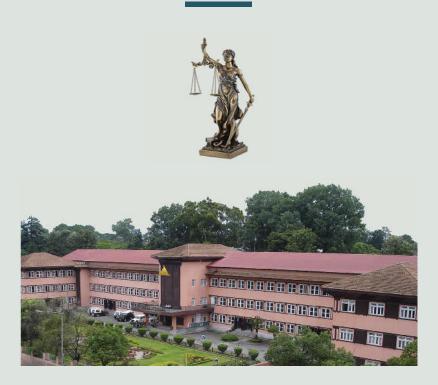




INTRODUCTION OF THE NEPALI JUDICIARY



SUPREME COURT OF NEPAL

Introduction

Nepal is a federal democratic republic country having adundant natural beauty & myriad diversity within its small terriotiry. It has a rich history of soveign existence & a comprehensive legacy in terms of legal & judicial traditions.

The Constitution of Nepal establishes an independent, impartial and competent judiciary. It provides that the judicial power of Nepal shall be exercised by the courts and the judicial authorities pursuant to the Constitution and other laws along with the recognized principles of justice. The Supreme Court is the apex Court of Nepal. Its foundation was laid in 1940 A.D with the establishment of *Pradhan Nyayalaya* meaning 'Apex Court'. The term *Pradhan Nyayalaya* was later changed to Supreme Court after the enactment of the Supreme Court Act, 1956. The Supreme Court is the court of record and has the final authority to interpret the Constitution and laws. Such interpretation as well as principles laid down by the Supreme Court in course of lawsuit have binding efficacy.

Although the court system of Nepal is unitary/integrated in function, the courts are geographically situated as per the federal system of governance i.e., each of the seven provinces have a 'High Court' (eleven Benches) and each of the seventyseven districts have a 'District Court'. There are also Specialized Courts and Tribunals established for specific jurisdiction. Further, quasi-judicial bodies, judicial committees and even officers designated by law can render legal decision subject to due process and appeal.

Historical Background of Nepali Legal System Ancient Period

- ★ It was the time before Nepal Sambat or before the promulgation of *Manav Nyayashastra* dating between 1400 B.C. to 700 B.C. (Prior to Circa 10th Century B.C.).
- Gopal Dynasty were the 1st ruling dynasty, followed by Ahir Dynasty, Kirat Dynasty (from Circa 10th Century B.C. to 3rd Century B.C.), Soma Dynasty (beginning of 4th Century

AD), Lichchhavi Dynasty concurrently with Thakuri Clan of Amshu Verma (4th & 5th Century AD).

- Mundhum, Smiriti(s) including other Hindu religious scriptures shaped the legal norms and behavior. During this period courts were divided as :
 - 1. *Kuther* Related to the collection of revenue, land tax and settlement of land related disputes.
 - 2. *Suli* Criminal court where five heinous crimes were looked into.
 - 3. *Lingual* Looked into welfare and development affairs.
 - 4. *Mapchok* Family court.

Medieval Period

- ★ It started from the Malla dynasty who were ruling concurrently in Kathmandu, Lalitpur and Bhaktapur from 1320 AD until the unification of Nepal. Also, Kathmandu Valley and its surroundings including other autonomous states known as *Baise* and *Chaubise Rajyas* had their own system. This period also marked the beginning of Nepal Sambat.
- ✦ Promulgation of *Manav Nyayashastra / Nyayabikashini* by Jaya Sthiti Malla in 6th Century (after 1350 AD) consolidated the judicial system.
- + Central judicial system had the following courts:
 - 1. *Kotiling* Civil court that tried cases related to property, public interest, rights and duties.
 - 2. Itachapali- Criminal court.
 - 3. Provincial level court system.
 - *4.* Local level court system.

