

COMPARATIVE SURVEY OF CRIMINAL INVESTIGATION SYSTEMS IN ASIA: BEST PRACTICES AND CHALLENGES

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Abstract

This article comparatively reflects on prevailing legal frameworks and practices of investigation within criminal justice system, and the roles of investigator and prosecution in Asia countries, including Nepal, India, China, Japan and Sri Lanka, appraising their systems in terms of both best practices and challenges. It also draws descriptions and comparisons on the issue under consideration from western countries including the USA, the UK and Germany, which have been consequential in the development of criminal justice system of the discussed Asian countries.

1. BACKGROUND: BASIC STRUCTURE OF CRIMINAL JUSTICE SYSTEM

Every society has its own history of the development of criminal justice system. The history has bearings from the typical context of the given society. Factors such as the economy, landscape, culture, social setting, religion and most importantly, the history of the evolution of the given society itself play inevitable role in shaping the structure and essence of criminal justice. Nepal, for instance, followed inquisitorial system of criminal justice since early history of the society.

Coordination and functional cooperation between investigators and prosecutors is a key element for success to ensure fairness and impartiality in criminal justice, or, to prevent miscarriage of justice. The role of prosecutors in a functional criminal justice system is always vital even in the process of investigation because the investigation, as tool of obtaining evidence, is to be necessarily guided by the need of prosecution to discharge the burden of proof beyond reasonable doubt. In criminal justice system, the main responsibility of the investigator is to discover objective evidence, whereas the prosecutor's role, during the progress of investigation, is to secure legitimacy of the evidence by overseeing the legality of the procedures applied for collecting evidences by the investigator.

- 1.1. ***Criminal justice system is a multi-pronged process:*** Criminal justice system, in general, follows a multi-pronged process, irrespective of its different structural frameworks in different countries that are popularly known as adversarial or inquisitorial system, or a hybrid of these two. In any of those forms, however, it consists of certain unavoidable stages, and engages designated institutions for its functional success. The existence of investigation, prosecution and adjudication, as distinct institution, is thus inevitable. The defense bar is omnipresent in all these different stages as an instrument to protect innocents. Ordinarily, these different stages are often generalized as the core functions of the system as a whole. In each stage, an independent agency is supposed to carryout works, generally without interference of the other but with fully established coordination and functional cooperation.
- 1.2. ***The jurisdictions enjoyed by different agencies are institutionally independent and functionally interdependent:*** In the adversarial model of criminal justice system, one agency in particular exercises more power independently than the others, thus preventing others from interfering in its designated functions, although independence cannot be a license to function in isolation or disintegration of the system. In fact, the criminal justice system cannot be a platform consisting of mutually unaccountable, scattered and disintegrated sub-systems. While each agency functions in its own designated sphere and powers, the collective goal is to deliver a fair and impartial justice.
- 1.3. ***Coherence in functions through synergy or synchronism in result:*** The criminal justice system of any organized society functions as a composite and integrated system in itself. Failure of one agency to function coherently with other results in unimaginably disastrous consequence

to the entire society. Failure of any agency to carry out its functions will necessarily cause an adverse impact on another's output and thus maligning the outcome of the entire system.² With no doubt, it can be argued that the efficiency and effectiveness of the criminal justice system of any country is determined by coherent, integrated and synergetic efforts of all agencies.³ A criminal justice system in this sense is well-framed machinery devised to keep the society safer for everyone's person and property by penalizing the offender and thereby deterring the potential offenders.

2. COMPARATIVE REFLECTIONS ON PRACTICE OF ARREST AND DETENTION IN ASIA: CHINA, INDIA, JAPAN AND NEPAL

Undoubtedly, acts of arrest and detention are necessary preliminary steps for ensuring meaningful investigation. However the universal principles of the modern criminal justice system that describe arrest and detention as a last resort instrument⁴ also engender high susceptibility towards abuse of powers and human rights violation. To prevent such situation, conspicuous supervision and monitoring investigator's acts of arrest and detention by prosecutors and trial courts is not only desirable, but also indispensable.

In a modern state, the investigators and prosecutors are expected to function on the state's behalf, which is a party to the criminal proceeding. These agencies are thus expected to function in utmost coordination for ensuring successful prosecution and conviction of the suspect, but without jeopardizing the life and liberties of innocent persons.⁵ In countries strictly following the adversarial system, coordination between police and prosecutors is ensured by handing the powers of overseeing or monitoring the investigation affairs to the prosecutors. The most important coordination in the very preliminary stage relates to the power to plea bargains for suspect's confession in lieu of relaxation on charges or the punishment.⁶ An extensive power of plea bargains becomes meaningful if the prosecutor has an effective control over the investigation process.

To look from this point of view, the prosecutor's power to supervise the investigation seems to be immensely extensive in Japan like in Germany. The prosecutors in Japan and Germany may, if they wish, control the entire functions relating to investigation. This means that the act of arrest and detention of a suspect by police is largely controlled by the prosecutors, at least implicitly. However, the

² See Haribansa Tripathi (Dr.) *The Adjudication Process in Criminal Justice System* (A Working Paper for National Workshop on Criminal Justice System of Nepal, 10-12 June 1997); ILRR, Kathmandu, Nepal.

³ *Id.*

⁴ The basic protection against arrest and detention is found in the Universal Declaration of Human Rights (UDHR), 1948, and the International Covenant on Civil and Political Rights (ICCPR). ICCPR provides that persons accused of crime have specific protection, that is: the guarantees of fair trial, presumption of innocence, and appeal against judgment. Since detention begins with arrest, and as required by the ICCPR, the arrest needs to be subjected to judicial control. Article 9(3) of the ICCPR stipulates that persons awaiting trial should not normally be held in detention. During the detention, the possibility of abuse of power is always higher, and thus to avoid it the international standards urge to use other alternatives that include; a promise to appear; a release on recognizance; and order to suspect to stay at a residence; a periodic check in with some designated authority; sport check by bail authorities; and others. ICCPR prefers to use alternatives for those placed on detention. See on John L. Evans (Dr.) "An Overview of the Law and Practices of Administrative Detention: International Standards and Norms of Detention" in Roselle C. Tenebrancia & Sarha Lou Arriola (eds.) *Proceedings of the Conference on Administrative Detention in South East Asia*, LAWASIA Human Rights Standing Committee; Metro-Manila, 1999, p. 17.

