

“The Importance of the Rule of Law for Development and Economic Prosperity”

Public lecture given on Visit of the United Kingdom Judicial Delegation to Kathmandu, Nepal

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1. Introduction

1.1 I would like to begin by expressing my profound sympathy to the Nepalese people and to the families and friends of all those lost or injured in the Rasuwa flash flooding. On behalf of the UK Supreme Court and the UK judiciary generally I echo the messages of solidarity and support sent by our King and our Prime Minister.

1.2 I am very grateful to the Chief Justice of Nepal for the invitation to the United Kingdom Judicial Delegation to visit Kathmandu and to be given the opportunity to deliver this lecture. It is an honour to do so.

1.3 My lecture will focus on the economic value of the rule of law. I will endeavour to explain how adherence to the rule of law can provide important support for the economic development and prosperity of a country, whether the United Kingdom or Nepal.

1.4 In outline, I will address four questions. First, what is meant by “the rule of law”? Second, what attributes of the rule of law promote economic development and prosperity? Third, how does the rule of law support and encourage these economic benefits? Finally, how do these considerations relate to the rule of law in Nepal?

1.5 At the outset, I observe that a relationship between the rule of law and economic prosperity is recognised in the Preamble to the Constitution of Nepal of 2015. This includes a commitment to democratic norms and values including civil liberties,

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fundamental rights, human rights, an independent, impartial and competent judiciary, and the concept of the rule of law. The latter appears immediately before a commitment to building a prosperous nation.¹

1.6 The importance of the rule of law is repeatedly acknowledged in the Constitution. It provides in Part 4, “[t]he political objective of the State shall be to establish a public welfare system of governance, by establishing a just system in all aspects of the national life through the rule of law...” amongst other directive principles.² Policies relating to the political and governance system of the State include the requirement “to maintain rule of law by protecting and promoting human rights”.³ The Federation, state and local levels comprising the main structure of the Federal Democratic Republic of Nepal are constitutionally required to protect the rule of law.⁴ These assertions of the importance of the rule of law in the Constitution have significance not only nationally but also internationally and help underpin Nepal’s reputation as a rule of law country.

2. What is meant by the Rule of Law?

2.1 In order to discuss how the rule of law contributes to the economic development and prosperity of a country, it is first essential to define what we mean by the term or what values we ascribe to it. This is not a straightforward task. As Lord Neuberger has observed: “the rule of law is easy to pontificate about, but not so easy to define.”⁵

2.2 In universities in the United Kingdom, law students will rarely get past the first week of their undergraduate degrees without learning about Professor Albert Venn Dicey. As the great common law judge Lord Bingham said, whether Dicey “coined”⁶ the phrase “the rule of law”, or whether he merely popularised it,⁷ he was responsible for ensuring that

¹ Constitution of Nepal (2015) <https://ag.gov.np/files/Constitution-of-Nepal-2072_Eng_www.moljpa.gov_npDate-72_11_16.pdf> accessed 4 August 2026 (“Constitution”), Preamble.

² *Ibid*, Part 4 ‘Directive Principles, Policies and Obligations of the State’, art. 50 cl. 1 (Directive principles).

³ *Ibid*, art. 51 cl. 2(b) (Policies of the State: Policies relating to political and governance system of State).

⁴ *Ibid*, Part 5 ‘Structure of State and Distribution of State Power’, art. 56 cl. 6 (Structure of State).

⁵ Lord Neuberger, ‘Arbitration and the Rule of Law’ (March 2015), [5]. Speech given to the Chartered Institute of Centenary Celebration, Hong Kong, <https://supremecourt.uk/uploads/speech_150320_6ed8a9ed61.pdf> accessed 19 August 2026.

⁶ F. H. Lawson, *The Oxford Law School 1850-1965* (1968), 72.

⁷ H. W. Arandt, ‘The Origin of Dicey’s Concept of the Rule of Law’ (1957) 31 *Australian Law Journal*, 117-123.

no discussion of modern democratic government can properly omit reference to it.⁸

2.3 Dicey's conception of rule of law had three aspects:

- (i) No man is punishable or can be lawfully made to suffer in body or goods, except for a distinct breach of the law established in the ordinary legal manner before the ordinary courts of the land.⁹
- (ii) Not only is no man above the law, but every man, whatever be his rank or condition, is subject to the ordinary law of the ordinary tribunals.¹⁰
- (iii) The constitution is pervaded by the rule of law on the ground that the general principles of the constitution (such as the right to personal liberty, or the right of public meeting) are the result of judicial decisions determining the rights of private persons in particular cases brought before them.¹¹

2.4 The Diceyan conception of the rule of law has faced criticism, but has nevertheless influenced, been expanded upon, and adapted by many later rule of law theorists.

