec. 1)

The British legal provisions and Nepali law on medical abortion are congruous. The British law allows abortion up to twenty-four weeks on the recommendation of two registered medical practitioners who recommend the abortion in their good faith based on the health risk to the mother and the unborn baby, whereas Nepali laws limit abortion up to eighteen weeks.

In the CN, the provision for the appointment of the chief attorney of the province as the principal legal advisor of the provincial government, who assists the general attorney of the federal government (Constitution of Nepal, art. 160), is a foreign legal culture derived from the US legal traditions. On the influence of common law practices in the Nepali legal system, Kishwor Sapkota critiques that Nepal is also directly and indirectly influenced to follow the common law system. The judiciary of Nepal is deeply rooted in implementing the general principle of criminal law, and the ways judges are appointed and decision-making processes are influenced by the common law system (308). He examines how the common law system dominates the modern Nepali laws and legal culture.

Further, as part of cultural transfer in laws and legal systems, the CN delegates executive power to the Prime Minister and his/her cabinet. The local government can draft bylaws at the local level to manage education, sanitation, drinking water, and traffic management, provided they are consistent with the rights guaranteed by the Constitution and with the American federal legal culture.

A comparative analysis of the English court structure and its jurisdictions clarifies how foreign legal culture is transferred into Nepali law and legal systems. English courts are divided into civil and criminal courts by the jurisdiction they possess, as Guadalupe Soriano-Barabino notes:

Courts in England can be broadly divided into two main groups: civil courts and criminal courts. The former deals with civil cases involving individuals or corporate bodies, while the latter looks after cases brought by the state against individual or corporate defendants. A tribunal, not to be confused with a court, is a body outside the court structure where disputes relating to immigration, employment, and some tax matters are heard and adjudicated. Tribunals are thought to be a cheap and fast way to allow expert knowledge to be applied.

(105)

Civil Courts deal with civil cases, and Criminal Courts hear criminal offenses. The Supreme Court supervises all the lower courts, which are congruously transferred to the Nepali legal system. The English tribunals provide justice quickly in cases related to tax, employment, immigration, and asylum. The hierarchy of the courts is the Supreme Court, the Court of Appeal, the Crown Court, and the Magistrates' Court. The High Court works with three administrative divisions for civil cases: the Queen's Bench Division, the Chancery Division, and the Family Division. Magistrate courts deal with criminal and private law (Soriano-Barabino 106-07). The British judicial

culture is transferred to the Nepali legal system, with the first hearing of minor disputes over land, forests, drugs, and house rents handled by quasi-judicial bodies in Nepal, as in England. On the jurisdiction of the English courts, Suzanne Rab informs:

The Supreme Court is the final court of appeal that hears appeals on arguable points of law of public importance for the whole of the UK in civil cases and for England and Wales, and Northern Ireland in criminal cases. In Scotland, appeals from the lower courts in criminal cases can be made to the High Court of Justiciary. The "Court of Appeal" and the "High Court" constitute the "senior courts." The "Court of Appeal" is an appellate court and is divided into two divisions, Criminal and Civil. The "High Court" hears the more serious and complex civil and family cases at first instance. . . . Less serious cases and those involving juveniles are tried in the Magistrates' Courts, as well as some civil cases. (14-15)

These English courts are designed to deliver justice to English people by applying national and international laws. There is a hierarchy of courts to correct a lower court's decision. The essence of this culture spreads all over the world, including modern Nepal.

Nepal also maintains a court hierarchy, including the Supreme Court, High Courts, and District Courts; however, the Nepali court structure differs from the English one. In line with the English Supreme Court, the Supreme Court of Nepal oversees all lower courts. Congruent with the Magistrate Court of England, the Chief District Officer (CDO) hears and decides some cases under the Local Administration Act, 2071. The jurisdiction the CDO gains in hearing the cases related to minor theft, a maximum of five hundred rupees, cases relating to pick-pocketing, use of inaccurate weights and measures for deception, and the slaughter of female animals at places

other than temples where it is a customary practice (sec. 8).

The English legal profession of judges, barristers, solicitors, and legal executives is transferred to the Nepali legal system. In England, legal professionals work collectively to deliver justice to the public, a model also adopted in the Nepali legal system. Speaking on the role of judges, Soriano-Barabino states that judges in England interpret, apply, and create new legal principles. They give importance to the case law. Different types of judges sit in courts or tribunals to hear different cases and have different powers when deciding them. They mainly sit in three jurisdictions: civil, criminal, and family (110). Nepali judges interpret, apply, and create new principles in case law that are consistent with what English judges and lawyers do. The defense lawyers defend their clients in the Nepali justice system.

Adopting the English legal profession of barristers and solicitors to draft, counsel, and defend the client, Nepali pleaders and advocates draft cases, provide services, and defend them in court. The culture of a fair trial is carried over into the Nepali court system, where the plaintiff and the defendants present their claims with evidence. Decisions are given after hearing the cases and applying the particular law and precedents. The judge is neutral and decides cases in accordance with due process of law. The decision of the court of first instance can be appealed to the higher court, but the Supreme Court's decision is final and binding. However, the court has the jurisdiction to review its previous decision. The transference of foreign legal traditions plays a role in modernizing Nepali law and the legal system. The legal culture transmitted through LT fills the knowledge gap and addresses the legal crisis.

Concluding this section, I find that foreign legal principles, practices, institutions, professions, ways of behaving, and legal perceptions are transferred to Nepali laws and legal systems to modernize the indigenous legal system. The transfer

of foreign legal culture into the Nepali legal system is a cultural compromise that Nepal accepts to meet the demands of modern Nepali society.

Linguistic Transcoding vs. Cultural Transfer in Nepali Laws

The linguistic theory of the 1960s focuses on the linguistic equivalence between the SL and the TL. It remains silent on the cultural transfer through translation that the cultural theorists highlight after the 1980s. Language and culture are inseparable, so translation is a cultural transfer from one language to another, and it is more than linguistic transcoding. LT transfers legal culture from one jurisdiction to another, and limiting TL in linguistic transcoding does not meet the intended objective of a translation. On the surface, LT seems to be a work of transcoding SL into TL, but in fact, translational work transfers SL culture into the TL and develops a universal culture. However, scholars question the core objective of a translation: linguistic transcoding vs. cultural transfer.

Initially, the translation study was SL-oriented and focused on the fidelity between the SL and the TL. Over time, scholars have realized the importance of cultural transfer in translation and have focused on culture. They advocate that the objective of a translation is cultural communication from SL to TL. According to them, the semantic equivalence rarely delivers the cultural property of a language reflected in a text. For instance, section 2 of the NPA *Samhitākō bāhirakṣētrīya prayōga* is translated into 'extra-territorial application of the act' where the translation is semantically corresponding, but needs additional explanation of the term "extra-territorial" represented in the code. Either the code attracts both Nepalese and foreigners equally, or only Nepalese living outside Nepal. To transfer the SL concept, a short explanation in TL is needed. Maintaining conceptual equivalence or communicating the SL legal spirit is more important than mere linguistic transcoding.

The cultural transfer in law, for example, can be traced with a provision of "arrest without warrant" that is transferred to the National Penal Procedure (Code) Act, 2017 of Nepal. This culture is congruous with the Criminal Law Act 1967 of England, which authorizes the police to arrest a person without issuing a warrant notice for a serious offense if the suspect is found sufficiently involved in the crime. As this foreign act permits the police to arrest the suspects that "...where a constable, with reasonable cause, suspects that an arrestable offense has been committed, s/he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence" (sec. 2.4). If a case demands an immediate arrest, the suspects are arrested without giving notice, which is a common practice in the criminal justice system.

This culture of "immediate arrest" without a warrant is transferred to Nepali laws and the legal system, which allows the Nepal police to arrest the offender immediately without a warrant, for the reason that the offender is going to commit an offense before the police officer who visits the place on the received information of possible crimes. The National Criminal Procedure (Code) Act, 2017 allows, "...if a person who is not arrested at once or there is a reasonable ground to believe that such person may abscond, escape or destroy the evidence, exhibits or proof, such person shall be arrested immediately upon issuing an urgent warrant of arrest. . ." (sec. 9.6). The culture of immediate arrest is, in principle, transferred to Nepal's criminal justice system; however, some procedural incongruities remain, suggesting that LT is not a mere linguistic transcoding but a cultural transfer.

Free, also known as dynamic translation, is an alternative to word-for-word or literal translation. Dynamic translation is the sense-for-sense translation which focuses on functional equivalence. Translation is the transfer of the SL's textual

message into the TL. Critiquing the meaningless effort for translation equivalence, Janny HC Leung argues, "It seems reasonable to say that the idea of equivalence is just that something for which we strive without being able ever to realize it" (58). In bilingual jurisdictions in Hong Kong, Canada, and the EU, all linguistic versions of legal drafts are equal and authoritative, indicating that maintaining linguistic fidelity between ST and TT is impractical. The Vienna Convention on the Law of Treaties of 1969 suggests, "The terms of the treaty are presumed to have the same meaning in each authentic text" (art. 33.3). In everyday language, the equivalence between SL and TL is determined by the context of a text. For example, the sentence "Give us this day our daily bread," in which the term "bread" can be replaced with "rice" in cultures where "rice" is an everyday food.

A translation is a product of language and culture, and the primary objective of translation is to transfer the SL culture to the TL readers' cultural values. For example, the Nepali national anthem, "Sayāṁ thuṅgā phūlakā hāmī ē'utai mālā Nēpālī," is literally translated as "we Nepali are a hundred flowers of a garland," but this does not convey the anthem's spirit. "*Sayāṁ thuṅgā phūla*" is 'hundred or many flowers', and *mālā* 'garland' is used metaphorically to convey unity in diversity. The anthem wants to deliver that "we, the Nepali people of different castes, creeds, and cultures, live harmoniously as the flowers in a garland." So, cultural transfer prevails over linguistic transcoding to infer the intended meaning of a text.

Snell-Hornby argues that translation equivalence is an illusion and adds that no single term in a language exactly equals another, so to suggest linguistic equivalence across languages is a fiction that deceives readers. A translation can be compared to the exchange of a foreign currency, which does not require the same coin but an equivalent amount of money. For instance, the concept of "affidavit" was

introduced into Nepali legal culture with the enactment of the Notary Public Act, 2007. This legal culture domesticates the foreign practices of translating, certifying, and verifying the authenticity of legal documents, consistent with the American, English, and Canadian legal systems. However, the practice and the rights given to the notary public are inconsistent with the foreign legal system.

Rather than the linguistic theory of transcoding, the communicative approach of translation transfers SL culture to TL. The way communicative translation transfers culture, Newmark articulates, "The communicative translation attempts to render the exact contextual meaning of the original in such a way that both content and language are readily acceptable and comprehensible to the readership" (*Textbook* 47). Pursuing the communicative function of translation, an advertisement can be translated into different languages while maintaining its essence. The UDHR is translated into various languages to foster a human rights culture among TL readers.

Meaning keeps changing over time and across cultures. Pointing to the meaninglessness of absolute correspondence, Venuti affirms, "Meaning is a plural and contingent relation, not an unchanging unified essence, and therefore a translation cannot be judged according to mathematics-based concepts of semantic equivalence or one-to-one correspondence" (18). The meaning of legal signs keeps changing, so the translator's struggle to achieve full equivalence is a desperate one. Readers have different social, cultural, and educational backgrounds; therefore, cultural transfer through translation is always an approximation. As the transference of Nepali legal culture against social discrimination based on caste and the provision against discrimination (sec. 166) of NPA is incongruous with the apartheid of South Africa, and the color discrimination of America.

Due to linguistic and cultural variety, the meanings loaded into linguistic signs

in a language do not carry the same meaning in another language and keep changing. Linguistic signs are a part of the language and culture they represent. On linguistic and cultural varieties, Cao remarks, "Legal concepts from different countries are seldom, if ever, identical because, firstly, the nature of language dictates that two words are rarely identical between two languages and even within the same language" (33). Even the British and American English use different linguistic signs for the same professionals of the defense lawyer "advocate" in the USA, and "barrister" in the UK.

Cultural transfer in law is challenging due to the complex structures of the SL and TL-speaking societies. Legal culture is part of social, political, and economic evolution that cannot be replicated identically or transferred to other languages. The translator translates neither words nor language but texts, and every text is embedded in a situation that is not a language itself. A text is a joint product of the language, culture, history, politics, economics, and the social units that speak to the readers. For instance, the preamble of the CN proposes to end all forms of discrimination and oppression created by the feudalistic, autocratic, centralized, and unitary system of governance. When translating and communicating this to TL readers, the translator needs to clarify Nepal's social, economic, and cultural conditions somewhere in the text, such as in a footnote or glossary section. Only the linguistic equivalence of the preamble fails to transfer the spirit of the Constitution.

Catford's linguistic equivalence differs from the cultural transfer theory in translation. He argues that translation is a process of substituting a text of SL with a text of TL. Explaining the major problem of a translation, he states, "The central problem of translation practice is that of finding TL translation equivalents. The central task of translation theory is that of defining the nature and conditions of translation equivalence" (21). For example, the term *dharmaputra* is 'adoption' in

English translation. However, it does not convey the congruous meaning of Nepali society, where the purpose of adoption is more religious than sociological. Finding complete equivalence is almost impossible, so he divides translation into "full equivalence" and "partial equivalence." The full equivalence replaces the entire SL by the TL, whereas the partial equivalence partly reflects the text. For example, translating *kaka* and *mama* as "uncle" and *dharma* as "religion" is a partial equivalence that does not convey the culture of Nepali society.

Even though translation is a cultural communication, Catford opposes this notion as an intellectual betrayal. He separates "translation" and "transference" and claims, "In transference, there is, indeed, a transference of meaning, but this is not the usual translation" (42). He affirms that linguistic transcoding is sufficient to transfer meaning, as well as other extralinguistic properties of a language.

Contrary to Catford's view, the cultural theorists argue that translation not only carries meaning but also transfers the full properties of the SL, i.e., linguistic and extralinguistic, to the TL. The entire context of SL changes in the TL, including the readers and their culture, so transfer is a necessity of translation. Translation is like a bridge that connects the readers of two different languages and cultures. Given the non-corresponding backgrounds of the SL and TL readers, cultural transfer is a necessity and an objective of translation.

The genuine critique inspires Catford to reform his linguistic theory of equivalence and accept the notion of "transference" in translation, as he states, "The limits of translatability in total translation are, however, much more difficult to state. Indeed, translatability here appears, intuitively, to be a *cline* rather than a clear-cut dichotomy. SL texts and items are more or less translatable rather than translatable or untranslatable" (93). Whether a text is translatable or untranslatable is difficult to state

in a word, as it depends upon the interchangeable situation between SL and TL. The translation challenges increase when the SL and TL cultures are incongruous. For instance, the equivalence of *satī prathā* 'widow burning' culture does not exist in TL (English) society, so it transfers partially to the TL culture.

Regarding this dichotomy of linguistic transcoding vs. cultural communication or translatability vs. untranslatability, Bhattarai et al. remark that the debate of translatability or untranslatability is unending so long as translations are carried out (*Across Languages* 188). However, for interlingual communication, the translation equivalence needs to move from linguistic equivalence to textual equivalence. The translation of the phrase "*phaujadārī kasuraharū* " as "criminal offenses" is a linguistic equivalence. However, this concept includes offenses against the state, public tranquility, contempt of the authority of public servants, and public justice, as mentioned in the NPA, which is the textual equivalent.

Interrogating the notion of translation equivalence for meaning, Jacques Derrida claims that there is no fixed, final meaning of a text, as meaning keeps on changing. For instance, the previous meaning of "coparcener share" of the *Mulukī Aina* of 1963, which defined father, mother, and sons, has been changed in the NCA. Section 205 provides that fathers, mothers, sons, and daughters have equal rights to family property. Every reading brings new meaning to the readers, so the concept of fidelity to the original is an outdated principle. A translator is the reader and second author of the text, and "the concepts such as the 'sacred original' or the attempt to reproduce the intentions of its author are 'deconstructed,'" - and with them, of course, the notion of "faithfulness" to the source text (Snell-Hornby, *Turns of Translation* 61). Every reader infers different meanings from the same text and transmits the author's meaning, incorporating his/her interpretation. For instance, the meaning of

"democracy" and "freedom" differ depending on the political and social conditions of a country where the reader belongs. Translation is a product of the understanding of a translator as a reader, and he/she does not merely transmit the author's meaning, but rather reproduce new meanings for the new readers. A translator should not be confined to preserving the original meaning but should be encouraged to create new meaning to meet the cultural expectations of the TL readers. Hence, the notion of equivalence based on linguistic parameters is impractical for legal translation.

Deconstruction theorists argue that the relationship between the translator and translation needs to be reconsidered. The translator struggles not only for linguistic equivalence but also aims to transfer the SL culture to the TL. The translator conveys the SL concept by restructuring the text and adding the necessary meaning that new readers are likely to expect in their language and culture. If no original remains, the author dies in translation by the emergence of a new text and the readers. However, Snell-Hornby suggests the death of the author should not imply the destruction of the author and his text, as the deconstructionists believe, but rather the resurrection (rebirth) of the author with the new readers. She argues that the birth of the reader, particularly for translation, need not destroy the author's work but create the potential for a further existence (*Turns of Translation* 63). The source text is reconstructed for the TL readers.

The Translation of foreign laws into the Nepali language transmits foreign legal culture into Nepali law and the legal system. The translation of the UDHR, CEDAW, ICCPR, CRC, and the UN Charter into Nepali has introduced a foreign legal culture on human rights to Nepal, with special rights for women and children. Nepali people can exercise their fundamental rights under the Constitution, and they can challenge decisions restricting human rights in court. The objective of legal

translation in Nepal is more than linguistic translation; it also transfers foreign legal culture into Nepali laws and legal systems. Traditional laws are modified and compromised in accordance with international laws and legal systems.

Translating native laws into English globalizes the indigenous Nepali legal culture and acts as a form of cross-cultural communication. The indigenous laws are compiled in the civil code and translated into English so that target readers can understand Nepal's legal system. For instance, the provision of succession in NCA acknowledges, "Upon the death of a person, succession to his or her property shall be deemed to be opened . . . the term 'succession' means devolution of liabilities and rights in regard to debt, wealth and property of the deceased upon his or her heirs in accordance with law" (sec. 237). This legal provision transfers the Nepalese legal culture on succession to the TL reader who has business and fixed property in Nepal.

As discussed above, the foreign legal culture is reflected in Nepal's Civil Aviation Act, 2015. Domestic and international air traffic is regulated by this law, which implements the provisions of the Warsaw and Chicago Conventions on aviation. After appropriating the "Warsaw Convention" in 1996, Nepal has enacted municipal laws to regulate aviation safety (Dulal 3). The Warsaw Convention requires the carrier to provide the necessary information to the passenger. The ticket must be issued with the information of the airport for departure and landing, the issued date of the ticket, the agreed stopping places, provided that the passenger has the right to alter the stopping place if necessary, and the name and address of the carrier/s (Warsaw Convention, art. 3). This international air culture is obligatory for the state party.

Adapting the international aviation culture, Nepal enacted the Nepal Civil Aviation Act, 2017, which requires airlines to make public the terms and conditions, journey facilities, and airfare rates for the information of passengers. The passenger

may use their rights as specified if they are deprived of using flights due to the cancellation and delay of flights or due to the airline (sec. 13.1.2). This provision is congruous with the Warsaw Convention, which guarantees the right to claim against the destruction, losses, and damage due to the flight delay (art. 30.3).

Besides, the US constitutional provision is transferred to the Nepali constitution. The American Constitution allows the Senate to draft necessary laws for the country and transfers its power to the executive and judiciary organs. This culture is transferred to the CN that manages such provisions in parts seven, eight, and eleven of the Constitution. The Congress refers to both the Senate and the House of Representatives, which are transferred to the CN with the two Houses: *Sāmsad* 'Parliament' includes the *Rāṣṭriya sabhā*, 'National Assembly', and the *Pratinidhi sabhā*, 'House of Representatives'.