⁵ *UN Guidelines on the Roles of Prosecutors* requires prosecutors to function independently to ensure fair trial for detainees. The prosecutor must act to protect innocent persons.

⁶ Leonard H. Leigh, "The Protection of Rights of the Accused in Pre-Trial Procedure: England and Wales" in J.A. Andrews (ed.) *Human Rights in Criminal Procedure: A comparative Study*, British Institute of International and Comparative Law; Martinus Nijhoff Publishers: London/Boston, 1982.

power of police regarding investigation in some countries like UK and USA is controlled by a scheme in which the prosecutors are conferred upon an extensive and ultimate power to decide on issue of charge independently and exclusively rather than regularly overseeing the investigation progress. The police investigators in these countries have no say at all in matter of the charge to be levied on. In adversarial system, though the power of investigation is rested on police, the involvement of prosecutors is crucial in order to secure the legality or legitimacy of the criminal proceeding, so that the investigation process is protected from being fallen into a trap of illegality or impropriety.⁷ The coordination between the investigators and the prosecutors is thus crucial.⁸ The following arguments provide justification of mandatory coordination between police and prosecutors:

- Police investigators are not necessarily lawyers, and consequently they may not have adequate knowledge about laws governing procedures applicable to obtain evidence. They may equally be ignorant of procedural safeguards (fair trial rights) of suspects. The police investigators are thus vulnerable to commit procedural mistakes, or violation of human rights.
- Police investigators may be psychologically influenced by presumption of guilt of suspects, as they often have to work under certain premise of supposition or estimate. Obviously, there is a danger of suspect being the center point of investigation, but not the crime. A suspect centric investigation yields greater risk of having innocent people wrongly investigated and prosecuted.
- Police investigators are not always well equipped in outlook, training, and function to weigh the evidence and circumstances of crimes and offenders objectively. Often, the loyalty of police personnel goes to the crime control mission. The concept of justice is less important for them.
- The power of police to arrest and detain and interrogate suspects, interview witnesses, gather and test scientific evidence and select the evidence to be laid before the court may be entirely under the control of police investigators. In such atmosphere, the prospect of discretionary power being used police is obvious. It is thus believed that the powers of police should be checked through prosecutors. In many countries, for instance, the prosecutors deny prosecuting persons based on evidence which is obtained by police in violation of laws.
- Prosecutors are practically dependent in matters of evidence on the police investigators as they possess technically superior knowledge about investigation thereby retaining their domination in the sphere of investigation, which may induce them to commit abuse of power and manipulation of the evidence.
- Frequently, police officer do not disclose relevant information- which may on occasion be of material assistance to an accused- and this will lead to the wrong prosecution subjecting the suspect to deprivation of liberty. To prevent it, the prosecutors must obtain powers to supervise and monitor police affairs about investigation.
- It is impossible for police to be adequately trained as lawyers. This need would be addressed by the prosecutors.

⁷. In adversarial system, an inherent weakness among the police investigator otherwise so pervasively involved in investigation, is that of being psychologically obsessed to treat suspect as offender and prosecute him/her. He/she may prejudicially perceive the suspect as guilty. He/she then insists on prosecuting the person and winning the case, and this issue eventually becomes one of dignity or morale of the police force. To keep this situation in check, the role of independent prosecutor is important. See Michael Zander, *Cases and Materials on the English Legal System*, Weidenfeld & Nicholson; London, 1976, p. 156.

⁸. *Id.* at pp. 155-159.

Hence, the prosecutor, based on the ground of insufficiency or inadequacy of evidence, or the illegality or impropriety of proceeding applied to obtain evidence, or the abuse of power committed during investigation, may refuse to prosecute suspects. In the light of the nature of power entrusted with, police investigators are greatly susceptible to resorting to unlawful and improper methods for obtaining evidence.⁹ The role of prosecutors in ensuring the fairness of the procedures as well as the protection of the rights of suspects is thus not only crucial but also inevitable. Similarly, the role they can play in preventing illegal and arbitrary arrest and detention is significant.

Nepal: The power of police to detain suspects within 24 hours of arrest is exclusive and unlimited.¹⁰ The power to detain suspects beyond 24 hours is subject to the remand from the judicial authority.¹¹ The remand for entire pre-trial detention may extend for a period of 25 days, being granted at one time or at different times consecutively. However, the remand period in narcotic drugs cases is extendable to a period of 90 days.¹² In practice, the trial courts seem not inclined to grant remand for total period at one time. The role of the prosecutors in matters of arrest and detention is miserably poor in Nepal, which can be pointed out as one of the setbacks of the Nepalese criminal justice system. 'Arrest first and think later' is part of the *modes operandi* in Nepal whereby the likelihood of an innocent person being arrested and detained is explicable huge. Random arrest and detention is one of the serious causes of failure of prosecution as it has no option other than following the investigator's flawed footsteps.

India: Article 21 of the Constitution of India provides that 'No person shall be deprived of his life or liberty except according to procedure established by law'. Further, as laid down by the Supreme Court of India in *Maneka Gandhi v. Union of India case*¹³, the procedure contemplated by this article must be right and just and fair, and not arbitrary, fanciful or oppressive; otherwise it would be no procedure at all and the requirement of Article 21 would not be satisfied. Obviously, in order to protect the person from unlawful encroachment of his/her personal liberty, the State's power to arrest is subjected to strict limitations.

The arrest of person, as a rule, is subjected to lawful authority of the Magistrate. Thus, the police officer has to arrest a person only under the authority of warrant for arrest issued by the magistrate taking cognizance of an offence. A magistrate taking cognizance of an offence can issue a warrant for arrest of the suspect as provided by Section 204 read with Section 87 of the Code of Criminal Procedures, 1973. According to Section 204 (1), if in opinion of the magistrate if there is sufficient ground for proceeding, he/she can proceed for the process of arrest and detention.

Despite the strict Constitutional safeguards and the explicit procedures established by the Code of Criminal Procedure and guidelines issued by the Supreme Court in several cases, the police in India are confronting serious allegations of misuse of power.¹⁴ The power of arrest has also been center point of criticisms against police officers, and it has been described as one of the chief sources of corruption in the police department. As suggested by the National Police Commission in its 3rd report, nearly 60% of

⁹. As the problems facing the criminal justice system became glaring, A Committee of Justice of UK, in 1970 recommended that the prosecution should be – and should be plainly seen to be- independent, impartial, and fair: concerned only with the pursuit of truth and not with winning or losing the case. This committee recommended following the track of public prosecution system as in Scotland where Lord Advocate is responsible for prosecutions. J. A. Sigler, *Public prosecution in England and Wales*, p. 642.