2.5 “The rule of law” has to be distinguished from “a rule of law”. As Kristen Rundle and Jeremy Waldron explain:

“...The latter phrase is used to designate some particular legal rule like the rule against perpetuities or the rule that says we must file our taxes by a certain date. Those are rules of law, but *the* rule of law is one of the ideals of our political morality and it refers to the ascendancy of law as such and of the institutions of the legal system in a system of governance. It speaks to the political demand of mutual subordination of ruler and ruled to law and legal institutions.”¹²

2.6 A recent Lord Chancellor, the Rt. Hon. Shabana Mahmood, stated that the rule of law can be understood as a “culture of lawfulness”. This culture is undermined when, for example, there “is a sense that someone came in, robbed a shop, walked out and nothing

⁸ Lord Bingham of Cornhill, ‘Dicey Revisited’ (2002) *Public Law* (Spr), 50.

⁹ A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (1915 ed.) (first published 1885), 183.

¹⁰ *Ibid*, 189.

¹¹ *Ibid*, 191. Dicey contrasted this aspect with that of many foreign constitutions, in which the security given to the rights of individuals results, or appears to result, from the general principles of the constitution.

¹² K. Rundle and J. Waldron, ‘The Rule of Law’, *The Stanford Encyclopaedia of Philosophy* (Summer 2026 ed.), E. N. Zalta and U. Nodelman (eds.) <<https://plato.stanford.edu/archives/sum2026/entries/rule-of-law/>> accessed 4 August 2026.

happened”.¹³

2.7 From the time of Dicey to the present day, accounts of the rule of law have highlighted both procedural and substantive aspects. I will adopt a taxonomy which understands the rule of law in two broad senses. First, the formal or ‘thin’ conceptions emphasise procedural protections. Second, the substantive or ‘thick’ conceptions suggest that the rule of law imports a certain minimum of substantive content.¹⁴

2.8 A key proponent of the ‘thin’ conception was Joseph Raz. He argued that the rule of law was principally concerned with the ability of a country’s laws to guide one’s conduct. He deduced further values that he viewed as a necessary component of this aim. First, the law itself should be prospective, clear, and relatively stable. Second, it should be made in an open, stable, and clear manner. Third, the application of the law requires parties having access to the courts, filled with an independent judiciary.¹⁵

2.9 In contrast, Lord Bingham advocated one of the most well-known expositions of the ‘thick’ conception.¹⁶ He suggested that the rule of law was made up of eight separate “strands”, some of which included more “substantive” content, as follows:

- (1) The law must be accessible, intelligible, clear and predictable.
- (2) Issues should be resolved by law, not discretion.
- (3) Law should apply equally to all.
- (4) The law must protect fundamental human rights.
- (5) Disputes must be resolved economically and fast.
- (6) Public powers must be exercised reasonably and appropriately.
- (7) Adjudicative procedures provided by the state should be fair.

¹³ House of Lords Select Committee on the Constitution, *The rule of law: holding the line against tyranny and anarchy*, 13th Report of Session 2024-26 (20 November 2025).

<<https://publications.parliament.uk/pa/ld5901/ldselect/ldconst/211/211.pdf>> accessed 5 August 2026 (“Constitution Committee”), 16, para 29 citing the Rt. Hon. Shabana Mahmood.

¹⁴ See generally: P. Craig, ‘Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework’ (1997) *Public Law*, 467; The Rt. Hon. Lord Sales, ‘What is the Rule of Law and Why Does it Matter’ (December 2024) (The Robin Cooke Lecture, Victoria University of Wellington/Te Herenga Waka). A proponent of the ‘substantive’ conception is Lord Bingham. See T. Bingham, *The Rule of Law* (2011) Penguin Books, 66-67.

¹⁵ J. Raz, *The authority of law: Essays on law and morality* (1979) Oxford, ch. 11. See also Craig (n 14), 4.

¹⁶ Bingham (n 14).

(8) The state must comply with its obligations under international law.

2.10 Rule of law definitions by Nepalese courts have voiced many of these attributes.

Landmark decisions of the Supreme Court of Nepal have, for example, emphasised a Raz-like ‘thin’ conception of the rule of law when holding that a “[a] free, fair and competent judiciary and judicial administration is the very pillar of the rule of law.”¹⁷

2.11 In the thicker sense, the Court has emphasised the importance of public powers being exercised reasonably and appropriately. In *Chandra Kanta Gyawali vs. Office of the Prime Minister*, Justice Badri Kumar Basnet praised the applicants for coming to the Court to realise the “constitutional thirst” of the rule of law, and held:

“It is a matter of professional ethics and conduct as well for a legal professional to aspire for the promotion of rule of law in the State and to strive for the same. The philosophy embedded in the tenet of rule of law makes it clear that the arbitrary actions and conducts on the part of the persons who are entrusted to run the State act for according to the rule of law, does not amount to the welfare of the nation and its nationals.”¹⁸

3. The main attributes of the Rule of Law which promote economic development and prosperity

3.1 The ‘thin’ and ‘thick’ conceptions of the rule of law should not be regarded as being mutually exclusive. Both share central insights which are of particular importance to a country’s economic development and prosperity.

