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Prospects and Challenges of Virtual Trial in Nepal

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ABSTRACT

The caliber of Nepal's communications infrastructure has dramatically improved in recent years. The extension of the e-governance agenda to the judicial system has led directly to the adoption of technology in courtrooms. Over the past five years, the Supreme Court of Nepal has consistently worked to increase the effectiveness and efficiency of the administration of justice by utilizing cutting-edge technology. It just authorized the use of video conferencing technology to record witness testimony for the first time in its rule. This study aimed out to examine the current state of virtual trial in Nepal as well as its potential future directions. In order to achieve this goal, the study concentrated on the most promising application areas in light of the software and technology that are currently used in the Nepalese legal system. There were also some suggestions for incorporating cutting-edge technologies.

Keywords: *Virtual trial, Nepal, Supreme Court.*

I. INTRODUCTION

Court management is a complex act which cannot be simplified merely depending upon the human resources. At the beginning phase of court room technology, court friendly software, hardware and ICT were used for case management in the ad hoc form². However, with the passage of time they have been integrated as the foundational factor of judiciary. Advancement in the court proceeding concerning the significance of evidence in trial have introduced the term 'Virtual Trial' to the world. 'Virtual trail' is a trail in which all the participants and all information, including the remote witness testimony, evidence, opening statements, closing arguments, injury trials and instructions are conveyed in electronic form.³

In the case of United States vs. Salazar, two out of five judges gave their verdict through videoconferencing being present in different states without concern for physical location.⁴

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² Software Technology initially came in the form of ad hoc; case-specific hardware brought into the courtroom for use in a single case and later removed.

³ Fredric I. Lederer, *The Road to the Virtual Courtroom? A Consideration of Today's -- and Tomorrow's -High Technology Courtrooms*, 50 S.C. L. Rev. 799, 801 (1999).

⁴ Lederer, *Supra*, 802.

Therefore, judicial reform is not just the responsibility but rather an overall process of court⁵. The higher number of pending cases added greater pressure to Nepalese judiciary. In addition to this, maintaining the record of all cases either in the physical form of files or register called 'Misil'⁶ was being the greatest problem for all levels of courts in Nepal. Such files were insecure and counsels and judges were not able to retrieve the indispensable information at required time. Public used to go through a long formal procedure to fetch a single piece of information on a particular case or for filing a case.

With regard to all such problems, Nepali judiciary started to conduct the national conferences including the international experts, professionals, judges, lawyers and academicians to find out the way for effective court management. It formulated and implemented the five-year strategic plan (2004 AD – 2009 AD) for the first time in the history of Nepalese judiciary introducing the software application and ICT for advancement of court works.⁷ The periodical strategic planning have resulted as the most effective tool to prosper ICT and virtual medium as the foundational layout of Nepalese judiciary. Similarly, Supreme Court of Nepal uses ERP for the case record management⁸. The Supreme Court regulation have established an IT committee which looks after the ICT of all levels of court in Nepal.⁹

II. PROSPECTS

Changes in the legal system are being impacted by the growth of cyberspace and the proliferation of software and hardware technologies. Courthouses, often regarded as the cornerstones of civic architecture, have experienced significant changes recently. Modern courtroom technology allows for a virtual, real-time arena for the administration of justice, eliminating the necessity for a trial to take place in a physical courthouse. We'll look at the possibility of a virtual trial in Nepal below.

(A) Remote witness testimony

Virtual trial is incomplete without the live witness testimony through real-time interface applications as it is the critical component of trial which can't be substituted merely by evidentiary and informational presentation. Depositions of video as the evidence and testimony has become a common place of court room technology¹⁰ and thus the same development can be

⁵Introduction, Second Five-Year Strategic Plan of The Nepali Judiciary, F (2009), http://supremecourt.gov.np/web/assets/downloads/2nd_plan_English.pdf

⁶ Misil is a nepali term which is a register containing all related documents of a case collected and preserved in an systematic and organized form.

⁷ Introduction, *Supra*, A.

⁸ Khadak Singh Bhandari, *E-Government Implementation In Nepalese Judiciary*, 4 (2014).

⁹ Supreme Court Regulation § 115.

¹⁰ 58. See, e.g., Henry H. Perritt, Jr., Video Depositions, Transcripts and Trials, 43 EMORYL.J.1071, 1072 (1994).

referred as the main factor introducing the remote witness testimony in judicial proceedings. Videoconferencing can be used as the mode for remote witness testimony. Witness can be testified in the virtual real-time experience without the mandatory requirement to be present on the same physical setup of courtroom. Further, remote testimony can make the work of court more convenient by taking in concern the privacy of the witness. Witness don't need to come across the whole public and the software applications can be used to hide their identity even during the virtual trial. This seems significant especially in rape cases where the protection of privacy and identity of victims is prime concern.