¹⁰. Pursuant to the Article 14(6) of the Nepalese Constitution, any person arrested or detained shall be produced before the judicial authority within 24 hours of such arrest. Plainly enough, this Article does not set forth any specific criteria that the arresting officer has to fulfill.

¹¹. Section 15(4), State Cases Act, Nepal, 1992.

¹². See Narcotic Drugs (Control and Punishment) Act, Nepal, 1986; See also Corruption (Control and Punishment) Act, Nepal, 2002.

¹³. *Maneka Gandhi v. Union of India case* (1978) 1 SCC 248, 284: AIR 1978 SC 597.

¹⁴. Government of India Ministry of Home Affairs (2003) Malimath Committee Report, Paras. 7.26.2, 7.26.3.

arrests made by police were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the police department.¹⁵

As suggested by the 154th report of Law Commission of India, the police often misuse the power of arrest. Such misuse is detrimental in all aspects of investigation. The person arrested not only suffers from considerable inconvenience, but also from loss of his/her image in the society. As observed by the Malimath Committee, the police personnel in India move with an impression in their minds that the first thing for them to do is to arrest the suspect even without making an enquiry. In many occasions, the misuse of power of arrest results in severe torture of arrested persons. According to an Amnesty International report, 'torture and ill treatment by police still continue to be endemic throughout India',¹⁶ and 'deny human dignity to thousands of individuals.'¹⁷

China: In structure, the criminal justice system of China consists of police, procurators, correctional institutions and courts, not always presided over by professional judges. Under the present system, the Public Security branches that are manned by police personnel are responsible for the arrest, detention, investigation and preparatory examination of criminal cases. The People's procuratorates are responsible from approving arrest, conducting procuratorial work, including investigation, and initiating public prosecution. People's courts are responsible for adjudication.¹⁸ The procedure can be summarized as follows:¹⁹

- After the suspect is arrested, the family member or living partner is notified within 24 hours along with reasons for his/her arrest and the place of custody. However, the notice may be withheld if the police believe that it would hinder the investigation process. In the recent years, the practice of holding information has been largely minimized.²⁰
- When the investigation process is complete, the police draft the opinion either making recommendation for prosecution or exemption for the same. The opinion is then transferred along with the documents and evidence to the procuratorates for review.
- The procuratorates then reviews the case and make a decision on whether to prosecute the suspect.
- If the procuratorates decides to prosecute, the case is submitted at the court of same level which reviews the case. If the case is clear and evidences are sufficient, it may decide to open the court session for adjudication in which the suspect is formally brought to the trial.

The police in China need no warrant of the court to arrest and detain a person.²¹ The personnel of the security branch can arrest and detain persons, who, depending on the nature of crime, is (1) preparing to commit a crime; (2) identified as having committed a crime by a victim or eyewitness; (3) discovered to have criminal evidence on his person or at his/her residence; (4) planning or attempting to commit

¹⁵ . *Id.* Para 7.26.3.

¹⁶ . Furthermore, in a report disclosed by National Human Rights Commission (NHRC) in August 2000, in a period between 1999 and 2000, there were 1,143 deaths in the custody. These deaths include deaths in judicial as well as police custody. See Amnesty International, *India: Words into Actions- Recommendations for the Prevention of Torture*, December 2000 <www.stoptorture.org>.

¹⁷ . *Id.*

¹⁸ . Li Xingjian, *Studies on Structure of Criminal Procedure*, China University of Law and Politics; Beijing, 1992.

¹⁹ . Yang Chunxi et al., *Encyclopedia of Criminal Sciences*, Nanjing University; Nanjing, 1990.

²⁰ . Generally See; Huang Huaguang and Luan Jianzhang, *The Roadmap of the 18th CPC National Congress and The Chinese Dream*, Foreign Language Press, Beijing; 2013, Chapter 6 and 7.

²¹ . The power to issue warrant lies with Chief Procurator. The concept of warrant in its judicial sense indicates to an instrument devised to protect person from power of arbitrary encroachment by police. The warrant to be issued by Chief Procurator in China does not meet this requirement as he/she is neither independent from State's police power, nor is he/she an authority to use judicious mind.

suicide or to escape or become a fugitive after committing the crime; (5) using opportunity to destroy or falsifying evidence or colluding with other to devise a false account of events; (6) concealing the identity; and (7) is involved in beating smashing and looting and undermining work, production or the social order.²²

One of the significantly positive aspects of the Chinese criminal justice system is the prosecutor's role in interrogation of the suspect. Interrogation of suspect is conducted by the investigation personnel of the People's Procuratorates. Most importantly, no fewer than two personnel may be present during the interrogation. In principle, use of torture to coerce out confession is prohibited. The engagement of procuratorates in the interrogation is important in the sense that they are professionals, not the members of institution to use force.

To sum up, it can be deduced that in China-

- The arrest and detention of an offender is an exclusive privilege of the police force. The power of the police to arrest and detain suspects is not monitored by any independent judicial authority. No role of court starts at all prior to submission of the case by prosecutor for adjudication upon completion of the investigation.
- The concept of warrant in the sense of restraint on the power of police to violate the individual liberty is absent.
- The confession is admissible as evidence to convict the accused.

Japan: The modern criminal justice system of Japan began to take shape only after the end of Meiji Era (1867-1912).²³ Historically, the Japanese criminal legal system is influenced by the Continental Laws, namely the German and French Criminal Law which implies that the Japanese criminal justice system continues to covertly emphasize the role of confession. However, following World War II, the influence of American adversarial model has become more dominant in the sphere of the criminal jurisprudence. In fact, Japan even adopted the jury system in this era although it was never actually put to practice.

The fundamental rights regarding criminal justice guaranteed in the Constitution of Japan maintain an effective check against the abuse of power by police in course of arrest and detention. Moreover, the police system in Japan is structured on a democratic base, which in itself a guarantee against arbitrary use of power by the police. Article 31 of the Constitution of Japan declares, 'No person shall be deprived of life or liberty, nor shall any other penalty be imposed except according procedure established by law'. Article 33 covers protection from illegal arrest and reads, 'no person shall be arrested except upon a warrant issued by a competent judicial official, who specifies the offence with which a person is charged'. Similarly, article 34 protects persons from illegal confinement.

