

## INTRODUCTION

The Bhutanese legal system is a legacy developed by our past leaders based on an independent, fair and competent Judiciary. Therefore, it is very important to interpret and apply the laws which govern us. The vital responsibility of the Judiciary is to uphold the principles of law and the rule of law. The *Drangpon* is an arbiter of facts and laws in resolving disputes and a highly esteemed symbol of the State.

The rule of law, being an ideal having no relevance to politics in legal and political theory, the government and its officials are subject to law and must govern in accordance with the laws. The often repeated ideal, “government by law and not by men”, explains that the government officials, ministers, *Drangpons*, bureaucrats and Police must not be guided by personal whims and fancies, but govern under duly enacted laws. The rule of law protects the citizens from an arbitrary government.

In the criminal justice system, the police, Judiciary and the Prosecution being the closest arms of government to the people are most probable to violate the rule of law. For instance, if a Police Officer unlawfully arrests or tortures a citizen or if a rich or powerful person escapes punishment for a crime by bribing the prosecutor or if a minister interferes in the justice system and accomplishes a political objective, the ideal would be compromised. An independent and easily accessible Judiciary which adjudicates cases fearlessly, irrespective of the person’s power, wealth, status or political affiliation is a sine qua non for the rule of law. A democratic government endures only by the will of the people and without the governmental support the orders of Judiciary can never attain compliance. The Judiciary’s most valuable resource is the popular respect accorded to the moral authority of its decrees.



# **BENCH BOOK FOR JUDICIAL PROCESS**

## **PART 1 CIVIL CASE**

1. Every petition or plaint shall be filed before a Court of Law and no petition shall be entertained outside the Court in accordance with section 28(b) of the Civil and Criminal Procedure Code of Bhutan (hereinafter referred to as the Code).
2. All inquiries and proceedings shall be conducted as expeditiously as possible in accordance with section 75(a) of the Code.
3. A case shall not be assigned to a Drangpon who may have or be reasonably construed to have conflict of interest in the matter at hand in accordance with section 73 of the Code.
4. The Registrar of the Court shall ensure that:
  - (a) The petition or plaint is registered in the Miscellaneous Register of the Court in accordance with sections 32 of the Code;<sup>1</sup>
  - (b) The petition or plaint is filed by a person or institution in accordance with sections 116, 117, 148 and 149 of the Code and Ga 2-2 and Ga 2-3 of the Inheritance Act;
  - (c) The petition of complaint alleges sufficient information to establish a right of relief, states the basis of the Court's jurisdiction, and contains a prayer for relief in accordance with section 132.1 of the Code;

- (d) The petition of complaint bears necessary legal stamp and is signed by the petitioner or his/her member of the family/legal guardian or *Jabmi* in accordance with section 132.2 of the Code;
- (e) The petition or plaint is instituted in the Court having jurisdiction in accordance with section 120 of the Code;
- (f) The petitioner or plaintiff has “legal standing” to file the petition or plaint and the petition involves a concrete case or controversy in accordance with section 31.2 of the Code;
- (g) Ascertain whether the petition or plaint is subject to dismissal under the principle of *res-judicata* in accordance with section 115 of the Code;
- (h) The same case is not pending before any other competent Court in accordance with section 127 of the Code; and
- (i) The petition or plaint is in accordance with section 138 of the Code.

#### **In-Situ Proceedings**

5. The Court may hold proceedings or conduct hearings at any site other than the place where the Court is situated, whenever it considers that it is necessary, expedient or otherwise in the interest of justice to do so in accordance with section 121 of the Code.

## **Driglam Namzha**

6. The Registrar and the Bench Clerk of the Court shall:
  - (a) Ensure the attendance of the parties;
  - (b) Ensure that all the relevant/necessary documents are submitted and are in order;
  - (c) Ensure that the Hon'ble *Drangpon* is free;
  - (d) Submit the list of miscellaneous matters;
  - (e) Place the Miscellaneous Register before the Hon'ble *Drangpon*;
  - (f) Ensure that the parties are properly briefed with regard to the *Driglam Namzha* and that they conduct themselves in a manner consistent with, and appropriate to the operation of a Court of law;
  - (g) Ensure that parties are not in possession of arms, mobile phones, pagers, recording equipments, cameras and other electronic devices;
  - (h) Ensure the order of precedence of the parties as per the miscellaneous registration and make them to wait outside the Courtroom; and
  - (i) Usher in the parties in order of precedence with the permission of the Hon'ble *Drangpon*.

## **Miscellaneous Hearing**

7. The miscellaneous hearing shall be conducted by the Chief Judge who shall assign the cases in *seriatim* to the Benches.

8. The Bench shall:
  - (a) Pronounce that the Court is conducting the miscellaneous hearing in accordance with section 32 of the Code;
  - (b) Order the plaintiff to make the submissions truthfully;
  - (c) Order that the plaintiff may be held liable for cantankerous litigation under sections 371 and 372 of the Penal Code, if the case was initiated with malafide intent to embarrass, harass or without any reasonable basis;
  - (d) Read out the petition;
  - (e) Order the plaintiff to make an oral submission;
  - (f) If the petition is dismissed, pronounce and issue a written order for the cause of dismissal in accordance with section 32.1(c) of the Code;<sup>2</sup>
  - (g) If the petition is admissible in accordance with section 32.1(a) of the Code, admit the case and assign it;<sup>3</sup> and
  - (h) Order that summon orders will be issued in accordance with sections 35 and 39 of the Code.<sup>4</sup>

**Show Cause Order**

9. If necessary, the Bench shall:
  - (a) Pronounce that the Court is conducting a hearing for show cause in accordance with section 80 of the Code;

- (b) Pronounce that the party must “show cause” to prove, justify or explain to the Court or why the Court should not find that the party is in “contempt of court” for violating an earlier order; and
- (c) Adjourn the hearing with relevant orders for dismissal, contempt of court or with specific instructions.

**Preliminary Hearing<sup>5</sup>**

10. The Bench shall:

- (a) Pronounce that the Court is conducting preliminary hearing in accordance with section 81.1 of the Code;
- (b) Pronounce that the parties to the case are hereby summoned before the Court to appear in person in accordance with section 35 of the Code;
- (c) Pronounce the power of the Court to adjudicate in accordance with section 28 of the Code;
- (d) Pronounce that the case has been registered in accordance with section 31 and order payment of Court fees in accordance with section 132.3 of the Code;
- (e) Order the parties to make their submissions truthfully and pronounce that the parties shall be held liable for perjury if they knowingly make a false declaration or give false evidence with regard to the issue or point in question in accordance with sections 369 and 370 of the Penal Code;

- (f) Pronounce expeditious proceedings and rights of the parties to uninterrupted hearing during the proceedings in accordance with section 75 of the Code;
- (g) Order the due process of law in accordance with the principles of equal justice under law under section 3, open trial under section 4, non-interference under section 5, and impartiality under section 6 of the Code respectively;
- (h) Order the parties that their testimonies may be questioned at any time during the proceedings;
- (i) Pronounce that the parties may be subjected to contempt of court for showing disrespect to the Court during Court proceedings, failure to appear, absence without leave in accordance with sections 102 to 106 of the Code and sections 367 and 368 of the Penal Code;<sup>6</sup>
- (j) Pronounce that the defaulting party shall be liable to pay to the attending party daily allowance and travel costs in accordance with section 98 of the Code, if a party fails to attend hearings as per the schedule fixed;<sup>7</sup>