A translation not only translates language but also transfers culture from SL to TL. The language is the words, phrases, sentences, and paragraphs, and the culture is what the language speaks about. Language is used to speak or write about culture, which varies from language to language. Language is translatable, and culture is transferable. The legalese reflects legal principles and practices, and LT transfers them from one jurisdiction to another. Though cultural incongruities intensify translation challenges, transference of culture through translation is possible. For instance, the concept of "snow" can be transferred alternatively to "milk" if someone has not seen the snow. For example, "this cloth is as white as snow" can be expressed as "this cloth is as white as milk."

However, a complete transfer is not possible due to linguistic and cultural differences between the SL and the TL. Snell-Hornby takes the notion of translation to mean "not as a mere transcoding process as in linguistically oriented translatology, but

as a cross-cultural event" (*Translation Studies* 3). According to her, translational action is not only linguistic transcoding, but also a means of cross-cultural communication. Transcoding seeks linguistic equivalence between the languages, but a cross-cultural event transfers the culture of the SL-speaking society to TL readers.

Translating CEDAW into Nepali promotes a culture of equality between men and women. As the CN guarantees gender equality, it adopts the principle that "every woman shall have equal lineage rights without gender-based discrimination" (Constitution of Nepal, art. 38.1). However, the Constitution maintains a culture of positive discrimination pursuant to the international Convention. Regarding the special provision of positive discrimination, the CEDAW mentions:

Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail, as a consequence, the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved. (art. 4, par. 1)

Positive discrimination is time-bound and discontinued once the objectives of the provision are met. The CN also guarantees positive discrimination in the Constitution for women, *Dalits*, and the backward people, adopting the foreign legal culture. On positive discrimination for the participation of women in state mechanisms, the CN guarantees, "Women shall have the right to obtain special opportunity in education, health, employment, and social security, based on positive discrimination" (art. 38.5). This suggests that LT is more than the linguistic transcoding and focuses on cultural transfer for transcultural communication in law.

Concluding this section, we can safely say that the foreign legal culture is

transferred to the Nepali law and legal systems through domestication and foreignization, and that this transfer influences the Nepali legal system to be consistent with modern legal culture. As far as the debate of linguistic transcoding or cultural transfer is concerned, the translation purposefully conveys the SL message, which is possible through the cultural transfer. Mere linguistic transcoding does not transfer the spirit of the ST. The text's context needs to be conveyed through cultural transfer. A translation is not a retrospective effort to maintain fidelity to the ST, but a prospective work that needs to be receiver-oriented in terms of language and culture. The translator can artistically use the SL content as a raw material to shape the TT.

This chapter compares the CN, the NCA, the NPA, and some statutes. It explores how foreign cultures are incorporated into Nepali laws and legal systems, comparing them with the ICCPR, ICR, UDHR, ICC, and CEDAW, the US Constitution, and the English family laws, French Civil Code, German, and Japanese Penal Codes. It assesses the degree of congruence and incongruence between the Nepali and foreign legal cultures and provides an outline of how the latter has influenced the indigenous laws of Nepal. As a cultural compromise, foreign legal culture is incorporated into Nepali laws and legal systems to modernize them. The appropriation of legal culture in Nepali laws and legal systems is discussed in the next chapter, which presents and interprets the collected data, as a core part of this dissertation.

Chapter Four

Appropriation of Legal Culture in Nepali Laws and Legal Systems

This chapter examines the appropriation of foreign legal culture, i.e., legal principles, practices, values, attitudes, behaviors, professions, institutions, legal consciousness, legalese, law, and justice-making processes, into Nepali laws and legal systems. It explores the foreign legal culture in the CN, the NCA, the NPA, the Evidence Act of 1974, the Act Relating to Children, 2018, the Contract Act, 1999, the Bank and Financial Institution Act, 2007, and the Company Act, 2007 to compare and contrast with the foreign legal culture intending to find the congruities and incongruities between Nepali and foreign laws in Nepali laws and legal systems, the need of appropriation, and explores the conditions that produces the appropriation as a cultural compromise (textually/practically).

One aim of appropriating foreign legal culture is to modernize the indigenous Nepali legal culture and align it with foreign legal practices. For instance, Nepali laws and legal systems domesticate foreign cultural norms in family, property, and business law, including marriage, adoption, inheritance, divorce, loan deeds, and land tenure. The globalization of law motivates Nepali laws and legal systems to be consistent with international practices; therefore, Nepal domesticates corporate, financial, and human rights laws to promote business and the economy and safeguard human rights, as a necessity of a modern state. Nepal domesticates foreign legal culture through LT by ratifying and incorporating international provisions into the native legal system. The US Constitution is taken as a model for federalism, secularism, and democracy in the country. The provisions of international conventions, such as the UDHR, ICCPR, CEDAW, CRC, and the ICC, are incorporated into Nepali law to modernize the native legal system, including English

legal norms on marriage, divorce, and adoption.

In ancient and medieval Nepal, the Kirāta, Lićhavi, and Malla dynasties practiced indigenous and religious legal systems, and the rulers drafted laws based on the Hindu, Kirāta, and Buddhist philosophies. The *Vedas*, particularly the *Rig Veda* and the *Smṛti* (memory of the rishis-learned persons), were the sources of Nepali law (Sangroula 167). When the Shah dynasty began, the *Mulukī Aina* of 1854 was promulgated as the first comprehensive law, incorporating the social, religious, ritual, and cultural values of Nepali society.

Before the promulgation of the CN, Nepali law was based on Hindu-dominant religious law. Constitutionally, Nepal was a Hindu Kingdom until 2006. *The Interim Constitution of Nepal* (2007) transformed Nepal into a federal democratic republic and a secular state, and the CN further solidified these changes and established new ones. However, the Constitution aims to protect the Hindu and Buddhist religious cultures handed down from time immemorial (Constitution of Nepal, art. 4), and this religious legacy continues to endure. Tara Nath Ghimire and Shyam Prasad Phuyel review the first codified law of Nepal and critique, "...The first written law of Nepal was created by incorporating religion and traditional rituals into the old civil law" (81). As a result, the Nepali indigenous social practices were incorporated and codified in the *Mulukī Aina* of 1854. However, the *Aina* was discriminatory in terms of religion, culture, and caste.

In chapter 159 of the *Aina*, illicit sex with a discriminatory provision that states, "If a Muslim has illicit sexual intercourse with a Kasai, Kusule, Kulu, Dhobi woman or the like, who belongs to a Water-unacceptable Hindu caste, and if he has contaminated her through cooked rice or water, he shall be fined 100 rupees. If he has not contaminated her through cooked rice or water, he shall be fined 70 rupees" (sec.

4). The caste system is acknowledged in the *Aina*, and the penalty was discriminatory as it was lenient to the water-acceptable and severe to the water-unacceptable. This caste and religion-based legal provision implies that the codified laws under the *Mulukī Aina* were discriminatory and directly adopted Hinduism and Buddhism in Nepali laws and legal systems.

Further, the initial provisions on marriage, inheritance, adoption, partition, share, women's property, and husband and wife are consistent with the Hindu religious culture. Section nine of the *Bihābārīko* 'On Marriage' is consistent with verses eighty-one and two of the *Manusmṛti*, which are managed under chapter nine. Section two of *Aṃśa Baṇḍāko* 'On Partition Share' is consistent with section 104, and section eleven of *Dharma Putrako* 'On Adoption' is consistent with verse 141. Section five of *Strī Aṃśa Dhanako*, 'On Women's Share and Property', is consistent with verse fifty-four of chapter three. Section one of *Dāna Bakasako*, 'On Donation and Gift' continues the provision as mentioned in verse 115 of chapter ten. The first amended *Mulukī Aina* (1963) also continues these religious norms in Nepal's family and property laws. People's beliefs in religion and culture were acknowledged through the enactment and implementation of the *Aina* system, which systematized and unified contemporary society.

The religious and cultural motivations led people in their words and works. They believed that harming others in words or actions was irreligious and immoral. They hesitated to go against it due to the unseen fear of misfortune in personal life, which may befall their children and continue. Religion and morals would guide people; however, no state sanction was imposed on those who broke these unwritten moral codes. Gradually, these moral and religious norms were turned into codified laws and ultimately shaped into the *Mulukī Aina* in 1854. When Janga Bahadur visits

Europe as the Prime Minister of Nepal, he learns about codified law and introduces the same culture of written law in the country. Herbert Lionel Adolphus Hart, known as H.L.A. Hart in short, defines the nature of law and clarifies, "Law is the command of the uncommanded commanders of society - the creation of the legally untrammelled will of the sovereign who is by definition outside the law" (59). He suggests that law differs from religious and moral obligations because it is ordered by sovereignty, with sanctions to ensure its smooth implementation and obedience. Law regulates social behaviors for the peace and progress, and maintains harmony and brotherhood in society.

To modernize Nepali laws and legal systems, several modern laws have been drafted to meet the needs of Nepali society and to promote universal systems in education, business, economics, law, international relations, and similar areas. As a dynamic country, Nepal must organize internal peace and security to grow its economy and operate businesses and industries. On the other hand, it has signed many bilateral and multilateral treaties as a State Party, which it is required to implement as a signatory. The interdependence of states and the modern trend of the welfare state encourage Nepal to formulate social laws or adopt them from international conventions and foreign experiences. So, Nepal adopts foreign legal cultures and incorporates them into Nepali laws and legal systems. The foreign concepts, such as the rule of law, welfare state, democracy, federalism, secularism, positive discrimination for women, the elderly, and vulnerable groups, and inclusiveness, are acknowledged in the Nepali legal system. The Nepali legal system recognizes the supremacy of the Constitution and the international conventions over statutory laws.

When the world was maintaining peace and progress under the rule of law and order, Nepal promulgated the *Interim Constitution of Nepal* in 1951, formally

ending the autocratic Rāṇā regime. The Constitution accepts the rule of law and the supremacy of the Constitution as the basic principles of the ruling system. As a result, Nepal promulgates and modifies its legal systems, formulating seven constitutions by 2015, and reforms Nepali laws and the legal system. Nepal's journey of implementing indigenous laws through *Mulukī Aina* has been progressing and reforming toward modern law through the promulgation of the CN, NCA, and NPA. These legal instruments have domesticated Western legal culture within the state's mechanisms for social justice and economic growth. The NCA and the NPA are drafted to manage the civil and criminal justice systems separately, consistent with foreign legal culture. However, before the promulgation of the Constitution in 1951, religion was taken as a decisive source of Nepali laws. As Kanak Bikram Thapa critiques, "Nepalese laws since the ancient period until the establishment of democracy in 1951 are based on religion, local customs, and royal proclamations. Law is considered to be a branch of religion. Before the codification of the Country Code '*Mulukī Aina* of 1854', the legal system of Nepal was very much influenced by religion" (922). The Hindu and Buddhist religious norms and values were acknowledged as part of social culture and codified for implementation in the country.

The Hindu religion and customs of the *satī prathā* 'widow burning custom', *Āśoca Bārneko* 'mourning period', were codified and regulated in the *Mulukī Aina* of 1854. The provisions of *Caupayako* 'On Quadruped', *Jyālāmajadurīko* 'On Wages', and *Garibkangālko* 'On Pauper' were added in the first Amendment. The royal edicts of the King, *Shree 5 Rajendrako Nyayik Bandobasta* of 1883 BS, 'Royal edict of King Rajendra for Justice of 1826 AD', and the commander-in-chief's rules for the army and the civil servant entitled *Ujir Singh Thāpāko Jaṅgī tathā Nijāmati Sthiti Bande* of 1879 BS, 'Ujir Singh Thapa's Rules for Army and Civil Servant of 1822' were

enacted for the development of the Nepali legal system. Recalling the codification of social practices of Nepal, Khim Lal Devkota recalls, "The process of organizing a law-making system in Nepal began with the promulgation of the *Mulukī Aina* in 1853 (1910 BS)" (13). After the promulgation of the first country code, Nepal began its journey to systematize and reform Nepali laws and legal systems by appropriating foreign legal culture and legalizing the existing customary practices as the native laws of the land.

The modern laws, such as the Patent Design and Trade Mark Act of 1965, Contract Act of 1999, Bank and Financial Institution Act of 2007, Mediation Act of 1998, Labor Act of 1991, the Act Relating to Children, 2018, and the Company Act of 2007, are promulgated in Nepal, incorporating foreign legal culture. The provisions of the *Mulukī Aina* are transferred to the NCA and NPA and subsequently modified in accordance with modern legal principles to reform the constitutional laws, the civil code, and the penal code. The CN adopts the American model of federalism, secularism, and inclusiveness, as well as the English common law system in the judiciary. As Devkota reviews,

Nepal's legal system is primarily based on common law, which has been largely influenced by the British common law system. The Supreme Court is the highest legal authority in Nepal, with substantial autonomy from other branches of government. Under the Supreme Court, there are seven High Courts (Court of Appeal) across the country and a District Court in each of 77 districts. (9)

The current legal provisions indicate that Nepal has been appropriating foreign legal culture and applying it, thereby compromising the Nepali legal system. The common law system strengthens the modern Nepali legal culture, in which the legislature drafts

laws, the executive executes, and the judiciary reviews and reforms them by interpreting and inventing case law as the case may require justice. Nepal imports foreign laws, bylaws, jurisprudence, institutions, decision-making processes, and legalese through translation methods of domestication and foreignization.

Domestication of Foreign Legal Culture in the Constitutions

Nepal appropriates foreign legal culture by domesticating the US Constitutional provisions in the CN. The fundamental elements of the Constitution are domesticated, making it consistent with the American Constitution. The preamble of the CN outlines the background and objectives of the Constitution's promulgation, consistent with the American Constitution. The state power is divided among the legislative, executive, and judicial branches to ensure the rule of law in the country. The dominant culture of Hindu Kingship is replaced by the system of the President and the Vice-President, an appropriation of a foreign legal culture. The fundamental rights of the CN are consistent with the international human rights principles. Some special rights are constitutionally privileged with positive discrimination to safeguard women, children, senior citizens, and backward classes (Constitution of Nepal, arts. 38.5, 40, 41, and 43), which align with foreign legal culture. The constitutional commissions, such as the Election Commission for periodic elections (art. 245), the Commission for the Investigation of Abuse of Authority (art. 238) for controlling the abuse of power vested in the government and public authorities, and the National Natural and Fiscal Commission for distributing national revenues between Federal, States, and Local Governments scientifically (art. 251), are appropriated in the CN.

The national languages and official language are declared in Articles 6 and 7 of the CN, as it acknowledges all spoken languages in the country and authorizes Nepali as the official language. The CN declares the national flag (art. 8), adopting

the foreign legal culture, besides declaring the national animal, bird, national anthem, color, and coat of arms (art. 9). So, this section examines the congruities and incongruities of the foreign legal culture that exists in the CN and the national codes.

Compared with foreign constitutions, Nepal's constitutional practice is relatively young. So, Nepal appropriates foreign legal culture in the Constitution and codes through LT, while compromising it with native traditions. Nepal adopts the foreign legal culture of the written Constitution, which prevails over statutory law. Speaking on the role of a translator to transfer the foreign culture by domestication and foreignization methods, Venuti recalls:

Schleiermacher allowed the translator to choose between a domesticating method, an ethnocentric reduction of the foreign text to target-language cultural values, bringing the author back home, and a foreignizing method, an ethnodeviant pressure on those values to register the linguistic and cultural difference of the foreign text, sending the reader abroad. (20)

The domestication method minimizes the strangeness of the foreign text, while foreignization preserves its foreignness and seeks to register the differences of the foreign culture. However, both strategies perform intercultural communication and transfer the SL culture into the TL. This section briefly discusses how foreign legal culture is introduced in Nepal's constitutions.

The first written Constitution of Nepal is *Nepāl Sarakārako Baidhānik Kānūn*, 2004, '*Constitution Act of the Government of Nepal 1948*' appropriates the culture of the written Constitution. It domesticates the foreign culture regarding the fundamental rights and duties of the people (articles 4-5). The Constitution domesticates the foreign legal culture of freedom of speech, press, and religion; rights to form organizations; quick access to justice; voting rights; the right to personal property;

and compulsory primary education on behalf of the State. In addition to these, it appropriates the bicameral parliamentary system: *Kāryakariṇī Sabhā* 'Executive Assembly' and *Byabasthāpak Sabhā* 'House of Representatives', and prescribes their functions. The *Kāryakariṇī Sabhā* forms a cabinet under the Rāṇā Prime Minister, known as *Shree 3 Maharāja*, including two members from the *Byabasthāpak Sabhā*, with a four-year tenure. The Constitution establishes the judiciary culture, empowering the competent court of law, and appoints judges under Article 49. The Constitution can be amended by the council's recommendation, as prescribed in Article 68. However, this Constitution remains unimplemented due to pressure from the family on the Prime Minister, Padma Shamsher Rāṇā, and his subsequent resignation from the post. The parochial Rāṇā family members hate his popular steps as the Prime Minister of the country and compel him to resign from the post.

Replacing the first Constitution, Nepal promulgates the second Constitution, *Nepāla Antarima Śāsana Vidhāna, 2007 BS* 'Interim Constitution of Nepal, 1951 AD'. It appropriates democratic foreign constitutional provisions, such as establishing the Public Service Commission (art. 64), Election Commission (art. 68), and the Auditor General (art. 60). The legal culture of taking an oath before holding the public chair of the *Sallāhākāra Sabhā* 'Member of Parliament' is congruously adopted.

The third Constitution of Nepal, *Nepāla Adhirājyako Saṃvidhāna, 2015 BS* 'Constitution of Nepal, 1958 AD' appropriates the progressive foreign culture of declaring emergency in the country (art. 65), elects the Speaker and the deputy-speaker of the House (art. 29). The culture of formal summons and ending of the sessions of the House (art. 26), constitutional remedy for the violation of the fundamental rights (art. 9), and the culture of declaring a law void fully or partially if inconsistent to the Constitution (art. 54).

The fourth Constitution of Nepal is *Nepālako Sambidhāna 2019 BS*, '*The Constitution of Nepal 1962*' ensures the right of citizenship certificate and the conditions of its termination (arts. 8-9). The Constitution appoints the attorney general as the government's chief legal advisor to counsel on constitutional and disputed legal issues (art. 80). It also provides for the appointment of ambassadors (art. 86) to establish relationships with foreign countries.

The successful people's movement in 1989 led to the promulgation of the democratic Constitution. *The Constitution of the Kingdom of Nepal*, 1990, establishes the three tiers of courts (art. 85), removes the ban on political parties under the *Panchāyata* System (art. 112), and establishes the Constitutional Council (art. 117).

The sixth Constitution, *The Interim Constitution of Nepal, 2007*, appropriates the foreign legal culture of federalism and secularism in the country. It safeguards the rights of women (art. 20), the right to the environment and health (art. 16), the rights of children (art. 22), the right to social justice (art. 21), the provision of the President and Vice-president (art. 61), the Constitutional Assembly (art. 63), and ensures the formation of the Human Rights Commission (art. 131) that transfers foreign legal culture in Nepali laws and legal systems.

The current Constitution is the seventh, continuing the democratic and progressive principles of the former constitutions and adding new provisions, consistent with the international conventions to which Nepal is a party. The human rights culture is derived from the UDHR and recognizes the inherent dignity in men and women equally as inalienable rights. The preamble of the UDHR views all human beings as a family and treats them equally to promote peace, prosperity, freedom, and justice worldwide. Acknowledging this legal culture, the CN promises the fundamental rights of people, including the rights to life, liberty, equality, justice,

and inclusiveness, and provides compensation to crime victims in Part 3.