It is clear from the provisions of the Constitution that police in Japan can arrest a person only with the mandate of warrant issued by the competent judicial official. The possibility of police being involved in

²² . Cheng Guangzhong, *Science of Criminal Procedure Law*, China University of Politics and Law, Beijing 1990.

²³ . The history of Japanese criminal justice is coarse. Before the Meiji Era, the powers of imperial family members and judges they appointed possessed a large amount of discretion, which frequently resulted in the abuse of power. Capital punishment was the main measure of dealing with offenders. Under feudal rule, authorities frequently used the death penalty against the political rivals. See for detail, Shkita and Tsuchiya, *Crime and Criminal Policy in Japan*; Springer-Verlag, 1992. After the Meiji Era, as Western culture was introduced, the government of Japan established new laws reflecting a gradually modernizing Japanese society. In 1907, Criminal Law and Prison Law were passed in an effort to bring Japan into line with Western countries. After the Second World War, radical changes were made in the criminal justice system. Based on the new Constitution, Criminal Procedure Law was totally changed towards the adoption of an adversarial system. Under this law, the roles of the police, prosecutors and judges changed drastically. See: *World Fact Book of Criminal Justice System: Japan* <www.ojp.usdoj.gov/bjs/pub/ascii/wfbcjap.txt> .

abuse of the power by resorting to arbitrary arrest and detention remains nominal. Investigation of the crime is the responsibility and function of the police. However, the police investigator must refer the case to the public prosecutor within 48 hours, if the suspect needs to be detained. Interestingly, the prosecutors can also investigate all categories of cases on their own initiative, without assistance from the police and other law enforcement agencies.²⁴ The detention of suspect is subjected to approval of the trial judge. If the public prosecutor believes that continued detention of the suspect is needed, he/she must apply to the concerned judge for a warrant of detention. This warrant must be applied for within 24 hours after police transfer the case to the prosecutor. In any case, no suspect can be detained beyond 72 hours by the police and prosecutor without warrant of the court.²⁵

Based on the prevailing provisions of the Constitution and the Criminal Procedure Code, it can be concluded that in Japan:

- neither the police nor the public prosecutor can detain arrest or detain a person without a warrant from the competent judicial official;
- police can arrest and detain the suspect only under the mandate of the judicial warrant, and hence the possibility of abuse of power by the police is effectively checked;
- Post the 72 hours period, detention of suspect may be lawful only if the court agrees to grant warrant for the same.

The prospect of fair trial is thus larger under the Japanese criminal justice system compared to that of countries in the SAARC region. Probability of innocent person being prosecuted is severely reduced by virtue of prosecutor's power to engage in investigation of the crime independently of, and simultaneously with, the police.²⁶ Concerning the continuity of the detention, Nepal seems to be closer to the Japanese system, as the concurrence or the trial court is mandatory, whereas the systems in India and China are quite different. However, the role of prosecutor in determination of continuity of detention, which presents itself as a crucial aspect of the Japanese system, is rather distinctive to the practices in China, India and Nepal.

U.S.A: The American Criminal Justice has emerged out of the basic premise of common law system, which in the past recognized individual's right to resist an unlawful arrest.²⁷ In common law, the right to resist was based, in larger part, on the perception that some unlawful arrests were so provocative that a person, either the subject of the arrest or an onlooker, might react to the attempted arrest without carefully contemplating the consequence of their actions, and that an individual was justified in resisting, by force if necessary, an illegal interference with his/her liberty.²⁸ This concept has had tremendous influence in the American Criminal Justice jurisprudence. During 19th and early 20th century, virtually all American courts allowed the use of whatever force necessary to resist the arrest. The only major restriction on this right was that an arrest made pursuant to a warrant could not be resisted.²⁹ This underlying principle behind the recognition of this right is that no authority has power to arrest without warrant. To speak other way, the concept of arrest with warrant made it appearance to avoid resistance in lawful arrest.

²⁴ . Quoted from Tadashi Moriyama, *Id.*

²⁵ . *Id.*

²⁶ . The rate of prosecution failure is as low as below 0.01 %. Statistics of National Police Agency, Japan, 2007.

²⁷ . In Common law, the right to resist an unlawful arrest has existed over 300 years. Its origin may be traced out to the *Magna Carta* in 1215, but it was not until *The Queen V. Tooley* that the right was clearly established by judicial decision. It was believed that an illegal arrest constituted provocation to victim. See Craig Hammens, "Resisting Unlawful Arrest in Mississippi: Resisting the Modern Trend" 2 Cal. Crim. L. Rev. 2. (2000).

²⁸ . Pul G. Chevigny, "The Right to resist an Unlawful Arrest", 78 YALE L.J. 1128 (1969).

²⁹ . See Hammens, 2000.

In USA, the investigation of crime and offender is a task of the police. One crucial role of police is often to confront with the task of arresting the suspect and charge him/her under the law, namely indictment. The prosecutors have little control over police investigations. The police have wider discretion in matter of investigation of crimes and may even investigate a suspect without any proof whatsoever that the suspect has committed a crime. The law, however, requires there be a probable cause before the police to arrest a suspect.³⁰ The US police have power to arrest anyone the ground of probable cause,³¹ which do apparently remove the need of having presence of concrete evidence to show that the suspect is involved in committing the crime. The theory of probable cause even rules out the need to show reasonable suspicion as a ground for arrest. On this parlance, one can surely say that the American police enjoy a massive power to stop and arrest persons for questioning.³² Moreover, the police power of arrest is wider also in the account that most persons identified as suspects in felony crimes are arrested. The American criminal justice system requires greater amount of proof for prosecution than the amount of proof legally required for arrest.³³

The grant of sweeping power to police to arrest has been a major cause of abuse of power, which has been dealt with by Supreme Court evolving a number of controlling instruments, especially during the 1960s. In order to address this problem, the Supreme Court in 1960s developed the concept of exclusionary rule and also it imposed the requirement that offenders understand their right to an attorney and so forth. With these practical instrument, the US Supreme Court obtained control over the misuse of power during the arrest and detention of suspect.³⁴

Germany: The criminal procedure of Germany is mainly regulated by Code of Criminal Procedure (in Germany it is called StGP, as German acronym). Two more source of authority for criminal justice system are *Grundgesetz* (The Constitution of the Germany) and the European Charter of Human Rights. Germany being the member of European Union, the Charter and its interpretation by European Court Human Rights constitute authoritative source of criminal law and procedure.

