

# **CHAPTER: ONE**

## **INTRODUCTION**

This study is about “A study on the Legal Discourses”. This chapter consists of general background, importance of English, discourses, types of discourses, English in Nepalese legal system, introduction of advocates and clients, review of the related literature, objectives of the study and the significance of the study.

### **1.1 General Background of the Study**

Human beings are most developed living creatures in the universe. They deserve species specific property, language to communicate, discourse and express their thoughts, feelings, emotions and attitude in their day to day life. In this regards, Wardaugh (1992, p.3) states "language and system of arbitrary vocal symbols used for human communication". In the same way Sapir (1921,p8) states “Language is purely human and non instinctive method of communicating ideas, emotions, and desire by means of voluntarily produced symbols”. On the basis of Sapir and Wardhaugh, language is only for human beings because of brain structure quality i.e. called ‘Neocortex’ so we are special one from all living creatures of the universe.

Language is sole property of human beings through which human beings exchange their views. It consists of the vocal noises made by human beings and vocal sounds such as sneezing, coughing, snoring etc. These sounds can communicate some meanings but cannot be considered as language because these sounds are not deliberately used for the purpose of communication. These are involuntary sounds. Thus, language can be defined as voluntary vocal system of human communication. So, the term

language refers only to the voluntary vocal sounds through which speakers use deliberately for the purpose of communication. It is a means which helps human beings to think, interpret and express about the real world.

Richards, et al. (1999, p.196) define language as “The system of human communication which consists of the structured arrangement of sounds for their written representation into larger units e.g. morphemes, words, sentences etc” In the process of communication one perceives the clear pictures of the whole world through the language. Similarly, Crystal (2002, p.255) defines language as “an abstract system of underlying the collective totality of the speech/writing behavior of a community or knowledge of this system by an individual”

Considering English, it has far fewer native speakers than Mandarins Chinese but it is English that is considered as international language today. Presently, there are more non-native speakers of English than native ones. It is contributing factors in the spread of English. Language is species specific to mankind i.e. only human beings can have the capacity to speak language to discourse and their mind is genetically equipped with it .No other animal can acquire language because of its complex structures and their physical inadequacies. Human mind is specially equipped with a special type of capacity to acquire language that Chomsky calls Language Acquisition Device (LAD). Hokett, 1970 (cited in Bhandari 2005, p.51) explains “Man is only living species can reasonably be presumed to have had the power at some earlier time and have lost it. The appearance of language in this universe at least in our planet is thus exactly as recent as the appearance of man itself”.

Language has two basic purposes: general and specific. Language, as a general purpose, is defined for communication (discourse) of everyday activities. On the other hand, specific purpose of language is defined to a definite purpose e.g. instrumental, legal discourses, connective, argumentative etc. The prime concern of this study goes to legal discourses which are used to defend the cases and provide justice if they are really in injustice or not.

Various linguists and scholars have tried to define language from their own perspectives. However, language cannot be defined absolutely in linguistic theory. No firm boundary can necessarily be drawn between one language and another. One language may contain vast differences in pronunciation, grammar and vocabulary from other. However, they come to the same conclusion that language used in discourse is a human phenomenon especially meant for communicating purposes which has its own system and produced voluntarily through vocal apparatus according to the situation.

### **1.1.1 Importance of English**

English has been practised and used all over the world by millions of people. English has become voice of progresses, modernizations, globalizations and development .Today, English has also become immensely dispersed and diversified international mass of communication, English, nowadays, no longer remains the private property of the English speaking countries, like Britain, America and Australia. It has rather developed and globalized as an inclusive channel of communication and education throughout the universe. English is considered as a language of civilized, qualified and professionally highlighted persons. In the context of Nepal, English is regarded as

language used by the academically and intelligent people and rest of the people (who do not know English) are as the people of backwards.

The United Nation Organization (UNO) has allowed English as an official language. It is used in many different international organizations like UNO, South Asian Association for Regional Co-operation (SAARC), World Trade Organization (WTO), United Nations Educational Scientific and Cultural Organization (UNESCO) and so on.

Giving the importance of English language, Karn (2006, p.130) remarks “There has been a belief among some where English is the language on which the sun never sets”. According to the survey of UNESCO (as cited in Khanal 2011, p.23), “More than sixty countries of the world use English as an official language, about one hundred and sixty millions of people listen to English radio programs and over sixty million children study English at primary level” Then, we must say English is the gateway through which everyone can learn history, culture, lifestyle, socio economic status, level of education and so on. On the other hand, we can say English is the main language of publications: newspaper advertising, academic, conferences, diplomacy, business and the bridge of all people to go to any corner of the world. It is official and international language of traffic control. In the same way, Harmer (2008,p13), states “English is also, of course, a mother tongue of many people in the world through such native speakers are increasingly out-numbered by people who have English as a second language or third language and use it for international communication”

Increasing the importance of English language, Awasthi (ibid.) further says “At the same time, our vernacular language Nepali is not sufficiently developed to meet all the requirements of the communication.

### **1.1.2 Discourses**

Generally, discourse refers to any kind of communicating act done by the people, any continuous stretch of consistent and coherent piece of speech, event either in oral or written form such as conversations, sermons, prayers, jokes and classroom interactions. Likewise, poem, story, novel, paragraph and advertisement in print media, shopping and piece of narratives can be listed as the examples of written discourses. Let's consider some definitions given by different scholars:

Crystal (1992, p.25) defines "Discourse is a continuous stretch of language, larger than the sentence, often consisting of a coherent unit such as sermons arguments, a joke or a narrative". Discourse is the combination of the segment of words using by people for different purposes. Nunan (1993, p.7) defines "A discourse refers to the interpretation of communicative events in context". He states that discourse is the interpretation between peoples according to their desire, attitudes and context. On the other hand, Cook, G (1989, p156) argues, ".....Stretches of language perceived to be meaningful, unified and Purposive". This definition also supports to the view of Crystal, Nunan and Cook.

