

Case-flow Management in Nepal

By: Dr. Bijaya Prasad Mishra, Senior Advocate, Supreme Court of Nepal, Associate Professor, Nepal Law Campus, Tribhuvan University, Nepal

The crisis of increasing caseload in courts of Nepal is a familiar issue in every litigation across Nepal. This has affected the litigators, clients, judges and court administration alike. Every law student has read the proverb “justice delayed is justice denied,” but once they graduate and become even slightly familiar with the case flow management and justice dispensation timeline of the Nepalese judiciary, many of them relegate the proverb as to something that used to happen in history, but not anymore. Then they come to reality: Justice is always delayed here. In order to appreciate how the Nepalese judiciary came to this point it is important to study the anatomy of this crisis. Also, it is equally important to study the measures - small and big- taken by the judiciary in handling this crisis, and their effectiveness.

Compared to the previous generations, Nepalese people have become more litigious in nature as there is awareness. Civil lawsuits on partition of ancestral properties and cheque bounce have become commonplace. Except for a few cases, most of these types of civil cases don't require much judicial deliberation and study; yet since they are filed at a court of law, judges have to spend their time in these cases. As a consequence, judges are not able to devote their time to studying cases that are novel in nature and require much study. Additionally, since Nepal has a relatively liberal appeal system and special leave of appeal, many if not most of the cases resolved at the original court, get appealed to the higher courts. Little wonder the justice dispensation at higher courts is as delayed and tardy as the lower levels, if not more. This all has caused a major crisis at the highest court in the Nation: over thirty thousand backlog cases at the Supreme Court of Nepal.

While there have been some steps taken by the state, government, and the court administration to handle the caseload burdening the entire judiciary, their effectiveness is definitely up for question. And the resulting trade-offs require some reflection as well. One of the existing measures in practice, brought through legislative instruments, is Court Fee. The litigant party has to deposit a proportion of the value of the asset in question in the court (between 1% and 5%) in order to have their cases heard and decided. This may have prevented many people from filing frivolous lawsuits intended to hassle the opposing party, but it is difficult to deny that this may also have hampered genuine justice seekers who cannot spare the required Fee. Mediation is also employed as a means by which many of these civil cases are sidelined by the regular courts, encouraging the parties to get together and decide the issue. But all the court can do is allot the time and hope the parties get together, which doesn't happen often. As a consequence, this measure is seen merely as a formality and is inadvertently delaying the justice dispensation: quite the opposite of what it intended to.

There has been ongoing discourse that establishment of two separate courts for civil and criminal proceedings should smooth the justice dispensation process, but this doesn't begin to address how it would prevent frivolous appeals at the higher courts. Arguably it would merely amount to feeding the current practice without addressing the major causes. Narrowing the appeal system could be looked at as a means to addressing it, but the possible consequence of it resulting in people not getting proper justice has prevented this means from coming to the mainstream. There is no magic wand to this problem. Each "solution" involves some trade-offs. But perhaps the best thing Nepal can do is study what other countries are doing and implement the applicable methods in a manner fitting to the Nepalese judicial system. The cause list system is now handled on the basis of lottery in place of the earlier full control over the assignment of the cases by the Chief Justice. This change has increased fairness and trust over the judiciary.