- (k) Order that the parties shall be allowed to present evidence in their defence, including the right to subpoena relevant witnesses and to compel the production of physical evidence on their behalf in accordance with sections 35.1, 36 and 84.1, and to cross-examine the opposing witnesses in accordance with section 90 of the Code. The witnesses and physical evidence must be within Bhutan in accordance with sections 86 and 87 of the Code;
- (l) Pronounce that the parties may give testimony orally and file a written statement during the proceedings in accordance with sections 50 of the Code;
- (m) Pronounce the right of the parties to have a *Jabmi* who is a Bhutanese citizen in accordance with section 33 of the Code;
- (n) Provide a list of licensed Bhutanese *Jabmis* for the parties to choose from, along with forms pertaining to selection or waiving the right to a *Jabmi* in accordance with section 33(b) of the Code;<sup>8</sup>
- (o) Pronounce that at any time after the institution of a suit, a plaintiff may, as against all or any of the defendants abandon his/her suit or part of his /her claim in accordance with section 153 of the Code and that in such case the plaintiff may be liable for such costs as the Court may award in accordance with section 153.1 of the Code;<sup>9</sup>
- (p) Pronounce that it shall be open to the parties to avail mutual settlement in civil cases at any stage of the proceedings in accordance with section 150 and that parties may request for an adjournment in accordance with section 150.2 of the Code;

- (q) Read out the petition of complaint and order the plaintiff to make an oral submission;
- (r) Provide a copy of the petition or plaint to the defendant and inform the defendant that he/she should study the petition or plaint carefully before submitting the defence in accordance with section 133 of the Code;
- (s) Order the defendant to submit pleadings in accordance with section 137.1 of the Code; and
- (t) Schedule the next date for hearing and adjourn the proceeding.<sup>10</sup>

### **Opening Statement**

11. The Bench shall:

- (a) Pronounce that the Court is conducting hearing for opening statement in accordance with section 82 of the Code;
- (b) Order the parties to submit the duly filled *Jabmi* forms;
- (c) Pronounce the number of issues filed;
- (d) Read out the opening statement of the parties submitted in accordance with section 82 of the Code and order to make an oral submission;
- (e) Order the parties to submit the issues one by one orally;
- (f) Order that the parties may submit their deposition;<sup>11</sup>

- (g) Provide a copy of the opening statement to the party and inform him/her that he/she should study it carefully before submitting his/her rebuttal. Adequate time shall be granted to the plaintiff;
- (h) Pronounce that the parties shall be permitted to rebut every issue in accordance with section 83 of the Code; and
- (i) Schedule the next date for hearing and adjourn the proceeding.

**Rebuttal**

12. The Bench shall:

- (a) Pronounce that the Court is conducting hearing for rebuttal in accordance with section 83 of the Code;
- (b) Read out the rebuttal of the parties and order to make an oral submission;
- (c) Order the parties that they may rebut the issues one by one both in writing and orally;
- (d) Order that the parties may submit their deposition;
- (e) Provide a copy of the rebuttal to the parties and inform him/her that he/she should study the rebuttal carefully in preparation for further rebuttal; and
- (f) Schedule the next date for hearing and adjourn the proceeding.

## **Evidence/Witness/Exhibit**

13. The Bench shall:

- (a) Pronounce that the Court is conducting hearing for submission of evidence in accordance with section 84 of the Code;
- (b) Order the parties that they may present evidence, exhibit or witnesses in accordance with sections 84, 85, 86 and 87 of the Code;
- (c) Give opportunity to the parties and witnesses of uninterrupted hearing during the proceedings;
- (d) Order the parties and witnesses that their testimonies relating to evidence may be questioned at any time during the proceedings;
- (e) Pronounce that the witnesses shall be held liable for perjury if they knowingly make a false declaration or give false evidence with regard to the issue or point in question in accordance with sections 369 and 370 of the Penal Code;
- (f) Pronounce that the witnesses may be subjected to contempt of court for showing disrespect to the Court during Court proceedings, failure to appear, absence without leave in accordance with sections 102 to 106 of the Code and sections 367 and 368 of the Penal Code;
- (g) Ensure that the evidence, exhibit or witnesses produced by the parties are admitted in accordance with the prescribed form;<sup>12</sup>

- (h) Read out the evidence and examine the exhibit if submitted to the Court; and
- (i) Schedule the next date for hearing and adjourn the proceeding.

### **Independent Testimony**

14. If necessary, the Bench shall:

- (a) Pronounce that the Court is conducting hearing for independent testimony in accordance with section 85 of the Code;
- (b) Order the witnesses to make their submissions truthfully;
- (c) Give opportunity to the witnesses of uninterrupted hearing during the proceedings;
- (d) Order that the witnesses' testimonies may be questioned at any time during the proceedings;
- (e) Order the witnesses to submit their submissions in deposition in accordance with section 50.1 of the Code;
- (f) Read out the depositions submitted by witnesses and order confirmation as to its accuracy in accordance with sections 50.2 and 50.3 of the Code; and
- (g) Adjourn the proceeding.

### **Cross-Examination<sup>13</sup>**

15. The Bench shall:

- (a) Pronounce that the Court is conducting hearing for cross-examination in accordance with section 90 of the Code;
- (b) Order the witnesses to make their submissions in deposition in accordance with section 50.1 of the Code;
- (c) Read out the depositions submitted by witnesses and order confirmation as to its accuracy in accordance with sections 50.2 and 50.3 of the Code;
- (d) Pronounce that the parties may cross-examine the opposing witnesses;
- (e) Choose to cross-examine the witnesses of either party in pursuance of Justice and Equity in accordance with section 90.3 of the Code;
- (f) Allow re-examination of their witnesses subsequent to cross-examination, if any of the parties desire in accordance with section 90.1 of the Code;
- (g) Order that the parties may make their submissions in deposition; and
- (h) Schedule the next date of hearing and adjourn the proceeding.

### **Judicial Investigation<sup>14</sup>**

16. After the submission of evidence or hearing of witnesses, if necessary, the concerned Court may conduct judicial investigation, if necessary in accordance with section 88 of the Code.

### **Closing Argument<sup>15</sup>**

17. The Bench shall:
  - (a) Pronounce that the Court is conducting hearing for closing argument in accordance with section 92 of the Code;
  - (b) Ask the parties whether they have any witnesses to be summoned again or any documents left to be submitted;
  - (c) Give opportunity to the parties or their *Jabmis* to summarise their case and evidence;
  - (d) Ensure that the Court has addressed all the issues one by one;
  - (e) Ensure the completion of prescribed forms and processes; and
  - (f) Adjourn the case for Court deliberation in accordance with section 93 of the Code.

### **Court Deliberation**

18. If a case is heard by more than one *Drangpon*, the Bench shall deliberate and draft the judgment in accordance with sections 93 and 95 of the Code and ensure that:
  - (a) Whenever possible, the Court deliberations do not exceed ten days in accordance with section 94.3 of the Code;

- (b) Professional secrecy and confidentiality concerning the case and deliberation is maintained in accordance with section 94 of the Code; and
- (c) The judgment shall be in accordance with section 96.3 of the Code.

**Award of Judgment<sup>16</sup>**

19. The Bench shall:

- (a) Pronounce that the Court is conducting hearing for award of judgment in accordance with section 96 of the Code;
- (b) Pronounce that the Court has addressed all the issues one by one;
- (c) Pronounce the number of pages of the judgment and that only the introduction of the case, court findings, and the operative part of the judgment shall be read;
- (d) Order that the judgment shall be enforced in accordance with the operative part of the judgment. Failure to comply with the judgment decree for execution shall be deemed as contempt of court in accordance with section 104 of the Code and sections 367 and 368 of the Penal Code. Order that the affected party must move the Court for enforcement of the judgment decree; and
- (e) Order the posting of the judgment on the judiciary website and release of the operative part of the opinion to the public and the news media if necessary.