Similarly, Longman Dictionary of the English language (1984) defines discourse as "A conversation, especially of a formal nature; formal and orderly expression of ideas in speech or writing; also such expression in the forms of sermon, treatise etc, a piece or unit of connected speech or writing (Middle English discourse, from Latin: act of running about)".

Discourse is linguistic communication seen as a transaction between speaker and hearer, as an interpersonal activity whose form is determined

by its social purpose. Text is linguistic communication (either spoken or written) seen simply as a message coded in its auditory or visual medium.

### **1.1.3 Types of Discourses**

According to the level of the usage, English discourses can be marked with roughly four contrasting levels, such as formal and informal, oral and written, reciprocal and non reciprocal, transactional and in transactional. These are, in fact, the most level of usage. Discourse can be roughly divided into two types viz. general and specific. The general type of discourse (as cited in Mishra, 2008) is further divided into four broad categories which are presented below.

- I. Spoken and written discourses
- II. Formal and informal discourses
- III. Reciprocal and non reciprocal discourses
- IV. Transactional and non transactional discourses

The nature of above mentioned categories of discourses are major ones which are described briefly in the following sections.

#### **I. Spoken and Written Discourses**

The two traditional divisions of the language communication into spoken and written form are based on the differences between production and reception of the message. Our organs like mouth, ears, hands and eyes are involved in this process. A spoken discourse is generally less formal and therefore, more orderly in its expression with a severely limited possibility of accessibility to the sub-ordinate.

## **II. Formal and Informal Discourses**

A formal discourse may be either in spoken or written form, but vary by its nature; it is well planned and orderly compared to the informal discourse which can also be possible on the two forms. The formal discourse is meant for transmission of serious purposes such as business letters and regulation. A formal discourse is always written. On the other hand informal discourses are colloquial in nature. These are the kind of discourses which are meant for private conversation and for personal purposes.

## **III. Reciprocal and Non-reciprocal Discourses**

The discourse typology under reciprocal and non reciprocal is based on the possibility of the degree of interruption by the receiver of the communication. A discourse is said to be reciprocal when there is possibility of interruption by the other speaker and participants, a face to face communication, is an ideal example of reciprocal discourse. On the other hand, in non-reciprocal discourses the senders and the receivers may have no chance of any interaction and intervention posthumous book by an author for i.e. it is absolutely a non reciprocal discourse. It is beyond readers' power of exercising any influence on the development of characters, plot and course of novel.

## **IV. Transactional and Interactional Discourse**

This is from the functional point of view, the discourse typology may be divided into two categories, as transactional and interactional. According to Brown and Yule (1983) and Nunan (1993), "Language may be used for transactional and interactional purposes. The former refers to the use of language for content expression. These sorts of language functions are used for the exchange of goods and services.

The interactional type of discourse is said to be the one which is meant for socializing purposes. It is used for facic communication to establishing and maintaining social relations, personnel feelings, sentiments and emotions.

#### **1.1.4 Some Specific Types of Discourses**

The specific type of discourses (as cited in Mishra, 2008) is further sub-divided into following categories which are presented below.

- A. Literature based Discourse
- B. Legal Discourse
- C. Religious Discourses
- D. Medical Discourses
- E. Journalism based Discourses
- F. Business –based Discourses

#### **1.1.5 Legal Discourses**

Legal discourses are tones having very formal, serious, complex syntax with clauses and sub clauses, marked and punctuated by legal terminologies, action and situations. “To exercise one’s rights without due regards to law and without infringing upon rights of others is also fundamental duty of every citizen.” (From our constitution 2007) Some legal terminologies which characterize Nepali legal registers are cited below:

“Niyam”, “Dhara”, “Upadhara”, “Tarek”

“Biniyam”, “Kanun”, “Annuchhed”



“Upaniyam”, “Parichhed”, “Anuchuchi”

“Vag”, “Dafa” , “Upadafa”, “Niyamawali”

“Akhandata”, “Akhabari”, “ Multabi” ,“Akhtiyar”

“Akhtiyar durupayog anusandhan aayog”, “Akhtiyarnama”,

“Agradhikar”, “Khalis”, “Ijalas”, “Khareji”, “Gatirodh

“Gawaha”, “Gair Kanuni”, “Ghosana” , “Chori”, “Chauki”,

“Chyut”, “Chadke”, “Chekthun”, “Chodpatra”,

“Jaghanya”, “Jana-andolan”, “Janagadana”, “Janahi”

“Janjir”, “Janamat sanghra”, “Jamat”, “Jamani”

“Janchbujh”, “Jalsaji”, “Thagi”

The legal registers are further characterized by the frequent use of passive structures, court trials, legal procedures, and prosecution against towards activities .There are objective and social description of rights and duties, warning against prohibited activities and guiding principles.

Let’s consider some legal terms and regulation which are stated in our nation’s constitution. Example; ‘Devotion to the nation and loyalty to the state are the fundamental duties of every citizen” (from Constitution of Nepal 2007).