Nepal promulgates the CN, which turns the country into a federal democratic republican state, and adopts secularism as the system of governance (art. 4). The Constitution treats all citizens' religions and cultures equally, in line with the foreign legal cultures of France, America, India, and China. The CN declares the national language to be all the languages of the people who speak them as their mother tongue (art. 6) and uses the *Devanāgarī* script as the official language (art. 7), domesticating the culture of foreign constitutions. As the *Constitution of India* categorizes the national and official languages, and Hindi in the *Devanāgarī* script is the official language of India (Constitution of India, art. 343.1). As a federal constitution, the CN establishes a system of sharing power between the federal and state governments to mobilize natural resources for rapid economic growth and the overall development of the country. The absolute and concurring rights of the federal, state, and local levels are mentioned in the schedules five to nine of the CN.

The appropriation of federalism and secularism in the CN has modernized the Nepali legal system. Domesticating the culture from the SL legal system, translation modifies the TL laws to be consistent with the SL culture, as practiced in Nepal. Foreign legal culture is appropriated to address social and cultural issues that are identical between the SL and the TL speaking societies. However, the application of the adapted laws is adjusted in the TL legal system.

When a foreign legal culture is domesticated into the native legal system, the appropriated culture changes slightly in its new home, despite identical issues. Legal culture evolves in response to the needs of people and society. The appropriation of corporate and finance legal culture is more consistent with international provisions than the laws of family, property, and land tenure. The regional legal culture is

adopted more quickly than that of a distant culture. The regional laws of SAARC are more domesticated in Nepal than those of the African or European Union, due to the congruous objectives of the former and the incongruous goals of the latter.

Geography, space, and time are the decisive factors that determine the work of appropriation and also influence the translation strategies. On the determinants of geography and the time for cultural appropriation, Venuti claims that the foreignization method of translation is more specific to certain European countries at particular historical moments. The European countries followed German culture during the classical and romantic periods and French culture in the postmodern development (20). Civilization, colonization, and globalization affect legal appropriation, as the law of the colonizer is readily adopted in colonized countries. Even Nepal, as a non-colonized country, voluntarily adopts foreign legal culture and modernizes its laws and legal systems.

The CN constitutionalizes the child rights and juvenile justice systems to make them consistent with the CRC and promote child welfare. The CRC suggests the state party and ensures, "The child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members" (art. 2.2). An identical provision is appropriated in the CN as it mentions, "No child shall be subjected to physical, mental or any other form of torture in *home*, school or other place and situation whatsoever" (art. 39.7). The best interest of the child is protected in every condition, which corresponds to Article 3 of the CRC which further guarantees, "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." The best interests of the child

are the primary concern in juvenile justice and must be acknowledged in all circumstances. A child has the right to protection, education, and care within the family environment. The CN appropriated this foreign legal culture and safeguards, "Every child shall have the right to education, health, maintenance, proper care, sports, entertainment, and overall personality development from the families and the State" (art. 39.2). The CRC, as an international convention on child rights, has been adopted and implemented throughout the world for the rights, justice, and protection of the best interests of the child. Nepal incorporates these legal provisions in the Constitution, the Civil Code, and the Act Relating to Children, 2018, in a congruous manner, though some incongruities arise in the process of implementation.

In addition to the provisions discussed above, the CN safeguards, "Every child shall have the right to elementary child development and child participation" (art. 39.3), and guarantees the basic rights of the child for the development of the childhood period, participating in children's activities at home, school, and outside. Further, Article 39(4) prohibits employing a child in risky manual work, and rules, "No child shall be employed to work in any factory, mine, or engaged in similar other hazardous work." Further, the CN guarantees the protection of a child's personal life. As Article 39(5) prohibits, "No child shall be subjected to child marriage, transported illegally, abducted/kidnapped or taken hostage." The act of abusing of a child in any form is prohibited in Article 39(6) which makes aware, "No child shall be recruited or used in the army, police or any armed group, or be subjected, in the name of cultural or religious traditions, to abuse, exclusion or physical, mental, sexual or another form of exploitation or improper use by any means or in any manner." These constitutional provisions of Nepal safeguard children from possible hazards of abuse, exploitation, and injustice.

The CRC calls for the state party to protect and promote the child's rights from the beginning of life and guides, "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference" (art. 8). The unauthorized interference to the child's life and development is prohibited by the CRC for the identity and welfare of the children. In accordance with this provision, the CN adopts this legal culture and mentions that "every child shall have the right to name and birth registration along with his or her identity" (art. 39.2). The rights of naming and birth registration are fundamental requirements for a child's identity that are acknowledged in national and international laws. The incorporation of these legal provisions into the CN substantiates Nepal's incorporation of foreign legal culture into its domestic laws and legal system. Moreover, as a state party, other international conventions are domesticated into Nepali law and legal systems either congruously or incongruously.

Nepal appropriates foreign legal culture to ensure the civil and political rights of people, making the CN consistent with the ICCPR, and also invents laws and bylaws. Nepal ratified ICCPR in 1991 and became a member state of the convention. The provisions of civil and political rights mentioned in the ICCPR are applicable as good as the native laws in Nepal and prevail if found inconsistent with the convention. The Nepal Treaty Act 1990 mentions:

In case of the provisions of a treaty, to which Nepal or the Government of Nepal is a party upon its ratification accession, acceptance, or approval by the Parliament, inconsistent with the provisions of prevailing laws, the inconsistent provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws. (sec. 9)

The Treaty Act of Nepal authorizes the domestication of international treaties that Nepal ratifies and legalizes, and provides for their implementation through the dualist process. It further clarifies that the inconsistent native law shall be void to the extent of inconsistency and made consistent with international law, as mentioned in the treaty. The CN domesticates international laws by the approval of a two-thirds majority in both Houses of the Federal Parliament (art. 279). The supremacy of conventions and treaties is acknowledged and recognized to harmonize a common system worldwide. LT plays a crucial role by translating foreign laws into Nepali and transferring foreign legal culture into the Nepali legal system, which can be persuasive to native legislators and legal professionals.

Article 2 of the ICCPR advocates equality between males and females and among individuals, stating that everyone is equally before the law regardless of their religion, race, sex, beliefs, or origin. The convention rules to avoid all types of discrimination among people by their creed, color, language, and origin, stating:

Each state party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or another opinion, national or social origin, property, birth or another status. (art. 1.1)

Adapting this foreign legal culture, the CN prohibits all kinds of assumed discrimination among native people, as the preamble notes, "To ensure economic equality, prosperity, and social justice, by eliminating discrimination based on class, caste, region, language, religion, and gender and all forms of caste-based untouchability." However, caste-based discrimination of untouchability continues in Nepali society.

Caste-based discrimination is a social folly that exists in the Nepali society, which the CN determines to eliminate by enacting anti-discriminatory laws and effectively implementing them. It adopts the ICCPR's principles against discrimination based on social, religious, linguistic, and cultural differences. In Nepal, the discriminatory caste-based social law drafted during the reign of King Jayasthiti Malla (r. 1382-1395 BS) classified Nepali society according to people's skills and knowledge. Regarding this, D.B. Shrestha and C.B Singh assert, "Among those who were learned is to act as priests and preceptors and those who were illiterate or half-literate are to act as goldsmiths, carpenters, masons, and other artisans" (26). This caste-based discriminatory practice persisted under the Shah dynasty until the first amendment to the *Mulukī Aina* in 1963. After the restoration of democracy in 1990, Nepal ratified the ICCPR and tried to eliminate all forms of civil and political discrimination based on birth, beliefs, and socio-economic status. Education and industrialization have transformed traditional society, and people's customary professions have become modern jobs. The *Dalit* people have gained legal protection and are gradually transitioning into modern professions.

The CN appropriates the equality principles from ICCPR and provides equal civil and political rights to males and females, and ensures the right to gain social justice to weak and vulnerable people, as the CN reads:

The economically, socially, or educationally backward women, *Dalit*, indigenous nationalities, *Madhesi*, *Tharu* Muslims, minorities, persons with disabilities, marginalized communities, Muslims, backward classes, minorities, marginalized communities, persons with disabilities, gender and sexual minorities, farmers, laborers, oppressed or citizens of backward regions and indigent *Khas Arya* shall have the right to participate in the State bodies

on the basis of principle of proportional inclusion. (art. 42.1)

All Nepali people of different castes, religions, and cultures obtain equal civil and political rights and participate in the mainstream of development through proportional representation mentioned in the CN. However, socially and economically backward people, including women, *Madhēśī*, *Thārū*, and *Dalits*, get privileges with the special rights to take part in the state mechanism proportionally, which is congruous with the ICCPR.

Further, the principle of equality between males and females by law is a foreign legal culture domesticated in the Nepali legal system. In the domestication method of LT, the translator adapts the foreign legal culture to make it familiar to readers. For instance, the domestication of the culture of human rights under the fundamental rights and duties of Nepali people i.e., the right of liberty, equality, and justice, right against torture and degrading environment, women's and child rights, right to social justice and constitutional remedies for the violation of the fundamental rights, and duties of citizens are appropriated from foreign legal culture and incorporated into the native legal culture with minor moderation. However, the spirit of the foreign legal culture is preserved in Nepali laws. How the culture gets appropriated through translation, Sally Engle Merry articulates:

Cultural appropriation means adopting a cultural product in terms of local meanings and practices. In its broadest sense, the term means taking an existing cultural form from one social group and replaying it in another with different meanings or practices: perhaps taking the tune and playing it in a different key or at a different tempo so that it becomes something different, yet still the same. (585)

Cultural appropriation involves importing legal culture from the societies where it

originated, developed, and was first practiced, and reintroducing it in a new society with moderation, without changing its essence. For instance, the appropriation of accused rights in the Nepali legal system is essentially the same; however, it differs slightly in practice. In the same way, the form of federalism varies to address a country's specific geopolitical conditions while preserving its fundamentals. The appropriation of foreign legal culture in the CN is further discussed by comparing and contrasting it with US Constitutional practices in structures and institutions.

The US Constitution consists of the preamble, the Seven Articles, and twenty-seven amendments that manage the federal system of the USA, allocating absolute and concurrent powers between the federal government and the states. It balances the federal government by the doctrine of separation of powers among the three independent organs of the country: the executive, the legislative, and the judiciary. The President leads the executive branch and enforces laws enacted by Congress, which is the top of the legislative branch. The Supreme Court is the highest in the judicial branch, interpreting and administering the law and guiding the lower courts when a legal question arises (About America 4).

The CN domesticates the US Constitutional provisions that, in Parts Seven, Eight, and Eleven, address the formation and functions of the executive, legislative, and judicial branches. Pursuing Article 76, the elected member of the House of Representatives and the leader of the parliamentary party is appointed to the post of the Prime Minister, who uses the executive power to form the Council of Ministers. The parliament exercises legislative power, whereas the Supreme Court exercises judicial power, supervising the High and District Courts and guiding their decisions through landmark precedents.

The US Constitution allows the federal government to regulate and collect

taxes, declare war, and regulate interstate and foreign trade and commerce. The Constitution of America secures the 'expressed power' and the 'implied power'. The expressed power is clearly stated in the Constitution, and it grants this power to Congress to collect taxes, duties, and declare war (art. I, sec. 8), whereas the implied power is the indirect power that the government carries out to implement the 'expressed power' and to address the country's needs. For example, Congress has no specific delegated power to print paper money; however, such a power is implied in the delegated power to borrow and coin money (About America 4). In many cases, the federal and state governments exercise concurrent powers. Federal laws prevail over state laws if they conflict (4). The powers that the Constitution neither gives to the federal government nor prohibits the states are the 'reserved powers', which are secured to the State or the people. Such a culture of sharing power between the Federal and State governments is transferred to the CN.

The State power consists of enacting state laws on marriage, divorce, schools, local government, interstate trade and commerce, and all state-level plans, policies, and works as per the Constitution. The power reserved for the US people includes the right to earn, use, and possess property, and to get a fair trial by a competent court of law with an independent and impartial jury. Appropriating this US federalist model, the CN divides state power into the Federal, State, and Local Levels. Federal laws govern key national issues; States are free to enact and apply state laws within their territories; and Local Levels are autonomous in drafting and completing local-level plans and policies. However, the CN does not grant the state governments and the people the reserved powers that the US Constitution states, but instead reserves them to the federal government.

The US Constitution forbids imposing additional taxes on the interstate export

and import of goods and services, as Article I, section 9, provides: "No Tax or Duty shall be laid on Articles exported from any State." None of the State governments gains authority to impede the export of manufactured goods to other states by imposing additional charges. No State gains a preference in trade, and every State can enter and trade with other States freely. Ensure this trade culture, clause six affirms, "No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another." This constitutional provision of interstate free trade and transit strengthens national unity from an economic perspective. Nepal appropriates this federal culture of duty-free interstate business, ensuring in the CN that:

Notwithstanding anything contained elsewhere in this Constitution, it is prohibited to make any kind of obstruction to the carriage of goods or extension of services by a State or Local level to another State or Local level or to the carriage of goods or extension of services to any State or Local Level or to levy tax, fee or charge thereon or to make any kind of discrimination on the carriage or extension of such services or goods. (Constitution of Nepal, art. 236)

The CN appropriates foreign federal trade culture to systematize business and industry within the country by prohibiting the imposition of additional taxes on goods and carriage, and extending services from one province to another and at the local level. Neither a provincial government nor a state government prohibits the extension of the business and movement of goods of other States freely within the State.

Further, Article I of the US Constitution prohibits the States from doing any special work that needs to be decided by the Federal Government as clause two

mentions, "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws. . ." (sec. 10). This legal culture accepts the supremacy of Congress while deciding on taxes and is accountable to the citizens. The CN domesticates this financial legal culture and prohibits imposing additional tax by the Provinces as it remarks, "No tax shall be levied and collected in a State except in accordance with law and no loan shall be raised and guarantee given by the State Government except as provided for in the Federal law" (art. 203). The federal legal culture of maintaining financial discipline through taxation, such as the need to raise taxes and guarantee loans, as the United States practices, is appropriated in the CN, which makes the Provinces draft financial laws consistent with the federal laws.

The CN corresponds to the US Constitution regarding the impeachment of the President and the members of the constitutional bodies. Article I of the US Constitution impeaches the President, stating that "the Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present" (art. 3). The Senate controls the President for abusing power and directs the head of the State to obey the rule of law for the betterment of the US people.

Nepal adopts this impeachment culture through Article 101 of the CN, mentioning that "[o]ne-fourth of the total number of the then members of the House of Representatives may move a motion of impeachment against the President or Vice-President on the ground of serious violation of this Constitution and the Federal law. . ." The lower House of Nepal proceeds with the motion of impeachment to the

President and the Vice-President; however, the upper House becomes active for the work as per the US Constitution. The Chief Justice presides over the impeachment motion in the US, whereas the parliamentary committee presides over the impeachment of the President in Nepal. The President of Nepal is ceremonial, like the King of England, so the CN does not imagine the President committing any treason, bribery, or other high crimes and misdemeanors, unlike the US President, who is executive and head of the government.

The provision of impeachment is equally applicable to the constitutional officials, such as the Chief Justice of the Supreme Court, the Speaker of the House, the members of the Judicial Council, and the Public Service Commission. The motion of impeachment is charged on the ground of serious violation of the Constitution and federal laws of the country.

In addition to these, the additional foreign legal culture is appropriated in the CN. In line with the preamble of the US Constitution, which explains the background and objectives and declares it a property of the American people, the CN provides a "preamble" that outlines the background and objectives and declares the people as the source of the constitutional provisions. Both constitutions aim to eliminate social and cultural discrimination by ensuring the effective implementation of their constitutions and laws. Besides, the legislative branch of the US Constitution, as provided in Article I, grants Congress the power to promulgate bills after they are discussed in the House. Appropriating this US legal culture, the parliament of Nepal introduces legal drafts, discusses them, and presents them for voting under Article 110, which requires a majority of both Houses to pass the draft into law; Article 99 governs the process and requires the President's assent to bring it into effect.

The US parliament is bicameral: the 'House of Representatives'- lower House,

and the 'Senate'- the upper House. Nepal appropriates the institutional culture of keeping a bicameral parliament. The 'House of Representatives' is the lower House, and the National Assembly is the upper House. The lower House is composed of directly and proportionally elected representatives, and the upper House is composed of members elected by the electoral bodies of the people's representatives in the House of Representatives, provincial members of parliament, the mayor/chairman and deputy-mayor/vice-chairman of Municipality and Rural Municipality, and three members appointed by the President.

Article II of the US Constitution centralized executive power in the President, Vice President, and the cabinet and its departments, headed by cabinet secretaries, to implement laws enacted by Congress. The CN adopts the foreign practice of the ceremonial President as the head of state (art. 61) and the executive Prime Minister (art. 75), who forms the cabinet of ministers, which is congruent with the Indian Constitutional culture. Not only the legislative and executive branches, but also the judicial branch, are influenced by the foreign legal system.

Article III of the US Constitution discusses the "Judicial Branch," in which the US Supreme Court oversees the judicial system and decides cases fairly in accordance with the Constitution and laws. The circuit and district courts, which work under the Supreme Court, hear criminal and civil cases and enforce federal, state, and municipal laws under its supervision. The CN adopts the foreign legal culture of adjudication by the competent court, as Article 127 provides for three tiers of courts: the Supreme Court, the High Court, and the District Courts, in addition to Special Courts for specific cases.

Appropriation of legal culture should not be understood as copying the dominant practices as they are, but as a strategy of restructuring the source culture for

domestic purposes. Domestication of legal culture may insignificantly deviate from the original, as Merry points out, "Appropriation can be a resistant practice, even though it means adopting aspects of the dominant society since it restructures the position that the subordinate occupies within the hegemonic structure created by dominant societies" (602). In this sense, the appropriation of the US legal system is a resistance practice against a cultural compromise in Nepali laws and legal systems; however, Nepal restructures the hegemonic structure of the dominant society and shapes it in accordance with the country's ground reality.

The US Constitution establishes a federal system of government, and Article IV, section 1, requires every State to recognize the laws and records of other States. The citizens of one State can use all the privileges in other States without any discrimination as the Constitution writes, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States" (art. IV, sec. 2). The CN congruously appropriates this culture and ensures, "A State shall, in accordance with its State law, provide equal security, treatment and facility to residents of another State" (art. 233.3). Each State acknowledges the law of other States, intending to protect the US citizens equally.

Further, Article V of the US Constitution provides for 'amendments' and authorizes Congress to propose amendments to the Constitution as necessary. The CN domesticates this culture by providing that at least a two-thirds majority in both houses of the Federal Parliament can amend the constitutional provisions through due process (art. 274.8). Both constitutions are congruous in this regard and make the Constitution a dynamic, changeable product in line with the country's needs.

Article VI, clause two of the US Constitution, states that federal law prevails over the states if inconsistent, and states that the Constitution and federal laws prevail

over state and local laws, which must be consistent with the Constitution. Congruent to the US culture, the CN suggests the readers, "This Constitution is the fundamental law of Nepal. Any law inconsistent with this Constitution shall, to the extent of such inconsistency, be void" (art. 1). The culture of the supremacy of the Constitution and privileges of federal law is acknowledged in both countries and congruously appropriated in the CN.

The similarities and differences in the constitutional provisions between the US and Nepal demonstrate that Nepal has adopted the US legal culture in its laws and legal system. However, every Constitution of every country is shaped by the needs of the society and the obligation to adopt international laws. The US Constitution serves as a model for federalism, dividing powers between the federal government and the states, and for the separation of powers among the legislative, executive, and judicial branches, with their rights and duties. Structurally, the CN provides for a preamble, and textually it addresses the power of emergency, the impeachment of the President, and safeguards to the Constitution, all of which are consistent with the US Constitution. Further, the CN appropriates the foreign culture of accepting people as the sovereign power and the source of law, adult franchise and periodic elections, an independent, impartial, and competent judiciary, fundamental rights, and the accused's rights to modernize the Nepali legal system.