3.2 One insight focuses on the rule of law qualities of a country’s laws. Those laws must provide legal certainty and predictability. Raz expressed this in terms of law being prospective, clear, and relatively stable and made in an open, stable, and clear manner. Lord Bingham expressed this in terms of the law being accessible, intelligible, clear, and predictable.

¹⁷ *Santosh Bhattarai vs. Kanakmani Dixit, Publisher*. Per Balaram K.C. J, 28 Mangsir, 2063 B.S. (14 December 2006). *Landmark Decisions of the Supreme Court of Nepal*.

<<https://supremecourt.gov.np/web/assets/downloads/judgements/Some%20Landmark%20Decision%20-%20Vol.2.pdf>> accessed 4 August 2026 (“*Landmark Decisions*”), 234.

¹⁸ *Chandra Kanta Gyawali vs. Office of the Prime Minister*, 24 Baisakh, 2063 (7 May 2006) per Badri Kumar Basnet J. in *Landmark Decisions*, 176.

3.3 A second insight is that there must be effective application and enforcement of those laws. Parties need to have efficient and effective access to fair mechanisms and procedures to enforce their legal rights before independent, impartial and incorruptible courts and tribunals.

3.4 These components of the rule of law are essential features for a legal system to be attractive to commercial business. In order for businesses to transact with each other, the parties need to be able readily to understand their legal rights and obligations. Commercial parties need to know where they stand: if they are able to identify what the law is and can obtain reliable advice as to how it is likely to be applied, then they can conduct business with confidence.

3.5 Whatever the qualities of a country's laws may be (the first insight), their value will be little unless they are effectively applied and enforced (the second). Parties need to have confidence in the protection and enforcement of their rights. Knowledge that contractual rights will be recognised and enforced, and that property rights will be effectively protected, instils the confidence required to organise business affairs and access the economic benefits of multiple commercial transactions.

4.1 A legal system's adherence to these key characteristics of the rule of law – legal certainty, predictability, and effective access to fair and efficient justice – facilitates and supports the creation of economic value. Adherence to the rule of law provides a platform on which the economic activities of a country can operate and prosper.

4.2 This interrelation between economic prosperity and adhering to these rule of law principles has long been recognised by jurists and economists alike.

4.3 For example, Lord Mansfield, the eighteenth-century Lord Chief Justice observed long ago that: "In all mercantile transactions the great object should be certainty: and therefore, it is of more consequence that a rule should be certain, than whether the rule is established one way or the other."¹⁹

¹⁹ *Vallejo v Wheeler* (1774) 98 E.R. 1012, 1017.

4.4 More recently, Max Weber, the renowned German sociologist, commented that certainty and predictability are a necessary part of a rational capitalist society. The confidence to invest for economic gain depends on “calculable adjudication and administration.”²⁰

4.5 An important aspect of “calculable” adjudication is that the law is expressed in accessible and intelligible terms.

4.6 “Calculable” administration requires effective enforcement mechanisms of legal obligations, through the court or, by other dispute resolution procedures such as arbitration or mediation, provide an underlying guarantee that a party will honour its obligations or risk a remedy being granted to the injured party. Without this guarantee from the underlying legal system, the economist Joseph Stiglitz observes that the market would fall apart: “cheating would be rampant, trust low... Contracts agreeing to receive a good today in return for a payment later couldn’t exist.”²¹

4. The economic benefits of the Rule of Law

4.7 The House of Lords Select Committee on the Constitution recently published findings on the economic benefits of the rule of law in a report titled *‘The rule of law: holding the line against tyranny and anarchy’*.²² This rather dramatic title highlights the importance with which the rule of law is regarded by the UK Parliament.

4.8 Legal academics, law firms, and law reform non-governmental organisations gave evidence that the legal stability provided by the rule of law facilitates a successful economy, where companies are confidently able to do business and can thrive.²³ The Constitution Committee reported that the rule of law underpins business and trade by providing an ordered society and the legal stability necessary to maximise economic potential and drive growth.²⁴

²⁰ M. Weber, *General Economic History* (1923), chapter XXII.

²¹ J. Stiglitz, *The Road to Freedom: Economics and the Good Society* (2024) Penguin Random House, xvi.

²² Constitution Committee (n 13).

²³ *Ibid*, 14, para 31 citing evidence from Dr J. Grogan and Professor L. Pech, Linklaters LLP, C. Clark, World Justice Project, and JUSTICE.

²⁴ *Ibid*, 15, para 34.