It can broaden the access of public to trial,¹¹ thus, ensuring easy access to court works and the case proceedings. Lawyers do not need to travel long distances for appearances as they can present the witnesses to court through virtual interface from their respective places. The oral arguments and testimonies of trial can further be broadcasted via satellite connected to an established digital media of the court. Recently, Florida Supreme Court settled a robbery case by testifying accused from Argentina through two way video via internet.¹² Thus, remote testimony is expanding rapidly.¹³

a. Video Conferencing

Video conferencing platform vested to court management has been developed through the five year strategic planning of Supreme Court of Nepal. Video-conferencing system for recording statements of witnesses and experts have been legally incorporated in the regulation as part of trial in Supreme Court.¹⁴ This platform designed by the IT division can be used as a single door of judiciary to conduct the virtual trails by any courts in Nepal. Video conferencing system can be operated either through satellite (internet) based module or the ISDN 'dial-up' module. Concerning the fact that all courts in Nepal do not have the access to internet, due to topographical and climatic difficulties, both of this module can be operated in e-judiciary of Nepal. The ISDN 'dial-up' module of videoconferencing can help the court without the access of internet to connect to IT department of Supreme Court and conduct the virtual trail through the mobile networks. Similarly, the high-tech courts in facilitated cities and sub-urbans can adapt the satellite based video conferencing as it can supply the near-perfect audio and video

¹¹ Lederer, Fredric I., "The Road to the Virtual Courtroom? A Consideration of Today's -- and Tomorrow's -- High Technology Courtrooms" (1999). Faculty Publications. 212, 825.

¹² Harrell v. State, 709 So. 2d 1364, 1372 (Fla. 1998), cert. denied, 119 S. Ct. 236 (1998).

¹³ Book, *Supra*, 819.

¹⁴ *Supreme Court adopts e-technology; off-duty justices can be assigned cases*, The Himalayan Times, July 30, 2017, <https://thehimalayantimes.com/nepal/supreme-court-adopts-e-technology-off-duty-justices-can-assigned-cases/>

quality from anywhere in world.¹⁵

(B) Electronic Case brief and Court records

In the online trial, we expect electronic court documents to have three main consequences. These briefs are much more complete than their conventional counterparts because they enable an unparalleled electronic visual exchange of legal authority between judges and counsel.²⁸ There is also an economic impact. Electronic appellate papers often repurpose information that was developed or presented during the trial. For the most economical preparation, trial transcripts and evidence should be recorded digitally from the beginning so that they may be quickly and cheaply published in the brief. Digital delivery, sharing, and submission of these documents opens the door for a virtual appeal courthouse.

The court record is the second major sign of the possibility of a virtual trial after electronic case papers. In traditional courts before computers, clerks would live record every oral argument and written judgement. Their hands used to move in rhythm with the proceedings in the courtroom. Modern technology called stenographs makes it possible to report on the case by converting audio recordings into written text, either digitally or on paper. All of these papers are sent to the personal computers of judges and attorneys. Customers may easily browse through all of the transcripts in the search index that meet their criteria with only a few keystrokes or voice commands.¹⁶

Since the transcript is in electronic form, it may be exchanged in real-time in the virtual trial between the judges and the attorneys. To make the transcribed court documents available to the general public in real-time form, they might be added to the online library on the World Wide Web. While analogously handling a case and even during a fictitious trial, judges and attorneys might make reference to the preceding instances through transcripts during virtual trial.¹⁷ The electronic court records may be simply delivered over ISDN or high bandwidth connections to faraway locations without internet access. A multimodal, synchronised transcript is created by combining digital audio and video with a computer-assisted transcript.

a. E-portal

The Supreme Court of Nepal's official website features an E-Portal that may be used as an online library with access to just Nepali courts. The online library contains all of the case law and pertinent legal authorities needed for legal study in electronic format. Even dial-up

¹⁵Lederer, *Supra*, 819.

¹⁶ Lederer, *Supra*, 809.