Nepal appropriates foreign legal culture as a need to meet the aspirations of the people and as a welfare State. The appropriation of legal culture from Western societies serves as a basis for the formulation of new laws in Nepal. Intending to change existing conditions and transform traditional society, a country adopts a foreign legal culture into its laws and legal systems. As Merry argues, "The concept of cultural appropriation provides a way of understanding social transformation that is

attentive to the agency, to competing cultural logics, and to the complexity of the social fields within which changes take place" (602). A society keeps changing over time, adding new challenges, and to address these new issues, legal appropriation is needed.

The practice of appropriating law and legal culture contributes to understanding the flexibility, consistency, and differences across societies. It provides a roadmap for adopting foreign legal culture or continuing indigenous practices. By appropriation, the indigenous dispute management culture, as embodied in the *Panchāyata*, *Badghara*, or *Cumlung*, is replaced by complex modern social structures. Replacing the traditional culture of dispute resolution in Nepal, a modern legal culture is introduced, with disputes managed by a competent court of law, as practiced in the international community. The *Kipat*, Nepal's 'communal land tenure system,' is replaced by the modern Land Reform Act of 1964, which modifies traditional land tenure systems and, as the Act suggests, prepares people.

Not only from an extra-linguistic point of view, but also linguistically, both constitutions are identical at the start of the preamble. The US Constitution reads, "We the people of the United States, in order to form a more perfect Union. . ." (pmb.). It determines to make a more perfect union uniting different States, while the CN notes, "We, the Sovereign People of Nepal, internalizing the people's sovereign right. . ." (pmb.). The culture of keeping people in the center and promulgating the Constitution and laws for domestic peace, prosperity, and the sovereignty of the country is congruously acknowledged.

The CN addresses national issues through the written Constitution, as foreign constitutions do; however, the problem of untouchability between the *Dalit* 'untouchable' and the Non-*Dalit* persists in Nepali society, a problem the CN aims to

resolve. The principles of social justice are appropriated from the US Constitution and the UDHR as the National Human Rights Commission of Nepal is aware, "Every government of the country is responsible to uphold not only the traditional, civil and political rights but also a variety of economic, social and cultural rights that the people of Nepal are entitled to under these national and international instruments" (Foreword v). The Commission suggests that Nepal should pursue national and international principles regarding civil, cultural, political, and economic rights while drafting domestic laws. The CN ensures civil, political, economic, and religious rights in the Constitution, adopting foreign legal culture in Nepal.

The CN adopts democratic legal culture from the foreign Constitution as it acknowledges the civil and political rights and liberties including the freedom to religion, adult franchise, right to property, right to communication, victim's rights, right to be trialed by an independent, impartial, and competent judiciary, right against exile, right to food and housing, right to women, children, and senior citizens, right of consumer, right to get the constitutional remedy for the violation of the fundamental rights and conducts periodic elections for the people's representatives.

Consistent with the foreign legal culture, the CN is promulgated by the Constitution Assembly, as practiced in America, India, and South Africa. The *Constitution of America* was promulgated by the Constitutional Convention assembled in Philadelphia in 1787. Both the CN and the US Constitutions are congruent in their principles of equality, tranquility, national integration, economic prosperity, and social justice, all aimed at meeting people's aspirations. The minimum age of people's representatives and voters is guaranteed in both constitutions. The minimum age to be a member of the House of Representatives is 25, and to be a senator, it is 30, according to the US Constitution (art. 1, secs. 2-3). Appropriating

this foreign legal culture, the minimum age of the House of Representatives in Nepal is 25, and it is 35 for the National Assembly (Constitution of Nepal, art. 87). The 26th amendment in the American Constitution lowered the voting age from 21 to 18 years, and the CN congruously domesticated the age of voters to complete 18 years.

The culture of filling vacancies in the Senate, as mentioned in the US Constitution, is also appropriate in the CN. However, the number of representatives varies depending on a country's demographics and geography. The US Constitution mentions, "When vacancies in the Representation from any State occur, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies" (art. I, sec. 2). This legal culture is appropriated in the CN which mentions, "Any vacancy of seat in the National Assembly shall be filled for the remainder of the term of office in the same manner of election or nomination as in which the seat of the vacating member was filled" (art. 86.5). The CN domesticates the US legal culture of equal representation in the upper House. Every US State elects two representatives, which is appropriate in Nepal, where eight members from each province are elected regardless of population density.

As mentioned in the CN, the House of Representatives elects a Speaker and a Deputy Speaker from among its members within fifteen days of commencement of the first meeting (art. 91). This legal culture is consistent with the US Constitution, as it schedules the time for the commencement of the House after election and clears the uncertainty in law. As per the US Constitution, the session of the House of Representatives commences on 3rd January after the elected members represent the House (art. I, sec. 2). On the other hand, the Senators' tenure begins immediately after they assemble in consequence of the first election, dividing into three classes equally, and ends every two years.

As per the US Constitution, the tenure of the Senators of the First Class terminates at the expiration of the second year, of the Second Class at the expiration of the fourth year, and the Third Class at the expiration of the sixth year so that one-third may be chosen every second year (art. I, sec. 3). This legal culture is congruously domesticated in Nepal with the election and nomination of the members of the National Assembly for six years and the tenure of one-third members expires in every two years and new members represent. The CN mentions, "Provided that after the commencement of this Constitution, arrangements shall be made by drawing a lottery to retire one-third of the members on the expiry of two years, another one-third on the expiry of four years, and the final one-third on the expiry of six years" (art. 86.3). Furthermore, the meeting in the US Congress shall be arranged at least once every year (art. I, sec. 4), whereas it is domesticated with the provision of at least two seasons in a year. According to the CN, the interval between two consecutive sessions shall not be more than six months (art. 93.1).

The US Constitution authorizes the House to frame rules for conducting parliamentary affairs systematically, to penalize those who disobey the rules, and to regulate the business of the Session. As it mentions, "Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member" (art. I, sec. 5), which is appropriated in the CN as it rules, "Each House of Federal Parliament shall frame rules to conduct its business, maintain order during its meetings, and regulate the constitution, functions, and procedures of the committees and procedures of the House or its committees" (art. 104.1). The Constitutions of both countries authorize the Houses for framing rules themselves to conduct their parliamentary sessions under discipline.

Besides, the US Constitution ensures the prerogatives of Senators and

members of the House of Representatives, except when they are involved in criminal activities. As it writes, "They shall in all Cases, except treason, felony, and breach of the peace, are privileged from arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they are not questioned in any other place" (art. I, sec.6). This culture is congruously appropriated in the CN as it states, "There shall be full freedom of speech in both Parliaments and no member shall be arrested, detained, or prosecuted in any court for anything said or any vote cast in the House. . . nothing in this clause shall be deemed to prevent the arrest under any law of any member on a criminal charge" (art. 103.1.6). The Constitution safeguards that nobody can challenge in the court against the parliamentarians for their speech and cast vote in the House. Neither shall they be arrested while going to or returning from the parliamentary sessions.

The lower House is composed of a directly elected body. Hence, the Constitution makes the lower House more accountable by requiring it to present financial Bills only there for active and constructive discussion. As the US Constitution forwards the money-raising Revenue Bills in the House of Representatives (art. I, sec. 7), pursuant to this foreign culture of making the lower House more accountable for presenting the financial drafts, the CN authorizes that the revenue Bills have to be tabulated only in the House of Representatives (art. 110.1). This provisions suggest that the lower House is accountable for framing Bills on revenue and taxation need for the country.

Furthermore, the due process for passing bills in the US Constitution is that every bill must pass the House of Representatives and the Senate before it becomes law with the US President's seal. This culture is congruously domesticated in the CN,

as a Bill passed by one House of the Federal Parliament is immediately sent to the other House, and after that House passes the bill. It is sent to the President for the certification and authentication of the Bill (art. 111.1). A drafted Bill changes into a law after constructive discussion in the parliament and passes by the vote of a majority composed in the Houses.

US Constitution prohibits taking awards, titles, honors, and decoration without the consent of the Congress as it transcribes, "No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accepts any Present, Emolument, Office, or Title of any kind, whatever, from any King, Prince, or foreign State" (art. I, sec. 8). Pursuant to this culture, the CN forbids to accept foreign rewards and titles the consent of the Government of Nepal is mandatory. As it is written, "No citizen of Nepal may, without the approval of the Government of Nepal, accept any title, honor, or decoration from any foreign government" (art. 272.2). This provision intends to safeguard the citizens from undue foreign influence and to monitor the receipt of such titles and awards; however, it can be taken by the approval of the federal government. In addition to appropriating the US legislative culture, whether congruously or incongruously, Nepal also domesticates the executive provisions of the US Constitution.

The Executive Branch enforces the law and maintains law and order for the peace and prosperity of the people, and quickly decides in times of emergency in the nation's best interests. Therefore, the Constitution authorizes the Executive to govern the country in accordance with the law and outlines its principal functions. The Constitution obliges the executive to protect the Constitution and to implement the decisions of the Legislative Branch. The executive is provided for in the Constitution

to exercise state power. The US Constitution vests executive power in the President as the head of state and Commander-in-Chief of the Army, who takes action to protect the interests of the American people and defend the nation in a crisis. The CN adopts this culture and exercises executive power through the Prime Minister and his/her cabinet of ministers (art. 175.1). In the US, the President is the chief executive who is directly elected; however, the culture of electing the executive is indirect in the CN, as the Prime Minister is elected from the members of the House of Representatives, to whom people directly elect. Out of two hundred seventy-five seats, one hundred sixty-five members are elected through the first-past-the-post electoral system. One hundred and ten members are elected through the proportional electoral system, "where voters vote for political parties, with the whole country being considered as a single election constituency" (art. 84.b).

Under the doctrine of the separation of powers, the executive enforces the laws enacted by the legislature, and the judiciary passes judgment when the executive acts in violation of the Constitution and the laws. The laws direct the government and the constitutional bodies to function accordingly. It is one of the advantages of written laws, as Thomas O. Sargentich argues: "The rule of law vision insists that laws announced in advance must guide and control the use of governmental power" (451). The written law defines the ruler's rights, duties, and functions for the welfare of the state, and makes the Executive accountable to the people. Law confers rights on people and imposes duties on them. It opens the door for people to seek legal remedies if statutory and constitutional provisions are challenged. The constitutional bodies perform their duties as provided by the Constitution and the laws, and they activate the executive.

Obliterating the traditional governance system of Kingship, the CN adopted an

elected President as the nation's head and pursued a modern legal culture. Under the US Constitution, the President is directly elected for a term of four years (art. II, sec. 1), whereas the President of Nepal is elected by the parliament and serves for five years. Article 63 of the CN mentions, "The term of office of the President shall be for five years from the date on which he or she is so elected." The foreign legal culture of an elected President as head of state is adopted in Nepal, replacing the Hindu monarch. The US President holds the Office of the President for no more than two terms as the 22nd Amendment of the Constitution mandates. The CN adopts the culture of the two-term constitutional provision of the President congruously and prohibits, "A person who has already been elected President for two terms, shall not be eligible to be a Presidential candidate for the Presidential election thereafter" (art. 64.2). Next, the minimum age to be the President in the USA is thirty-five years (art. II, sec. 1), whereas it is forty-five years in Nepal (art. 64.1). The US President must have the natural born citizen and must reside at least fourteen years within the United States (art. II, sec. 1). The CN does not specify it, but mentions the qualification of the President in Article 64, which mentions the qualification equal to be a member of the Federal Parliament. Neither the Constitution delimits the upper age of the President, but it delimits the terms of resuming Office. Electing the President from a political person is common in both constitutions.

The US Constitution removes the President from office through impeachment for abusing power, engaging in bribery, or committing other crimes. As the Constitution authorizes the Congress that "[t]he President shall be removed from Office on impeachment for and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors abusing power" (art. II, sec. 4). This foreign culture of removing the President the Office on impeachment is domesticated congruously in the CN

which rules, "If an impeachment motion against the President is passed under Article 101 on the violation of the Constitution and Federal law by abusing power" (arts. 65.b, 101.1). However, Nepal's Constitution is soft on the conviction of the President for bribery or abuse of power, which is grounds for removal from office. The culture of impeachment vested in the parliament is congruous with the Constitution, and it proceeds in accordance with the due process of the Constitution and law.

The US Constitution authorizes the Vice-president to hold the chair of an acting President in case of the removal of the President from Office or of his death or resignation (art. II, sec.5) and this culture is congruously appropriated in the CN which mentions that the Vice-president shall perform the duties of the President. . . when the President ceases to hold Office (art. 67.2). This legal culture is adopted to fill the constitutional vacuum when the President fails to resume the Office. In addition to the legislative and executive, the US judicial culture is also domesticated in the CN.

The US Constitution ensures the efficiency of the judicial system by providing fair justice and protects the rights, liberties, and equality of the people. It guarantees equality among people and provides equal opportunities and justice. The Judiciary Branch reviews unconstitutional decisions of the Executive Branch and directs the Executive Branch to correct them, and also rules on the Legislative Branch to draft public-interest laws within the parameters of the constitutional provisions. An independent study of the Constitutional Rights Foundation finds that, "[t]he judicial branch has the power to make sure that laws passed by Congress do not violate the Constitution" (4). The state bodies genuinely exercise the powers as mentioned in the Constitution and function spontaneously and independently by cooperating. As Simeon E. Baldwin recalls, the US Attorney General's statement that the Supreme

Court of the United States has the power to decide conclusively on the constitutionality of US laws and bind the hands of state authorities, rendering their actions illogical and monstrous (319). Besides the unconstitutional decisions of the Executive and Legislative Branches, the US Supreme Court does not interfere with the daily business of the independent organs of the country that are consistent with the Constitution. The judiciary directs the executive and legislative organs, keeping the welfare and best interests of the American people in mind.

Nepal adapts American judicial culture by establishing an independent, impartial, and competent court of law. Constitutionally, the Supreme Court of Nepal has the power to hear appeals against unconstitutional government decisions and violations of human rights laws. By the use of the extraordinary jurisdiction, the Supreme Court voids the laws that are inconsistent with the Constitution, with *ab initio* (from the beginning) or from the date of decision (art. 133), which is congruous with the US Supreme Court's power of nullifying the unconstitutional laws. The foreign legal culture of an independent judiciary is domesticated in the CN to deliver justice independently and to foster people's belief in the judiciary.

In the US legal system, the cases of constitutional importance are analyzed and interpreted by the Constitutional Court. Appropriating this culture, the CN has established the Constitution Bench in the Supreme Court (art. 137) with jurisdiction to hear disputes regarding elections, the rights of the Federal, State, and Local Levels in the use of natural resources, and the review of the constitutionality of existing laws. Domesticating this tradition, the CN prevails over constitutional law and seeks to resolve disputes among the three tiers of governments in Nepal. The US Constitution authorizes courts to exercise judicial power and provides for the remuneration of the justices for their services. Bestowing the judicial power in the Supreme Court and

other inferior courts, Article III of the US Constitution authorizes:

The judicial power of the United States shall be vested in one Supreme Court and such inferior Courts as the Congress may ordain and establish from time to time. The judges, both of the supreme and inferior Courts, shall hold their offices during good behavior and shall, at stated times, receive compensation for their services, which shall not be diminished during their continuance in Office. (sec. 1)

The US culture of vesting judicial power in the Supreme Court as a leading institution and of monitoring the justice of the lower courts is domesticated in the CN to ensure justice and systematize Nepal's judicial system. Pursuant to the US legal culture, the CN writes, "Powers relating to justice in Nepal shall be exercised by courts and other judicial institutions by the provisions of this Constitution, other laws, and recognized principles of justice" (art. 126.1). Further, the CN assures the remuneration of the justice in exchange of their services with the provision that, "the remuneration and other conditions of service of the Chief Justice and other judges of the Supreme Court shall not be altered to their disadvantage" (art. 130.4). Nepal adopts the foreign legal culture of appointing judges with the terms and conditions of their services, and provides remuneration and facilities that shall not be unfavorable to the existing. However, the jurisdiction of the US Supreme Court is broader than that of Nepal. Article III of the US Constitution permits:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls. . . to Controversies between two or more States; - between a State and Citizens of another State;- between Citizens of

different States, - between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof;- and foreign States, Citizens or Subjects. . . . (sec. 2)

The US Supreme Court gains wider jurisdiction over cases involving hearings on disputes regarding the appointment of an ambassador, citizens' claims to land registered in different States, and treaties made with the US State. It accepts appeals of the citizens of one State against another State. The court prevails to have a hearing on internal and external domestic affairs concerning America. The disputes between the States and the State, the citizens of foreign States, and the decisions that affect the appointments of the ambassadors, ministers, and consuls are subject to the jurisdiction of the Court.

The ordinary and extra-ordinary jurisdictional culture of the US Supreme Court is congruously domesticated in the CN as it mentions, "The Supreme Court shall have jurisdiction to hear original and appellate cases, review its own judgments or interim orders, examine decisions referred for confirmation, review cases, or to hear petitions" (art. 33.4). The Supreme Court of Nepal gains the prerogative power of hearing the appeals against the decisions of the High Courts and extra-ordinary jurisdiction of the writ petitions. It reviews its own decisions if any substantial differences occur in the past decision, and has the authority to amend the judgment based on the new findings. Besides, the Supreme Court issues an interim order in the name of the opponent for such cases that may affect the implementation of the final judgment. As discussed before, the culture of the Constitutional Bench to hear constitutional issues is domesticated in the CN. On the advantages of the appropriation of foreign legal culture regarding the Constitutional Bench in Nepal as a federal country, Radheshyam Adhikari critiques:

The Constitutional Bench also plays an important role in making the Constitution a success. The Constitution will be a living document only if the Bench wins people's trust and maintains its neutrality. All three tiers of government must have faith in the Bench. The Constitution and federalism will last long only when disputes between and among the three levels are settled fairly. (22)

A Constitutional Bench, if not possible to start the Constitutional Court, is necessary in Nepal to settle disputes regarding the use of natural resources and the concurrent rights of the three tiers of government. Hence, the CN adopts the foreign legal culture into Nepali laws and legal systems, primarily drawing on the US Constitution to address social, economic, and cultural issues and to promote peace, prosperity, equality, and the rule of law in Nepal as a federal democratic republic.

Appropriation of Modern Legal Culture in Legislation

This section discusses the appropriation of modern legal culture in the NCA, NPA, Evidence Act 1974, the Act Relating to Children 2018, and State Case Act 1992, Domestic Violence (Crime and Punishment) Act 2006, Company Act 2007 by comparing and contrasting with the English Marriage Act, Civil Code of France, German Criminal Code, ICR, ICCPR, ICC, and CEDAW to examine the cultural transfer in Nepali laws and legal systems.

The NCA domesticates the tort legal culture, focusing on compensation for civil wrongs. Tort law awakens people to conduct their business carefully, which may have the opposite effect in practice, either the Commission of a duty recklessly or the omission of a duty as the law intends, causing loss of property or affecting the victim who needs to be compensated (sec. 672). By the error, negligence, and carelessness of one party, the other party suffers a loss, and that is compensated by enforcing the tort

law. Not only this, but Nepal has also appropriated foreign legal culture in the private international law, such as the solemnization of marriage abroad, pursuing the law of the land of the country where the marriage is concluded (sec. 700). Likewise, the decision of the court is only acknowledged for divorce cases (sec. 706). The business and monetary transactions of the parties living abroad, if concluded by a written deed, are enforceable by law as if they were entered into within Nepal (sec. 710).

Section 77 of the NCA recognizes a marriage between a Nepali and a foreigner, but it must be under the law of the concerned country and consistent with Nepali laws, which is a foreign legal culture adopted in Nepal. The Nepali nationality has to apply to the District Court of Nepal where the applicant resides for at least 15 days before the application, with the foreigner, or apply at the Nepali Embassy/Consulate if living abroad, and can conclude the proposed marriage. The applicant must provide details in the application, including the name, caste, age, gender, address, occupation, parents' and grandparents' names, the name and gender of the prospective spouse (including marital status), and the names of the two witnesses. Nepal adopts the legal culture of marriage by registration from the Marriage Act of 1949 of England, as mentioned in section 45, and the French Civil Code ensures this in sections 63 to 76.