4.9 The UK, for example, enjoys significant economic benefits stemming from its international reputation for upholding the rule of law, meaning that not only is our law and legal jurisdiction widely utilised, but that the UK is an attractive place to do business and in which to invest.²⁵

4.10 The UK Government emphasised in its evidence that the rule of law “underpins commerce, allowing different partners to operate based on trust that their commitments will be upheld and that disagreements will be resolved fairly”.²⁶ As the President of the Supreme Court explained in his evidence, a country with a strong reputation for the rule of law will attract international investment and be an attractive place to do business, therefore underpinning strong economic growth.²⁷

4.11 The UK’s thriving legal sector is a concrete example of the benefits of being a country in which it is recognised that the rule of law is respected. The Lady Chief Justice of England and Wales, the Rt. Hon. Baroness Carr of Walton-on-the-Hill, noted that the UK has the second largest legal sector in the world.²⁸ In 2019, £250 billion of global mergers and acquisitions activity used English law.²⁹ In 2022, nearly 370,000 people were employed in the sector, and in 2023, the sector contributed £37 billion to the UK economy.³⁰

4.12 The economic benefits of the rule of law are not only evident in the commercial legal sector, but more broadly across society. Baroness Carr gave the example of family disputes: if they are resolved quickly, the children will be happier, healthier, less likely to commit crime, and more likely to get jobs. Their parents are likely to be working better and more productively at work.³¹

²⁵ *Ibid.*

²⁶ *Ibid.*, para 30 citing evidence from the UK Government.

²⁷ *Ibid.*, para 32 citing evidence from the TheCityUK, Law Society of Northern Ireland, Sir R. Knowles CBE, and Lord Thomas of Cwmgiedd, Law Society of England and Wales, Dr J. Grogan and Professor L. Pech, and The Supreme Court.

²⁸ *Ibid.*, para 33 citing evidence from Baroness Carr of Walton-on-the-Hill.

²⁹ *Ibid.*, citing evidence from The Social Market Foundation.

³⁰ *Ibid.*, citing evidence from TheCityUK and Baroness Carr of Walton-on-the-Hill.

³¹ *Ibid.*, para 31 citing evidence from Baroness Carr of Walton-on-the-Hill.

4.13 In March this year, the Bingham Centre for the Rule of Law published a literature review of ‘The Rule of Law and the Institutional Roots of Economic Performance’.³² England and Wales was spotlighted as an important case study illustrating how the economic impact of the rule of law should be considered over the long term, and that the interplay with other factors is crucial.³³

4.14 The review explains that the rule of law principle that everyone, including the sovereign, is subject to the law can be traced back at least as far as Magna Carta in 1215 in England and Wales. It developed from the Middle Ages through to the Industrial Revolution and has more recently led to the consolidation of a globally competitive service economy. Evolving incrementally through a system of judicial precedent, the common law established a normative framework that reduced uncertainty regarding property rights, contractual obligations, and commercial disputes. The rule of law became a foundation for legal and economic confidence: it provided a degree of legal security that enabled economic agents to plan ahead, allocate resources efficiently, and undertake investment with moderate risk.³⁴

4.15 The emergence of a constitutional government and the constraint of executive power through a strong Parliament was crucial in bringing institutional advantages associated with the common law system. Institutional constraints placed on fiscal authority when taxation became a matter for Parliament anchored market confidence and public credit credibility, and thus national borrowing costs.³⁵ The interaction between the legal framework and economic incentives also generated deep structural change: while not the sole driver of industrialisation, the legal framework contributed decisively to the institutional architecture that made economic modernisation viable and enduring.³⁶

³² Bingham Centre for the Rule of Law, *Literature Review: The Rule of Law and the Institutional Roots of Economic Performance* (March 2026) https://binghamcentre.biiel.org/documents/172_the_rule_of_law_and_the_institutional_roots_of_economic_performance.pdf > accessed 12 August 2026 (“Bingham Centre 2026”).

³³ *Ibid*, 24.

³⁴ *Ibid*, 24-25.

³⁵ *Ibid*, 25 citing D. C. North and B. R. Weingast (1989), ‘Constitutions and commitment: The evolution of institutions governing public choice in seventeenth-century England’, *Journal of Economic History*, 49(4), 803–832.

³⁶ *Ibid*, 26 citing D. C. North (1990), *Institutions, institutional change and economic performance*, Cambridge University Press; A. Greif (1993), ‘Contract enforceability and economic institutions in early trade: The Maghribi traders' coalition’, *The American economic review*, 525-548.