Legal discourse is the special kind of discourse used by typical professionals i.e. advocates, lawyers, teachers of law, representatives of legislative provisions, judiciary specialist, law makers, judges of different courts, etc varying according to the concerned matters. It is also used for day to day communication to solve some social problems at the stage of violation of the rules in the society. So, what we can say is it is used to

balance our society. There are examples of different ancient records, which are guided by religious terminologies used by Sagas (priests). Even today, some peoples are guided by religious terms (Richas and Mantras) like Srimadvagawata (Gita) and Chadikya niti, Manusmiriti, Bidur niti (From: Ancient Religious Books i.e. Gita,Chanikyaniti,Manusmirti). There is a special provision to maintain peace in the nation which is legal discourse to maintain balance between people lives in the society.

In conclusion, we can say that legal discourses are the means to maintain balance in the nation. We as a special creature of the universe with brain, legal discourses can control our emotions compelling us to complete our daily tasks. So, legal discourses can provide us justice, control crime and be able to create peaceful environment.

#### **1.1.5.1 Features of Legal Discourses**

Discourse is a highly specialized use of language requiring a special set of habits. Obviously, translating legal texts requires painstaking attention to detail and sensitivity to the consequences of subtle contextual changes. This kind of writing is such a departure from our everyday use of language that it is worthwhile to consider some of the specific characteristics of legal language which the translator should keep in mind. Understanding why legal language is the way it is can help the translator to develop a kind of textual model, a sense of how language functions in legal discourse.

As you consider the selections presented for comparison, you will note how sensitive legal terms are to changes in context-the specific "setting" in which they are used. For this reason, dictionaries and lexicons are of limited usefulness in translating legal terms. A good translation requires both a thorough understanding of the subject under discussion and

familiarity with similar models in the target language, i.e., the same kind of documents or instruments.

Here are a few general characteristics of legal language to keep in mind when faced with these types of documents (as cited in <http://www.justice.gov.uk/civil/procrules>).

1. Legal language is conscious of precedent; conservative; slow to change; formulaic.

Underlying legal discourse is the idea that the law is a unified system developing organically from generation to generation. We believe that there is continuity in the law that has continued to grow and develop in a consistent way throughout a very long tradition. Legal language reflects these conceptions; a keen consciousness of precedent affects every choice of word, every turn of phrase in legal discourse. For this reason, legal language tends to be quite conservative. It is slow to change and tends to retain phrases and formulas that have fallen into disuse in everyday language. Legal language relies heavily on standard formulas of expression because the meaning of these phrases has been sanctified through long use. Our need for legal language to be as reliable and as consistent as possible from generation to generation is of very high priority.

2. Legal language is definite, precise and technical.

"The lawmaker sends his message over wide reaches of space, and he hands it down through indefinite stretches of time. These facts require that the lawmaker, above all speakers, transmit his message in a form which cannot miscarry or be lost to view" (Burke Shartel, *Our Legal System and How it Works*, p.288).

The message must be transmitted in language that is extraordinarily definite and precise. Words must be used in strict accordance with definitions understood by all concerned. Members of the legal profession make careful distinctions between words that seem nearly interchangeable to the layman: the difference between residence and domicile, dictum and decision, privilege and right, may be of little consequence in everyday language, but in a legal context these distinctions are critical. Inevitably a large number of technical words must be used; popular language simply lacks the necessary consistency and precision. "The degree of definiteness (needed for legal discourse) can usually be obtained only by employing technical legal words whose meaning has been brought out and fixed by long experience and use," Burke Shartel explains (p.295). Technical words once we understand their meaning are not only precise but economical.

3. Legal language tends to spell things out with painstaking attention to minute detail.

In everyday language, we ordinarily try to leave the obvious unsaid; we take it for granted that people know what we are thinking and understand what we mean. In legal discourse, nothing can be taken for granted: every significant detail must be stated explicitly. We often feel that legal language is unnecessarily wordy, even redundant, and we often feel tempted, while translating, to try to reduce the number of words. This can have dangerous consequences, because the apparent redundancy usually is serving an important function

4. Legal language is characterized in all its aspects by formality.

Formality in legal language is the expression of the formality of the legal process itself. Berman and Greiner define formality as follows:

"If . . . a legal solution is sought to ...problems, and then time must be taken for deliberate action, for articulate definition of the issue, for a decision which is subject to public scrutiny and which is objective in the sense that It reflects an explicitly personal judgment. These qualities of legal activity may be summed up in the word formality; formality in this sense inheres in all kinds of legal activity, whether it be the making of laws (legislation), the issuing of regulations under the law (administration), the applying of laws to disputes (adjudications), or the making of private arrangements Intended to be legally binding (negotiation of a contract, drawing of a will, etc.)" (The Nature and' Function of the Law, p.26)

5. The complexity of certain legal concepts demands a corresponding complexity in sentence structure.

A great many qualifying phrases and dependent clauses may be required in order to express a concept with the necessary precision.

6. Many foreign expressions are found in the legal language, especially Latin

### **1.1.5.2 Application of the Legal Discourses**

Legal discourses are used in many fields to handle the different cases in the court. The many cases include: cases of criminals, family laws, land, consent order, contravention, court hearing, court order,

enforcement order, exposed to family consultant and abuses cases. The discourses vary in its forms, nature, structures and the jargons to be specific in certain cases. The discourses used in the case of criminal vary in the cases of family and child disputes. The lawyers make use of discourses when they encounter different cases to solve the problems which clients bring in the courts. Legal discourses are used by the concerned persons in the court related fields i.e. in Supreme Court, Appeal court, District court, BAR Associations, Notary Public offices and in the concerned parliamentary discussions.