The French Civil Code mentions, "Before the celebration of a marriage, an officer of civil status shall give public notice of it by way of a bill stuck up on the door of the town hall. That notice shall state the first names, surnames, occupations, domiciles, and residences of the future spouses, as well as the place where the marriage is to be celebrated" (sec. 63). The formal public notice given for any impediment exists to the proposed marriage. The venue of marriage is fixed by law so it further obliges, "A marriage must be celebrated in the commune where one of the

spouses has his or her domicile or residence established by a continuous habitation of at least one month at the date of the public notice provided for by law" (sec. 74).

Regarding the provision of domicile, the NCA domesticates it but adjusts into two weeks as it states that "either the man or the woman or both must have resided since at least fifteen days ago in the concerned district if the application has to be filed in the District Court and, if the application is to be filed in the embassy or consulate general, in the country in which such an embassy or a consulate general is situated" (sec. 77.2). In Nepal, the marriage must be concluded in the District Court before a judge declaring one another as husband and wife. The court registrar issues the marriage certificate to the couple, listing the spouses' names and their relationship as husband and wife. As a welfare state, Nepal appropriates this legal provision, acknowledging the marriage of a native with a foreigner as their personal choice. Nepal's private international law governs this provision and provides relief to those who stay abroad for study and work and plan to settle there.

In addition to these statutory laws and the legal system, legal culture comprises ideas related to law and legal behavior, including people's attitudes toward judgment, the effects of corruption in society, and the abuse of power and its impact on people. In other words, legal culture is the perception, reception, and reaction to law in a society. Nepal appropriates foreign culture that consists of legal ideas, values, professions, draft laws, legal institutions such as courts and prison systems, litigation processes and practices, victims' compensation, and the accused's rights. Appropriation is a need to address emerging issues in modern society. However, Nepal appropriates foreign legal traditions as a cultural compromise.

The adoption of foreign legal culture influences the Nepali legal system, aligning it with universal practices. The adoption of corporate laws for modern

banking and finance systems makes native laws congruent with foreign practices. For instance, Nepal appropriates company, civil aviation, contract and tort, environment, and cyber laws as a modern legal culture to update the native legal system.

Appropriating law is a common practice worldwide, dating back to the beginning of nation-states. It is because of the similar goals and achievements, and the corresponding nature of human societies. Nepal does not shun this tradition, so, in addition to the appropriation of statutory laws to adopt modern legal culture, the legal notions and terminology are also borrowed into the Nepali legal system. Nepali laws borrow and naturalize the terms bank, voucher, company, postmortem, mayor, royalty, unit trust, firm, notary public, bear, and bonded warehouse to fill gaps in the legal lexicon.

Legal culture emerges and develops alongside societal changes, legitimizing common social customs and traditions that people accept as their accepted behaviors. Simultaneously, they adopt foreign legal culture to develop and manage the existing society. The scholar's works also contribute to the development of legal culture. The state can assign scholars to search and codify social customs to authorize them as law in the national territory. When we trace the history of Nepali legal culture, the research finds that Nepal legalizes people's social and religious customs as law and also appropriates from foreign legal traditions. For instance, the *Mulukī Aina*, as Nepal's first country code, codifies and legalizes the indigenous social and religious practices of Hindu and Buddhist people. When Nepal became a republic under the CN, it domesticated foreign legal culture and codified it in the NCA and NPA. For instance, the laws related to natural and legal persons, the international provisions in the family, property, contract laws, and the fundamental rights of people, including the accused.

Besides, the NPA appropriates the general principle of the criminal justice system in the country. The principle that the lawful act or the act excused by law is no offense is ensured in the NAP with the provision that "no act required by law to be done or excused by law shall be considered to be an offense" (sec. 6). The code declares anti-social works as an offense and liable for punishment. The culture of "no offense without law and punishment as per the law" (sec. 7) is domesticated as the core principle of the criminal justice system in the code. It guarantees that no person shall be liable to punishment for doing an act not punishable by law of the land, nor shall a person be subjected to punishment which is heavier than the one prescribed by law in force when the offense was committed. Section 8 appropriates the principle that an act done by mistake of fact does not become an offence, and further states, "No act done by a person who is, or who by reason of a mistake of fact, in good faith believes that he or she is bound by law to do that act or that such act is excused by law shall be considered to be an offense. Provided that no act done in ignorance of the law shall be excused." The universal culture of the criminal justice system is adopted in the NPA to ensure justice through a fair trial, accepting facts and principles.

The other domesticated principles of criminal justice in the NPA are the principle of no double jeopardy (sec. 9), i.e., no punishment again for the same offense. It avoids the practice of repeatedly punishing a man for the same crime, as was implemented in the past Nepali criminal justice system. No deprivation of fair trial (sec. 10) fosters the culture of recognizing the accused's right to be tried by an impartial court of law. It adopts the principle of "no compulsion to testify against oneself" (sec. 11) and guarantees the accused's right to privacy. The presumption of innocence until proven guilty (Sec. 12) is domesticated as a system to respect the accused's rights, consistent with the internal laws. The act of a child not being an

offense (Sec. 13) is domesticated based on the notion that, generally, a child's action does not entail malicious intent, though it may prove delinquent. The act of a person of unsound mind not to be offended (sec. 14) is domesticated, accepting the principle that the actor with an unsound mind is unable to calculate the consequences of the action.

The modern legal culture of an act done by consent not being an offense (sec. 15) is domesticated to save the act of good faith that may bring unintended results to a dependent. The act done for the benefit by consent not to be an offense mentioned in section 16, and the act done for the benefit by consent of a guardian not to be an offense of section 17 are domesticated based on the principles that an act for the benefit of a minor without any malicious intention may prove otherwise. The NPA domesticates the principle that causing harm by a communication of good faith is not an offense (sec. 21) to preserve a pious intention of a communication, but has the reverse effect. An act compelled by fear, threat not to be an offense (sec. 22) is appropriated to ensure the right to freedom for the personal and private life and oriented against coercion. It protects dependents from the undue influence of anyone in power or dominance.

The principle of an act done in good faith to prevent other harm, injury not to be offense (sec. 23) is appropriated to save people from their work of good faith, deems against it. Next, an act done for private defense not considered to be an offense (sec. 24) is appropriated to save one's own life, such as in the case of heinous crimes, such as rape, kidnapping, and attempt to murder. The restriction on the exercise of the right of private defense (sec. 25) is domesticated to protect the act of security personnel discharging their duties as per the law. However, someone obstructs them and seeks exemption from the punishment, claiming the right of private defense is

controlled. No right to cause death (sec. 26) is domesticated to restrict the acts that cause the death of others. An act causing slight harm is not to be an offense (sec. 27) as it may happen in the course of work, but insignificant harm caused to others is not punishable. The person liable to punishment for an offense committed by a child (sec. 28) is adopted, accepting the principle of the guardian's responsibility for a child's work.

Criminal intention not to be examined in a strict liability offense (sec. 29) is appropriate for the grievous crimes, such as murder, rape, and arson, in which the intention of the offender is not examined, but fully deserves punishment for the offense. The criminal liability for an offense committed by a body corporate, to be vested in one who commits or causes the Commission of the act (sec. 30), is domesticated to make the owner responsible for the corporation's offense. The culture of punishing all members for an offense committed by a group (sec. 31) is adopted to make them liable for a gang offense. The victim of a crime is entitled to obtain information on the proceedings of the case and to compensation (sec. 32), consistent with the ICC, which ensures the victim's right to obtain information on the legal proceedings. Most of the adopted principles are consistent with the ICC, which modernizes Nepal's criminal justice system and meets the standards set by international instruments.

The NPA penalizes offenses against a person, the State, public tranquility, conspiracy, attempt, and abetment. The law assesses the gravity of the crime, the effect on the victim, and mitigating factors before punishing the offender. The NPA domesticates foreign legal culture and criminalizes wrongful conduct by individuals towards society and the authority. It criminalizes contempt of the Court and of the government's authority for the sake of peace, justice, and a secure public interest in

health, safety, and morality. The penal code adopts foreign legal culture in different chapters, such as it adopts the punishment for the crimes relating to arms and ammunition (ch. 6), explosive weapons (ch. 7), crime against national and public heritages (ch. 8), offence against religion (ch. 9), discrimination, and other degrading treatment to human beings (ch. 10), marriage (ch. 11), on human body (ch.12), protection of pregnancy (ch. 13), hurt or grievous hurt (ch. 14), unlawful detention (ch. 15), enforced disappearance (ch. 16), kidnapping or taking of hostages (ch. 17), and sexual offenses (ch. 18). The other provisions are the punishment for offenses related to medical treatment (ch. 19), theft and robbery (ch. 20), cheating, criminal breach of trust, and extortion (ch. 21) are adopted in the NPA. In addition, the law on public property and private life is designed to protect people's lives and property, as a fundamental duty of a nation. The provision of sentencing in the offenses of fake currency (ch. 22), stamps (ch. 23), loss in weights and measures (ch. 24), dealing with fraudulent documents (ch. 25), criminal trespass and mischief (ch. 26), hunting animals and birds (ch. 27), and violating individual privacy and prestige in part 3 of the NPA, borrowing the law of foreign countries, and adding native experiences.

The NPA adopts these legal provisions to align with local penal codes and the global criminal justice system. Maintaining consistency with international law implies that Nepal accepts transnational legal culture within its domestic legal system to reform traditional practices and acknowledge new challenges. By dualism, Nepal domesticates international law and makes its domestic law consistent with it. Even non-ratified transnational laws are treated as persuasive law in Nepal. On the influence of the global legal culture on the municipal laws, Terence C. Halliday and Pavel Osinsky affirm, "Some transnational norms are themselves binding, but most are not and only obtain legal force when implemented by states. Nonbinding norms,

however, often carry powerful normative and persuasive value" (449). Global legal culture permeates to the point that countries cannot ignore it, but must reshape their native practices in line with international law, preserving the national interest. In Nepal, the NCA and NPA adopt international legal principles and incorporate them into the native laws. Despite this, Nepal's family and property laws continue indigenous practices and incorporate provisions from foreign laws as a cultural compromise.

Nepal appropriates foreign traditions to update its native legal system and to reform practices that no longer exist in modern society. The globalization of law influences local legal culture to adopt international laws, such as those governing open markets, cross-border terrorism, and environmental conservation, leading the country to draft local laws by reviewing international legal provisions.

The appropriation of legal culture in the modern world is not a new practice, but continues from the past. Roman law was adopted in Europe in the sixth century and served as a foundation for the Common Law system in England. Again, the Common Law system was appropriated in the British colonies for the development of their country's laws. The appropriation of legal culture is a common practice worldwide for regulating and systematizing the global community. Nepal appropriates foreign legal culture from Eastern and Western jurisprudence and reshapes its native laws and legal systems. International organizations, such as the UN, WTO, and ICC, have contributed significantly to the transfer of foreign legal culture into Nepali laws and legal systems and to reshaping local practices in line with the needs of modern society.

After the emergence of the ILO, the WTO, and the ICC, the international community felt the need to provide equal pay for equal work for men and women,

prohibit minors from being employed in certain industries, and acknowledge the inherent rights of indigenous peoples regarding their concerns. The international organization under the UN's supervision began drafting corporate, business, marine, wildlife conservation, and environmental laws for the international community, thereby gaining extraterritorial jurisdiction. The international laws against genocide, terrorism, and environmental degradation are acknowledged in the native laws for the punishment of the offenders. Pointing to the needs of adopting international law and its role in shaping the native laws, Laura A. Foster argues, "Legal, regulatory orders have increasingly been transnational as the legal ideas travel and are adopted, discarded, and refigured" (79). The mother law system of the dominant societies spreads worldwide and influences local systems. Some international provisions are modified to function effectively in the local community, while others that are unsuitable are rejected. Progressive laws are universally adopted to advance human society, promote peace, and foster international brotherhood.

The NPA applies the principle to assess the offender's malicious intent, thereby intensifying the gravity of the crime. The major factors for deciding the severity of the punishment are the *actus reus* (physical involvement in the crime) and *mens rea* (the mental State of an offender for the offense). In the NPA, if someone commits a crime of abetment and compels someone to go to suicide, the offender is liable to a sentence of imprisonment for a term not exceeding five years and a fine not exceeding fifty thousand rupees (sec. 185). The offender's mental state is measured, though it lacks the abettor's physical involvement. This provision of abetment is consistent with the German Criminal Code, 1998 on "Abetting", as it reads, "Any person who intentionally induces another to intentionally commit an unlawful act (abettor) shall be liable to be sentenced as if he were a principal" (sec. 26). The

inducer if proved guilty shall be punished as the principal offender for the inducement of the crime.

When legal culture passes from one jurisdiction to another, it encounters local customs and mixes with them; therefore, the legal concepts denoting identical institutions sometimes mean different things in the local language. Legal culture functions as a color mix-up that produces a new color not completely identical to the previous ones. While traveling, a dominant legal culture encounters a new culture, modifies itself to adjust to the host country, and seeks to change the traditional notions of the locality. Speaking on the transformation of the domesticated laws, John W. Cairns acknowledges, "Laws are usually borrowed from elsewhere so that laws often operate in societies and in places very different from those in which they had initially developed" (640). When Nepal domesticates the CRC, some specific provisions are added to ensure the rights and best interests of the Nepali children under the Act Relating to Children, 2018. The law changes the former provision that a person who is considered legally mature at sixteen years is modified to eighteen pursuant to the CRC, to make a child mature by age.

Chapter four of the NCA rules to have a good relationship and responsibilities among the family members is the domestication of the CRC which reads, "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents" (art. 7). Being consistent with this provision of child's identity by naming and registering the birth in the Local Registrar's Office, the NCA states, "If a son or daughter is born to a couple, the mother or father shall file an application, within three months of the birth of such a son or a daughter, before the authority specified by the Government of Nepal by a notification in the Nepal

Gazette, for the birth registration" (sec. 113). The inconsistent provisions of previous laws on children are amended to comply with the CRC, and Nepal appropriates the culture of birth registration of a child with recognizing sex, and also mentions the names of the parents in the certificate and the record book maintained in the office.

Nepal adopts the adversarial method for criminal investigation under the common law system; however, the examination of the witness continues the indigenous Nepali culture, as the witness gives a statement before the Bench, taking an oath to God. According to the NPA, the police investigate the case by arresting the accused, placing them in police custody, and coordinating with the government attorney. The police must present the accused before the judicial officer within twenty-four hours (sec. 14.1) and have to complete the investigation within twenty-five days (sec. 14.6). When the investigation is completed, the government attorney prosecutes the case in the Court (sec. 32). Mentioning on arrest, investigation, and prosecution of a criminal offense, the National Criminal (Procedure) Code 2017 writes:

Upon receipt of any information that an offense. . . is likely to be committed, the concerned police office shall, as soon as possible, designate a police employee whose rank is at least assistant sub-inspector as the investigating authority and give information thereof to the concerned government attorney office and the higher police office; and the investigating authority so designated shall conduct an investigation into such offense. (sec. 8)

This legal culture of a police officer arresting and investigating a crime is based on a foreign legal tradition. Conferring authority on the police officer to arrest the suspect and investigate, with coordination with the government attorney, is an internationally

recognized practice that Nepal has adopted and implemented in the criminal justice system.

The modern legal culture of arresting, interrogating, and investigating crime in accordance with the law of the land is a foreign legal practice that the Nepali legal system has adopted. The Criminal Law Act 1977 of England and Wales authorizes police officers to arrest and investigate an accused, detaining him/her at a police station or other place for a period by issuing a warrant notice. It ensures:

Where any person has been arrested and is being held in custody in a police station or other premises, he shall be entitled to have intimation of his arrest and of the place where he is being held sent to one person reasonably named by him, without delay or, where some delay is necessary in the interest of the investigation or prevention of crime or the apprehension of offenders, with no more delay than is so necessary. (sec. 62)

Presenting suspects before the judicial body is adopted to respect the rights of the accused. If unavoidable circumstances cause a delay in presenting the suspect before the justice administration officer, it must be justified as necessary for the investigation or prevention of an additional crime, or to avoid something unpleasant happening in the future. The arrest must not be arbitrary and must be explained in a written notice, specifying which law the suspect violated through their work.

For the prevention of domestic violence, the Domestic Violence (Crime and Punishment) Act, 2008 of Nepal adopts the legal consciousness that foreigners developed and shapes the Nepali law against domestic violence. It defines the offenses and encodes, "Domestic violence is any form of physical, mental, sexual, and economic abuse perpetrated by any person to the other person with whom he has a family relationship. The definition also covers acts of reprimand or emotional

abuse"(sec. 2. a). Domestic violence occurs when family members abuse the power of their position by dominating and hurting children, the elderly, and women, and it deserves punishment by law. Nepal acknowledges domestic violence as an offense in the NPA and attempts to prevent it by enforcing the laws with a system of penalties for the perpetrator.

To prevent domestic violence, Japan has enacted the Act on the Prevention of Spousal Violence and the Protection of Victims 2001, which prohibits and punishes domestic violence between spouses. The term "spousal violence" is defined as the bodily harm caused by one spouse (illegal physical attacks that threaten the other spouse's life or person) or words and deeds by one spouse that cause the same level of psychological or physical harm to the other spouse (sec. 1.1). Domestic violence spreads everywhere, from rural to urban societies, and needs prevention by law. The NPA encodes domestic violence as an offense caused by any family member against others in another family. The law against domestic violence safeguards children, women, and senior citizens who are vulnerable and lie in the zone of more likely to be victimized in a family. LT transfers this foreign legal culture against domestic violence to the Nepali legal system, and motivates the enactment of laws to prevent such types of violence in a household.

Legislative practice shows that a legal idea originating in one society has spread to others to address corresponding social issues, where translation plays a key role in shaping the concept. Appreciating Merry's concept of legal appropriation, Forster reveals that translation involves three dimensions of law's appropriation. First, legal ideas are communicated and framed through local cultural narratives and conceptions. Second, they are adapted to local structural conditions. Third, they may be expanded to address a different group of legal subjects (97). Translation grounds

for framing, adapting, and developing ideas in a society. For instance, the NPA is framed as consistent with the principles of the ICC, as it adopts the principles of the criminal justice system and expands the legal institutions of the court, police station, detention house, and prison to control crimes against persons and the state. Furthermore, the concept of child rights is framed, adopted, and expanded in Nepal through the formulation of laws relating to children.

Scholars agree that the conceptual similarities in jurisprudence and among legal professionals are essential and function as an inseparable organ of legal development. Adaptation of legal culture occurs when the law of one country is applied in another, or when two legal systems communicate with one another. The process of rearranging law from one society to another is a legal appropriation that begins with law formation and continues through translation. The Nepali laws of marriage, adoption, partition-share, inheritance, and women's shared property are framed within the Hindu and Buddhist structural cultures. Cultural appropriation in law refers to the adoption of novel legal principles and practices to reform native laws within the comparative legal system. Speaking on the appropriation of law in Western societies, Watson elaborates, "It is an accepted fact that most of the private law of all the modern legal systems of the Western world (and also of some non-Western countries), apart from the Scandinavian, derives more or less directly from either Roman Civil Law or English Common Law" (*Legal Transplants* 22). Private law generally concerns individuals' cases, such as relationships, contracts, property, and the rights and duties of citizens, matters that people deal with in all countries, which encourages the domestication of private law at a higher level.

The domestication method of translation transfers the SL culture to the TL for cultural communication. Tracing the practice of cultural transmission for legal

development from the past to present, Watson claims, "Legal transplants- the moving of a rule or legal system from one country to another or from one person to another- have been common since the earliest recorded history" (21). He compares legal transplants or appropriation with legal borrowing and believes in performing it at the conceptual level. He implies borrowing in the sense of adaptation of "rules - not just statutory rules - institutions, legal concepts, and structures that are borrowed, not the 'spirit' of a legal system. Rules, institutions, concepts, and structures might almost be termed tangibles, can easily be reduced to writing, and are accessible" ("Legal Transplants" 3). Written laws are tangible, easy to understand, and transferable to new places for the TL readers.