4.16 From this historical background, the rule of law in the UK has provided the institutional foundation for the development of a globally competitive legal services sector that represents a key pillar of the national economy.³⁷

4.17 As the Bingham Centre concluded, the rule of law has therefore functioned not merely as a legal framework but as a cornerstone of economic development.³⁸

4.18 These economic benefits are not limited to the UK, either today or historically. A key finding of the literature review was that empirical evidence from cross-country and aggregate studies suggests that the rule of law has direct and sustained effects on economic performance.³⁹

4.19 This relationship can be seen through a wide range of studies focusing on different aspects of economic development and performance. Across a broad set of countries, reliable legal systems lower the costs of starting a business and facilitate formalisation of informal businesses.⁴⁰ Legal frameworks, particularly those that protect investors and guarantee contractual rights, are associated with deeper financial markets and higher levels of investment.⁴¹

4.20 Direct surveys of foreign direct investment (“FDI”) decision-makers support the same conclusion.⁴² In 2015 the Bingham Centre commissioned a survey of senior executives at leading multi-national companies to understand how important a foreign country’s adherence to the rule of law was in their decision to bring foreign direct investment (“FDI”) to that country.⁴³

4.21 The conclusion was that it played a significant part in their decision-making. The

³⁷ *Ibid*, 26.

³⁸ *Ibid*, 27.

³⁹ *Ibid*, 16.

⁴⁰ *Ibid*, citing S. Djankov, R. La Porta, F. Lopez-de-Silanes, and A. Shleifer (2002), ‘The regulation of entry’, *Quarterly Journal of Economics*, 117(1), 1–37.

⁴¹ *Ibid*, citing R. La Porta, F. López-de-Silanes, A. Shleifer, and R. W. Vishny (1997), ‘Legal determinants of external finance’, *Journal of Finance*, 52(3), 1131–1150; R. La Porta, F. López-de-Silanes, A. Shleifer, and R. W. Vishny (1998) ‘Law and finance’, *Journal of Political Economy*, 106(6), 1113–1155.

⁴² Bingham Centre for the Rule of Law, Hogan Lovells, & Economist Intelligence Unit (2015), *The rule of law: Risk and reward*. British Institute of International and Comparative Law, <https://binghamcentre.biicl.org/documents/49_risk_and_return_fdi_and_the_rol_compressed.pdf> accessed 24 August 2026 (“Bingham Centre et al 2015”).

⁴³ *Ibid*, 28, Table 10.

executives viewed a ‘Strong Rule of Law’ as one of the top three considerations when making an FDI decision. 88 per cent of respondents stated it was either “essential” or a “very important” factor – this is a strong rule of law acting as a “pull” factor.

4.22 The survey also found that, as a general rule, where a company experienced a ‘Rule of Law incident’ from the country’s legal system, this often led to a reduction of investment levels or, depending on what exactly occurred, potentially a complete withdrawal of investment by the company. This is a weak rule of law acting as a “push” factor.

4.23 As examples of such incidents, the survey respondents identified “opaque decision making”, “arbitrary or discriminatory treatment”, and a “lack of recognition of intellectual property rights”.⁴⁴ These concerns are the antithesis of the rule of law values that I described earlier. They are an explicit statement by businesspeople of the need for effective recognition and protection of their legal rights, including intellectual property rights. Such rights require protection against all, governments included.

4.24 For states seeking to attract FDI, one of the key messages emerging from the survey was that the rule of law matters – “acting not only to pull investment in, but also to push it away when Rule of Law conditions are not satisfactory”.⁴⁵ For states in Asia, as with those in the Americas, the relative frequency with which investors identified problems with a lack of transparency in regulatory and legal rulemaking was a cause for concern. The authors warned:⁴⁶

“There is a clear need for states to take steps to improve their domestic Rule of Law institutions, not only by establishing clear rules and policies, but also by improving the efficacy with which state officials enforce them.”

4.25 Published now a decade ago, those survey outcomes confirmed that a strong rule of law framework is key for host countries maintaining FDI in their territories and encouraging further investment.⁴⁷

⁴⁴ *Ibid*, 6.

⁴⁵ *Ibid*, 11.

⁴⁶ *Ibid*.

⁴⁷ *Ibid*, 58.

4.26 A 2024 report published by the International Bar Association (“IBA”) looked at the potential contribution of the rule of law to a country’s GDP.⁴⁸ Whilst accepting that this will ultimately be influenced by the individual country’s specific circumstances, they found that, as a general rule, a one-point increase in the World Bank’s Rule of Law Index ranking for a country brought a corresponding 0.82% increase in GDP per capita.⁴⁹ This provides further empirical evidence of the rule of law’s role in promoting the economic prosperity of a country.

4.27 The IBA report goes on to consider the wider, direct contribution that the legal profession makes to the global economy through both employment in the profession and the wider GDP contribution of its activities. The headline figure from the report is that legal professionals directly contributed over USD \$1.6 trillion to global GDP – representing 1.7 per cent of total sources in 2022.⁵⁰

4.28 In summary, the link between economic development and prosperity and the rule of law is borne out by numerous studies and statistics. The rule of law’s relationship with growth and economic performance is undeniable, well-documented, and a relationship that often goes in two directions.⁵¹

4.29 To obtain these benefits it is important for a country not only be one in which the rule of law applies, particularly in the respects which I have identified, but also to be recognised as being such a country. You have not only to be a rule of law country but to be seen to be so.