The Federal Republic of Germany was founded on May 23, 1949 with declaration of the Constitution. The basis for Germany's modern day statutory law is the *Penal Code for the German Empire* codified in 1871, which was influenced by the French Penal Code of 1810, the Bavarian Penal Code of 1813 as well the Prussian Penal Code of 1815. The retribution was the dominant philosophy behind the criminal law, and heavy emphasis was placed on prevention of crimes through punishment. Following 1882, the reform of criminal sanctions was introduced that emphasized on prevention through special deterrence, i.e. emphasis on deterring offenders, not the offence. The Nazi era introduced sweeping and harsh changes with an emphasis upon general deterrence through extreme severity.³⁵ Following 1962, the drastic reforms were undertaken. This reform was guided by philosophy of protecting human rights of offenders and rehabilitation of victims. The reforms introduced the notion that general

³⁰ . Floyd Feeney, 'German and American Prosecutions: An Approach to Statistical Comparison', US Department of Justice, Office of the Justice Program; USA, 1998, p.9.

³¹ . In the *United States v. Strickland*, (144 F.3d 412 6th Cir. 1998) the 6th Circuit Court concluded that the 4th Amendment's probable cause requirement was satisfied when police officers relied upon an informant and occurrences observed by the officers which corroborated the informant's information. The requirement is not strict and founded on concrete ground.

³² . Feeney, 1998, p.10.

³³ . *Id.* at p.12.

³⁴ . George L. Kelling, *Broken Windows and Police Discretion: A Research Report*, National Institute of Justice: USA, 1999, p. 6 <http://www.ojp.usdoj.gov/nij>.

³⁵ . Albin Eser, 'A century of Penal Legislation in Germany' in Albin Eser (ed.) *Old Ways and New Needs in Criminal Legislation*, Max-Plank Institute: Feriburg, Germany: 1989, p. 26.

deterrence could never be used as a philosophical basis for individual punishment.³⁶ Under the existing law, the police power of arrest and detention has several limitations:³⁷

- Since Germany practices inquisitorial model, the role of judge in examination of evidence produced by the investigators is strong. Obviously, any events or situations of abuse of power by police come into notice of judges instantly and apparently.
- Disclosure of the prosecution case to the defense lawyers in advance of trial is instantaneous. This element makes the investigation transparent, and any abuse of power of police becomes all too obvious.
- The prosecutor has formal responsibility of investigation, and the police are considered to be a subordinate helping agency. The prosecutorial monitoring over the police is thus effective, which *ipso facto* prevents circumstances of abuse of power by police.
- The role of police in interrogation is limited, or subordinated to the prosecutor. When a crime is reported to the police, the police attempt to identify the offender responsible for crime. When such an offender is identified, the crime is said to be cleared or solved. The subsequent investigation is the responsibility of the prosecutors, minimizing the probability of abuse of power by police.
- Police can arrest persons only on the ground of suspicion. As opposed to American practice, they cannot stop and arrest anyone on the ground of probable cause. Arrest requires both sufficient suspicion and risk of suspect fleeing. Longer term detention requires both a very high level of proof (urgent and concrete suspicion) and strong reason for detention (danger of fleeing). Longer detention also needs order of the court.

The police have powers to stop and arrest persons upon sufficient suspicion upon violation of criminal or administrative statutes. The sufficient suspicion, however, is merely a conjecture of police that the alleged person might have committed the crime. The risk of suspect fleeing is stronger ground for arrest.³⁸ In principle, the police have no discretion to use force. The principle of legality governs every actions and responsibilities of police. The rules of interrogation are strict. As required by Criminal Procedure Code section 136 and 136a, at the initial interrogation, the accused must be told of charges against him/her and the right to consult with a lawyer. Coercion, deceptions and enticement during the interrogation are prohibited. Any statement made by suspect free of these disqualifications is acceptable as evidence in the court.³⁹

U.K: The Criminal Justice System of UK is adversarial in all courts, including juvenile courts. Historically, it is the pioneer of common law type of legal system prevalent worldwide. In England, courts expanded and the law evolved based on decisions made in individual cases. The judicial decisions significantly influenced the legal perceptions and rules in England. Indeed, the whole bunch of criminal justice jurisprudence has been framed by the judicial decisions of the various types of courts. This process can be traced back to 5th century, where freemen of local communities acted as judges and incorporated community perceptions into court decisions. After 1066, the geographical generality of common law principles increased when judges traveled around for court settings.⁴⁰

³⁶ . *Id.*

³⁷ . Feeny, 1998, pp. 1-11.

³⁸ . *Id.*

³⁹ . Walter Friedrich, *Adults and Juveniles before the Police and Court*, Munich: C.H. Beck Publishers, 1987, p. 57.

⁴⁰ . Richard J. Terrill, *World Criminal Justice System: A Survey*, Anderson Publishing Company, Cincinnati, Ohio, 1984.

In UK, the police and Criminal Evidence Act of 1984 allows a police officer to stop, detain and search persons and vehicles for stolen goods, weapons or other tools of crime. They may set up roadblocks in certain circumstances. While doing so, as the law requires, the police must state and record the grounds for taking this action and record what was found.⁴¹ Police may arrest persons with or without warrant. In general, arrest may occur without warrant where a person is reasonably suspected of having committed an arrestable offence. The power to issue warrant lies with the magistrate.⁴² The possibility of abuse of power in this system is inherent.⁴³ However, the misuse of power by police is checked by:⁴⁴

- prohibiting the police officers to use discretion, and
- guaranteeing rights to free and independent legal advice of the suspects, along with obligation of the police officer to caution the suspects.

The Police Complaints Authority established in 1984 is a consequential instrument which checks misuse of powers by police during arrest and detention by supervising the investigations of alleged serious misconducts by police officers and deciding whether a breach of disciplines should be charged. Under the prevailing laws, investigation is a function of the police department. Nevertheless, the police cannot withhold the information to the prosecutors. After arrest, if the police seek to forward a case for prosecution, they have to charge the arrestee, and hand the case papers over to the Crown Prosecution Service, which reviews the evidence and makes a decision whether or not to prosecute. In the UK, police officer cannot hold a suspect in detention without charges, and also, the moment the suspect is charged the right to consult lawyers becomes effective.⁴⁵

3. COMPARATIVE ANALYSIS OF SITUATIONS IN INDIA, CHINA, JAPAN AND NEPAL

It is clear that criminal justice system in any society is expected to function based on concrete foundations established by a set of following unavoidable principles:

- Powers and responsibilities of criminal justice actors are separated and defined, but they are obliged to work in legally defined framework of coordination and cooperation.
- The prosecution is required to prove its case beyond reasonable doubt; the law requires an acquittal where it cannot do so. The prosecutor's accountability of discharging *onus of proof* is absolute in all systems. The practice of burden of proving innocence is completely ruled out.
- Trial of cases is to go through a defined legal process-evidence must meet certain standards which defense is entitled to challenge. Evidence collected in disregard of the defined or

⁴¹ G.C. Barclay et al., *Digest: Information on the Criminal Justice System in England and Wales*, Home Office Research and Statistics Department, London 1995.