## **Adjudication without Proceedings/ADR<sup>17</sup>**

20. The Bench shall:

- (a) Pronounce that the Court is conducting Adjudication without Proceedings in accordance with section 150 of the Code;
- (b) Pronounce that negotiated settlement in all civil cases may, at the discretion of the parties, proceed with or without the assistance of a *Jabmi* in accordance with section 150.1 of the Code;
- (c) Ensure that settlement is by voluntary consent and that the agreement is signed by the parties and the mediators in their presence and executed without erasure or alterations in accordance with section 150.3 of the Code;
- (d) Ensure that the agreement bears proper legal stamp and conforms to the laws and is in accordance with section 150.4 of the Code;
- (e) Read out the mutual settlement agreement;
- (f) Order the parties and the mediators concerned to orally confirm the modalities and contents of the mutual settlement agreement in the Court;
- (g) Pronounce that the Court shall proceed to award judgment on the basis of the mutual settlement agreement in accordance with section 150 of the Code; and
- (h) Schedule the date for award of judgment and adjourn the proceeding.

### **Summary Proceeding**

21. When no real legal or factual dispute exists during the Preliminary and Rebuttal stage of the hearing, the Court shall proceed to award summary judgment in accordance with section 151 of the Code.

### **Summary Judgment<sup>18</sup>**

22. The Bench shall:
  - (a) Pronounce that the Court is conducting hearing for award of summary judgment in accordance with section 151 of the Code;
  - (b) Pronounce that the party to the suit has requested for a summary judgment to dispose off a case;
  - (c) Order that the judgment shall be enforced in accordance with the operative part of the judgment. Failure to comply with the judgment decree for execution shall be deemed as contempt of court in accordance with section 104 of the Code and sections 367 and 368 of the Penal Code. Order that the affected party must move the Court for enforcement of the judgment decree; and
  - (d) Order the posting of the judgment on the judiciary website and release of the operative part of the opinion to the public and the news media if necessary.

### **Default Judgment<sup>19</sup>**

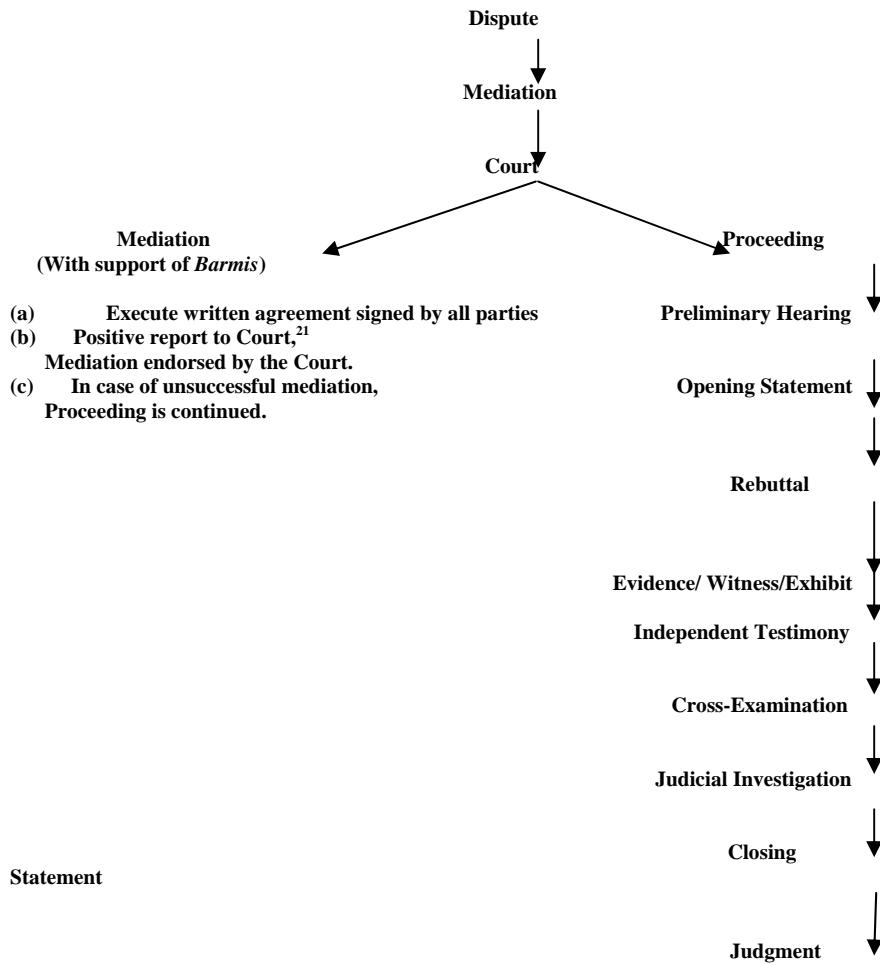
23. The Bench shall:

- (a) Pronounce that the Court is conducting hearing for award of default judgment in accordance with section 152 of the Code;
- (b) Pronounce that the Court has exhausted all means to determine the whereabouts of the party;
- (c) Pronounce that the judgment shall be enforced if it is not appealed within the limitation period;
- (d) Order that the judgment shall be enforced in accordance with the operative part of the judgment. Failure to comply with the judgment decree for execution shall be deemed as contempt of court in accordance with section 104 of the Code and sections 367 and 368 of the Penal Code. Order that the affected party must move the Court for enforcement of the judgment decree; and
- (e) Order the posting of the judgment on the judiciary website and release of the operative part of the opinion to the public and the news media if necessary.

### **Judgment for Withdrawal of suit<sup>20</sup>**

24. At any time after the institution of a suit, a plaintiff may, as against all or any of the defendants abandon his/her suit or a part of his /her claim in accordance with section 153 of the Code.

**The sequence of Civil Proceeding**



**PART 2**  
**CRIMINAL CASE**

1. Every charge shall be filed before a Court of Law and no charge shall be entertained outside the Court in accordance with section 28(b) of the Civil and Criminal Procedure Code of Bhutan.
2. All inquiries and proceedings shall be conducted as expeditiously as possible in accordance with section 75(a) of the Code.
3. A case shall not be assigned to a *Drangpon* who may have or be reasonably construed to have conflict of interest in the matter at hand in accordance with section 73 of the Code.

**Warrant**<sup>22</sup>

4. During issuance of arrest, search and seizure warrants, the Court shall ensure that:
  - (a) The warrant is issued upon the submission of the police crime report containing the name of the suspect, the nature of the crime, and other elements justifying probable cause for arrest, search and seizure in accordance with sections 162, 163, 168 and 181 of the Code; and
  - (b) The police crime report contains information sufficient to warrant a prudent person's belief that the wanted individual had committed a crime for an arrest warrant or that evidence of a crime or contraband would be found in a search for search and seizure warrant.

## **Production before Judge**

5. During the production before a Judge in accordance with section 188.1 of the Code, the Court shall:
  - (a) Ensure that the person arrested with or without warrant in accordance with sections 163, 165, 166 and 167 of the Code is produced before the Court within 24 hours excluding holidays and travel time involved;
  - (b) Ensure that subsequent to arrest, the Police have informed the person of the charge for which he/she is being arrested in accordance with sections 184 and 184.1 of the Code;
  - (c) Ascertain that the correct person has been arrested to prevent illegal arrest and unlawful detention by the Police;
  - (d) Consider issuance of remand order, release on bail or other orders in accordance with sections 186 and 188.2 of the Code;<sup>23</sup> and

- (e) Order that when a police investigation cannot be completed in time to enable a preliminary hearing within the remand period, the investigating officer shall produce the accused before the Court, which may authorize detention of the accused for an additional period not exceeding 49 days, if satisfied that adequate grounds exist for doing so; or 108 days where investigation relates to a heinous crime in accordance with section 191.1 of the Code.<sup>24</sup>
6. The Registrar of the Court shall ensure that:
- (a) The charge is registered in the Miscellaneous Register of the Court in accordance with section 32 of the Code;<sup>25</sup>
  - (b) The charge is being filed in accordance with section 31.1 of the Code;
  - (c) The charge contains particulars as are reasonably sufficient to give the accused notice of the matter with which the accused is charged in accordance with section 187 of the Code;
  - (d) The charge contains such particulars as to time and place of the alleged offence and the person (if any) against whom or the thing (if any) in respect of which, it was committed in accordance with section 187.2 of the Code;
  - (e) The charge has necessary legal stamp, sealed and signed in accordance with section 138(e) of the Code;

- (f) The charge is being filed in the Court of competent jurisdiction in accordance with section 189 of the Code; and
- (g) The same case is not pending before any other competent Court in accordance with section 189.1 of the Code;

### **In-Situ Proceedings**

- 7. The Court may hold proceedings or conduct hearings at any site other than the place where the Court is situated whenever it considers that it is necessary, expedient or otherwise in the interest of justice to do so in accordance with section 121 of the Code.