Modern Period

- + It started in 1853 AD (1910 BS).
- The sources of laws in the initial phase were the dicta of the rulers documented as Ram Shah's 26 Royal Edicts, Prithvi Narayan Shah's Divine Counsel, etc. With the beginning of the Rana regime, Muluki Ain (National Code), 1864 was promulgated and modern day legislations and court system were formed. The courts were as follows:

- 1. *The Kausal* (Council)- It was the supreme executive and legislative body having original and appellate jurisdiction in both civil and criminal cases. At this time, the function of judicial work under the Kausal was separate but under the executive control followed by judicial processes.
- 2. *The Sadar Courts-* It comprised of four courts namely *Kotiling, Itachapali, Taksar, Dhansar, looking over five heinous crimes.*
- 3. *The Gaunda Court* It issued death sentences which were carried out only after *lalmohar* from the central government.
- 4. The Jilla Adalat District court
- 5. The Amal Adalat Civil court.

Nepali Legal System and Court Structures Inquisitorial Justice Model (Before 1992 AD)

1853 AD (1910 BS)

✤ 1st Codified Law.

1940 AD

+ Establishment of *Pradhan Nyayalaya* (Now Supreme Court).

1959 AD

 The Judicial Administration Act-High Court, District Court and State Court under Supreme Court.

1963 AD

+ Enactment of *Muliki Ain* (National Code)

1964 AD

+ District Court, Zonal Court, and Supreme Court

1973/74 AD

+ The Judicial Administration Reform Act- District Courts, Zonal Courts and five Regional Courts and Supreme Court

Introduction of the Nepali Judiciary | Page 3 of 24

Adversarial Justice Model (After 1992 AD)

1992 AD

✤ Enactment of the State Cases Act

Prevailing Major Legislations:

National Civil Code, 2017, National Civil Procedure Code, 2017, Criminal Offences (Sentencing and Execution) Act, 2017, National Penal Code, 2017, National Criminal Procedure Code, 2017

Existing Court Structures

Supreme Court, seven high courts (with additional eleven Benches) for geographical comenience and seventy-seven District Courts. Cases at all levels of Courts are allotted to judges based on *Gola* process otherwise known as lottery process conducted through procedural guidelines.

SUPREME COURT OF NEPAL

- a. Special Court: 1
- b. Revenue Tribunals: 4
- c. Labor Court: 1
- d. Administrative Court: 1
- e. Foreign Employment Tribunal: 1
- f. Debt Recovery Tribunal: 1
- g. Debt Recovery Appellate Tribunal: 1

Koshi Province

1. High Court Biratnagar

Morang, Sunsari and Udayapur District

- a. **High Court Biratnagar, Ilam Bench** Taplejung, Panchthar, Ilam and Jhapa District
- High Court Biratnagar, Dhankuta Bench
 Sankhuwasabha, Tehrathum, Bhojpur and Dhankuta
 District
- c. **High Court Biratnagar, Okhaldhunga Bench** Solukhumbu, Okhaldhunga and Khotang District

Introduction of the Nepali Judiciary | Page 4 of 24

Madhesh Province

1. High Court Janakpur

Dhanusha, Mohottari and Sarlahi District

- a. **High Court Janakpur, Rajbiraj Bench** Siraha and Saptari District
- b. **High Court Janakpur, Birgunj Bench** Bara, Parsa and Rautahat District

Bagmati Province

1. High Court Patan

Ramechhap, Sindhuli, Dolakha, Rasuwa, Kavrepalanchowk, Sidhupalchowk, Dhading, Nuwakot, Kathmandu, Bhaktapur and Lalitpur District

a. **High Court Patan, Hetauda Bench** Makwanpur and Chitwan District

Gandaki Province

- High Court Pokhara Manang, Gorkha, Lamjung, Syangja, Tanahun, Kaski and Nawalpur District
 - a. **High Court Pokhara, Baglung Bench** Mustang, Myagdi, Parbat and Baglung District

Lumbini Province

- 1. **High Court Tulsipur** Rolpa, Pyuthan, Dang and Rukumkot District
 - a. **High Court Tulsipur, Butwal Bench** Arghakhanchi, Gulmi, Palpa, Nawalparasi, Rupandehi and Kapilvastu District
 - b. **High Court Tulsipur, Nepalgunj Bench** Banke and Bardiya District