⁴² <www.ojp.usdoj.gov/bjs/pub/ascii/wfbcjeng.txt>

⁴³ The criminal justice system of UK is under intensive criticism for its routine failure to deliver timely, fairer and competent justice. The system has been alleged to have lost balance between the defense and prosecution. The Royal Commission has made recommendations for reforms, which, inter alia, enables the Crown Prosecution Service to take more responsibility for determining charges so that the right cases go to the court on the right charges; give sentence indication to encourage early guilty pleas; give police power to impose conditions on a suspect's bail during the period before charge; improve defense and prosecution disclosure by increasing incentives and sanctions to ensure compliance; allow courts to be informed of a defendant's previous convictions where appropriate; and introduce intermittent custody to enable use of weekend or night-time custody for low risk offenders. See Home Office, UK, *Justice For All: A White Paper*, October, Criminal Policy Group, Queen Ann's Gate, London, 2002.

⁴⁴ *Id.*

⁴⁵ See Criminal Justice System of England and Wales <www.cjsonline.gov.uk/the_cjs>.

prescribed procedures ceases to have legal impact. The legality of evidence is therefore as important as the property attached to it.

- The accused is entitled to legal representation of his/her choice, and the State must meet the costs where it is in the interest of justice; and
- Proceedings usually take place in public; and must be reported.

These fundamental principles ensure a system of justice so that the public can have confidence on it. Obviously, the role of actors involved in order to ensure effective and efficient functioning of these principles in practice is not only crucial, but also indispensable. Failure of any actors to comply with any of these principles will jeopardize the system as the failure will automatically destroy the prospect of inter agency coordination. In this context, the standards or workability of the criminal justice of a country can be measured against these principles. In precise words, the interagency coordination can be attained only by ensuring effective and efficient compliance of these fundamental principles.

The police power is important for effective functioning of the criminal justice system, as it gets operationalized only by intervention of the police. However, the power of investigation cannot be muddled up with or confused as power of investigator. An investigator may be a police officer, but the power he/she exercises as an investigator belongs to the system of justice, which comes as an outcome of the trial by the court. The investigation of the crime in any system is a primary function, in absence of which no acts of prosecution and adjudication can be imagined to be effective. The final result of the criminal justice system is, in fact, entirely dependent on the investigation. Objective and proper investigation will definitely open a door for fairness and impartiality in all subsequent processes. And any sort of abuse or malfunctioning at the level of investigation will thus certainly jeopardize the prospect of effective and efficient criminal justice system. To summarize the legal framework and experiences of its implementation in some countries, the following facts are discernible:

- The control of the police power of arrest and detention by procedure of warrant has been taken as one of the common instruments in many countries. Japan has applied this instrument most effectively as it has been provided by the Constitution itself that no one can be arrested without warrant of competent judicial official. Obviously, police discretion in matters of arrest and detention is strictly prohibited in Japan. In India, however, the police have power to arrest without warrant in number of circumstances as laid down by the Code of Criminal Procedures. The possibility of police using their discretion and abusing their power in such scenarios is not completely ruled out. Nevertheless, the provision has obviously established a mechanism for judicial monitoring of investigation.
- In contrast, control over police power in USA is maintained by strict enforcement of suspect's procedural rights, and imposition of strict and heavy obligation on prosecution to prove guilt. In USA, police officer has power to arrest persons without warrant, but their treatment to suspects or detainees is strictly observed, and minute errors are used against the prosecution. Obviously, the US system does not prohibit police to use its discretionary power while arresting and detaining persons, but requirement of fairness in treatment to them and the protection of their rights to silence and obtain legal counsel should prevail without any excuse in any circumstance. USA has adopted and developed the concept of exclusionary rule as powerful check against misuse of powers by police. Whereas, Germany has maintained the same by limiting the power of police to arrest only on the ground of sufficient suspicion, and granting the decisive power to prosecutors to lead the investigation.

- In China and Japan, the police is placed under subordination to the prosecutors. It is accountable to prosecutors in matters of arrest, detention and process of obtaining evidence. In Nepal, the prosecutors can provide instructions and guidelines concerning types of evidence required and the process of obtaining them. However, they have no power when it comes to making suggestions on issue of arrest and detention of suspects, which is the responsibility of the investigating officer under authority of the trial judge.

4. COMPARATIVE REFLECTION ON LAWS AND PRACTICES OF INTERROGATION

The practice of interrogation varies from country to country, mainly based on the importance given to the confession as evidence. Historically, confession has been accepted as a crucial evidence worldwide for condemnation of suspects to criminal liability. Interrogation of suspects thus was taken as an indispensable instrument of investigation. Since the evidentiary value of the confession was highly valued, its extraction was necessary, consequently the interrogation comprised of several methods permitting use of force and deceptions. Such historical legacy still continues in various forms. In Nepal, for instance, coercive and deceptive interrogation forms a usual device to extract confession because of its wider use in the trail.

U.K: The long practiced common law in the UK has provided some crucial principles, such as cautioning the suspect to remain silent, else face his/her words against his/her interest in the trial. In the common law system, there has been a long practice of using confession as an important evidence for conviction of the suspect.