### **Driglam Namzha**

- 8. The Registrar and the Bench Clerk of the Court shall:
  - (a) Ensure the attendance of the parties;
  - (b) Ensure that all the relevant/necessary documents are submitted and are in order;
  - (c) Ensure that the Hon'ble *Drangpon* is free;
  - (d) Submit the list of miscellaneous matters;
  - (e) Place the the Miscellaneous Register before the Hon'ble *Drangpon*;
  - (f) Ensure that the parties are properly briefed with regard to the *Driglam Namzha* and that they conduct themselves in a manner consistent with and appropriate to the operation of a Court of law;

- (g) Ensure that parties are not in possession of arms, mobile phones, pagers, recording equipments, cameras and other electronic devices;
- (h) Ensure the order of precedence of the parties as per the miscellaneous registration and make them to wait outside the Courtroom; and
- (i) Usher in the parties in order of precedence with the permission of the Hon'ble *Drangpon*.

### **Miscellaneous Hearing**

- 9. The miscellaneous hearing shall be conducted by the Chief Judge who shall assign the cases in *seriatim* to the Benches.
- 10. The Bench shall:
  - (a) Pronounce that the Court is conducting the miscellaneous hearing in accordance with section 32 of the Code;
  - (b) Order the Prosecutor to make the submissions truthfully;
  - (c) Order that the Prosecutor may be liable for defamation and perjury in accordance with sections 317, 319, 369 and 370 of the Penal Code respectively;
  - (d) Read out the charge;
  - (e) Order the Prosecutor to make an oral submission;
  - (f) If the charge is dismissed, pronounce and issue a written order for the cause of dismissal in accordance with section 32.1(c) of the Code;<sup>26</sup>

- (g) If the charge is admissible in accordance with section 32.1(a) of the Code, admit the charge and assign the case;<sup>27</sup> and
- (h) Schedule a date for preliminary hearing of the case within ten days of the registration of the case in accordance with sections 81.2 (a) and 190 of the Code.

**Show Cause Order**

- 11. If necessary, the Bench shall:
  - (a) Pronounce that the Court is conducting a hearing for show cause in accordance with section 80 of the Code;
  - (b) Pronounce that the party must “show cause” to prove, justify or explain to the Court or why the Court should not find that the party is in “contempt of court” for violating an earlier order; and
  - (c) Adjourn the hearing with relevant orders for dismissal, contempt of court or with specific instructions.

**Preliminary Hearing<sup>28</sup>**

- 12. The Bench shall:
  - (a) Pronounce that the Court is conducting a preliminary hearing within ten days of registering the case in accordance with section 190 of the Code;

- (b) Pronounce that the parties are hereby summoned before the Court to appear in person in accordance with section 35 of the Code;
- (c) Pronounce the power of the Court to adjudicate in accordance with section 28 of the Code;
- (d) Pronounce that the charge has been registered in accordance with section 31 and order payment of Court fees in accordance with section 132.3 of the Code;
- (e) Order the parties to make their submissions truthfully and pronounce that the parties shall be held liable for perjury if they knowingly make a false declaration or give false evidence with regard to the issue or point in question in accordance with sections 369 and 370 of the Penal Code;
- (f) Pronounce expeditious trial and rights of the parties to uninterrupted hearing during the trial in accordance with section 75 of the Code;
- (g) Order the due process of law in accordance with the principles of equal justice under law under section 3, open trial under section 4, non-interference under section 5, and impartiality under section 6 of the Code respectively;
- (h) Order the parties that their testimonies may be questioned at any time during the trial;

- (i) Pronounce that the parties may be subjected to contempt of court for showing disrespect to the Court during the trial, failure to appear, absence without leave in accordance with sections 102 to 106 of the Code respectively and sections 367 and 368 of the Penal Code;<sup>29</sup>
- (j) Pronounce that the defaulting party shall be liable to pay to the attending party daily allowance and travel costs in accordance with section 98 of the Code, if a party fails to attend the hearing as per the schedule fixed;<sup>30</sup>
- (k) Order that the parties shall be allowed to present evidence in their defence, including the right to subpoena relevant witnesses and to compel the production of physical evidence on their behalf in accordance with sections 35.1, 36 and 84.1, and to cross-examine the opposing witness in accordance with section 90 of the Code. The witnesses and physical evidence must be within Bhutan in accordance with sections 86 and 87 of the Code;
- (l) Pronounce that the parties may give testimony orally or file a written statement during the trial in accordance with section 50 of the Code;
- (m) Pronounce the right of the parties to have a *Jabmi* who is a Bhutanese citizen in accordance with section 33 of the Code;
- (n) Provide a list of licensed Bhutanese *Jabmis* for the parties to choose from, along with forms pertaining to selection or waiving the right to *Jabmi* in accordance with section 33(b) of the Code;<sup>31</sup>

- (o) Order that if following the accumulation and review of evidences, the Police or the Prosecutor believes that there is insufficient legal basis to make a compelling case to prove the suspect's guilt beyond a reasonable doubt, the Police or Prosecutor may request the Court to allow the prosecution to be withdrawn in accordance with section 202 of the Code;
- (p) Order that Legal Aid will be provided for the defence where the interest of justice so desires in accordance with section 34 of the Code;
- (q) Read out the charge submitted to the Court in accordance with section 187 of the Code and order the prosecutor to make an oral submission;
- (r) Provide a copy of the charge to the defendant and inform that he/she should study the charge carefully before submitting his/her defence. Adequate time should be granted to the defendant in accordance with section 188 of the Code;
- (s) Order the defendant to make his/her plea of guilty, full or partial plea of not guilty or consider plea bargain in accordance with sections 195, 196 and 197 of the Code respectively; and
- (t) Schedule the next date of hearing and adjourn the trial.<sup>32</sup>

## **Opening Statement**

13. The Bench shall:

- (a) Pronounce that the Court is conducting the hearing for opening statement in accordance with section 82 of the Code;
- (b) Order the parties to submit the duly filled *Jabmi* forms;
- (c) Pronounce the number of charges filed;
- (d) Read out the opening statement of the parties submitted in accordance with section 82 of the Code and order to make an oral submission;
- (e) Order the parties to submit the charges or defence one by one orally;
- (f) Order that the parties may submit their deposition;<sup>33</sup>
- (g) Provide a copy of the opening statement to the party and inform him/her that he/she should study it carefully before submitting his/her rebuttal. Adequate time shall be given should be granted in accordance with section 188 of the Code; and
- (h) Pronounce that the parties shall be permitted to rebut every charge in accordance with section 83 of the Code;
- (i) Schedule the next date of hearing and adjourn the trial.

## **Rebuttal**

14. The Bench shall:

- (a) Pronounce that the Court is conducting hearing for rebuttal in accordance with section 83 of the Code;

- (b) Read out the rebuttal of the parties and order to make an oral submission;
- (c) Order the parties to rebut charges one by one both in writing and orally;
- (d) Order that the parties may submit their deposition;
- (e) Provide a copy of the rebuttal to the parties and inform him/her that he/she should study the rebuttal carefully in preparation for further rebuttal; and
- (f) Schedule the next date of hearing and adjourn the trial.