Karnali Province

1. **High Court Surkhet** Rukum, Salyan, Surkhet, Jajarkot and Dailekh District

Introduction of the Nepali Judiciary | Page 5 of 24

a. **High Court Surkhet, Jumla Bench** Humla, Jumla, Mugu, Kalikot and Dolpa District

Sudur Paschim Province

1. High Court Dipayal

Bajhang, Bajura, Achham, Doti and Kailali District

a. **High Court Dipayal, Mahendranagar Bench** Darchula, Baitadi, Dadeldhura and Kanchanpur District

Jurisdiction of Ordinary Courts of Nepal Supreme Court

- + Appeal, revision, review and reference (*sadhak*) cases
- + Hear application on interlocutory order
- + Initiate & decide cases of contempt of court
- + Transfer cases from one High Court to another
- + Send cases for mediation
- + Issues appropriate orders or Writs including habeas corpus, mandamus, certiorari, prohibition and quo-warranto
- + Judicial Review through Constitutional Bench
- Hear disputes related to the jurisdiction of Federal, State and Local level as well as disputes on qualification of elected members of Federal or State Parliament
- + Give necessary directives to lower courts regarding administration of justice
- Make rules and regulations of courts
- + Inspect & monitor sub-ordinate courts and tribunals

High Court

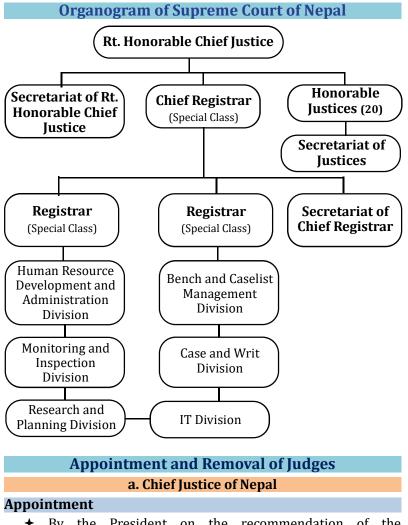
- + Appeal and reference cases
- + Power to try certain cases as specified by law
- Initiate & decide cases of contempt of court
- + Hear application on interlocutory order
- Transfer case from one District Court to another within one's jurisdiction

Introduction of the Nepali Judiciary | Page 6 of 24

- + Send cases for mediation
- + Issue writs
- + Inspect & monitor lower courts within one's jurisdiction

District Court

- + General jurisdiction over all types of case within its territorial jurisdiction, expect as provided by law
- Hear appeal of decisions made by quasi-judicial bodies and judicial committees of local level
- + Execute judgments
- + Issue search warrant and arrest warrant
- + Issue interlocutory order
- + Initiate & decide cases of contempt of court
- + Send cases for mediation
- + Issue writ of habeas corpus and injunction order
- + Inspect quasi-judicial bodies and judicial committees



+ By the President on the recommendation of the Constitutional Council.¹

Required Qualification (basic criteria: should be a citizen of Nepal and hold a bachelor's degree in law)

+ Justice of the Supreme Court for at least three years.

1 The Constitutional Council is a body formed under article 284 of the Constitution of Nepal with primary mandate to make recommendation for appointment of Chief Justice and officials of constitutional bodies of Nepal.

Introduction of the Nepali Judiciary | Page 8 of 24

b. Justice of Supreme Court

Appointment

+ By the President on the recommendation of the Judicial Council.

Required Qualification (basic criteria: should be a citizen of Nepal and hold a bachelor's degree in law)

- Chief Judge or a Judge of a High Court for at least five years, or,
- + Senior advocate or advocate for at least fifteen years, or,
- Distinguished jurist with at least fifteen years of experience in the judicial or legal field, or,
- Gazetted first class or a higher post of the Judicial Service for at least twelve years.

c. Conditions for Post to be Vacant

- + Submission of written resignation before the President,
- Attains the age of sixty-five years,
- Impeachment motion passed by a two third majority of the House of Representatives on ground of incompetence or bad moral conduct or dishonesty,
- Removal of Chief Justice from office by the president on recommendation of the Constitutional Council, and the Judge of the Supreme Court on recommendation of the Judicial Council, on the ground of being unable to discharge respective duties due to physical or mental illness,
- Punished by a court for a criminal offence involving moral turpitude,
- ✤ If he or she dies.