4.30 Moving from the global to the local, I will now, with the recognition and reservation that I am an outsider, consider aspects of the rule of law in Nepal.

5. The Rule of Law in Nepal

⁴⁸ International Bar Association, ‘The IBA report on the social and economic impact of the legal profession’ (2024), <<https://www.ibanet.org/document?id=The-IBA-report-on-the-social-and-economic-impact-of-the-legal-profession>> accessed 24 August 2026.

⁴⁹ *Ibid*, 98. The report notes that there are outliers to this general relationship and that the specific relationship will ultimately be influenced by each country’s individual stage of development (page 99).

⁵⁰ *Ibid*, 107.

⁵¹ Bingham Centre 2026, 18.

5.1 As I mentioned in opening, the Constitution of Nepal mentions the concept of the rule of law four times – once in the Preamble and in three Articles,⁵² including as part of the “Directive Principles”.⁵³ These multiple references to the rule of law directly emphasise the importance with which the principle is viewed within the Nepalese constitutional order. The Constitution thereby recognises the important role of the judiciary as the guardian of the rule of law.⁵⁴

5.2 However, the text of the Constitution does not offer instructions about how the principle of the rule of law is defined.⁵⁵

5.3 Prima facie, the courts are entrusted with the role of safeguarding the rule of law. With constitutional review, courts consider cases when lawmakers adopt primary legislation that contradicts the Constitution. With judicial review, courts consider the abuse of administrative actions. At its core, judicial review depends heavily on a notion of judicial independence.⁵⁶

5.4 Recalling Lord Bingham’s eight strands of the rule of law, he emphasised the independence of the judiciary and that judicial and other adjudicative procedures must be fair and independent.⁵⁷ Where can one identify this in the Constitution?

5.5 As academics Goubin Zhu and Antonious Kouroutakis point out, the independence of the judiciary was one of the central concerns of the drafters of the 2015 Constitution of Nepal.⁵⁸ It is contained within the 16-Point Agreement among the major political parties which spurred the finalisation of the draft constitution, before the adoption of the final constitution document. Point 11 stated:

“An independent, impartial and efficient judicial system will be formed as per the

⁵² Constitution, art. 50 cl. 1, art. 51, cl. 2(b), art. 56 cl. 6.

⁵³ *Ibid*, art. 50 cl. 1.

⁵⁴ G. Zhu and A. Kouroutakis, ‘The role of the judiciary and the Supreme Court in the Constitution-making process: the case of Nepal’ (Winter 2019), 55 *Stanford Journal of International Law*, 74.

⁵⁵ *Ibid*.

⁵⁶ *Ibid*, citing J. Melton and T. Ginsburg, ‘Does de jure judicial independence really matter? A reevaluation of explanations for judicial independence’ (2014) 2 *Journal of Law and Courts*, 187.

⁵⁷ Bingham (n 14).

⁵⁸ Zhu and Kouroutakis, 74.

concept of independent judiciary.”⁵⁹

5.6 Zhu and Kouroutakis consider that this sheds light on the very specific reference to the nature of the judicial system and its interaction with other state organs in the Preamble of the Constitution of Nepal. The Preamble states that the people of Nepal express:

“commitment to create the bases of socialism by adopting democratic norms and values, including [among others] an independent, impartial and competent judiciary, and the concept of the rule of law.”⁶⁰

5.7 Testament to this preambular commitment, the Constitution includes a number of institutional guarantees to protect the independence of the Supreme Court in particular. This spans the appointment and selection of judges (Article 129 Clause 2 and Article 61) and constitutional protection of the judicial salary and benefits which cannot be altered by the political branches of government (Articles 130, 141, 149) save in a state of emergency (Article 130 Clause 4). The Constitution shields judicial independence from external forces by setting a number of limitations allowing judges to focus on their task (Article 132).

5.8 A way to enhance judicial independence is a judicial appointment process that is free of any political involvement. In the UK this has been done through the establishment of a Judicial Appointments Commission. This has been a relatively recent development but one which is now widely supported.

5.9 As to how the rule of law operates in practice in Nepal, an outside observer such as myself might look to the World Justice Project Rule of Law index, which ranks Nepal as 72nd out of 143 countries globally.⁶¹ Nepal ranks higher than the regional average but lower than the global average.

5.10 Avoidance of corruption is an important factor in the Rule of Law Index and a key

⁵⁹ Constituent Assembly, *Agreement between four major parties in the Constituent Assembly on June 8, 2015* <https://www.satp.org/satporgtp/countries/nepal/document/papers/16-point_Agreement.htm> (accessed 14 August 2026) (“Constituent Assembly Agreement”) at para 11.