In 1906, these principles were adopted as Judges' Rules through a letter of Lord Chief Justice, Lord Alverstone, who wrote to the Chief Constable of Birmingham in an answer to a request for advice after one judge had censured a police officer for having cautioned a suspect, whilst another Judge had censured another police officer for having omitted to do so. In UK, the issue of cautioning of suspects has spawn debates for long time. On one hand, proper cautioning has been emphasized for efficacy for the protection of suspects' rights who are being questioned by police officers, and on the other hand, it is maintained that their application unduly hampers the course of detection and punishment of crime. In the course of time, however, a complete set of rules was developed, which found their validity on the principles of inalienability of the right against self-incrimination. These principles are:

- The police officers cannot compel any person, otherwise than by arrest, against his/her will to come to or to remain in the police station;
- Any person who is arrested at any stage of investigation should be able to communicate and to consult privately with legal counsel. This privilege is available even if he/she is in custody;
- No person who is in custody should be subjected to unreasonable delay or hindrance in matters of the processes of investigation or the administration of justice;
- The investigating police officer who is making enquiries of any person about an offence has enough evidence to institute a charge against that person for that offence must without delay inform him/her that he/she may be prosecuted;⁴⁶

⁴⁶ . When a person is charged, he/she should be cautioned in the following terms: 'Do you wish to say anything? You are not obliged to say anything unless you wish to do so, but whatever you say so will be taken down in writing and may be given in evidence. But before this, or any questions made to the suspects, he/she should be cautioned in these terms: 'I

- It is a fundamental condition of the admissibility of confession in evidence against any person that it should have been obtained from him/her voluntarily⁴⁷ in the sense that it has not been obtained by fear of prejudice or hope of advantage, or by coercion or use of force, the physical and mental torture.
- Police officer, as soon as he/she has evidence, which would afford reasonable grounds for suspecting that the suspect has committed an offence, must caution⁴⁸ the suspect; and
- When after being cautioned if the suspect chooses to make a statement, a record must be kept of the time and place at which any such questioning or statement began and ended and of the persons present.

The importance of these principles was realized in order to protect suspects from highhandedness of police during interrogation. The general experience of police behaviors towards suspects under investigation had brought to notice that the investigating officers, due to their psychological obsession, treated suspects as offenders, and used every resource and skills to prosecute them. In this circumstance, the life and liberty of innocent persons were often subjected to a danger of deprivation. The common law system thus developed an instrument of protection against self-incrimination, and for this considered to limit the powers of police on interrogation.

Some countries, including India and Sri Lanka that inherited common law system however made a sharp departure, causing rampant distrust over the police among other problems.

India and Sri Lanka: India seriously departed from the system that allows police to obtain confession exclusively and independently. Consequently, the police investigators in India, unlike those in the UK, have no powers to interrogate suspects for the purpose of extracting confession. Section 164 of the Code of Criminal Procedure of India, for instance, provides for a different system as discussed below:

- Any metropolitan magistrate or judicial magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation...Provided that no confession shall be recorded by police officer on whom any power of a Magistrate has been.
- The magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if does so, it may be used against him; and the

wish to put some questions to you about the offence with which you have been charged'. Any questions put and answers given relating to the offence must be contemporaneously recorded in full and the record signed by that person. If he/she refuses to answer the question, the same thing must be recorded and signed by the interrogating officer. All written statements made after cautioning should follow the manner: (1) the person wishing to answer the questions must be informed that his/her answers will be recorded in writing. If the person wants to write down himself/herself, it should be permitted. If he/she writes down his statement, he/she must not be prompted as to what matters are important, (2) whenever the police officer writes the statement, he/she shall take down the exact words spoken by the person making the statement, and (3) when the statement is finished the person shall be asked to read it and make any corrections, alterations, or additions he/she wishes. Zander (fn.) 6, p. 97.

⁴⁷ . The 'Judges Rules' in England have categorically maintained that answers and statements made by suspects to the questions of police officers are only admissible in evidence if they have been voluntary in the sense that they have not been obtained by fear of prejudice or hope of advantage, exercised or held out by a person in authority, by oppression. These rules prescribe for affording reasonable comfortable conditions, adequate breaks for rest and refreshment etc. The Judges Rules in England take the adverse conditions imposed during interrogation as means of thwarting the voluntariness of the confession. *Id.*

⁴⁸ . The Judges Rules have laid down the terms for cautioning. Therefore, the cautioning must be made in terms: 'You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence.' When this caution is made and even after that suspect chooses to speak and make statement, a record must be kept of the time and place at which any such questioning or statement began and ended. *Id.* at 93.

Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

- Anytime before the confession is recorded, if the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorize the detention of such person in police custody.

These provisions have limited the scope of interrogation in the following ways:

- Firstly, the police investigator has no power at all to record the confession; the power is exercised only by the metropolitan or judicial magistrate. This provision fully rules out the legality or admissibility of the extra-judicial confession. This law is radically different than that of common law system being practiced in UK, where the police investigator has power to record the confession. Secondly, even the magistrate's power to record the confession has limitations. On one hand, he/she has to inform the suspect of his/her right to refuse making confession. On the other hand, the magistrate has the duty to confirm that the person willing to give confession is making it voluntarily.
- Thirdly, the magistrate should not authorize detention of suspect in the police custody if the suspect has stated, before the recording of confession starts, that he/she is not willing to make a confession.

Section 25 of the Indian Evidence Act, 1872, leaves no scope for extra-judicial confession being admissible in the trial. This rule has been acclaimed more trustworthy and reliable to ensure the fairness of the interrogation process. Similar provision was adopted by Sri-Lanka in the beginning, which has substantially changed in the recent years. At present, the police investigators possess extensive power to arrest, detain and interrogate suspects, without interference by the judicial magistrate.

The confession extracted by police in their custody is admissible in the trial at the court. As the development in this regard manifest over the years, the Sri Lankan system has preferred to go more in the direction of practice established by the Judges' Rules in England, which recognize the admissibility of an extrajudicial confession, provided that such confession is obtained voluntarily without fear of prejudice, or hope of advantage, or use of coercion.

Nepal, with its present Evidence Act of 1975, has followed the track of Sri-Lanka. Thus, in the given situation of the professional standard of investigating officers in Sri Lanka, the susceptibility of abuse of power during interrogation is quite apparent.

In Sri Lanka, the Evidence Act provides a broad power of interrogation to the police, so much so that extrajudicial confession has been made admissible in the court as an important piece of evidence against the suspect, it is usual for the investigating officers to be attracted to coercive and deceptive means of interrogation.