High Court Chief Judge and Judge

Appointment

 By the Chief Justice on the recommendation of the Judicial Council.

Introduction of the Nepali Judiciary | Page 9 of 24

Required Qualification (basic criteria: should be a citizen of Nepal and hold a bachelor's degree in law)

- Judge of a District Court for at least five years, or,
- Senior advocate or advocate for at least ten years, or,
- + Legal professionals with experience of at least ten years, or,
- Gazetted first class of the Judicial Service for at least five years.

Conditions for Post to be Vacant

- + Resignation in writing before the Chief Justice,
- Attains the age of sixty-three years,
- Removed from office by the Chief Justice on recommendation of the Judicial Council, on the ground of incompetence, bad conduct, failure to perform duties honestly, performance of business with mala fide intention or serious violation of the code of conduct,
- Removed from office by the Chief Justice on recommendation of the Judicial Council on the ground that he or she is unable to discharge duties owing to physical or mental illness,
- Punished by a court for a criminal offence involving moral turpitude,
- ✤ If he or she dies.

District Court Judge

Appointment

- + By the Chief Justice on recommendation of the Judicial Council,
- The Judicial Service Commission is responsible for conducting competitive examinations and makes recommendation, in order of merit, to the Judicial Council for appointment as District Judges.

Introduction of the Nepali Judiciary | Page 10 of 24

Required Qualification (basic criteria: should be a citizen of Nepal and hold a bachelor's degree in law)

- Twenty percent: On the basis of seniority, qualification and competency from amongst the gazetted second class officers of the Judicial Service who have served for at least three years,
- Forty percent: On the basis of open competitive examination from amongst the gazetted second class officers of the Judicial Service who have served for at least three years,
- Forty percent: On the basis of open competitive examination from amongst legal professionals with at least eight years of experience or gazetted post of the Judicial Service for at least eight years.

Conditions for Post to be Vacant

- + Submits written resignation before the Chief Justice,
- + Attains the age of sixty-three years,
- Removed from office by the Chief Justice on recommendation of the Judicial Council, on the ground of incompetence, misconduct, failure to perform duties honestly, performance of business with mala fide intention or serious violation of the code of conduct,
- Removed from office by the Chief Justice on recommendation of the Judicial Council on the ground that he or she is unable to continue service because of physical or mental illness,
- Punished by a court for a criminal offence involving moral turpitude,
- If he or she dies.

Civil Proceeding

Lawsuit is presented before the concerned District Court.

Locus standi, statute of limitation, jurisdiction and format is checked by court officials.

Introduction of the Nepali Judiciary | Page 11 of 24

- 1. If the procedural requirements of the lawsuit are not met, then it is sent back along with justification.
- 2. If the formalities of lawsuit is found according to the law, then it is registered.

A copy of lawsuit and summon is sent to the defendant who should be present before the court with statement of defense within prescribed time.

If found according to law, the statement of defense is registered, else it is returned for correction.

Preliminary hearing is conducted if question of locus standi, time limitation and jurisdiction is raised.

If such technical aspects is found to be contrary to the law, the case is quashed, else the court provides a date for the parties to be present before the court.

Evidence and witness is presented before the court and pleading is done by respective legal representatives.

Court gives verdict within one month of the submission of all necessary evidence.

Party which is not satisfied with the verdict can appeal to higher court in prescribed format within specific timeframe provided by law.

Introduction of the Nepali Judiciary | Page 12 of 24

Criminal Proceedings

FIR is lodged in concerned police station.

The court issues arrest warrant as per the nature of the case.

After investigation within specified timeframe, police submits report to the District Attorney.

On behalf of the state and victim, District Attorney files chargesheet in the concerned District Court.

The court informs the accused about the details of the chargesheet including the charge, presented evidence, prescribed punishment and asks the offender to record their deposition.