**Evidence/Witness/Exhibit**

15. The Bench shall:

- (a) Pronounce that the Court is conducting hearing for submission of evidence in accordance with section 84 of the Code;
- (b) Order that the parties may present evidence, exhibit or witnesses one by one in accordance with sections 84, 85, 86 and 87 of the Code;
- (c) Give opportunity to the parties and witnesses of uninterrupted hearing during the proceedings;
- (d) Order the parties and witnesses that their testimonies may be questioned at any time during the proceeding;

- (e) Pronounce that the witnesses shall be held liable for perjury if they knowingly make a false declaration or give false evidence with regard to the issue or point in question in accordance with sections 369 and 370 of the Penal Code;
- (f) Pronounce that the witness may be subjected to contempt of court for showing disrespect to the Court during Court proceedings, failure to appear, absence without leave in accordance with sections 102 to 106 of the Code and sections 367 and 368 of the Penal Code;
- (g) Ensure that the evidence, exhibit or witnesses produced by the parties are admitted in accordance with the prescribed form;<sup>34</sup>
- (h) Read out the evidence and examine the exhibit if submitted to the Court; and
- (i) Schedule the next date for hearing and adjourn the trial.

### **Independent Testimony**

16. If necessary, the Bench shall:

- (a) Pronounce that the Court is conducting hearing for independent testimony in accordance with section 85 of the Code;
- (b) Order the witnesses to make the submissions truthfully;
- (c) Give opportunity to the witnesses of uninterrupted hearing during the trial;

- (d) Order that the witnesses' testimonies may be questioned at any time during the trial;
- (e) Order the witnesses to submit their submissions in deposition in accordance with section 50.1 of the Code;
- (f) Read out the depositions submitted by witnesses and order confirmation as to its accuracy in accordance with sections 50.2 and 50.3 of the Code; and
- (g) Adjourn the proceeding.

**Cross-Examination**<sup>35</sup>

17. The Bench shall:

- (a) Pronounce that the Court is conducting hearing for cross-examination in accordance with section 90 of the Code;
- (b) Order the witnesses to make their submissions in accordance with section 50.1 of the Code;
- (c) Read out the depositions submitted by witnesses and order confirmation as to its accuracy in accordance with sections 50.2 and 50.3 of the Code;
- (d) Pronounce that the parties may cross-examine the opposing witnesses;
- (e) Choose to cross-examine the witnesses of either party in pursuance of Justice and Equity in accordance with section 90.3 of the Code;

- (f) Allow re-examination of their witnesses subsequent to cross-examination if any of the party desires in accordance with section 90.1 of the Code;
- (g) Order that the parties may make their submissions in deposition; and
- (h) Schedule the next date of hearing and adjourn the trial.

**Judicial Investigation<sup>36</sup>**

- 18. After the submission of evidence and hearing of witnesses, if necessary, the concerned Court may conduct judicial investigation, if necessary in accordance with section 88 of the Code.

**Closing Argument<sup>37</sup>**

- 19. The Bench shall:
  - (a) Pronounce that the Court is conducting hearing for closing statement in accordance with section 92 of the Code;
  - (b) Ask the parties whether they have any witnesses to be summoned again or any documents left to be submitted;
  - (c) Give opportunity to the parties or their *Jabmis* to summarise their case and evidence;
  - (d) Ensure that the Court has addressed all the issues one by one;

- (e) Ensure the completion of prescribed forms and processes; and
- (f) Adjourn the case for Court deliberation in accordance with section 93 of the Code.

### **Court Deliberation**

20. If the case is heard by more than one *Drangpon*, the Bench shall deliberate and draft the judgment in accordance with sections 93 and 95 of the Code and ensure that:
- (a) Whenever possible, the Court deliberations does not exceed ten days in accordance with section 94.3 of the Code;
  - (b) Professional secrecy and confidentiality concerning the case and deliberation is maintained in accordance with section 94 of the Code; and
  - (c) The judgment shall be in accordance with section 96.3 of the Code.

### **Award of Judgment<sup>38</sup>**

21. The Bench shall:
- (a) Pronounce that the Court is conducting hearing for award of judgment in accordance with section 96 of the Code;
  - (b) Pronounce that the Court has addressed all the issues one by one;
  - (c) Pronounce the number of pages of the judgment and that only the introduction of the case, court findings, and the operative part of the judgment shall be read;

- (d) Order that the judgment shall be enforced in accordance with the operative part of the judgment. Failure to comply with the judgment decree for execution shall be deemed as contempt of court in accordance with section 104 of the Code and sections 367 and 368 of the Penal Code. Order that the affected party must move the Court for enforcement of the judgment decree; and
- (e) Order the posting of the judgment on the judiciary website and release of the operative part of the opinion to the public and the news media if necessary.

### **Summary Trial**

- 22. When there is no real legal or factual dispute with the defendant opting to plead *nolo contendere* or guilty or entering into a plea bargain with the prosecution during the Preliminary or Rebuttal stage of the hearing, the Court shall proceed to award summary judgment in accordance with section 151 of the Code.

### **Summary Judgment<sup>39</sup>**

- 23. The Bench shall:
  - (a) Pronounce that the Court is conducting hearing for award of summary judgment in accordance with section 151 of the Code;
  - (b) Pronounce that the party to the suit has requested for a summary judgment to dispose off a case;

- (c) Order that the judgment shall be enforced in accordance with the operative part of the judgment. Failure to comply with the judgment decree for execution shall be deemed as contempt of court in accordance with section 104 of the Code and sections 367 and 368 of the Penal Code. Order that the affected party must move the Court for enforcement of the judgment decree; and
- (d) Order the posting of the judgment on the judiciary website and release of the operative part of the opinion to the public and the news media if necessary.

***Nolo contendere or Plea of Guilty***<sup>40</sup>

- 24. Before confirming a plea of guilty or *Nolo contendere*, the Court shall:
  - (a) In accordance with section 195 of the Code, address and determine that the defendant appears mentally competent and understands the nature of the charge to which the plea is offered; the mandatory and minimum penalties provided by law, if any; that the Court may also order the defendant to make restitution to any victim of the offence; and that if the defendant accepts a plea of guilty or *nolo contendere* he/she waives the right to trial;

- (b) Pronounce that the Court accepts a guilty plea or *nolo contendere* after due consideration of the views of the parties and the interest of the public in the effective administration of justice in accordance with section 195.4 of the Code; and
- (c) Order the prosecution to present evidence that they have, had the case proceeded to trial in accordance with section 84 of the Code to aid sentencing before award of judgment.

**Default Judgment<sup>41</sup>**

25. The Bench shall:

- (a) Pronounce that the Court is conducting hearing for award of default judgment in accordance with section 152 of the Code;
- (b) Pronounce that the Court has exhausted all means to determine the whereabouts of the parties;
- (c) Pronounce that the judgment shall be enforced if it is not appealed within the limitation period;
- (d) Order that the judgment shall be enforced in accordance with the operative part of the judgment. Failure to comply with the judgment decree for execution shall be deemed as contempt of court in accordance with section 104 of the Code and sections 367 and 368 of the Penal Code. Order that the affected party must move the Court for enforcement of the judgment decree; and
- (e) Order the posting of the judgment on the judiciary website and release of the operative part of the opinion to the public and the news media if necessary.

## **Plea Bargain**

26. The Bench shall:

- (a) Order that discretion as to whether or not to consider a plea bargain rests fully with the prosecution in accordance with section 197.2 of the Code;
- (b) Order the prosecution to determine whether the defendant is as provided under section 197.3 of the Code;
- (c) Order the parties to present a written plea agreement considered in lieu of a full criminal trial in accordance with section 197 of the Code; and
- (d) Order the parties that in the event any one party breaches the agreement, the other party is entitled to rescind, or require for specific performance of the conditions set out in the plea agreement.