#### **1.1.6 English in Nepalese Legal system.**

Particularly, Nepalese legal system was established during the period of Padma Samser in 2004 B.S (Government of Nepal Act 1948 A.D.) before that Kuther, Mapchowak, Lingwal, Sulli were in practice so were the cases even in Kirat and Lichhavi period. In medieval period, Neplease Kings were the sole sources of legal system .They themselves made laws. After the downfall of Malla, Shah Dynasty came into existence by the diplomatic and fearless King Prithivi Narayan Shah. In the 18<sup>th</sup> and 19<sup>th</sup> century, there was Pancha Valadmi system to manage legal system .They used to punish the criminals on the basis of seriousness of crime. Ram Shah of Gorkha state was very famous at that period. In that regard, there is still popular proverb “**Nyaya Napaya Gorkha janu**” even today. In those days, legal system was laid on the basis of the oral compromise by the locally reputed socialite and respected personalities.

In the history of Nepalese constitution, frequent amendments have been made. They are government of Nepal Act, 2004, B.s, Nepal interim constitution act 2007, Constitution Act of Nepal Kingdom, (2015), Nepal

constitution 2019, Constitution of the Kingdom 2047. Here, since 2004 B.S to 2047 B.S, amendments according to the need of people and demand of age have been implemented. Now interim constitution 2063 is applied after Jana Andolan 2062/63 B.S. It includes not only change of constitution but also interoperation of cases and verdict. (From different ancient religious and Historical Books).

### **1.1.7 An Introduction to Advocates and Clients**

This is common to all, person who advocates in any court relating to the legal issues is generally known as advocate or interpreter. Those who are professionals, who provide evidence, proof for the favours of their clients to the court are advocates. They always discover, investigate and find out the exact information which directly and indirectly related to the issues. During the discussion they possess different evidence and proof to provide justice to their clients.

The law in general is of two type i.e. civil law and criminal law. The prior i.e. civil law is concerned with legal general cases of human beings just like property, family, adaption, husband and wife, landlord etc. On the other hand, criminal law is concerned with crime. The fighting, theft, dacoits, murders are the cases which come under this law. Making rules and regulations, applying them, revising and correcting according to the time and the defining punishment all working under the process of law are the jurisprudence. It is Austin who for the first time, treated jurisprudence as a science of law concerned with analysis of the legal concepts their exposition.

Clients, on the other hand, are persons, institutions, organizations and some government related issues. Generally, they are known as customers

who need justice and visit advocates. On the other hand, those concerned groups who are always with issues/problems to solve are advocates.

In conclusion those persons, institutions and organizations who visit advocates to solve their problems are clients. There is always mutual relationship between advocates and clients. Because advocate who always try to defend their clients as well as to provide justice in legal way. So, here clients are customers and advocates are the service providers.

## **1.2 Review of Related Literature**

This study concerns with legal discourses. This study also tries to find out the discourses in every related field of advocacy. This study also tries to find out whether discourse terms are important for judicial professionals or not. Similarly, it tries to find out how much of professionals used legal discourse in their regular practices of justice.

Few studies have been carried out in the field of legal discourses. Some of them are as below.

Tamang (2007) carried out a research entitled “Translation of Legal Terms: A Case of Interim Constitution of Nepal”. This study attempted to find out the techniques employed and linguistics problems in translating legal terms. He had selected hundreds of legal terms from Nepali version of the interim constitution of 2007 published by Law Books Management Board, Babarmahal and corresponding words from English version of the same book. He found out that the constitution included five different techniques i.e. literal, loan, transliteration, hybrid formation and paraphrasing in translation of the constitution.



Giri (2007) carried out the research entitled “Use of English in Nepalese Court”. This study attempted to find out the extent to which English is used in the Nepalese court. He had selected thirty lawyers of the Supreme Court while interpreting the case in different lawyers in different cases. He used questionnaire, observation, checklist and interview as major tools of the data collection. The study found out that the English was used in the advocates in the court in order to impress the judges and audiences. It also found out that Nepalese lawyers used majority of the legal terms in English language due to globalization of the world.

Bhandari (2007) carried out a study on “Translation of Legal terms”. The study attempted to find out to identify the ambiguous of the legal terms of Constitution of 2007. He used only secondary sources for data collection that was the constitution of 2007. He used checklist as the major tools for data collection. He found out that the constitution had used less ambiguous terms in the context due to the preamble of these terms.

To sum up, this study concerns about legal discourses or interpretation with advocates and client who are directly or indirectly related to the subject matter or objectives of the study. Moreover, this study incorporates related issues of present context i.e. Judicial, Political, Academic and vice versa. . The researcher carried out a research entitled “A Study on Legal Discourses” which is different from others’.

### **1.3 Objectives of the Study**

The objectives of the study were as follows:

- ) To determine the legal terms used by judges, advocates and clients.
- ) To find out the frequency of those legal registers.
- ) To suggest the pedagogical implications of the study.

## **1.4 Significance of the Study**

The success of using English discourse components is measured through the achievement of legal terminologies by the lawyers/advocates. The achievement can be obtained only when due consideration is given to the language and its proper uses. For this, discourse can play a significant role to express and to assimilate by the advocates and judges respectively.

## **CHAPTER: TWO**

### **METHODOLOGY**

This chapter deals with the research methodology adopted to carry out the study on Legal Discourses. The sources of data, population of the study, sample size and sampling procedure, tools for data collection, process of data collection, limitations of the study and other procedure are described below.