¹⁷ *Effective Use of Courtroom Technology: A Judge's Guide to Pretrial and Trial*, 20-22 (July 12, 2020, 2 PM), <https://www.fjc.gov/sites/default/files/2012/CTtech00.pdf>

connection has been incorporated into courtroom equipment in certain nations, giving lawyers access to online libraries from anywhere at any time. By integrating E-Portal with mobile network providers, this technology may be deployed. It can make the legal authority portable, transferrable, and available in coded electronic form. As a result, while handling a case at hand, the judges and counsel can exchange crucial authorities even during a virtual trial. During the virtual trial, any papers of procedural and authoritative value, such as counsel briefs, transcripts, hypertext links to legal sources, and evidence, can be distributed to all screens connected to the same e-judiciary site.¹⁸

(C) Case filing and Case management software

The trial's scheduling is the judiciary's most hurried procedure since there are many cases that need to be decided within the short window of office hours. The filing of pleadings is the first step in a complicated series of steps that continue with the arguments of opposing counsel and the exchange of supporting documents until the decision is reached. As a result, handling situations effectively requires more than just human labour; software and technology are also needed. The courts' most difficult responsibility right now is making sure that everyone has access to justice, which is a fundamental right. In order to launch a case, victims must either travel a great distance or pay hefty legal fees. As a result, justice is not administered in an ideal manner.

The use of internet- or dial-up-based filing software enables attorneys to submit pleadings to the court in a coded electronic format. The trial can practically proceed according to the court's directions without the necessity for counsel to physically be in court. The main component paving the way for a virtual trial might be said to be electronic case filing. These kinds of software can let the court send copies of the essential papers to each party in a case at once.¹⁹ As a result, it can quicken the court's adjudication process and guarantee a just system. Email can be used for communication, but it is not a secure platform for a judicial system. As a result, the optimal platform for a virtual trial may be either ISDN or internet-based electronic file software. It further reduces the costs of case proceedings for the attorney and shortens the notice period.

The effectiveness of case records can be improved by case management software. The necessary

¹⁸ Further, the e-portal can be upgraded by including Electronic Court Information System (ECIS) on it. ECIS can make the electronic management of correspondence between courts and parties to lawsuits, between higher and lower courts, and between courts and governmental bodies easier during the virtual trial. As a result, the efficient communication between the counsel and parties to case and the track down of case proceeding will run the virtual trial smoothly.

¹⁹ Lederer, *Supra*, 804.

requirements of case records include things like the case name, the parties, the attorneys, and other information. All of these requirements for case records may be upheld by case management software, which also makes them database-accessible to the general public. Through its cloud-based data storage system, lawyers and judges may easily obtain pertinent cases for mentioning the appropriate authorities. The virtual trial may thus be more effective than regular court processes as a result. They can even show the relevant papers to the judges during a virtual trial because every case is available in an affordable, straightforward electronic format that is accessible at any time and from any location.

a. Push and Pull service

The Push and Pull SMS service has been adopted by the Supreme Court and Appellate Court. The applicant has received all the information on the case's filing date, hearing date, court orders, and ultimate determination via the Push service.²⁰ Either the email address or mobile number listed in his or her file receives the information. Similar to this, the applicant can utilise Pull Service to receive the same information from the court on a certain case through SMS.²¹ As a result, the court may increase push and pull service by granting permission to submit a case. Additionally, it may be utilised to provide both sides access to the videoconference for a virtual trial in any Nepali court. As a result, these SMS services may be updated as prospect to developing virtual trial in Nepal.

b. Case Management System (CMS)

Enterprise resource planning was created by the Supreme Court of Nepal with the intention of managing case records.²² To keep track of all court cases in Nepal, a case management system is used. Through the Supreme Court's official website, CMS enables anybody to access older cases whenever and wherever they wish in electronic form. During the virtual trial, CMS can enable the attorneys to transfer their electronic form to the court and refer to prior cases. However, identifying the particular case through case type and number is not possible due to lack of unique case identification number and uniformity.²³ To make virtual trial effective, this issue in CMS may be fixed.

III. CHALLENGES

Numerous supporting papers, voluminous evidence, and court records—which are essential

²⁰ *Information of Use of Information Technology in Judiciary 2072*, (July 15, 2020, 10 AM), http://www.supremecourt.gov.np/web/assets/downloads/law_reach/legal_infomation.pdf

²¹ *Information of Use of Information Technology in Judiciary 2072*, *Supra*.

²² Khadak Singh Bhandari, *E-Government Implementation In Nepalese Judiciary*, 4 (2014).

²³ Bhandari, *Supra*, 4.

elements in every case—are examined from the time a case is filed through the court's final ruling.²⁴ As a result, in order to properly develop all of the aforementioned prospects of virtual trial in Nepal, the court in that country must overcome a number of obstacles. The main obstacle that might stand in the way of the development of virtual trials has been briefly discussed in the following paragraphs.