## **Bail and Bond<sup>42</sup>**

27. The Bench shall:

- (a) Pronounce whether the Court is considering release of the defendant upon execution of a bond for such sum of money by one or more sureties, or without posting a bond based on a promise to return and other conditions set by the Court in the case of indigent defendants in accordance with sections 199 and 199.1 of the Code;

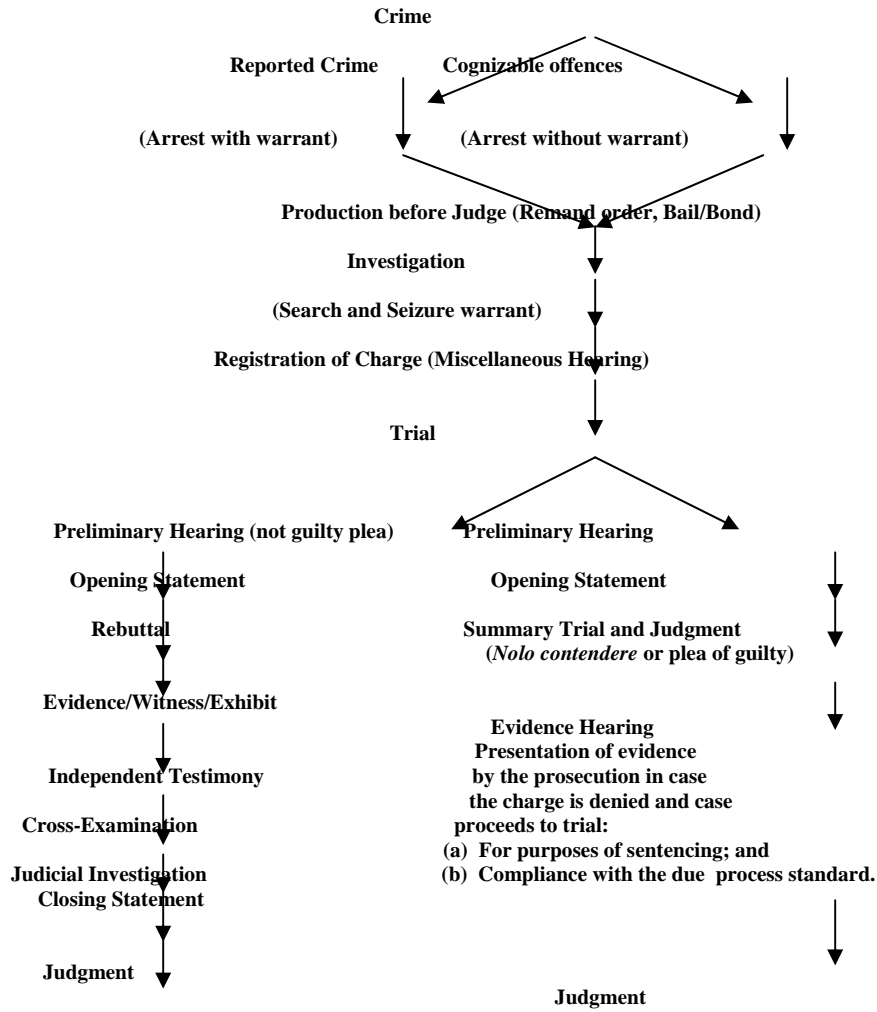
- (b) Order that the bond amount shall be fixed at ten to thirty percent of the annual income of the surety in accordance with section 201 of the Code;
- (c) In making determining whether to grant bail and the bail amount, consider severity of the charges, past criminal record, likelihood of flight, potential threat to society, the age of the suspect, physical or mental health condition, and views of the victim or aggrieved person in accordance with section 199.2 of the Code;
- (d) Ensure that the person released on bail complies with conditions prescribed under sections 199.4 to 199.8 of the Code;
- (e) Ensure that the relevant documents pertaining to bail are duly completed in accordance with the prescribed forms;
- (f) Ensure that the defendant and surety fully understand the conditions of the bail and bond; and
- (g) Adjourn the trial with relevant orders.

### **Juvenile Trial**

28. In the best interest of the Juvenile, the Bench shall ensure that:
- (a) The trial of a juvenile is conducted in-camera or in the Judge's Chambers respecting the privacy of the juvenile at all stages of the trial in accordance with section 213(e) of the Code;

- (b) The juvenile is informed promptly and directly of the charge in accordance with section 213(a) of the Code;
- (c) The juvenile is accompanied by a parent/member of family/legal guardian during trial unless it is considered not to be in the best interest of the juvenile in accordance with section 213(b) of the Code;
- (d) The juvenile is granted an opportunity to be represented by a *Jabmi* and has appropriate assistance in the preparation and presentation of the defence in accordance with sections 213(c) and 213(d) of the Code; and
- (e) The relevant factors are taken into consideration in the disposition of convicted juveniles and orders preceding sentence in accordance with sections 213.1 and 213.2 of the Code respectively.

**The Sequence of Criminal Trial**



**PART 3**  
**CONSIDERATIONS ON APPEAL**

**Considerations on Appeal**

1. In accordance with sections 110 and 111 of the Code, the *Drangpons* shall:
  - (a) Review issues of law (identify and correct errors of law) and not facts (lower court must be deemed to have completed the fact finding process). Limit the appellate process to issues of law. Unless the subordinate court made an egregious error with respect to some factual issue, the appellate court must accept the factual determinations of the lower court and review the lower court's determinations only for errors of law;
  - (b) Limit the Court's review to the contents of the record. The record shall consist of the contents of the proceedings of the lower courts. This should include all filings by all parties, all transcripts and other pieces of evidence, all court pronouncements, and anything else that was before the court in making its decision that is the subject of appellate court review; and
  - (c) Award appropriate costs and other expenses related to the suit, if the decision of the lower Court is upheld on appeal in accordance with section 97 of the Code.<sup>43</sup>
2. The appellate court may affirm, reverse the determination under review or remand the underlying decision for further action consistent with the appellate court's determination. The determination must be provided in accordance with section 96.3 of the Code.

## **PART 4 APPEALS**

### **The Bench**

1. Benches constituted to hear appeals from subordinate Courts shall consist of at least two *Drangpons*.
2. Every charge shall be filed before a Court of Law and no charge shall be entertained outside the Court in accordance with section 28(b) of the Civil and Criminal Procedure Code of Bhutan.
3. All inquiries and proceedings shall be conducted as expeditiously as possible in accordance with section 75(a) of the Code.
4. A case shall not be assigned to a *Drangpon* who may have or be reasonably construed to have conflict of interest in the matter at hand in accordance with section 73 of the Code.
5. The Registrar of the Court shall:
  - (a) Register the appeal/petition in the Miscellaneous Register of the Court in accordance with section 32 of the Code;<sup>44</sup>
  - (b) Ensure that the appeal/petition is filed by a person/institution in accordance with sections 31.1 and 116 of the Code and Ga 2-2 and Ga 2-3 of the Inheritance Act;
  - (c) Ensure that there is a record of both parties appealing, in case where both parties are not satisfied and appeal;
  - (d) Ensure that the appeal/petition is admissible in accordance with section 132.1 of the Code;

- (e) Ensure that the appeal/petition of complaint bears necessary legal stamp and is signed by the appellant/petitioner or his/her member of the family/legal guardian or *Jabmi* in accordance with section 132.2 of the Code;
- (f) Ensure that the appeal is filed before the Appellate Court in accordance with section 109.1 of the Code;
- (g) Ensure that the petitioner or appellant has “legal standing” to file the petition or appeal and the petition involves a concrete case or controversy in accordance with section 31.2 of the Code; and
- (h) Ascertain whether the appeal/petition is subject to dismissal under the principle of *res-judicata* in accordance with section 115 of the Code.