#### **2.1 Sources of Data**

Both primary and secondary sources of data were used to obtain the objectives of the study.

##### **2.1.1 Primary Sources of Data**

The primary sources of data for this study were the respondents from office of The Attorney Generals, Supreme Court, Kathmandu, Nepal BAR Association, Kathmandu, Notary Club of Kathmandu, Butwal and Bhairahawa, Appeal Court of Rupandehi, District Court of Siddarthanagar, Chief Judge of Appeal Court, District Court, Defense advocates, Criminal advocates private lawyers and governmental lawyers.

##### **2.1.2 Secondary Sources of Data**

I used different books and different sources of print and electronic media such as Mishra (2008), Awasthi (1979), Bhattarai (2006), Carter and Nunan (2001), Dhyani (2011), Harmer( 2008), Hart journals of Attorney Office, journals of NELTA, other journals, daily newspapers, reports, articles and internet information related to the objectives of the study.

## **2.2 Sample of the Study**

In this research, direct contact with concerned people was made by the researcher. In this study, the populations of the study were selected from the different part of the country by using judgmental or purposive sampling. In the same way, altogether 30 peoples from the different parts of the country i.e. Chief Justice of Appeal Court of Butwal, Chief Judge of District court, Register of Appeal Court, were selected by the researcher. The size was determined by taking 15 government lawyers, 10 private advocates and 5 clients. The declaration (pleading in bench) Ijalas of Chief Judge of Supreme Court, Chief Judge of Appeal Court and Chief Judge of district court were also observed by the researcher.

## **2.3 Tools for Data Collection**

The tools for the data collection for the study were questionnaires (open or close ended) and checklist for observation.

## **2.4 Process of Data Collection**

To collect the data, I followed the following procedures:

- ) The receptions of every office was visited and told the purposes of visiting over there.
- ) After getting information, the concerned people were met by showing my identity card and letter given by the department.
- ) Sitting on the seat of audience, the pleading of different courts were observed.
- ) The some legal terminologies used in the appealing process by the Chief Judges and the advocates were listed in the notebook.
- ) Thirty concerned people i.e. Chief Judges, lawyers and clients, were requested to answer the questionnaire.

- ) At last all the participants were thanked and made departure from the offices.

## **2.5 Limitations of the Study**

This research has the following limitations:

- ) This study was limited to the Office of the Attorney General, Kathmandu, Supreme Court, Appeal Court of Rupandehi, District Court, Siddarthanagar, Nepal BAR Association, Notary Club of Butwal and Bhairahawa, and Notary Club of Kathmandu.
- ) This study was limited to the fifteen questionnaires and checklist as the major tools for data collection.
- ) This study was limited only to the Legal discourses between advocates, clients, judges and concerned fields.
- ) Only twenty five concerned people working in judiciary professions and five clients were selected as the population of the study.

## **CHAPTER : THREE**

### **ANALYSIS AND INTERPRETATION**

This chapter consists of analysis and interpretation of the data. It deals with the analysis and interpretation of the obtained data, field survey at different concerned offices, professionals, their difficulty in in-service period, nature of the clients and discourses with them according to the necessity of the cases. The information was analyzed and interpreted to find out the actual findings in the judiciary process, professionals and their effects on the clients.

After collecting the responses of different lawyers, clients, students of LLB and LLM with the view to make the study more objective and effective, the analysis and interpretation of the data had been carried out by using statistical tools, questionnaire and observation.

The analysis and interpretation of the data had been carried out under the following headings:

#### **3.1 Transliteration of Legal Terms and their Equivalences in English**

It includes the data which are needed for this research where legal terms are taken from the SL with their transliterated forms. The terms in along with their equivalent terms found in the TL are included in the forms of table. The researcher also mentioned the techniques employed while pleading the cases and their discourses with the clients and their translated forms these are as follows:

**Table No. 1****Legal Terms of Transliterated Forms Adopted by Advocates**

S.N	SL Terms	TL Terms	Techniques
1	Akhandata	Integrity	LT
2	Akhitiyar durupayog Anusandhan ayog	Commission for the Investigation of abuse	PR
3	Adalat	Court	LT
4	Court	Session	LT
5	Adhyades	Ordinance	LT
6	Anusuchi	Schedule	LS
7	Alpasankhyak	Minority	LT
8	Ain	Act	LT
9	Kartavya	Duties	LT
10	Kasur	Offence	LT
11	Karyapalika	Executive	LT
12	Radio	Radio	HF
13	Khareji	Repeal	LT
14	Ganakpuraksankhya	Quorum	LT
15	Ghosana	Proclamation	LT
16	Janaandolan	Peoples Movement	PR
17	Janatmatsanghara	Referendum	LT
18	Tahakikat	Investigation	LT
19	Devanagiri lipi	Devaganari script	HF
20	Dhara	Article	LT
21	Najir	Precedents	LT
22	Samanata	equality	LT
23	Nirwachan	Election	LT
24	Nity	Policy	LT

25	Pakcha	Party	LT
26	Paramades	Mandamus	LT
27	Parisad	Council	LT
28	Prativedan	Report	LT
29	Pranali	system	LT
30	Pradhan Nyadhis	Chief Justice	LT
31	Bandi Pratakshikaran	Habeas Corpus	LT
32	Bar	Bar	TR
33	pres	press	TR
34	Man onayan	Nomination	LT
35	Matadhikar	Franchise	LT
36	Mahanyadhibakta	Attorney General	LT
37	Manab Adhikar	Human Rights	TL
38	Mirtyudanda	Death Penalty	LT
39	Matribhasa	Mother tongue	LT
40	Yatana	Torture	LT
41	Rajtantra	Monarchy	LT
42	Loktantra	Democracy	LT
43	paitric	ancestral	LT
44	Lok sewa ayog	Public Service commission	LT
45	Sapath	oath	LT
46	Sosan	Exploitation	LT
47	Sambidhan	Constitution	LT
48	Sadan	House	LT
49	Balig	Adult	LT
50	J Amanat Dinu	To give guarantee	LT



From the table no one it was clear that the lawyers, judges and the advocates used different techniques of translation while using legal discourses in different cases. They used mostly literal translation of SL terms in English. Transliteration, paraphrasing, hybrid formation and loan shift were used less in comparison to the literal translation.