(A) Cost

In a nation like Nepal where the judiciary and its officials still favour the conventional form of administration, installing e-technology to construct the virtual trial is expensive. Because Nepal's IT industry is still in its infancy, there aren't enough IT specialists and engineers to create the necessary software and gear for virtual trials. As a result, we must import technology from other nations, which is exceedingly expensive for the government due to Nepal's higher customs fees. The biggest obstacle for the nation whose primary source of income is remittances would be the regular maintenance costs even once it is installed.

Due to Nepal's varied topography, which ranges from the plain Terai to the snow-capped Himalayas, and its fluctuating meteorological circumstances, not all courts have network and internet services. First, the government must invest heavily in building a reliable cell network and internet infrastructure throughout Nepal in order to establish standard virtual trial technologies. The expense of developing a virtual trial in Nepal is increased by this step. Additionally, because pricey e-technology requires expensive equipment and ongoing internet access, which are outside the scope of a lawyer's usual wage, not many attorneys can afford it. Therefore, while creating virtual trials in Nepal, money may be the main obstacle.

(B) Knowledge

Knowledge may provide another difficulty for Nepal's virtual trials. Due to the fact that not all attorneys are knowledgeable with e-technology, it may be difficult for them to participate in virtual trials. On the other hand, the client might not always have access to the internet or a working understanding of digital technology. In these circumstances, the lawyer is less able to effectively communicate with the client and craft persuasive arguments, which increases the likelihood that the lawyer may be accused of attempting to conceal discoverable facts.²⁵ Lawyers unaware of the fact that software can be used to fabricate and alter evidences and digital documents mayn't be able to counter-argue with opponent. Such instances can make the

²⁴ Outside information assembled as required by the legal procedures are presented in the courtroom which are argued to fact finder on the basis of several interpretation theories and finally the verdict is given.

²⁵*Effective Use of Courtroom Technology: A Judge's Guide to Pretrial and Trial*, *Supra*, 63.

innocents liable due to inability of lawyers to comprehend the e-technology. So, lack of knowledge in lawyers regarding the courtroom technologies can make the virtual trial ineffective in Nepal.

(C) Flexibility

The flexibility provided by technology have the capability to interfere with every electronic documents in the form of asymmetric code. Evidences can easily be convertible to any forms as the counsels wants to present to court in favor of his/her party. The electronic documents including the essential exhibits relating to the fact of case in hand can be altered by using convenient applications. For instance, a digital photo delivered in a relatively small file may appear very fuzzy when it is presented on respective screens of all counsels, judges and parties of the case.²⁶ Not just the electronic documents, but also the sound and video of witnesses being testified in a remote medium can be changed through the use of graphics and animations. To prevent all such events produced by flexibility of technology must be controlled through high checking security system under the internet of larger bandwidth. Nepal doesn't owe its own satellite due to which it is dependent upon other country and thus have very low bandwidth internet which isn't so secured to prevent such events in virtual trial. Thus, the flexibility of technology not reduces the effectiveness of virtual trial but also fades out the trust of people on judiciary.

(D) Technology or Network failure

As stated earlier, the frequency of networks in Nepal is very low because it has been bought from satellite of other developed countries and thus the system often goes down. Stable internet connection is the prominent requirement of virtual trial. There must be a transparent communication between the judges and counsel as even a single second miss out in the video quality can mislead the whole verdict. However, in context of Nepal the network system is often unstable either due to technological problem in the server or change in the weather effecting the frequency of transmitted network. In addition to this, due to low bandwidth of networks the official webpages allowing the videoconferencing, which can be used for virtual trial, are not secured to continue the trail with privacy and security. This can lead to the system failure at the middle of virtual trial and invade the privacy and security to be maintained at virtual trial as in the traditional courtrooms. Thus, firstly stable network must be established to ensure effective administration of justice through virtual trial in Nepal.

²⁶*Id.*, 64.

IV. CONCLUSION

By eliminating travel, document transmission delay, and evidence presentation inefficiencies, virtual courtrooms could save a great deal of money and time for all of those involved in trial.²⁷ Participants can conveniently share all the information related to litigation and communicate with each other from any part of the world. Virtual is, thus, likely to ensure effective access to justice in every nooks and corners of Nepal. The public participation can be increased by accessing them the way to login to virtual trial from their own place. This will allow them to witness the justice system with their own eyes, thus increasing their trust in judiciary.²⁸ It will ultimately add value to the adjudication processes of courts in Nepal.

²⁷ Lederer, *Supra*, 843.

²⁸ *Id.*