First hearing is conducted where the court may order on whether to i) remand the accused in detention for trial ii) release on ordinary bail iii) release in guarantee bail until the final verdict.

The court appoints date for the presentation of evidence and witness.

Evidence and witness are examined and pleading is done by respective legal representatives.

Court gives verdict within one month of the presentation of all necessary evidence.

Introduction of the Nepali Judiciary | Page 13 of 24

If found guilty, generally a separate hearing to determine the sentence is held and decision on sentence is given within thirty days of the original verdict.

Party which is not satisfied with the verdict can appeal to higher court in prescribed format within specific timeframe provided by law.

Writ Procedure 1. Habeas Corpus

Concerned detainee or any other person on their behalf files petition in the court in prescribed format along with necessary details.

Ordinarily the petition is presented before the bench within three days of registration for preliminary hearing.

Court can order the respondent to be present before the court within three days along with the detainee and a written reply.

If the court deems the claim to be reasonable & legally acceptable, it can order :

a. to release the detainee on bail, or

b. to transfer the detainee to custody.

The respondent presents with written reply in prescribed format within specified time frame.

Introduction of the Nepali Judiciary | Page 14 of 24

After the pleading and assessment of facts and laws, the court may either:

a. quash the petition, or

b. order the opponent to release the detainee.

2. Quo-warranto, Mandamus, Certiorari, Prohibition

Concerned individual files petition in the court in prescrived format along with necessary details and fees.

It is presented before the bench within prescribed time for preliminary hearing after the registration.

The court, if deems appropriate can order any or both:

- a. "show cause" the respondent to present, by himself / herself or through representative, before the court within fixed time frame.
- b. give interim order or call for discussion on it.

The respondent presents with written reply in prescribed format within specified time frame.

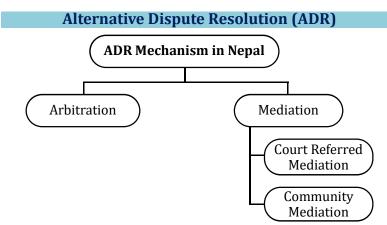
After the pleading and assessment of facts and laws, the court may either:

- a. quash the petition, or
- b. issue writ.

Introduction of the Nepali Judiciary | Page 15 of 24

Constitutional Bench

There is a separate Constitutional Bench in the Supreme Court as provided by Article 137 of the Constitution of Nepal. The Bench is chaired by the Chief justice and it comprises four other justices designated by the Chief Justice on the recommendation of the Judicial Council. It has an extraordinary jurisdiction to respond to writ petition questioning the constitutionality of any law of Nepal and declare such law void on ground of inconsistency with the Constitution. It also has an original jurisdiction to hear cases involving intergovernmental disputes between Federal, State and Local level, as well as the disputes relating to election of members of the Federal Parliament or Provincial Assembly and matters relating to disqualification of members of Federal Parliament or the Provincial Assembly. Apart from that, any case sub-judice in the Supreme Court that involves a question of serious constitutional interpretation can be heard by the Bench.



In Nepal, both arbitration and mediation are practiced as an Alternative Dispute Mechanism and are guided by their respective Acts. Mediation is more focused in the courts as court may refer for mediation in civil and certain criminal cases (court

Introduction of the Nepali Judiciary | Page 16 of 24

referred mediation). Such mediation is facilitated by Mediation Centre present in every court of Nepal (including the Supreme Court). The Centre maintains the list of licensed mediators who have received training as prescribed by the Mediation Council.

Mediation Council is an autonomous statutory body headed by a Justice of the Supreme Court and comprises of representatives from both public and private sector related to mediation. It is primarily responsible for making policies in regards to mediation, approving the curricula of the training to be given to the mediators, specifying the agency which conducts such training and inquiring into matters of code of conduct of mediators.

Court referred mediation started in Nepal from 2003 AD with the fourth amendment in the then District Court Regulation, 1995.