### **3.1.2 Techniques Used by the Lawyers to Translate Legal Terms.**

Various techniques were adopted by the advocates while pleading the different types of cases. They translated the terminologies according to the nature of their client's cases. Innumerable questions were asked by them to the clients to get the exact information to win the cases. On the basis of the real experimental research, analysis of the legal terms and their English equivalence, it was found that the advocates used the following techniques to make their cases strong:

- ) Literal Translation
- ) Loan Shift
- ) Transliteration
- ) Hybrid formation
- ) Paraphrasing

The techniques used in the translation of legal terms with their frequency and percentages were as follows:

**Table No. 2**

**Techniques Used in the Translation of Legal Terms by Advocates**

<b>Techniques</b>	<b>No. of Terms</b>	<b>Percentage</b>
Literal Translation	41	82
Loan Shift	2	4
Transliteration	2	4
Hybrid Formation	2	4
Paraphrasing	3	6

The table number two showed that the five different techniques used by the lawyers in the process of their profession. They used different techniques as a translator in the translation of legal terms from Nepali into English language. Among 30 clients, eighty-two percent terms were translated literally, four percent were through loan shift, four percent were transliterated, and again four percent through hybrid formation and finally two percent were paraphrased. The table proved that maximum number of advocates used literal translation techniques most frequently. Likewise, hybrid formation was least used techniques in the translation of legal terms while pleading the cases in the court and discourses with the clients.

**3.2 Level-wise Analysis**

This section is divided into two sub headings: advocates/lawyers and clients. Here, level wise analysis is dealt with in terms of the clients' educational background, lack of knowledge of legal terms, lack of equivalence in Nepali language, material collections and experience.

**Table No. 3**

**Views of Clients on the Use of Legal Discourses**

<b>Views of clients on the use of legal Discourses</b>	<b>Number</b>	<b>Percentage</b>
Lack of knowledge of legal terms	5	10
Lack of equivalents in Nepali	3	30
Material collection	2	10
Experience in legal procedure	5	10
Need of legal discourses	15	30

This table no three consists of five clients of different educational background on the use of legal discourse with their advocates'. Out of them, 10 % clients said that lack of knowledge of legal terms made their cases more difficult. Regarding them, 30 % clients lacked equivalent Nepali legal terms. Among them, 10% clients replied about collecting the materials for their cases. And, 30% clients replied that they had already got experiences in legal procedures for their need. They were familiar with the legal proceses with the help of their advocates and by self -study.

The most important fact was that all of the clients agreed to take part in legal discourses with their advocates for making their case stronger and more co-operative to win the cases.

### **3.3 Degree- wise Analysis**

The researcher observed the 30 legal cases interpreted by lawyers in the Supreme Court, Kathmandu Appeal court of Siddarthanagar and District Court of Rupandehi. The legal discourses and terminologies used while interpreting legal cases by those 30 lawyers are analyzed below:

**Table No. 4**

**Degree of legal Terms Used (in %)**

<b>Degree of legal terms used in percentage (%)</b>	<b>Number</b>	<b>Percentage</b>
Below 10	15	50
10-20	12	40
Above 20	3	10

The table no four shows that 50% lawyers used legal terminologies below 10%. Similarly, 40% lawyers used English terminologies of legal words by 10-20% whereas only 10% lawyers used legal English terms. So, a few numbers of advocates used English legal terms in Appeal court and District court.

**3.4 Word-wise analysis**

The researcher observed the 30 legal cases interpreted by different lawyers in three different courts. The word-wise analysis of those 30 lawyers is tabulated below:

**Table No. 5**

**Types of Words Used by the Lawyers**

<b>Types of words</b>	<b>Number</b>	<b>Percentage</b>
General words	18	60
Legal words	12	40

The table number five shows that 60% advocates used general words during their advocacy period, whereas 40% used legal words at the same time. The matter was that those lawyers who were good in English used legal terms as their normal use of language. The usage was autonomous

but rest of them i.e.18 (60%) lawyers used only general words and terms more or less like lawyers. Those who used legal words were also more accurate in their pronunciation than the others 60 percent of the lawyers who used normal words than the legal words.

### 3.5 Experience-wise Analysis

The researcher had analyzed the data on the basis of ranking them into four categories;

**Table No. 6**

#### **Experience of Lawyers in Years**

<b>Experience lawyers</b>	<b>% of legal word used</b>
Below 10 years	Less than 5%
10-20 years	5-10%
20-30- years	5-10%
Above 30 years	less than 5%

The table no six shows that the lawyers, who had experience of less than 10 years, used English legal terms by 5%. These lawyers with experience of 10-20 years used English by 5 to 10 %. Similarly, those lawyers who had experience of 20-30 years used same percent as in 10-20, i.e. 5-10%. The most experienced lawyers who had experience of above 30 years used English by less than 5 %. It was found out that the lawyers having the experience of 10-30 years used more English terms than the lawyers having the experience of below 10 and more than 30 years.