### **In-Situ Proceedings**

- 6. The Court may hold proceedings or conduct hearings at any site other than the place where the Court is situated, whenever it considers that it is necessary, expedient or otherwise in the interest of justice to do so in accordance with section 121 of the Code.

### **Driglam Namzha**

- 7. The Registrar and the Bench Clerk of the Court shall:
  - (a) Ensure the attendance of the parties;
  - (b) Ensure that all the relevant or necessary documents are submitted and are in order;

- (c) Ensure that the Hon'ble *Drangpon* is free;
- (d) Submit the list of miscellaneous matters;
- (e) Place the Miscellaneous Register before the Hon'ble *Drangpon*;
- (f) Ensure that the parties are properly briefed with regard to the *Driglam Namzha* and that they conduct themselves in a manner consistent with and appropriate to the operation of a Court of law;
- (g) Ensure that parties are not in possession of arms, mobile phones, pagers, recording equipments, cameras and other electronic devices;
- (h) Ensure the order of precedence of the parties as per the miscellaneous registration and make them to wait outside the Courtroom; and
- (i) Usher in the parties in order of precedence with the permission of the Hon'ble *Drangpons*.

### **Miscellaneous Hearing**

- 8. The miscellaneous hearing shall be conducted by the Chief Justice of the High Court who shall assign the cases in *seriatim* to the Benches.
- 9. The Bench shall:
  - (a) Pronounce that the Court is conducting the miscellaneous hearing in accordance with section 32 of the Code;
  - (b) Order the appellant/petitioner to make the submissions truthfully;

- (c) Conduct the miscellaneous hearing within ten days from the registration of the appeal;
- (d) Read out the appeal/petition; and
- (e) Order the appellant/petitioner to make an oral submission.

#### **Dismissal<sup>45</sup>**

10. The Bench shall:

- (a) Dismiss the appeal/petition, pronounce and issue a written order for the cause of dismissal in accordance with section 32.1(c) of the Code; and
- (b) If the appeal is dismissed, pronounce that the affirmed judgment will be enforced by the subordinate court.

#### **Registration of Appeal/Petition<sup>46</sup>**

11. The Bench shall:

- (a) If the appeal/petition is admissible in accordance with section 32.1(a) of the Code, admit the appeal/petition and assign the case; and
- (b) Order that summons shall be issued in accordance with sections 35 and 39 of the Code.<sup>47</sup>

#### **Show Cause Order**

12. If necessary, the Bench shall:

- (a) Pronounce that the Court is conducting a hearing for show cause in accordance with section 80 of the Code;
- (b) Pronounce that the party must “show cause” to prove, justify or explain to the Court or why the Court should not find that

the party is in “contempt of court” for violating an earlier order; and

- (c) Adjourn the hearing with relevant orders for dismissal, contempt of court or with specific instructions.

**Preliminary Hearing<sup>48</sup>**

13. The Bench shall:

- (a) Pronounce that the Court is conducting preliminary hearing in accordance with section 81.1 of the Code;
- (b) Pronounce that the parties to the case are hereby summoned before the Court to appear in person in accordance with section 35 of the Code;
- (c) Pronounce the power of the Court to adjudicate in accordance with section 28 of the Code;
- (d) Pronounce that the appeal/petition has been registered in accordance with section 31 and order payment of Court fees in accordance with section 132.3 of the Code;
- (e) Order the parties to make their submissions truthfully and pronounce that the parties shall be held liable for perjury if they knowingly make a false declaration or give false evidence with regard to the issue or point in question in accordance with sections 369 and 370 of the Penal Code;
- (f) Pronounce expeditious proceedings and rights of the parties to uninterrupted hearing during the proceedings in accordance with section 75 of the Code;
- (g) Order the due process of law in accordance with the principles of equal justice under law under section 3, open trial under section 4, non-interference under section 5, and impartiality under section 6 of the Code respectively;

- (h) Order the parties, that their testimonies may be questioned at any time during the proceedings;
- (i) Pronounce that the parties may be subjected to contempt of court for showing disrespect to the Court during Court proceedings, failure to appear, absence without leave in accordance with sections 102 to 106 of the Code and sections 367 and 368 of the Penal Code;<sup>49</sup>
- (j) Pronounce that the defaulting party shall be liable to pay to the attending party daily allowance and travel costs in accordance with section 98 of the Code, if a party fails to attend hearings as per the schedule fixed;<sup>50</sup>
- (k) Order that the parties shall be allowed to present evidence in their defence, including the right to subpoena relevant witnesses and to compel the production of physical evidence on their behalf in accordance with sections 35.1, 36 and 84.1, and to cross-examine the opposing witnesses in accordance with section 90 of the Code. The witnesses and physical evidence must be within Bhutan in accordance with sections 86 and 87 of the Code;
- (l) Pronounce that the parties may give testimony orally and file a written statement during the proceedings in accordance with sections 50 of the Code;
- (m) Pronounce the right of the parties to have a *Jabmi* who is a Bhutanese citizen in accordance with section 33 of the Code;
- (o) Provide a list of licensed Bhutanese *Jabmis* for the parties to choose from, along with forms pertaining to selection or waiving the right to a *Jabmi* in accordance with section 33(b) of the Code;<sup>51</sup>
- (p) Pronounce that at any time after the institution of a suit, a plaintiff may, as against all or any of the defendants

abandon his/her suit or part of his /her claim in accordance with section 153 of the Code and that in such case the plaintiff may be liable for such costs as the Court may award in accordance with section 153.1 of the Code;<sup>52</sup>

- (q) Pronounce that it shall be open to the parties to avail mutual settlement in civil cases at any stage of the proceedings in accordance with section 150 and that parties may request for an adjournment in accordance with section 150.2 of the Code;
- (r) Read out the petition of complaint/appeal and order the petitioner/appellant to make an oral submission;
- (s) Provide a copy of the petition/appeal to the respondent and inform the respondent that he/she should study the petition or appeal carefully before submitting the defence in accordance with section 133 of the Code;
- (t) Order the respondent to submit pleadings in accordance with section 137.1 of the Code; and
- (u) Schedule the next date for hearing and adjourn the proceeding/trial.<sup>53</sup>

### **Opening Statement**

14. The Bench shall:

- (a) Pronounce that the Court is conducting a hearing for opening statement in accordance with section 82 of the Code;
- (b) Order the parties to submit the duly filled *Jabmi* forms;
- (c) Order the appellant/petitioner to submit the appeal/petition in detail;

- (d) Read out the opening statement of the parties submitted in accordance with section 82 of the Code and order to make an oral submission;
- (e) Order the parties to submit the issues one by one orally;
- (f) If necessary, seek clarifications from the parties by asking questions regarding the opening statement submitted;
- (g) Provide a copy of the opening statement to the parties and inform him/her that he/she should study it carefully before submitting his/her rebuttal. Adequate time shall be granted to the parties;
- (h) Pronounce that the parties shall be permitted to rebut every charge in accordance with section 83 of the Code; and
- (i) Schedule the next date for hearing and adjourn the proceeding/trial.

### **Rebuttal**

15. The Bench shall:

- (a) Pronounce that the Court is conducting hearing for rebuttal in accordance with section 83 of the Code;
- (b) Read out the rebuttal of the parties and order to make an oral submission;
- (c) Order the parties to rebut the issues one by one both in writing and orally;
- (d) If necessary, seek clarifications from the parties by asking questions regarding the rebuttal submitted;
- (e) Order that the parties may submit their deposition,<sup>54</sup>

- (f) Provide a copy of the rebuttal to the parties and inform him/her that he/she should study the rebuttal carefully in preparation for further rebuttal; and
- (g) Schedule the next date for hearing and adjourn the proceeding/trial.