The tangible appropriation is the legal institutions and professions, while the intangible is the legal spirit and principle. On the importance of borrowing for legal development in Western countries, Watson articulates, "In the Western world, borrowing (with adaptation) has been the usual way of legal development" (*Legal Transplants* 7). Legal borrowing imports foreign laws, institutions, vocabularies, drafting style, and litigation culture, and reforms the native legal system. For instance, Nepal borrows corporate law from foreign legal cultures and divides companies into private and public based on the number of promoters, and limits authorized and paid capital. According to the Companies Act, 2006, a public company requires a minimum of seven promoters (sec. 9.2) with ten million paid capital (sec. 11). The private company can be set up with a single promoter but limits to fifty members (sec. 9.1). Even a private company can be changed into a public company pursuing certain legal provisions as mentioned in section 13 and 14. A company must be regulated by its articles of association and its memorandum, both of which must be consistent with the Companies Act. Hence, borrowing is a form of legal development enabled by LT.

As a usual process, borrowing of law started in the past, exists in the present, and will continue in the future. If we observe, the concept of *poena* 'punishment' or penalty comes from the Latin word, which was used in the Roman codified law "The XII Tables" to execute justice by punishing the bad debtor, itself borrowed from ancient Greek law. So, legal borrowing is a means of legal development that began in the earliest period and continues worldwide. Nepal is not far behind in this regard, as it has adopted modern banking, finance, and company laws to develop the relevant areas. Discussing the ways of appropriation and functioning of law in the receiving society, Watson claims, "A successful legal transplant is like that of the transplantation of a human organ, which will grow in its new body, and become part of that body, just as the rule or institution would have continued to develop in its parent system. Subsequent development in the host system should not be confused with rejection" (*Legal Transplants* 27). He gives an example of the early history of the French Code in Belgium after its annexation to France in 1797, which is a form of legal borrowing. He affirms that, upon the end of French domination, the civil code remained the law of Belgium (6). Hence, appropriation of law is a continuous process of legal development that Nepal also spontaneously accepts to modernize Nepali laws and legal systems.

Appropriation of culture does not mean abandoning indigenous practices, but rather modifying traditional laws and adapting them to modernity to address the needs of people and society. For example, Nepal has adopted the prohibition of incest marriage, partly from Hindu religious culture and partly from the Marriage Act 1949 of England. It does not mean that Nepal discards all indigenous customary practices of marriage, but adjusts the foreign concepts to systematize marriage. In civilized society, incest marriage is considered a social taboo. Hence, the modern law prohibits

it, however, the cultural practice continue from the time immemorial in some tribal communities is recognized by the NCA with the provision that, "nothing shall bar the conclusion, or causing the conclusion of, a marriage within the relationship that is allowed to marry in accordance with the practices prevailing in their ethnic community or clan" (sec. 70.b). So, a legal transfer is a process of receiving, reviewing, modernizing, and rejecting unsocial and unethical legal practices in a society. The appropriation of foreign legal culture regarding marriage and divorce in NCA is further discussed by comparing and contrasting it with the English marriage and divorce Acts.

Marriage Law regulates and systematizes weddings in a society by formulating legal provisions. However, the practice of marriage differs from place to place by laws in terms of the age, sex, incest, dowry, coercion, and other influencing factors. The marriage law delimits the minimum age of the prospective couples for marriage, avoids coerced and incest marriages, and seeks consent from the parents/guardians and legal authority. The marriage concluded by fraud and deception is voidable. It regulates the registration of marriage, declares the culture of dowry is illegal, and attempts to globalize marriage culture by law.

The indigenous culture of marriage in Nepali society continues from the past. However, now it has turned into modernity due to the influence of Western legal culture, such as same-sex marriage. Nepal appropriates legal provisions of marriage from the Marriage Act 1949 and the Hindu religious culture and incorporates them in the NCA. The English Marriage Act limits the age of the groom for the marriage, prohibits dowry, lays down rules to perform marriage in the presence of kin relatives, and strictly prohibits incest. The appropriation of this foreign culture of marriage exists in the NCA (sec. 72), which states that if a marriage is concluded between

siblings, it is punishable by law for incest. The prohibition of incest, including underage and coercive marriages, is congruous between Nepali and English laws. The family law of Nepal is highly motivated by the oriental philosophy, which prohibits incestuous marriage. As mentioned in the *Manusmṛti*, the law of Manu, marriage between blood relatives is prohibited. It rules that marriages within the *Sapinda* relationship and with the same *Gotra* 'lineage' are restricted (3.5). *Sapinda* concerns the mother's side of the relationship, and *Gotra* concerns the father's kinfolks.

In England, the marriage solemnized between the persons, either of whom is under the age of sixteen, shall be void (sec. 1.2). NCA adopts this culture of the legal age of marriage, but with an adjustment. In Nepal, a marriage may be concluded between a man and a woman if both have attained the age of twenty (sec. 70). This provision helps restrict child marriage and governs weddings between a male and a female. Section 73 prescribes that if a marriage is concluded under age, incest, coercion, fraud, deception, unsound mind, physically impaired, suffering from HIV, Hepatitis B, and another similar incurable disease, and pregnant, it is punishable by the Court of law for moral turpitude and sentenced to jail. This provision of marriage between either of the aforesaid partners is voidable and punishable by law. It seeks to prevent fraud and force in a marriage through undue influence, and safeguards an individual's freedom in matters directly related to one's life and career.

The Marriage Act 1949 voids such a marriage of the partners because, at the time of the marriage, a party is already lawfully married, and the parties are not respectively male and female. The new provision for voidable marriage after 1971 reads:

A marriage celebrated after 31 July 1971 shall be voidable because the marriage has not been consummated, owing to marriage is the incapacity of

either party to consummate it. It is because of the willful refusal of the respondent or either party to the marriage did not validly consent to it or performs in consequence of duress, mistake, or unsoundness of mind at the time of the marriage either of the party . . . to be unfitted for marriage such as at the time of the marriage the respondent is suffering from venereal disease in a communicable form or at the time of the marriage the respondent is pregnant by some person other than the petitioner. (sec. 12)

The English law nullifies coercive and fraudulent marriage, as well as marriage with a physically and mentally impaired person. Nepal incorporates these legal provisions in the NCA, which are set out in sections 71, 72, and 73 of the code.

The foreign culture of marriage registration, deriving from the Marriage Act 1949, is domesticated in the NCA. Section 53 of the Act rules for the registration of a marriage in the authorized offices. "In the case of a marriage solemnized according to the rite of the Church of England, by a clergyman by whom the marriage is solemnized. In the case of marriage solemnized according to the usages of the Society of Friends, by the registering officer of that Society appointed for the district in which the marriage is solemnized." The NCA domesticates this foreign legal culture with the provision of "the marriage is to be registered as prescribed by the law" (sec. 76), and further explains that both husband and wife shall get their marriage registered by applying to the authority specified by the Government of Nepal by notification in the Nepal Gazette (sec. 74.1).

The prospective spouse who lives outside Nepal may apply for their marriage registration at the Embassy or Consulate General of Nepal in the country where they have been living. If an application is received under sub-section (1) or (2) for the registration of a marriage, the concerned authority shall, after registering the marriage

in the marriage book maintained in the office, issue the marriage registration certificate in the form as specified by the Government of Nepal, to the applicant, within fifteen days of the filing of the application. The concerned authority requires that the records of the marriage registration be kept safely in section 76.2.

The principles of legalizing marriage to ensure the rights and duties of spouses and the legitimacy of children are congruent; however, the provisions and procedures differ between Nepal and foreign countries. Speaking on the equal status that a couple receives after marriage, Janet Halley states, "One of the most important elements of marriage as status is the idea that, though universal and fundamental to all civilization, its specific rules are under the control of the territorial sovereign. National courts could choose their own law in enforcing the rules of marriage and divorce" (5). Although marriage and divorce are universal phenomena and necessary to society, national jurisdiction prevails in such cases. The Marriage Law of Nepal registers marriages even after the prescribed period, subject to a late charge (sec. 76.8). This suggests that the procedures for marriage and the legalization of the relationship of husband and wife differ between Nepal and England, and that national jurisdiction prevails. Incongruent with the Marriage Act 1949, the NCA does not specify a time for marriage, either day or night. However, the English law prohibits marriage of "any person who knowingly or willfully solemnizes a marriage at any other time than between the hours of eight in the forenoon and six in the afternoon" (sec. 75). The NCA does not mention the solemnization of marriage in Naval, Military, and Air Force Chapels, as the English Marriage Act 1949 rules in section 68. The special condition of marriage of the persons employed in the military, air force, and navy is recognized by the law. The law of marriage in Nepal is conceptually congruous with the English Marriage Act of 1949, but incongruous in its procedures

and practices. In addition to the appropriation of the marriage law, the practice of divorce in Nepal is derived from Western legal culture.

The Western concept of marriage is a social contract that can be breached if either party is unfaithful to the relationship. However, the termination of marriage brings legal consequences to the parties in the field of alimony, maintenance, education, and custodial care of the children. In England, the Matrimonial Causes Act of 1973 regulates divorce cases, stating that "[s]ubject to section 3 below, a petition for a divorce may be filed in the court by either party to a marriage because the marriage has broken down irretrievably" (sec. 1.1). Further, noting down the prevailing conditions for divorce, the Act states:

- a) the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent; b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted. . . . (1.2)

Either one or more of the conditions mentioned above are necessary to dissolve a marriage irretrievably in the English legal system. It suggests that the culture of divorce is incorporated into the Nepali legal system, provided the marriage is not faithful to the parties.

However, in the case of adultery, immediate divorce is granted (sec. 2.1) as this is considered one of the serious offenses of the respondent. Further, section 3 (1) reads that "no petition for divorce shall be presented to the court before the expiration

of the period of three years from the date of marriage.” After divorce, the financial provision and property adjustment are "for a periodic or lump sum" (sec. 21.1).

Section 23 calculates the financial position of the parties and orders for payment for the best interest of the child and children's custody in case of divorce, nullity of marriage, or judicial separation. Section 24(1) ensures, "On granting a decree of divorce, a decree of nullity of marriage, or a decree of judicial separation or at any time thereafter." Divorce quashes the relationship, providing certain rights to the divorcing spouse and, if any, the children.

Section 24 (1a) rules that the Court may make any one or more of the following orders, that is to say- a) an order that a party to the marriage shall transfer property to the other party, to any child of the family, or to such person as may be specified in the order for the benefit of such a child, such property as may be specified.

The NCA appropriates this divorce culture in native law to address the problem between the spouses that disturbs the married life by mental and physical torture from one party to another, and changes the relationship into misery. On the process of divorce in mutual understanding, section 93 states, "Divorce may be effected by the consent of both. The Court may issue an order of divorce, breaking the relationship of husband and wife at any time upon the mutual understanding of the parties. Besides, the petitioner may file for divorce under any of the following circumstances, even without the respondent's consent. In the case of a husband, section 94 writes:

- a) Except the husband and wife have been living separately after obtaining their partition share or separating bread and board by law, if the wife has been living separately for three or more consecutive years without the consent of

husband, b) if the wife deprives the husband of maintenance costs or expels him from the house, if the wife commits an act or conspiracy likely to cause grievous hurt or other severe physical or mental pain to the husband, c) if the wife is proven to have had sexual relations with another person.

A wife can file for divorce against her husband in the same circumstances as mentioned above. However, she gets an additional privilege for "if the husband is proven to have rape the wife" (sec. 95). Marital rape is an undesired sexual intention of a wife; however, the husband compels the wife to go to the intercourse. It is the Western concept that Nepal adopts in the NCA to make it consistent with foreign legal culture and to provide a legal remedy to the female partner.

When the petitioner applies for divorce, pursuant to section 96, "the court shall, to the extent possible, remind and convince both parties and conciliate them" (sec. 97). The objective of mediation is to continue the relationship if possible to reconcile and reduce the rate of divorce in society. Section 100 acknowledges the culture of alimony with the provision that "[i]f a wife, after divorce, desires to obtain from the husband a lump sum amount or annual or monthly alimony or expense instead of the partition share, the court may order the husband to provide such a wife with a lump sum amount or annual or monthly alimony or expense calculating his property or income." This culture is adopted to secure the wife from the problem of accommodation during the course of the court proceedings. Furthermore, the NCA adds:

If the wife, who has not obtained a partition from the husband because there is no property for partition, desires to recover maintenance costs from her husband's income. The Court may order the husband to provide maintenance costs to the wife, calculating the income of the divorced husband. But if such a

wife concludes another marriage, or if the income of the wife is higher than that of the husband, it is not required to provide such costs. (sec. 101)

Divorce is an international legal practice that formally ends a marriage by a court's decision; however, it can bring difficulties for the divorcee, including the minor children, socially and emotionally. Observing the life of a divorcee as an opportunity and the challenges, Mohammad Taghi Sheykhi critiques, "Divorce, being a painful event for families and societies, is increasingly taking place in almost all societies. It is the beginning of new relationships; both parties (men and women) will encounter new life, new values, and new lifestyles. Though some challenges fade away, new challenges emerge" (66). Divorce is not the final solution to family disputes, as it solves the old one but invites new challenges in life due to feelings of separation and loneliness. Most divorces arise from incompatibility in married life rather than economic hardship. Independent research shows that the divorce rate is higher in modern societies than in traditional ones due to the complex lifestyles of city dwellers.

NCA appropriates the legal culture of divorce and modifies the existing laws to make them consistent with international practices. The Western divorce culture challenges the traditional Hindu concept of marriage for lifelong bondage between husband and wife, despite the difficulties the couple face in their married life, as it is the continuation of the past and reunion in the present.

The native codes of Nepal not only domesticate the laws of person and property appropriated, but also those concerning animals, birds, and fish from foreign legal cultures. In an ecosystem, animals and birds are so important to human life that they are recognized by the laws that govern them. The Crimes and Criminal Procedure of the USA prohibit hunting, fishing, trapping, disturbing, or injuring

wildlife refuges. As it warns:

Whoever, except in compliance with rules and regulations promulgated by authority of law, hunts, traps, captures, willfully disturbs or kills any bird, fish, or wild animal of any kind whatever, or takes or destroys the eggs or nest of any such bird or fish, on any lands or waters which are set apart or reserved as sanctuaries, refuges or breeding grounds for such birds, fish, or animals under any law of the United States or willfully injures, molests, or destroys any property of the United States on any such lands or waters, shall be fined under this title or imprisoned not more than six months, or both. (sec. 41)

The US Crimes and Criminal Procedure punishes those who are cruel to animals, birds, and fish to make people responsible for protecting them within the American territory. Killing, injuring, destroying eggs, and molesting land and water animals and their habitats is banned and liable to a fine and imprisonment or both, not exceeding six months. The legal culture of protecting wildlife, birds, and fish is codified in the NPA, specifically in the chapter "Prohibition of Cruel Treatment to Animals and Birds," which bans the inhumane killing of animals and birds, and ensures:

No person shall subject any animal or bird to torture by beating or hitting it, or by causing it to carry a load beyond its capacity, or by causing it to walk or run beyond its ability, or by engaging it in work if it is unable to work because of illness, wound or *Khatira*, or any other cause, or by feeding it harmful substance or in any other manner whatsoever or leaves publicly any animal or bird which he or she has grown up because of its being ill or aged or otherwise treat it cruelly or mercilessly. . . shall be liable to a sentence of imprisonment for a term not exceeding three months or a fine not exceeding five thousand rupees or both. (sec. 290)

The protection of animals was also ruled in the *Mulukī Aina* of 1963, but the protection of birds is a new provision adopted in the NPA. It appropriates the culture of fines and imprisonment, or both, congruent with the US Penal Code. Both the US and Nepali laws are against animal cruelty and ensure the life and free movement of livestock.

Adopting a culture of legal borrowing is essential for social development, as it transforms a country's legal system. Legal borrowing as part of appropriation effectively contributes to the development of a legal system. The translator, through domestication and foreignization, introduces new laws into emerging societies. Watson clarifies the importance of legal borrowing and hardly believes that anyone denies borrowing laws for legal development, recalling the development of law in France, Germany, and Switzerland, where they derived foreign law from Justinian's *Corpus Juris Civilis* (*Legal Transplants* 6). He further explains the significance of legal borrowing as a need for operating the new society. Watson writes:

I find it difficult to imagine that anyone would deny that legal borrowing is of enormous importance in legal development. Likewise, I find it hard to imagine that anyone would believe that the borrowed rule would operate in exactly the way it did in its other home. What I think is significant in the context of this paper is not the identity of interpretation but the fact that the identity of rule does lead to much greater similarity between the two systems. . . . Legal transplants are inevitable. Since the Roman Empire, they have been a major, if not always the main, factor in legal change in the Western world. England is no exception. Nor is the United States. ("Legal Transplants" 9-10)

The appropriation of law is a common cultural practice worldwide and continues to this day. LT is a route of appropriation of law from one legal system to another,

introducing foreign practices into the country. The scholarly work of academicians also contributes to legal appropriation, or they can serve as experts on the law commission. Nepal has also drawn on international experience in law-making to draft the federal constitution and modern native laws.

Tracing the history of the legal development in Nepal with the adoption of foreign legal culture, Lokendrahari Bhattarai recalls, the first chief justice of Nepal, Hari Prasad Pradhan (1951-1956), domesticates the principle of law as formulated by Indian Courts that use the Anglo-American model as the persuasive law in the absence of substantial laws in Nepal (128). American professor Sir Ivor Jennings came to Nepal to provide technical support in drafting the *Constitution of the Kingdom of Nepal* in 1959. The State Case Act of 1961 adopts the adversarial system in crime investigation and separates investigation from adjudication. Before the promulgation of this Act, the Court supervised and controlled criminal investigations.

In addition to these, the report of the High Commission for Judicial Reform 1971, formed under the chairmanship of Justice Bhagwati Prasad Singh, recommends adopting the Anglo-American System. The Evidence Act 1974 commences as recommended by the Commission and brings significant changes to the country's procedural law. Since then, the burden of proof has shifted to the prosecutor in criminal cases. The plaintiff must prove the charge of the offense, and no defendant needs to prove their own innocence. The Latin maxim influences this legal practice, *ei incumbit probatio qui dicit, non qui negat* (the burden of proof goes on the claimer, not to the disclaimers). Section 25 of the NPA states that "the burden of proof of proving that the accused has committed the offense in a criminal case shall lie on the plaintiff." The burden of proof goes to the claimant in civil cases, as it ensures that "[t]he burden of proof of proving the claim in a civil case shall lie on the plaintiff"

(sec. 26). The NPA has also appropriated the international criminal justice system, which is discussed in the coming section.

Adaptation of the Criminal Justice System

The globalization of law aims to integrate and consolidate the criminal legal system to combat national and transnational crimes. To prevent crime at the national and international levels, a country requires effective laws that are consistent with the international criminal justice system. Most modern states have incorporated the principles of the ICC into their penal codes to harmonize their criminal justice systems. However, some minor adjustments are accepted as a cultural compromise in the native legal system for sentencing and execution of the punishment. The homogeneity of the criminal legal system makes the offender liable for the crime and prevents them from escaping. This section compares and contrasts the appropriation of the international criminal justice in Nepali laws and legal systems.

The ICC drafts criminal law and opens it for acceptance and adoption at the international level; however, it does not replace national criminal justice systems but serves as a guide for consolidating national penal systems. When the national penal system is ineffective, unaware, unable, and unwilling to investigate and execute punishment for a person's heinous crime of international concern, the ICC investigates and adjudicates for justice. An informative book of the ICC notes, "The ICC does not replace national criminal justice systems; rather, it complements them. It can investigate and, where warranted, prosecute and try individuals only if the State concerned does not, cannot, or is unwilling to do so genuinely" (*Understanding* 11). The NPA appropriates the principles of the ICC to develop an effective criminal justice system.