### 3.6 Case-wise Analysis

The researcher, here, observed the 30 advocates of advocacy process in different cases. Those cases are tabulated under the following sector:

**Table No. 7**

**Types of Cases**

<b>Types of cases</b>	<b>Number</b>	<b>Percentage</b>
Criminal	5	above 10
Political	4	above 15
Incest	8	5-10
Corruption	4	5-10
Land	9	Below 5%

The table no seven shows that advocates used the legal terminologies on the basis of the nature of cases. The researcher found the use of legal terms in criminal cases by more than 10%. Likewise, even in political cases, lawyers used legal terms by more than 10% but in the case of incest, the percent of legal terms used was by 5-10%. Regarding the corruption cases, lawyers used legal terms as in the incest case, i.e. 5-10 percent, whereas in the cases of land, the use of legal words was by less than 5%. Comparatively, lawyers used the legal terms more in political and criminal cases.

**3.7 Educational Background-Wise Analysis**

The researcher analyzed the use of different register and diction in legal cases by the lawyers on the basis of their educational background. Here, lawyers were divided into two categories from English background and Nepali background.

**Table No. 8**

**Background of the Lawyers in English and Nepali**

<b>Background</b>	<b>Number</b>	<b>Percentage</b>
English	8	Above 15%
Nepali	22	Above 10%

The table no eight shows that the lawyers who were engaged in their legal profession from their English background used English legal terms by more than 15%. Their English use seemed to be automatic and habitual, whereas the use of English by the lawyers who were from Nepali background seemed to be a bit uneasy. These lawyers who were from Nepali background used English by less than 10 percent. In comparison to the lawyers from the English background, pronunciation of these lawyers from the Nepali background was found to be a bit incorrect on the basis of standard dictionary whereas pronunciation of the lawyers from foreign background seemed to be more accurate.

Moreover, these lawyers from Nepali background spoke English terms as if the Nepali terms were spoken. Even the facial expression of them was not in accordance with the words in English.

**Table No. 9**

**Educational Background**

<b>Educational Background</b>	<b>Number</b>	<b>Percentage</b>
Those who studied in Nepali background	25	Below 10%
Those who studied in English background in Nepal	5	Above 15%

The table nine shows that these lawyers who studied in Nepali background used English in legal cases by 10% whereas these lawyers who studied in Nepal in English background used English by more than 15 %. Comparatively, the lawyers studied in Nepali background used less legal English terms than the lawyers who studied in English background.



## **CHAPTER: FOUR**

### **FINDINGS AND RECOMMENDATIONS**

In this chapter, the researcher attempts to report the main findings of the study on the basis of data analysis and interpretation. It also deals with some recommendation made on the basis of major findings of the study.

#### **4.1 Findings**

On the basis of analysis and interpretation of the data, the researcher found the following findings. The researcher dealt with all the items to compare different terms. The main reasons for which clients and advocates needed legal English discourse for their cases in Nepalese courts were found as follows:

- ) It was found that most of the judges used legal terms on the basis of their experiences, education they acquired and in terms of the jargons used in Nepalese Constitution. Most of the advocates, who were from English background, were found using English legal terms in the place of Nepalese legal words.
- ) It was found that fifty percent of the lawyers used legal discourses below ten percent with their clients, forty percent of the lawyers used by ten to twenty percent legal terminologies with their clients. And, ten percent lawyers used exact terms while interpreting the cases.
- ) The experienced judges, advocates and lawyers used legal terms frequently than those the less experienced and newly appointed ones.

- ) The reasons of not using legal terms equivalent to the English legal terms were found due to lack of exact Nepali terms, less effective Nepalese legal terms in the place of English and lack of related resources for advocates.
- ) Most of the lawyers and advocates were found supporting the courses of law to be taught in English which could help them in competing in the international world.
- ) The lawyers were found in difficulty due to lack of freedom and help from the attorney of government.
- ) Some legal concepts had not been lexicalized in the English language. As a result, the advocates had to use the techniques of paraphrasing i.e. “rastrabhasa” - Language of the nation.
- ) It was found that legal discourses between advocates and clients always supported the cases.
- ) The mutual relations between the clients and the advocates were found helpful for winning the cases.
- ) Legal discourses were found helpful to the clients directly.
- ) Literal translations were found to be most widely used techniques to translate the legal terms by advocates while pleading.
- ) The lawyers were found not giving preferences to the already existing terms in TL.

It was found that most of advocates and the lawyers used English terms due to the lack of equivalent legal terms in Nepali. In their views, Nepali legal words did not clarify the context as English legal terminologies did.

Similarly, it was found out that lawyers used general words more than legal words while interpreting legal cases. Sixty percent of the words were found to be general whereas legal words were forty percent.

The lawyers who were experienced below ten years used less legal terms i.e. below five percent. The lawyers who had experience of ten to twenty years and twenty to thirty years were found to use more legal terms while interpreting the cases in the court.

The lawyers used more legal words in political cases i.e. by more than fifteen percent and lawyers used less legal terms i.e. less than five percent regarding the land cases and more than ten percent in criminal cases.

These lawyers who were from the English background in their academic period used by more than fifteen percent legal English terms whereas the lawyers who were from Nepali background used English legal terms by less than ten percent while interpreting legal cases.

Likewise, these lawyers who studied in English background in Nepal were found using more than fifteen percent English legal words whereas these lawyers who studied in Nepali background used less than ten percent legal English terminologies during their advocacies.