⁶⁰ Constitution, Preamble.

⁶¹ World Justice Project, *WJP Rule of Law Index*, <<https://worldjusticeproject.org/rule-of-law-index/global/2025/Nepal/>> accessed 14 August 2026.

feature for the rule of law's support of economic growth and prosperity. As stated by the Supreme Court of Nepal in *Rajeev Parajuli vs. Royal Commission on Corruption Control*:

“Corruption is a stigma for the country. It destroys the concepts of good governance. It is, therefore, essential to keep corruption under control without allowing it to flourish as it acts as an enemy to the moral values and norms. The Rule of Law has been specified by our Constitution as the basic foundation of governance. Therefore, nothing but a constitutionally reliable and effective legal provision can be a strong basis for the prevention of corruption.”⁶²

5.11 Effective separation of powers and adherence to constitutional arrangements is also an important factor. This too has been recognised by the Nepal Supreme Court. For example, in *Maheshwor Shrestha and Tikaram Bhattarai v Supreme Court*, concerning access to the courts during the COVID-19 pandemic, the Court stated as follows:

“60. The term “competent judiciary” is used in the preamble of the Constitution of Nepal. This is very important terminology and carries a deep jurisprudential meaning. The expression “competent judiciary” implies that a judiciary is capable of interpreting and applying the law to protect the rights guaranteed by the Constitution in accordance with the basic tenets of democracy. The task of removing legal gaps in accordance with the spirit of the Constitution comes under the broader concept of “competent judiciary.”...

...

63. . . . this question is related to the concept of separation of power. The Constitution of Nepal distributes state power, which includes the concept of the separation of power. Each organ and state body should exercise and perform their rights and duties within the jurisdiction set by the Constitution. There is no reason to dispute this matter. The judiciary is committed to performing its role and responsibilities within the boundaries set by the Constitution. The judiciary has also clarified its sensitivity towards constitutional limitations and responsibilities in the context of past disputes. The judiciary is alert and aware of its respective constitutional limitations...”⁶³

5.12 Both the Constitution and courts of Nepal rightly place value on the rule of law. Looking to the future, how might Nepal harness the economic prosperity promised by strong adherence to the rule of law?

⁶² *Rajeev Parajuli vs. Royal Commission on Corruption Control*, 1 Falgun 2062 B.S. (13 February 2006) per Meen Bahadur Rayamajhi J. in *Landmark Decisions*, 157.

⁶³ *Maheshwor Shrestha and Tikaram Bhattarai v Supreme Court*, Case and Writ Division (Mandamus, Larger Full Bench, 28 May 2020), Writ Nos 076-RE 0392 and 076-WO 0944 Supreme Court of Nepal, in *Compendium of Some Landmark Judgments related to Covid-19 rendered by the Supreme Court of Nepal 2021* <<https://supremecourt.gov.np/web/assets/downloads/sampadan/Compendium%20Of%20Some%20Landmark%20Judgements%20Related%20To%20Covid-19%20Rendered%20By%20The%20Supreme%20Court%20Of%20Nepal%202021.pdf>> accessed 5 August 2026 (“Covid-19 Judgments”), para 60 (case regarding resolving the deadlock including the statute of limitation, time limit, date for appearance during the COVID-19 lockdown).

5.13 Respondents to the Bingham Centre's 2015 survey were asked to identify the most important steps to improve rule of law conditions to be taken by countries in which they operate. Across all respondents, the adoption of stronger domestic laws for the enforcement of investor rights – including intellectual property rights – and laws guarding against expropriation was selected most often. Second came better training for members of the judiciary, legal profession, and security services. In Asia, almost half of respondents referred to increased political and social stability – a figure of 49% proving far more often than respondents located elsewhere.⁶⁴

5.14 Nepal has legislation protecting intellectual property rights, namely The Patent, Design and Trademark Act 1965 and the Copyright Act 2002. It has also taken steps to address anti-money laundering and counter-terrorist financing. Doing so effectively supports economic trust and international confidence.

5.15 Following the visit of the Nepalese judicial delegation to London in May of last year, Nepal has also become a member of SIFoCC - the Standing International Forum of Commercial Courts – an express objective of which is to support the rule of law. Nepal was represented at its Sixth Full Meeting in Delhi last November when judicial delegations from jurisdictions all over the world met for judge-to-judge roundtable dialogue. SIFoCC brings together the world's commercial courts, and those courts with a significant commercial jurisdiction, to facilitate judicial collaboration and cooperation between jurisdictions. As the mission statement of SIFoCC makes clear: "Together courts can make a stronger contribution to the rule of law than they can separately, and through that contribute to stability and prosperity worldwide."