- With the seventh amendment of the then Appellate Court Regulation, 1991 and the seventh amendment of the then Supreme Court Regulation, 1992 the process of mediation was widened.
- Now, Mediation Act, 2011 and Rule, 2013 remain as the special law for mediation.

Mediation Committee

According to the Supreme Court Regulation, 2017, a sixmember Committee chaired by a Justice of the Supreme Court looks after the court referred mediation throughout the nation. The Committee functions to enhance and develop the system of mediation, to improve the work culture and procedure and to monitor and evaluate the process of mediation.

Judgment Execution Directorate

It is an institution under the Supreme Court which is the central body for enforcing and monitoring the implementation of judgments of Courts. It is headed by a Director General; Gazetted First Class Officer of the Judicial Service. It also maintains a central archive of all court decisions including information related to imprisonment, fine, compensation and directive orders.

Introduction of the Nepali Judiciary | Page 17 of 24

Judicial Committee

The restructuring of Nepal from a unitary to a federal structure has formally devolved legislative, executive as well as judicial power to the local level too. The primary objective of dispensing justice at local level is to make justice easily accessible to people. The Constitution has envisioned the creation of a Judicial Committee in each of the local level units. The Committee, composed of three members, is mandated to settle specific disputes within its respective jurisdiction at local level. It is headed by deputy mayor in municipalities and by deputy chairperson in rural municipalities. The other two members are elected by the members of the Village Assembly or the Municipal Assembly from amongst themselves. Such disputes are encouraged to be resolved through mediation and the local executive body is responsible for its execution. Decisions made by the Committee may be appealed to the concerned District Court.

Stakeholders of Nepali Judiciary

1. Organizations dealing with management of human resource of judiciary

a. Public Service Commission

It is a five-member body formed as per the Constitution of Nepal with the primary responsibility of conducting examinations for the selection of suitable candidates to be appointe at various positions in the Civil Service including the judiciary.

b. Judicial Council

It is a five-member body headed by the Chief Justice and formed as per the Constitution of Nepal with primary responsibility of making recommendation on the appointment, transfer, disciplinary action, and dismissal of judges.

c. Judicial Service Commission

It is a five-member body headed by the Chief Justice and formed as per the Constitution of Nepal with primary responsibility of making recommendation on the appointment, transfer, promotion and disciplinary action against judicial officers.

Introduction of the Nepali Judiciary | Page 18 of 24

2. Concerned government agencies a. Ministry of Law Justice and Parliamentary Affairs

It is the liaison Ministry of Supreme Court, Judicial Council, Judicial Service Commission, High Courts, District Courts and specialized courts constituted under the federal law and judicial bodies.

b. Office of Attorney General

Attorney General is appointed by the President on recommendation of the Prime Minister of Nepal and is the chief legal advisor to the government. The Attorney General or government attorneys represent the Government of Nepal in lawsuits wherein the rights, interests or concerns of the government are involved.

3. Institutions of practicing lawyers

a. Bar Association

Nepal Bar Association

It is the umbrella organization of practising lawyers of Nepal & is governed by a twenty-five member central executive comittee.

- Supreme Court Bar Association
- ▶ High Court Bar Associations for respective High Courts.
- Special Court Bar Association
- District Court Bar Associations for respective District Courts.

b. Nepal Bar Council

It is an independent statutory institution with the primary responsibility of conducting license examination for law practitioners, registering and maintaining their record and investigating the adherence to the code of conduct by the law practitioners. It is chaired by the Attorney General.

Introduction of the Nepali Judiciary | Page 19 of 24

4. Institutions involved in judicial research and training

a. National Judicial Academy

It is an independent statutory institution with the primary responsibility of conducting training of the judges, government attorneys, judicial officers, private law practitioners, and others who are directly involved in the administration of justice in Nepal. The Governing Board of National Judicial Academy is chaired by the Chief Justice.

b. Judicial Service Training Center

It is a subordinate organ of Ministry of Law, Justice and Parliamentary Affairs with the primary responsibility of conducting pre-service entry training and in-service training to the officers and junior level employees of the judicial and quasijudicial sectors.