So, the fact revealed that the lawyers used more legal discourses in political cases. In the same way, lawyers who were from English background and the lawyers who were experienced with ten to thirty years used more legal discourse with their clients than the lawyers less than ten years and above thirty years experiences.

## 4.2 Recommendations

Relying on the mentioned findings of the research work, the researcher has presented the following recommendations:

- ) Their advocacies would be more comprehensible in the case of using proper English legal terms from the help of English source books and references. Legal terms, expressions and doctrines used in a statute cannot be translated and interpreted in a haphazard manner. Therefore, advocates should consider in the use of appropriate language in their profession.
- ) It should be noted that it is not which language terms have been used but how the reasons and evidences have been put forth. To prioritize the use of any language is false judgment of the lawyers.
- ) Discourse with related cases and clients should not be taken as a burden or hindrance nor should it be thought to be used to show how capable the lawyers are. Whatever discourse terms are chosen, it should be comprehensible to produce the intended goal.
- ) In some cases, the use of Nepali terms cannot be centralized the targeted sense of advocacies. For clarifying the meanings, longer time should be spent if only Nepali words are used in legal processes. In this context, the English terms should be used for better understanding.
- ) To confine within a nation's language in terms of using effective terms is not meaningful. For a gradual touch with the rest of the world also English language should be used in the legal process.
- ) Preference should be given to the already existed TL terms.

- ) Care should be taken to achieve maximum uniformity in the use of legal terms.
- ) Advocates before the process of appealing in the court should consult standard bilingual Law Dictionaries.
- ) Advocates should consider before selecting or coining TL terms for the SL terms most up to data ideas associated with SL terms should be taken into consideration.
- ) Advocates should not use whatever word is available in the dictionary. They should select the words looking the words in the thesaurus to get the correct equivalent legal terms.

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4. Who are clients? What sort of behaviors they show while they Visit you?

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5. Are there any situations in which lawyers need discourse with their clients related to their issues, matters? If yes how often?

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6. How could you research, investigate the cases? Do you feel is there need of mutual relation between Advocates and clients?

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7. What kind of legal discourses take place between Advocates and clients?

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8. Is it necessary for lawyer to collect all those evidences which is supporting to their cases?

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9. Is there a need for reading materials of decided cases precedents for the Advocates?

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10 Are all the languages, structures, Terminologies which are necessary for judicial process are including in the process of appealing?

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11 Can Discourse with clients are always support the cases?

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12. What are the legal procedures applied to submit the issues in the court and at that time what kind of discourses have been done with client?

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13 .Is it necessary for lawyers to read books for related matter of their clients?

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14. Do the students of law faculty need any specific course in English in their academic classes for better results in layering profession? If yes, what sorts of course should be designed? Give your suggestions to syllabus designer.

.....  
.....

15 In your opinion how can advocates are helpful to promote social justice with the help of legal discourse?

.....  
.....

Thank you for your invaluable help.

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## Appendix III

### Checklist to collect the Data

The checklist was used to collect the data in using SL and TL terms in the legal discourse.

S.N	SL Terms	TL Terms	Techniques
1	Akhandata		
2	Akhitiyar durupayog Anusandhan ayog		
3	Adalat		
4	Court		
5	Adhyades		
6	Anusuchi		
7	Alpasankhyak		
8	Ain		
9	Kartavya		
10	Kasur		
11	Karyapalika		
12	Radio		
13	Khareji		
14	Ganakpuraksankhya		
15	Ghosana		
16	Janaandolan		
17	Janatmatsanghara		
18	Tahakikat		
19	Devanagiri lipi		
20	Dhara		
21	Najir		
22	Samanata		
23	Nirwachan		
24	Nity		

25	Pakcha		
26	Paramades		
27	Parisad		
28	Prativedan		
29	Pranali		
30	Pradhan Nyadhis		
31	Bandi Pratakshikaran		
32	Bar		
33	pres		
34	Man onayan		
35	Matadhikar		
36	Mahanyadhibakta		
37	Manab Adhikar		
38	Mirtyudanda		
39	Matribhasa		
40	Yatana		
41	Rajtantra		
42	Loktantra		
43	paitric		
44	Lok sewa ayog		
45	Sapath		
46	Sosan		
47	Sambidhan		
48	Sadan		
49	Balig		
50	J Amanat Dinu		

## **Appendix IV**

### **Respondents of the Study**

- 1 Gokarna Singh Rana
- 2 G.K Mishra
- 3 Govinda Pd. Mrasini
- 4 Navaraj Panta
- 5 Suryalal Khanal
- 6 Janardan Nepal
- 7 Ramnidhi Ghimire
- 8 Buddha Bd. Thapa
- 9 Yamlal Khanal
- 10 Shreedhar Paudel
- 11 Jageshwor Subedi
- 12 Balendra Rupakheti
- 13 Jayalal Pandey
- 14 Yamuna Kandel
- 15 Maya Kadariya
- 16 Dharmaraj Paudel
- 17 Padam Pd. Pandey
- 18 Tek Bd. Ghimire

- 19 Jeevan Panthi
- 20 Yuva raj Subedi
- 21 Chiranjivi Gyawali
- 22 Sabir Khan
- 23 Ram Pd. Belbase
- 24 Sumitra Aryal
- 25 Min Bd. Kafle
- 26 Somnath Sharma
- 27 Rajan Gyawali
- 28 Ranjana Ghimire
- 29 Gopal Pandey
- 30 Rajesh Khanal