5.16 One way to strengthen the rule of law in Nepal is through the further encouragement of mediation which, where successful, produces an outcome reasonably satisfactory to both parties with a potentially significant saving in time and costs. It also relieves pressure on the courts and thereby assists judicial efficiency.

5.17 Baroness Carr spoke last year about the complementary and mutually reinforcing relationship between litigation and mediation, in the context of the promise of the United

⁶⁴ Bingham Centre et al 2015, 56.

Nations Convention on International Settlement Agreements Resulting in Mediation,⁶⁵ also known as the “Singapore Convention”. She suggested that the development of mediation can play an important role in promoting the rule of law, both domestically and internationally.⁶⁶ She emphasised how the promotion of international mediation can prompt practical developments that enhance the rule of law.

5.18 First, the development of international commercial mediation centres can act as a signal that a state is committed to the rule of law.⁶⁷

5.19 Second, training skilled mediators to a high standard, which standard is both set and enforced, ensures that mediation can be carried out effectively and in a way that parties can have trust and confidence in the process.⁶⁸

5.20 Third, ready and effective access to courts is needed to support mediation through providing the legal framework for facilitated negotiation.⁶⁹ This may encourage better investment in courts and judiciaries which in turn supports the practical application of the rule of law.

5.21 Nepal already has a supportive framework for mediation as set out in its Mediation Act. An example of how to enhance that support is provided by the approach adopted in Singapore.

5.22 Thirty years ago, the Singaporean Government established a Committee on Alternative Dispute Resolution, which made detailed recommendations for the establishment of mediation – from community mediation schemes to a whole suite of mediation centres and institutes. Singapore’s Mediation Centre,⁷⁰ the Singapore International Mediation

⁶⁵ United Nations Convention on International Settlement Agreements Resulting from Mediation (adopted 20 December 2018, entry into force 12 September 2020) 3360 UNTS 56365.

⁶⁶ https://uncitral.un.org/sites/default/files/singapore_convention_eng.pdf accessed 24 August 2026.

⁶⁷ Baroness Carr of Walton-on-the-Hill, ‘Mediation after the Singapore Convention’ (January 2025), para 6. President’s Circle Lecture 2025 given at the British Institute of International and Comparative Law, London UK, <https://www.judiciary.uk/wp-content/uploads/2025/01/Lady-Chief-Justice-speech-to-British-Institute-of-International-and-Comparative-Law.pdf> accessed 24 August 2026.

⁶⁸ *Ibid*, para 19.

⁶⁹ *Ibid*, para 20.

⁷⁰ Baroness Carr (n 68), paras 21-22.

⁷¹ See further the website of the Singapore Mediation Centre <https://mediation.com.sg/> accessed 24 August 2026.

Institute⁷¹ and Singapore's State Courts' Dispute Resolution Centre⁷² were established alongside its International Arbitration Centre⁷³ and its International Commercial Court⁷⁴. The International Mediation Institute was established to regulate mediators, securing and maintaining high standards. In 2016, the Singapore International Dispute Resolution Academy⁷⁵ was established at Singapore Management University, which both undertakes empirical research on aspects of the dispute resolution ecosystem and promotes training in those fields.⁷⁶

5.23 Singapore thereby offers a good example of initiatives that might be introduced to buttress the rule of law through use of mediation and other alternative methods of dispute resolution.

6. Conclusion

6.1 The rule of law is a very important pillar of support for the economic growth and prosperity of a country. A country which can demonstrate that its laws are certain and predictable and that it provides efficient, fair and independent adjudication mechanisms for the enforcement of legal rights will yield significant economic benefits. Both indirectly, in providing the necessary legal architecture for commerce to thrive, and directly, in incentivising foreign direct investment and international parties to select that country's legal system to govern and/or resolve their commercial transactions⁷⁷.

September 2026

⁷¹ See further Singapore International Mediation Institute's website <<https://www.simi.org.sg>> accessed 24 August 2026.

⁷² See further the relevant page of the Singapore Courts website <<https://www.judiciary.gov.sg/alternatives-to-trial/state-courts-court-dispute-resolution>> accessed 24 August 2026.

⁷³ See further the website of the Singapore International Arbitration Centre <<https://siac.org.sg/>> accessed 24 August 2026.

⁷⁴ See further the relevant page of the Singapore Courts website <<https://www.judiciary.gov.sg/alternatives-to-trial/state-courts-court-dispute-resolution>> accessed 24 August 2026.

⁷⁵ See further the website of the International Dispute Resolution Academy, <<https://sidra.smu.edu.sg/>> accessed 24 August 2026.

⁷⁶ Baroness Carr (n 68), paras 26-29.

⁷⁷ I am very grateful to judicial assistants Sarah Quinn and Miles Mason for their research in relation to this paper and help in its presentation.