The Rome Statute of the International Criminal Court entered into force in

1998, following the International Convention. Reminding the contribution and adoption of the Rome Statute, Ambos Kai writes, "The Rome Statute is not a dogmatically refined international model penal and procedural code. It could not be. But it is an attempt to merge the criminal justice systems of more than 150 States into one legal instrument that was more or less acceptable to every delegation present in Rome" (1). The ICC, effective from 1 July 2002, guides national penal systems in the adjudication and punishment of serious crimes, raising international concerns. The ICC gains the international jurisdiction over serious crimes, "namely the crime of genocide, crimes against humanity, war crimes and the crime of aggression" (*Understanding* 9). The ICC penalizes the offender for serious crimes that endanger humanity.

The ICC states, "It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this StatuteStatute, and shall be complementary to national criminal jurisdictions. . ." (Rome Statute, art. 1). It functions as a complementary law to the national criminal justice system and is directed to penalize for the crimes, often by abusing authority, which puts humanity at risk. However, such crimes are about to become immune from punishment due to the state mechanism's incapacity, ineffectiveness, or unwillingness to punish. The NPA domesticates the principles of the ICC to reform and consolidate the native penal system, in line with the international criminal justice system. Some domesticated provisions of the ICC are as follows.

Nullum crimen sine lege guarantees, "A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court" (Rome Statute, art. 22). The

NPA appropriates this with the provision that "lawful act not to be an offense" and explains "No act required by law to be done or excused by law shall be considered to be an offense" (sec. 6). Article 22(3) of Rome Statutes states, "This Article shall not affect the characterization of any conduct as a crime under international law independently of this statute." Nepal appropriates this culture in NPA as the "application of the special act". It explains, "Where a special Act defines a specific act as a separate offense and provides punishment for it, that Act shall apply to such offense" (sec. 5).

Nulla poena sine lege ensures, "A person convicted by the Court may be punished only by this Statute" (Rome Statute, art. 23). The NPA appropriates this with the provision that "[n]ot punishment except in accordance with law" (sec. 7) and explains, "No person shall be liable to punishment for doing an act not punishable by law, nor shall a person be subjected to punishment that is heavier than the one prescribed by law in force when the offence was committed." This provision safeguards the rights of the accused and controls the abuse of authority by the state mechanism.

Article 24 of the ICC states the principle of "Non-retroactivity *ratione personae*" and explains, "No person shall be criminally responsible under this statute for conduct before the entry into force of the Statute." This legal provision is appropriated in the CN writing that "No person shall be liable for punishment for an act that is not punishable by the law in force when the act is committed nor shall any person be subject to the punishment greater than the prescribed by law in force at the time of commission of the offence" (Constitution of Nepal, art. 20.4). The adoption of these provisions in the NPA signifies that the penal system of Nepal appropriates foreign legal culture.

Article 25 ensures the "Individual criminal responsibility" and defends, "In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: Commits such a crime, whether as an individual, jointly with another, or through another person, regardless of whether that other person is criminally responsible" (25.3a). NPA appropriates this provision with the provision of "All members are to be punished for an offence committed by a group" and elaborates, "Where an offence is committed by a group of two or more persons, all members of the group shall be liable to punishment for such offence" (sec. 31).

As far as Article 26 of the ICC is concerned, it rules for the "Exclusion of jurisdiction over persons under eighteen" and prohibits, "The Court shall have no jurisdiction over any person who is under the age of 18 at the time of the alleged commission of a crime." NPA adopts it with the provision of "Major liable to punishment for the offence caused to be committed by a child" (sec. 28) and adds, "Where an offence is committed by a child upon being lured, taught, or influenced by a person to do so, such person shall be liable for punishment as if the offence is committed by himself or herself."

Regarding the "Mental Element" in crime and its effect on the penal system, Article 30 (1) of the ICC clarifies, "Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge." Punishment for the intentional crime is heavier than for an offense that occurred unintentionally. The mental element in the State of crime intensifies the degree of punishment. However, in cases of homicide, rape, human trafficking, and any other grievous offenses, the mental State cannot be a factor for mitigating punishment. The

NPA domesticates it with the provision of "Criminal intention not to be examined in a strict liability offense" and explains, "In an offense which is a strict liability offense under this Act or the law, it shall not be examined whether or not the offense is committed intentionally" (sec. 29).

The grounds for excluding criminal responsibility in the State of mental diseases or defects at the time of committing a crime are acknowledged in the ICC.

As it implies,

In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person's conduct: The person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law. (art. 31.1a)

The NPA borrows this culture as, "Act of a person of unsound mind not to be an offense," and explains ahead, "No act done by a person who, at the time of doing it, because of unsoundness of mind, is incapable of knowing the nature, characteristic, fault, or consequence of such act, shall be considered to be an offense" (sec. 14). If a person cannot decide whether his Act is offense or not such person gets immune from the criminal liabilities. It refers to the action of a man with a mental disorder or an insane person.

In addition to this, the ICC ensures private defense at the time of war crimes, including the protection of the essential goods for the survival of life, with the provision that:

The person can act reasonably to defend himself or herself or another person or, in the case of war crimes, property that is essential for the survival of the

person or another person or property that is essential for accomplishing a military mission against the imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. (art. 31.1c)

The culture of private defense is adopted in the criminal justice system of Nepal with the provision, "An act done for private defense is not considered to be an offence" (sec. 24). Further, section 24.1 suggests, "Any act done in the exercise of the right of private defense, subject to this chapter, shall not be considered an offence."

Additionally, this section elaborates, "Every person has a right to defend the body, life, or property of his or her own or of any other person against any illegal harm" (sec. 24.2). To prevent the misuse of this principle of private defence, the NPA adds, "The right of private defense under this section shall be exercised only when there is a reasonable apprehension or reasonable cause to believe that the body, life, or property of his or her own or of any other person cannot be defended against any illegal harm unless any act is done immediately" (sec. 24.3). The culture of private defence is acknowledged in the law of modern states.

This legal culture is only applicable to the extent that the defender should reasonably exercise the power to save personal life, property, and the life of his/her dependents. The right of private defense influences the decision of criminal liability. By this international legal culture, the rape victim is immune from the offense of murder by the perpetrator, but this must be justified. The right of private defense is universally recognized as part of the criminal justice system.

The ICC asserts that any act committed under duress, coercion, threat of instant death, or any other uncontrollable situation of the actor is criminalized, and its liabilities rest with the commander who compels the actor to commit such an act or

offense. It clarifies:

The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be: (i) made by other persons; or (ii) constituted by other circumstances beyond that person's control. (art. 31.1d)

The act of an unsound-minded person is not a crime, as the criminal justice system criminalizes only the act of a person who mentally intends to do it with knowledge of its result. However, the act of a person with an unsound mind cannot calculate the result that his/her work brings.

To bring consistency with the international criminal justice system, this principle is domesticated in the NPA with the provision that an "act compelled by fear, a threat not to be an offence" (sec. 22), and elaborates:

No act done by a person who is compelled to do it by fear or threat exerted or made by another person carrying a deadly weapon or toxic or explosive substance that the other person would kill or cause grievous hurt to that person or his or her close relative if that person does not do that act immediately.

There is a reasonable cause to apprehend that it would cause death or grievous injury to that person or a close relative if such an act is not done immediately, and it shall be considered to be an offense.

Generally, a person commits a crime intentionally and willfully; however, sometimes it is beyond his control and is affected by external factors, compelling him to take an

action that proves illegal. The ICC takes such circumstances into account when determining punishment. For instance, the threat of killing one's dependent by the kidnappers compels a man to take action against the kidnapping for the protection of the dependents, which may take the life of the kidnapper. Under such circumstances, the murder of the kidnapper to save the life of the dependent is not criminalized.

"Mistakes of fact" and "Mistakes of law" are the universally acknowledged principles of the criminal justice system that the ICC incorporates and distinguishes the two for criminal justice, stating that a "mistake of fact" shall be grounds for excluding criminal responsibility only if it negates the mental element required for the crime. However, "A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be grounds for excluding criminal responsibility. A mistake of law may, however, be grounds for excluding criminal responsibility if it negates the mental element required for such a crime" (art. 32). The mistake of law does not immunize from criminal responsibility under the ICC.

NPA domesticates this culture with the provision that "act done by mistake of fact not to be offence" and elucidates ahead, "No act done by a person who is, or who by reason of a mistake of fact, in good faith believes that he or she is bound by law to do that Act or that such Act is excused by law shall be considered to be an offense. Provided that no act done in ignorance of law shall be excused" (sec. 8). No offender gets excused by the reason that he is unknown to the law and punishable.

The appropriation of the ICC's principles in the NPA suggests that Nepal's criminal justice system has domesticated a foreign legal culture. The NPA appropriates these cases in accordance with due process of law to provide justice to crime victims. The ICC's appropriation has modernized Nepal's criminal justice system and safeguards the rights of victims and the accused.

Borrowing Legal Maxims and Terms

The modern history of the Nepali legal system and translation study is younger than that of European, American, and some Asian countries. The Roman, English, American, Chinese, Indian, and Farsi legal traditions developed through their practical experience. Nepali legal systems borrow foreign legal terms from Latin, Sanskrit, English, Hindi, and Persian, among others. Nepali laws borrow Latin words and proverbs for legal communication and to maintain conceptual correspondence between the SL and TL legal systems. Comparing the appropriation of legal culture from one language to another, Fawcett argues, "Just as butchers in one country take the same animal and cut it up in different ways from butchers in another country, so languages take what is apparently the same external reality and slice it differently" (19). Even the same object is denoted differently across languages due to linguistic and cultural variation. However, some foreign words are borrowed to provide the original concept in the target language. Nepali legal language borrows foreign words and maxims to communicate and fill gaps in legal communication. This section deals with some foreign legal maxims and terms that exist in Nepali laws and legal systems as a cultural transfer.

Nepali laws and legal systems borrow maxims and legal terms from foreign legal traditions, primarily from Latin, English, Persian, and Hindi. The words affidavit, company, *ain*, and *tahakikat* are the foreign legal terms used in Nepali laws. Legal jargon means different things than everyday words. Lawyers use legal language to draft judicial documents and communicate in courts and quasi-judicial bodies. Legal meaning can be complex for those who work in non-legal fields. The legal terms, such as plaintiff, magistrate, and alimony, carry special meaning in law, while the words party, damages, and compensation have both legal and non-legal meanings.

The conceptual meaning of legal terms is shaped by tradition, culture, and context, enriching their meaning in the text-in-context. Borrowing legal terms from one language and jurisdiction to another and using them consistently demands a comprehensive knowledge of comparative law and legal systems.

Appropriating legal meaning through mistranslation leads to erroneous decisions and impairs the judicial process; therefore, legal meaning must be conveyed in its original sense. Nepali legal language is at the primary stage, so it needs to borrow legal terms and maxims from mature legal systems. The language of law is complex to a layman, so John Gibbons remarks, "Legal terms limited to the legal domain may not be known to lay people, and legal terms with non-legal meanings may be understood in their everyday sense" (288). Law professionals understand the meaning of legal terms differently from non-professionals and the general public. The legal terms are jurisdictional, and using them in other jurisdictions can give a different meaning from a cultural perspective. Law develops through the appropriation of foreign language and legal culture. For instance, the legal terms and maxims of the Latin language are common in English and other languages. Nepali law adopts legal terms and maxims originating in Latin. The Latin legal maxims used in Nepali law reflect a harmonious social reality between the Nepali and Roman legal cultures. The legal maxims that represent contemporary Roman society are not exactly applicable to modern society; however, they offer a glimpse of Rome's judicial system. Some Latin legal maxims are presented to trace the Medieval European legal culture that the Nepali legal system has adopted. English translation works as a lingua franca to understand the meaning and corresponding practice in the Nepali legal culture. The data are taken from the book, *Legal Maxims (Latin Legal Phraseology)*. The maxims number (MN) is given accordingly.

SN	Latin	English	Nepali	MN
1	<i>A communi observantia non est recedendum.</i>	A common practice must not be abandoned.	चलनचलितको अभ्यासलाई परित्याग गर्नु हुँदैन।	1
2	<i>A lege suae dignitatis.</i>	From the law of one's dignity.	न्यायिक मन वा अन्तस्करणदेखि	7
3	<i>A summo remedio ad inferiorem actionem non habetur regressus neque auxilium.</i>	After obtaining a higher remedy, there may be no recourse to an inferior action.	माथिल्लो तहबाट उपचार गरेपछि तल्लो तहमा विचार हुन नसक्ने।	20
4	<i>A verbis legis non est recedendum.</i>	No departure is permitted from the words of a statute if written in plain language	कानूनमा लेखिएकोभन्दा बाहिर जान पाइँदैन।	22
5	<i>Ab abusu ad usum non valet consequentia</i>	A consequence arising from the abuse of use is not valid. (A progression from abuse to use is ineffective.)	दुरुपयोगबाट भएको कुनै कामबाट उत्पन्न परिणाम मान्य हुँदैन।	25
6	<i>Ab intestato</i>	By the reason of intestate.	अपुतालिको कारणबाट (ईच्छापत्र बिना नै अपुतालि प्राप्त भएको)	41
7	<i>Accessorium non ducit, sed sequitur principalem.</i>	The accessory does not lead but rather follows the principal	मतियार मुख्य कसुरदार हुन सक्दैन तर मुख्य कसुरदारलाई सघाउँछ (सहायकले मूल कुरालाई	63

	<i>ducit, sed sequitur principalem.</i>	lead but rather follows the principal	तर मुख्य कसुरदारलाई सघाउँछ (सहायकले मूल कुरालाई पछ्याउँछ)	
8	<i>Accusator post rationabile tempus non est audiendus, nisi se bene de omissione excusaverit.</i>	Accuser is not to be heard after a reasonable time unless he can account satisfactorily for the delay.	विलम्ब हुनाको सन्तोषजनक कारण भएकोमा बाहेक म्याद गुज्रिसकेपछि अभियुक्तको सुनुवाई गर्नुहुँदैन।	72
9	<i>Acta in uno iudicio non probant in alio inter easadem personas.</i>	Things done in one action cannot be taken as evidence in another unless it is between the same parties.	कुनै मुद्दामा भए गरेको काम सोही पक्षहरू रहेको मुद्दामा बाहेक अर्को मुद्दामा प्रमाण रूपमा लिन सकिँदैन।	80
10	<i>Actore non probante reus absolvitur</i>	When the plaintiff does not prove his case, the defendant is absolved	वादीले आफ्नो दाबी प्रमाणित गर्न नसके प्रतिवादीले फुर्सद पाउँछ।	181

These legal maxims, originating in Latin, reflect the history of Roman legal culture. The legal concepts these phraseologies express apply to investigating, adjudicating, and delivering justice. The translation of these legal maxims transposes Roman legal culture into Nepali law and legal systems. The precise discussion of this legal maxim in Nepali law is as follows.

The culture of "A common practice must not be abandoned" is domesticated

in the NCA (sec. 489) to settle the period of loan deeds transacted at home in case of payment dispute. As per the legal provisions of this section, the victim has to seek a legal remedy within ten years from the date of the transaction, or, if the latest installment is paid, the partial interest on the principal amount is acknowledged as common practice in Nepali society.

"From the law of one's dignity" is a legal maxim used for an inherent power in a judge to deliver justice by the application of one's dignity in the absence of written law. The judge can exercise judicial conscience (*nyāyika mana*) in the pursuit of justice. Based on this maxim, a judge may exercise discretion in a writ petition and issue an interim order until the case is finally concluded. The pious objective of the interim order is to save the petitioner from further loss and ensure the effectiveness of the writ petition. Chapter 14 of the National Civil Procedure (Code) Act, 2017 appropriates this maxim with the provision that:

Where the claim of a plaint or memorandum of appeal will be meaningless if any act or action is not prevented immediately, or if any act is not done immediately in the course of the proceeding of any case, or if the status quo of any matter is not maintained, the plaintiff or appellant may make a petition, setting out that matter, to the concerned Court, praying for the issuance of an interlocutory order on such a matter. (sec. 156)

The Court issues an interim order to retain the disputed work in its existing condition and prohibits proceeding until the Court finalizes the case. The interim order of the Court assures the victim's right to justice, as reflected in the decision since the date of entry into the Court.

The legal maxim, "After obtaining a higher remedy, there may be no recourse to inferior action," is applied to ensure consistency in court decisions involving

similar circumstances. Nepal adopts the Common Law system, which binds lower courts by the "precedent" of higher courts. The CN incorporates this foreign legal culture in Article 128.4, which provides that "all must abide by any interpretation of the Constitution or a law made by or any legal principle laid down by the Supreme Court in the course of trying a lawsuit." The Supreme Court's decision is mandatory precedent for the lower courts of Nepal.

The maxim, "No departure is permitted from the words of a statute if written in plain language," binds the jury to decide cases in accordance with the statutory law. This principle guides the criminal justice system in determining the degree of the offense and the sentence. The NPA domesticates this culture with the provision that, "[n]o person shall be liable to punishment for doing an act not punished by law, nor shall a person be subjected to punishment which is heavier than the one prescribed by the law in force when the offense was committed" (sec. 7).

Section thirteen of the NPA writes, "No act done by a child below ten years of age shall be considered to be an offense." A child below ten years is completely immune from punishment, even though such acts are offenses and punishable by law. The maxim, "A consequence arising out of an abuse to use is not valid" (sec. 151), is adopted in the NCA, which warns against abusing the power given to the guardian of an incompetent or quasi-competent person. It explains ahead:

If the guardian knowingly, deceitfully, fraudulently, or dishonestly causes loss and damage to the property belonging to the incompetent or quasi-competent person under his or her guardianship in such manner as to or not to benefit himself or herself, the incompetent or quasi-competent person aggrieved therefrom may recover the amount of loss and damage caused to him or her from such a guardian. (sec. 151)

This section controls the misuse of the power given to the legal guardian of incompetent or quasi-competent persons who have the right to get compensation for the loss.

The culture, "By the reason of intestate" is also appropriated in the NCA as "Provisions Relating to Succession." This allows that, "upon death of a person, succession to his or her property shall be opened" (ch. 11, sec. 237). The culture of succession is appropriated in the Nepali legal system.

The property of a deceased person transfers to the nearest heirs (wife or children) if a will deed is lacking. In the case of the will deed, the property shall be transferred as written. If the children or the nearest heirs do not care, and a distant heir gives care to the deceased, the property shall be transferred in the name of the caregiver. Nepali laws do not require a written deed to acquire the property of the demised parents. The NCA guarantees in law to transfer the property of the demised person to anyone who cares for the demised, except his/her heir (sec. 243). The Code further adds, "Notwithstanding anything contained elsewhere in this Chapter, if another person has maintained and taken care of the deceased because the heir has done so, the person who has so maintained and taken care of shall be entitled to such succession." The statutory limitation period is three years from the date of succession opening. So, the culture of *Ab intestato* is incorporated into Nepali law and legal systems.

Furthermore, the principle of "the accessory does not lead, but rather follows, the principal" is appropriated in the criminal justice system to punish organized criminals. The principal offender is liable for the heaviest punishment than the assistants, such as in the crime of gang rape, mass murder, bomb attack, and other organized crimes. The degree of punishment is determined by the criminals'

involvement and the crimes they committed. The NPA penalizes the accessories of the crimes with the provision that "not exceeding one-half of the punishment imposable for the commission of such offense according to the degree of his or her involvement in that act" (sec. 36.b). This maxim suggests that all parties to the crime are not equally responsible for it and liable, on the ratio of their commission or assistance in the offense, as adapted in the NPA.