Some other common law countries, like Australia, New Zealand, Hong Kong and Malaysia adopted similar stand on the admissibility of confession in evidence; however, they devised an instrument of check against the admissibility of the tainted confession.⁴⁹ In these countries, a suspect can challenge

⁴⁹. A Statement which is not voluntary is rejected to be admissible through a motion of *voir dire*. In Hong Kong, a statement is involuntary, and also inadmissible, if it was obtained by threats, promises, oppression or deception. The test for voluntariness, for instance in Hong Kong, are set out in "Rules and Directions ". This provides: "... it is fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression". Even where a confession is voluntarily made, a trial judge may exercise his residual discretionary power to refuse to admit the confessions if he is of the opinion that on all the evidence before

the admissibility of the confession, which has involved the use of force, and get such a confession declared inadmissible. This process is called *voir dire*. Under this motion, the confession allegedly obtained against the will of the suspect is challenged in the trial court before the charge sheet is prepared and the prosecution has opportunity to use the statement as evidence against the suspect. The trial judge, therefore, has to determine the legality or propriety of confession through a motion prior to trial process starts at the court.

Germany: While there has been a vast change in the traditional notions, the Criminal justice system of Germany is primarily founded on the principles and values of inquisitorial model. One of the major changes is that, unlike in the past where investigation, prosecution and adjudication were entrusted to the same authority, the case is brought before the criminal courts by way of accusation.⁵⁰ Interestingly, the investigation of crime is carried out by State's attorney and it is informal. Neither the informer nor the person against whom suspicion is directed has to be notified. The state's attorneys may take all necessary steps, more especially; they may personally inspect localities, corpses, etc. They may summon witnesses and incriminate persons, and interrogate him. The suspect has right to consult the lawyer, and even to stay together during the interrogation. However, the lawyer cannot interfere in the process. The suspect may remain silent, and force is not used to make him/her speak out. The use of force by the police and state's attorney is strictly prohibited.⁵¹

The practice adopted by Germany prefers powers with the prosecutors rather than the police investigators. The role of police investigators is virtually limited to technical works, such as test of finger prints, preparation of the scene of crime report etc. Obviously, the police investigators work under full control and guidance of the prosecutors. The violation of suspects' procedural privileges by the police investigators is therefore not a problem in the German system.

Japan: As discussed earlier, the prosecutors in Japan are given a great amount of discretion in matter of crime investigation. The prosecutors supersede police investigator in the sense that they are enabled to take charge of investigation by themselves when they want. The prosecutor thus has the power to investigate and interrogate suspects concerning any criminal matters. The exercise of this power however is usually exercised with a high level of professionalism and concern for the rights of individual, which is not to say that there is no abuse of power by investigators. Since, use of confession is considered to be the best and most effective way of obtaining a conviction, when the suspect is interrogated by the police officer or prosecutor, the purpose of the interrogation is to extract a confession. In order to extract confession, a suspect is isolated from the family, friends and legal counsel for a lengthy period of time, usually twenty-three days.⁵² During this period, the suspect is subjected to varying interrogation techniques.

As it is very clear from the above mentioned discussion, the interrogation in all countries is primarily used for obtaining information of the crime and its clues, including information of offenders involved in the commission of the crime. As an effective tool of extracting confession from the suspects, the interrogation has been widely used in many systems. In US, three out of four people waive their *Miranda Rights*,⁵³ and about 60 percent⁵⁴ of them end up with confession of the crimes in interrogations.

him, or in the light of material circumstances, it would be unfair to admit the confession in evidence. See Law Reform Commission of Hong Kong, 1998.

⁵⁰ . Code of Criminal Procedure, Japan, 1973, section 151.

⁵¹ . Hans Julius Wolff, 'Criminal Justice in Germany', 42 Mich.L.Rev, 1943/44, pp. 1067-1088

⁵² . See Code of Criminal Procedure, Japan, sections 205 (2), 208(1), and 208 (2). See also Chalmers Johnson, Conspiracy at Matsukawa, 1972, p. 405

⁵³ . R. Leo, 'The Impact of Miranda Revisited', Journal of Criminal Law and Criminology 86: 621-92 (1996).

⁵⁴ . G. Gudjonsson, *the Psychology of Interrogations, Confessions and Testimony*, Wiley and Sons, New York, 1992.

In Germany the rate is about 40 percent.⁵⁵ In Japan, the vast majority of accused of criminal offences confesses, display repentance, negotiate for their victims' pardon and submit to the mercy of the authorities.⁵⁶ In Nepal, over 66 percent of people confess during the interrogation. The underlying principle for emphasis on confession is that it relieves the prosecutors of the burden of proof, as the burden of proof virtually shifts to the suspects when they intend to challenge the admissibility of the confessions on any grounds. The interrogation is thus a very effective tool of police investigator to pursue a convenient and easier approach to the investigation. Indeed, this element of confession makes interrogation a great threat to the procedural rights of suspects and in fact the fairness of the justice itself.

5. CONCLUSIONS:

Most Asian countries at present are following adversarial system. Though the general principles of adversarial systems followed do not vary, the practices in reality are widely divergent. A striking example in this context is the failure to uphold the principle of right against self-incrimination. It has been observed that while this principle is a long standing and cardinal one in common law, Asian countries like India and Sri Lanka which inherited common law mark a stark departure in their criminal justice system.

Investigation process in some countries is largely controlled by police, as an investigating authority, but in the others, the role of prosecutors is found comparatively prominent and dominant. In the countries that provide a broad responsibility to the prosecutors in the justice system, the prosecutor's power to supervise the investigation seems to be immensely extensive, such as in Japan and Germany, which aid in keeping abuse of power by police in check. In contrast, the prosecutors in Nepal have nominal role in matters of arrest and detention, which has consequently become one of the biggest setbacks of the Nepalese criminal justice system. Countries like India and Sri Lanka are far off from this scenario.

Arrest and detention is more pervasively used in those countries where confession constitutes a dominant form of evidence. The practice of using forensic science as a tool for collecting evidence seems to be used minimally in those countries that sweepingly use confession as evidence. In such countries, interrogation has been made a dominant feature of the investigating officers' power, which is a deeply rooted cause of physical and psychological torture.

Countries with pervasive culture of admitting confession as evidence for conviction have alarming rate of prosecution failure in trial. This situation is an indicative of the state of miscarriage of justice and ensuing human rights violation. People's trust on investigation and every agency associated with it have been found deteriorating.

Reforms in such jurisdictions require emphasis on use of scientific evidence, for instance, emphasis should be shifted from confession to examination of scene of crime examination, using available resources within forensic science. Investigations would continue to be obsessively concentrated on the accused unless the attention of investigators is diverted from confession to physical evidence.

⁵⁵ . *Id.*

⁵⁶ . Kenneth Winston, 'On Ethics of Exporting Ethics: Right to Silence in Japan and US', Faculty Research Working Paper, John Of Kennedy School of Government, Harvard University, 2003, p. 5.