5. Legal Education in Nepal

The modern history of legal education in Nepal dates back to 1954 A.D.; the year of the establishment of Nepal Law College (present Nepal Law Campus). Prior to that, legal education was imparted through *Shresta Pathshala*. Currently several private and government educational institutions are conducting five years Bachelors and three years Bachelors, Masters and PhD programs in law. Furthermore, at the Higher Secondary level education, a separate stream of law has also been introduced.

Introduction of the Nepali Judiciary | Page 20 of 24

Access to Justice Initiatives by the Judiciary of Nepal

Formation of Access to Justice Commission in 2015

It is a policy making body headed by the Chief Justice of Nepal and comprises of members from various stakeholders related to law and justice. A Registrar of the Supreme Court acts as the Member Secretary and the functions of the commission is coordinated by a Joint Registrar of the Supreme Court. It conducts research on barriers of access to justice, publishes various information based handbooks and conducts awareness campaign targeting vulnerable groups.

Meet the Judge and Judicial Outreach

Judges and court officials visit general public and seek feedback in relation to their respective courts and work.

Stipendiary Lawyer

A salaried lawyer is recruited by each court on contractual basis to provide free legal assistance for those who cannot afford to pay for legal assistance.

Internship Program and Court Observation

Law students are provided with regular opportunities to learn from the courts on a practical basis.

Information Officer

Each Court designates one of its officer as Information Officer whose duty is to disseminate information related to court activities.

IT based Case Management System and Video Conferencing

All cases registered in the courts are given unique case number and are integrated in IT system of the judiciary.

Hearing of cases through video conferencing is also practised when necessary.

Unified Webpage and Accessible Mobile Application

Supreme Court has an extensive webpage through which one may access the website of all other courts. Status of current cases, case laws, laws, rules and directives related to judiciary are also available.

General public can even access these information through the judiciary's mobile application.

Differentiated Court Management (DCM) System

Judiciary has implemented DCM for processing each case according to its nature to achieve speedy justice.

Introduction of the Nepali Judiciary | Page 21 of 24

Strategic Plans of Judiciary

To make the justice system more speedy, effective, trustworthy and accessible, Judiciary of Nepal for the first time initiated for a Five-year Strategic Plan in 2004. Currently, the 4th Strategic Plan (2019/20- 2023/24) is in enforcement.

1st Strategic Plan (2004/05 - 2008/09)

Mission

To protect the human rights and rule of law and ensure justice for all by establishing an independent, competent, inexpensive, speedy justice system in accordance with people's aspirations.

2nd Strategic Plan (2009/10 - 2013/14)

Mission

To establish an independent, competent, inexpensive, speedy, effective, accessible and reliable justice system thereby transferring the concept of the rule of law and human rights into a living reality and thus ensure justice for all.

3rd Strategic Plan (2014/15 - 2018/19)

Mission

- To establish an independent, competent and effective justice system.
- To protect the rule of law, civil rights and freedom of citizens, thereby ensuring justice for all.

Targets

- + Prompt and speedy adjudication.
- + Predictable judicial process.
- + Accessible judicial system.
- + Enhancement of public trust and faith towards judiciary.

Introduction of the Nepali Judiciary | Page 22 of 24

4rd Strategic Plan (2019/20 - 2023/24)

Mission

+ To ensure justice for all.

Targets

- + Speedy and Qualitative Justice.
- + Enhancement of Access to Justice.
- + Promotion of Judicial Good Governance.
- + Reinforcement of Management of Courts.
- + Enhancement of Public Trust.

Typical Courtroom of the Supreme Court of Nepal



Introduction of the Nepali Judiciary | Page 23 of 24

THE REPART OF WERN

Logo of the Supreme Court of Nepal

The logo contains the map of Nepal and the Constitution at the center accompanied by the building of Supreme Court and the Nepali flag.

The background is colored blue symbolizing peace. In the inner circle, the logo has seven Rhododendrons (the national flower of Nepal) symbolizing the seven provinces of Nepal.

Introduction of the Nepali Judiciary | Page 24 of 24

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