The maxim, "Accuser is not to be heard after a reasonable time unless he can account satisfactorily for the delay," is domesticated to fix the statutory time limitation for the accuser to file a case in Court, as mentioned in a particular law. This principle suggests that the Court only helps those who seek justice within the time of law. Sometimes, the situation is beyond the petitioner's control, and the petitioner cannot enter the Court, but this must be reasonably justified for the permission to be granted. This foreign culture is domesticated in both the NCA and the NPA of Nepal, while respecting the statutory time limits for rights and justice. If the natural disasters, serious health problems, delivery of a child, and death of parents/children delay the presentation in the Court, it must be justified reasonably as per the Civil Procedure (Code) Act, 2017 (secs. 58, 223, 259).

Generally, the global experience of people remains the same event of being ill, suffering from natural disasters, social injustice, economic challenges, and a desire for judgment by the competent Court of law; therefore, the Roman legal experience is transcribed in the form of legal maxims, which apply to Nepali laws and the legal system. The maxim "things done in one action cannot be taken as evidence in another unless it is between the same parties" is appropriated in the Nepali legal system to verify the witness's statements in Court. The witness statement is evidence for the Court, but this cannot be taken in another case if the parties are not the same. Suppose

a witness gives a court statement in a divorce case that the respondent husband has kicked the petitioner out of the home without providing food and clothes, which cannot be taken as evidence in another case of the respondent who commits domestic violence against his children. However, this is appropriated by reformation, adding some exceptional conditions to this legal provision. Regarding the provision on the admission of witness statements as evidence, section seventeen of the Evidence Act, 1974 of Nepal, corresponds to section thirty-three of the Indian Evidence Act, 1872. The law of both countries allows the previous witness's statement as evidence if the party's witness died, disappeared, was unable to be witnessed due to the witness's senior age, mental illness, or living abroad, or was threatened and conspired against the witness for the statement. The basic principle of evidence, as Gyaindrabahadur Shrestha comments on the Evidence Act of 1974 and reminds us of the general principle of evidence that all evidence shall be examined directly, not obliquely, or hearing from others (88, my translation).

The maxim "When the plaintiff does not prove his case, the defendant is absolved" is domesticated in the Nepali legal system. This principle governs the burden of proof in criminal cases, in which the prosecutor or the accuser must justify the charge beyond a reasonable doubt; otherwise, the accused is discharged from the charge or detention. Sections 25 and 26 of the Evidence Act 1974 acknowledge the burden of proof on the accuser or prosecutor. If the claimant cannot prove the accusation, the respondent is released from the charge. This suggests that Nepal appropriates Latin legal maxims into its domestic laws and legal systems. The Roman legal maxims were transferred to the Common Law System countries and spread worldwide, including Nepal. Not only legal maxims but also legal terms are borrowed from foreign languages into Nepali law.

used for legal communication. Legal culture has its roots in history and religion, and the words associated with them are incorporated into law. Hindu religious terms are common in Nepal's family law. The corporate law of Nepal borrows from the English legal culture, including its legal terminology. On the nexus between religion, culture, and legal system, Vijay K. Bhatia and Rajesh Sharma allude, "Although legal systems are invariably influenced by religion and culture, they have an inseparable relationship with language, which is typically used as an instrument of legal expression, both in spoken and written forms" (361). The legal terms reflect the legal system, and the appropriation of legal terms grounds the domestication of foreign legal culture. Nepali laws adopt Farsi legal terms and use them in domestic contexts to fill vocabulary gaps.

Many legal terms are borrowed from the Persian language and used in Nepali laws, such as, *firād* 'plaintiff paper', *zika* 'pleading', *italayanāmā* 'subpoena', a sort of summons in civil cases; *batil* 'falsehood/invalid', *tatīl* 'holiday', *huqum* 'order', *insāf* 'justice', *muqudma* 'case', *āhwān* 'call', *kabūla* 'promise', *izzat* 'prestige', *baizzat* 'defame', *gulām* 'servant', *daftar* 'office', *inqār* 'refuse', *kāzī* 'post', *dewānī* 'civil', *faujdārī* 'criminal', *dafā* 'section', *ain* 'law', *muluk* 'country', *kitāb* 'book', *inām* 'prize', *yek* 'one', *pāmc* 'five', *cha* 'six', *nau* 'nine', *bīs* 'twenty', *hazār* 'thousand', *khūn* 'blood', *gardan* 'neck', *dil* 'heart', *bābā* 'father', *sabzī* 'vegetable', *nān* 'bread', *tandurī* 'roasted bread', *kamīz* 'shirt', *jeb* 'pocket', *darzī* 'tailor', *qānūn* 'law', *adālat* 'court', *wakīl* 'advocate', *darbār* 'court', *badshāh* 'emperor', *tahasildār* 'tax collector', *qalam* 'pen', *kāgaz* 'paper', *sipāhī* 'soldier', *top* 'gun/cannon', the suffixes +*khānā* 'house' such as *kitabkhānā*, 'book house', *jelkhānā* 'jail', *ḍākkhānā* 'post office', the suffix *kār* 'the doer', *kalākār* 'artist', *kalākār* 'journalist' and *jankār* 'one who knows', *bhagīdār* 'partner', *gaz* 'yard', *meel* 'a mile', *bilkul* 'just like/sure', *qareeb* 'near', and *kharab* 'ruin'.

kitabkhānā, 'book house', *jelkhānā* 'jail', *ḍākkhānā* 'post office', the suffix *kār* 'the doer', *kalākār* 'artist' *kalākār* 'journalist' and *jankār* 'one who knows', *bhagīdār* 'partner', *gaz* 'yard', *meel* 'a mile', *bilkul* 'just like/sure', *qareeb* 'near', and *kharab* 'ruin'.

Scholars agree that Persian civilization is closely related to South Asia in terms of cross-cultural communication. Nepali language, culture, and law are rooted in Indian civilization, which is influenced by the Persian legal culture that spreads to South Asia. On the nexus of Iranian and South Asian civilization, Abu Musa Mohammad Arif Billah admits:

South Asia, especially the subcontinent, has been in close contact with Iran for millennia. Over this period, both lands have been influencing each other in many fields. Persian influences on South Asian languages and literature are evident in literary specimens from the ancient, medieval, and modern periods.

A number of Persian elements are present in most of the contemporary languages of South Asia. (98)

The South Asian dominant languages Hindi, Urdu, Nepali, and Bengali borrow numerous words from the Persian language, which was the language of the Court during the Mughal period before the British Empire colonized India.

Nepal has been religiously and culturally close to India from the beginning, with a shared border on three sides. So the Persian legal terms used in India are incorporated into Nepali law and legal systems. Common legal concepts in Persian and South Asian languages persist to this day. Comparing the domination of Persian Language in the East, like the French in the West, Jawaharlal Nehru argues, "The Persian language, like French in Europe, became the language of cultured people across wide stretches of Asia. Iranian art and culture spread from Constantinople in the west right up to the edge of the Gobi Desert" (146). Scholars point out that even

the invaders who conquered Iran were influenced by the Iranian language and culture and adopted it. Nehru further critiques, "Iran, like India, is strong enough in its cultural foundations to influence even its invaders and often to absorb them" (146). The primary objective of appropriating Persian language and culture is to secure the advanced civilization it deserves in Asia. History shows that Persian and Indian civilizations have more similarities and connections.

Not only the Persian but Nepal also appropriates from Latin and English legal vocabularies and uses them in Nepali laws and legal systems. Some appropriated Latin terms are *ad-hock* 'when necessary', *certiorari* 'to be more fully informed', *mandamus* 'an official order from a court of law', *ipso facto* 'by that very fact or Act', *postmortem* 'after death', *amicus curiae* 'friend of the Court', *quasi* 'as if', *in camera* 'private', *writ* 'a written command', and *In Re* 'in the matter of'. The English legal terms frequently used in Nepali include misil, file, company, master, meter, lease, line, list, upload, email, mayor, mobile, phone, and voucher, which are borrowed and transliterated into the *Devanagari* script.

In addition to these, Nepali legalese appropriates from the Sanskrit language, and some of them are: *dharma* 'right way of living', *dhana* 'wealth', *vidhi* 'rule', *dēśakāla* 'space-time', *niyama* 'observance', *saṃbandha* 'relationship', *adhika* 'additional', *nirupaṇa* 'investigation', *ācāra* 'right conduct', *anumāna* 'inference', *aparādha* 'fault', *bhāga* 'portion', *bhaya* 'fear', *dāna* 'charity', *dēśa* 'place', *dīrgha* 'long', *ekatā* 'oneness', *garbha* 'pride', *gati* 'movement', *guda* 'anus', *harṣa* 'joy', *himsā* 'injury', *icchā* 'desire', *janma* 'birth', *kāla* 'time', *kapaṭa* 'deceive', *karma* 'action', *lōbha* 'greed', *māna* 'respect', *mārga* 'path', *mukta* 'the liberated one', *nadī* 'river', *nāma* 'name', *niṇaya* 'ascertainment', *pañca* 'five', *pāpa* 'sin', *parōkṣa* 'indirect', *prakṛti* 'casual matter', *prayatna* 'attempt', *rājā* 'king', *ṛta* 'true/correct', *sāmānya* 'common',

saṅgraha 'collection', *śānta* 'peace', *śarīra* 'body', *śōka* 'grief', *upāya* 'means' or 'device', *utpatti* 'origin', *viśēṣa* 'special', *vistāra* 'expansion', *viśvāsa* 'faith', *vyāpaka* 'All-pervading', *yātrā* 'pilgrimage', and *yukti* 'skill' (Sivananda 3+).

This section reveals that the Nepali legal system appropriates foreign legal culture, adopting legal maxims and vocabulary. Nepali laws gradually developed the legal language for the use of the native laws. The Nepali legal system domesticates foreign legal culture in principles, practices, structures, institutions, and language. It appropriates the fundamental elements of the constitution, criminal justice system, and human rights in consistency with foreign legal culture. Due to the globalization of law, Nepal has adopted foreign legal culture to maintain consistency with the foreign legal system; however, this adoption must be prudent for the country.

Chapter Five

Conclusion: Legal Translation for Intercultural Communication

Summary

Legal translation transfers legal culture into Nepali laws and legal systems, bringing foreign norms, values, attitudes, and experiences, mostly from Western culture, to support intercultural communication. Nepali laws have incorporated foreign legal culture to modify and renovate the native legal system correspondingly. The CN, the NPA, the NCA, the Companies Act 2006, the Evidence Act 1974, the Contract Act 1999, the Labor Act 1991, the Mediation Act 1998, the Bank and Financial Institution Act 2007, the Act Relating to Children 2018, and the juvenile and criminal justice systems are domesticated in Nepali laws and legal systems.

The CN has adopted the culture of separation of powers among the executive, legislative, and judiciary, and has ensured the rule of law. The foreign culture of federalism, secularism, rights of citizenship, adult franchise, periodic election, progressive taxation, fundamental rights of people giving special rights to the women, children, senior citizens, and vulnerable persons, the extraordinary power of writ petition, the obligatory nature of precedent in case law, right of the crime victims, the legal provisions against untouchability and discrimination are some of the remarkable culture appropriated in the CN. Besides, Nepali legal traditions have domesticated the general principles of civil and criminal justice systems and acknowledge the modern legal culture in corporate and finance laws. The foreign culture of registration of marriage, divorce, migration, and adoption is adopted in the family law. The criminal justice system ensures the accused's rights, the rule of law, fair trial, bail or jail, probation and parole, right to remain silent, no double jeopardy, and appeal against the decision of the first instance court in the higher court. The appropriation of foreign

culture is taken as a necessity of the country to reform and modernize the native legal systems, and to address the challenges of global concerns.

The appropriation of foreign legal culture into the Nepali legal system is congruous in its principles and incongruous in its practices. Differences in history, culture, social progress, language, political developments, and legal systems intensify the degree of incongruities. However, LT, as a means of intercultural communication, transfers foreign legal culture into Nepali laws and legal systems as a cultural compromise and consolidates it. Nepal adopts the international conventions as a party state and maintains the minimum standards of drafting laws in the native legal system. The native legal provisions that are inconsistent with international laws are voided. The culture of federalism, secularism, the ceremonial president, and an independent judiciary is appropriated in the Nepali legal system.

The needs of people for overseas study, jobs, cross-border business, and establishing and continuing foreign relationships smoothly have made LT a necessity in modern Nepali society. Nepali laws and the legal system domesticate foreign legal culture to systematize business, industry, and internal affairs, thereby promoting economic growth and development and implementing the rule of law in the country. As a two-way channel of communication, Nepali laws are translated into English for international societies as a part of the comparative legal system.

The appropriation of foreign legal culture in Nepal has led Nepal to become a modern state; however, it has influenced the practices of indigenous laws. The legal practices that were based on native social and cultural values are at risk of disappearing, which will create the cultural imperialism of Western society in Nepal. So, the appropriation needs to be prudent and applicable to the country to solve the country's native issues.

Findings

The findings of this research is that the Nepali legal system has adopted foreign legal culture based on the civil and common law traditions. It domesticates foreign legal practices to reform the indigenous Nepali legal system and to be consistent with international laws. Not only laws but also the legalese are borrowed from foreign languages, including Latin, English, Sanskrit, Hindi, and Persian. The appropriation of legal institutions, professions, training, due process of justice, the decision-making process, and the implementation of decisions is congruous in principles; however, it is incongruous in practices. The culture of federalism from the US Constitution, the penal system from the German Criminal Code, and the Japanese Penal Code are adopted. The practice of codified law is adopted from the French legal system. The modern family and property laws are appropriated from English legal systems to reform, modernize, and promote native culture, ensuring the indigenous practices of marriage, adoption, partition, share, women's property, and trust. However, the differences in languages, cultures, and comparative legal systems have made the cultural transfer a challenge, as the SL culture partly transferred to the TL.

LT has transferred the foreign culture of legal institutions and functions; however, it poses difficulty in functioning in the mother culture in the new societies. Understanding local needs is essential for domesticating foreign laws, as the substantial similarities may differ in reality. The LT has mediated Nepali and foreign legal cultures by integrating the foreign legal values, norms, and practices into the Nepali legal system. The pragmatic knowledge of translation has led the readers to explore specific socio-cultural contexts of the ST to seek faithful correspondence in the TT. The globalization, socialization, and modernization of law have had a significant influence on the adoption of legal culture worldwide, including in Nepal.

Nepal has domesticated the principles and provisions of the UDHR, ICCPR, CRC, and CEDAW into Nepali law and the legal system, thereby introducing a foreign legal culture into Nepali jurisprudence. The human rights culture, as mentioned in the UDHR, is transferred to the CN and mentioned in the chapter "Fundamental Rights and Duties." Consequently, the CN has ensured the basic rights of people and provides the rights to liberty, equality, freedom of speech, the remedy for the breach of these fundamental rights, inclusiveness in state mechanisms, and the drafting of laws to eliminate discrimination by sex, caste, and religion. The CN has domesticated the foreign legal culture as a national need and has acknowledged the multiparty system, secularism, federalism, the doctrine of separation of powers, the rule of majority, the Westminster system of government, the bicameral legislature, and has empowered the local levels to exercise participatory democracy.

The foreign culture of declaring the national animal, language, flag, and anthem in the constitution has been congruously transferred to the CN, further domesticating it to ensure the relationship between a person and the state. The CN has managed to provide the citizenship certificates of decent, naturalized, and honorary types based on birth, residence, and special contribution to the country to promote Nepali language, culture, and economic growth (Constitution of Nepal, art. 11). The systems of the President, Vice president, and executive Prime Minister, and constitutional bodies have been domesticated in the CN to reform the Nepali legal system as a need of the modern society. The preamble of the CN specifies the objectives and background of the constitution, and is congruent with the US Constitution, as it starts with the same sentence structure.

Further, the principles of the criminal justice system are consistent with the ICC and have been transferred to the NPA, which has ensured no double jeopardy,

crime dies with the criminals, the burden of proof goes to the accuser, the accused's rights in the pre-trial, trial, and post-trial period, the victim's right to justice and claim for compensation, and fit the punishment to the crime. The juvenile justice system grants immunity from criminal offenses to those under 10 years of age, and the right to remain silent during investigations and court proceedings is a foreign legal concept that has been transferred to the NPA.

Additionally, Nepal has domesticated the general principles of civil law from the foreign legal culture. The ignorance of law is not excused, an act against public interest is not to be carried out, an act contrary to law is invalid, fixes the liability to the wrongdoer, prohibits a nuisance and taking benefit of wrong, recognizes the personality, and the customs and traditions contrary to law are void and voidable. The implementation of civil law is equal for natives and foreigners. The principles of the civil and penal codes are consistent with the modern legal culture practiced in other countries. The law related to children and juvenile justice is consistent with the CRC principles, which separate juvenile justice from the criminal justice system for the welfare and best interest of the child. The Anglo-American Common law culture is transferred and prevails over Nepal's customary laws.

Nepal has domesticated elements of the legal culture from the civil and common law systems, and it has also continued the Hindu legal tradition. As a common law culture, the 'precedent'- judge-made law- is binding on the lower courts. The culture of a written constitution and statutes has been derived from the civil law system. Family and property law have domesticated the Hindu legal culture, with some influence from modern legal culture, such as the registration of marriage, divorce, and adoption at the local registrar's office. The equal distribution of partition shares in inheritance, including the daughter, and the issuance of a land ownership

certificate to the owner are influenced by modern legal culture domesticated from the foreign legal system. Federalism, as ensured by the US Constitution, is appropriated in the CN, which grants the rights to use natural resources and to exercise state power to the Federation, Provinces, and Local Levels, in absolute and concurrent terms.

History reveals that a country's legal system develops gradually from its native history, culture, political consciousness, social practices, and adoption of foreign countries' legal systems. The factors that contribute to the development of national legal culture are transferable and pass from one jurisdiction to another through processes of translation and globalization. All over the world, the social, cultural, and economic needs of human beings are similar, so the legal culture for common issues transfers from one country to another to meet the national and international needs of jurisprudence. Many foreign legal cultures have been incorporated into Nepali law and legal systems due to common global social, economic, political, and cultural issues. By appropriating foreign legal culture, Nepali laws and legal systems have become consistent with the principles and practices of the UDHR, ICCPR, CRC, ICC, and CEDAW.

Conclusion

Comparing and contrasting the Nepali laws and legal systems with foreign legal systems, this research concludes that Nepal has adopted foreign legal traditions, compromising with the indigenous legal systems. This occurs at congruous and incongruous levels due to the socio-linguistic and cultural differences of the countries. The conceptual congruities differ in practices; however, the appropriation has reformed the indigenous practices. The domestication of corporate, human rights, and environmental laws has promoted business, respected human rights, and conserved

the environment. The domestication and foreignization translation methods are used as a complement to transfer SL (English) legal culture into TL (Nepali) laws.

The significance of this research is that it enriches the readers with the knowledge that the Nepali legal system has been appropriating foreign legal culture to reform indigenous practices. It also clarifies that the primary objective of LT is cultural communication rather than semantic equivalence. Additionally, it explores how Nepali legalese has borrowed foreign legal maxims and terms to fill the gaps of legal language in Nepal. LT has transferred foreign legal culture to Nepali laws and legal systems.

Since the codification of *Mulukī Aina* in 1854, Nepal has been appropriating foreign legal culture into its laws and legal systems to regulate the country. The *Mulukī Aina* has appropriated the French legal culture of codifying laws, incorporating the social and cultural practices of local people. The foreign legal culture has been appropriated to modernize the native legal system and to address the social challenges. The appropriation of foreign legal culture must not be taken as a replacement of local traditions, but rather as their reconstruction and reformulation for better results. For instance, the adoption of the ICC principles in the NPA has not replaced the Nepali criminal justice system, but has modernized it and filled its shortcomings.

Based on this research, the prospective scholar can explore cultural identity, policy implications in Nepali legal drafts, future law reform, and translation practices. They can also examine how globalization and the modernization of law have influenced indigenous laws to align with the universal legal culture. The researcher can even explore the domestication as a form of cultural imperialism in the Nepali laws and the legal systems.

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