**Evidence/Witness/Exhibit**

16. The Bench shall:

- (a) Pronounce that the Court is conducting hearing for submission of evidence in accordance with section 84 of the Code;
- (b) Pronounce that the parties may present evidence, exhibit or witnesses one by one in accordance with sections 84, 85, 86 and 87 of the Code;
- (c) Give opportunity to the parties and witnesses of uninterrupted hearing during the proceedings;
- (d) Order the parties and witnesses that their testimonies may be questioned at any time during the proceeding/trial;
- (e) Pronounce that the witnesses shall be held liable for perjury if they knowingly make a false declaration or give false evidence with regard to the issue or point in question in accordance with sections 369 and 370 of the Penal Code;
- (f) Pronounce that the witnesses may be subjected to contempt of court for showing disrespect to the Court during Court proceedings, failure to appear, absence without leave in accordance with sections 102 to 106 of the Code and sections 367 and 368 of the Penal Code;

- (g) Ensure that the evidence, exhibit or witnesses produced by the parties are admitted in accordance with the prescribed form;
- (h) Read out the evidence and examine the exhibit if submitted to the Court;<sup>55</sup> and
- (i) Schedule the next date for hearing and adjourn the proceeding/trial.

### **Independent Testimony**

17. If necessary, the Bench shall:

- (a) Pronounce that the Court is conducting hearing for independent testimony in accordance with section 85 of the Code;
- (b) Order the witnesses to make the submissions truthfully;
- (c) Give opportunity to the witnesses of uninterrupted hearing during the proceedings/trial;
- (d) Order that the witnesses' testimonies may be questioned at any time during the proceeding/trial;
- (e) Order the witnesses to submit their submissions in deposition in accordance with section 50.1 of the Code;
- (f) Read out the depositions submitted by witnesses and order confirmation as to its accuracy in accordance with sections 50.2 and 50.3 of the Code; and
- (g) Adjourn the proceeding/trial.

### **Cross-Examination<sup>56</sup>**

18. The Bench shall:

- (a) Pronounce that the Court is conducting hearing for cross-examination in accordance with section 90 of the Code;
- (b) Order the witnesses to submit their submissions in deposition in accordance with section 50.1 of the Code;
- (c) Read out the depositions submitted by witnesses and order confirmation as to its accuracy in accordance with sections 50.2 and 50.3 of the Code;
- (d) Pronounce that the parties may cross-examine the opposing witnesses;
- (e) Choose to cross-examine the witnesses of either party in pursuance of Justice and Equity in accordance with section 90.3 of the Code;
- (f) Allow re-examination of their witnesses subsequent to cross-examination if any of the party desires in accordance with section 90.1 of the Code;
- (g) Order that the parties may make their submissions in deposition; and
- (h) Schedule the next date of hearing and adjourn the proceeding/trial.

**Judicial Investigation<sup>57</sup>**

- 19. After the submission of evidence or hearing of witnesses, if necessary, the concerned Court may conduct judicial investigation, if necessary in accordance with section 88 of the Code.

**Closing Argument<sup>58</sup>**

- 20. The Bench shall:

- (a) Pronounce that the Court is conducting hearing for closing argument in accordance with section 92 of the Code;
- (b) Ask the parties whether they have any witnesses to be summoned again or any documents left to be submitted;
- (c) Give opportunity to the parties or their *Jabmis* to summarise their case and evidence;
- (d) If necessary, seek clarifications from the parties by asking questions regarding the statements submitted and issues in the case;
- (e) Ensure that the Court has addressed all the issues of the appeal one by one;
- (f) Ensure the completion of prescribed forms and processes; and
- (g) Adjourn the case for Court deliberation in accordance with section 93 of the Code.

### **Court Deliberation**

21. If a case is heard by more than one *Drangpon*, the Bench shall deliberate and draft the judgment in accordance with sections 93 and 95 of the Code and ensure that:
- (a) The *Drangpons* shall meet in private conference to discuss the case and to take a preliminary vote on each case;
  - (b) Whenever possible, the Court deliberations do not exceed ten days in accordance with section 94.3 of the Code;
  - (c) Draft opinions shall be privately circulated amongst the *Drangpons* until a final draft is agreed upon;

- (d) The dissenting *Drangpon* may give his/her reasons of dissent in the judicial opinion following the opinion of the majority in accordance with section 95 (c) of the Code;
- (e) The judgment shall not be signed by the Hon'ble *Drangpon* who was not present during the hearing of the case in accordance with section 95 (b) of the Code;
- (f) Professional secrecy and confidentiality concerning the case and deliberation is maintained in accordance with section 94 of the Code; and
- (g) The judgment shall be in accordance with section 96.3 of the Code.

### **Award of Judgment<sup>59</sup>**

22. The Bench shall:

- (a) Pronounce that the Court is conducting hearing for award of judgment in accordance with section 96 of the Code;
- (b) Pronounce that the Court has addressed all the issues one by one;
- (c) Pronounce the number of pages of the judgment and that only the introduction of the case, court findings and the operative part of the judgment shall be read;
- (d) Order that the judgment shall be enforced in accordance with the operative part of the judgment. Failure to comply with the judgment decree for execution shall be deemed as contempt of court in accordance with section 104 of the Code and sections 367 and 368 of the Penal Code. Order that the affected party must move the Court for enforcement of the judgment decree; and

- (e) Order the posting of the judgment on the judiciary website and release of the operative part of the opinion to the public and the news media if necessary.

**PART 5**  
**HEARING BY A LARGER BENCH OF THE HIGH COURT**

**The Bench**

1. The Chief Justice of the High Court may constitute such number of Benches or order a hearing by a larger Bench, as may be required in the interest of justice in accordance with section 10(d) of the Code.
2. All inquiries and proceedings shall be conducted as expeditiously as possible in accordance with section 75(a) of the Code.
3. Each Bench may consist of three or five *Drangpons* for Constitutional cases.
4. The Chief Justice shall preside over constitutional cases and hearings conducted by a larger Bench unless there is a conflict of interest in accordance with section 73 of the Code.

5. In case the Chief Justice is unable to preside over the hearings due to conflict of interest in accordance with section 73 of the Code, then the senior most *Drangpon* shall preside.
6. Ensure that the appeal or review petition has been filed within ten days of the award of judgment in accordance with section 109.1 of the Code. The Registry may extend the time to file a petition for a writ of certiorari for an additional period of ten days with an order specifying reasons why an extension of time is justified.

### **In-Situ Proceedings**

7. The Court may hold proceedings or conduct hearings at any site other than the place where the Court is situated, whenever it considers that it is necessary, expedient or otherwise in the interest of justice to do so in accordance with section 121 of the Code.

### **Driglam Namzha**

8. The Registrar and the Bench Clerk of the Court shall:
  - (a) Ensure the attendance of the parties;
  - (b) Ensure that all the relevant or necessary documents are submitted and are in order;
  - (c) Ensure that the Honb'le *Drangpons* are free;
  - (d) Ensure that the parties are properly briefed with regard to the *Driglam Namzha* and that they conduct themselves in a manner consistent with and appropriate to the operation of a Court of law;
  - (e) Ensure that parties are not in possession of arms, mobile phones, pagers, recording equipments, cameras and other electronic devices;

- (f) Ensure the order of precedence of the parties as per hearing calendar and make them to wait outside the Courtroom; and
- (g) Usher in the parties in order of precedence with the permission of the Honb'le *Drangpons*.

*Show Cause Order*

- 9. If necessary, the Review Bench shall:
  - (a) Pronounce that the Court is conducting a hearing for show cause in accordance with section 80 of the Code;
  - (b) Pronounce that the party must “show cause” to prove, justify or explain to the Court or why the Court should not find that the party is in “contempt of court” for violating an earlier order; and
  - (c) Adjourn the hearing with relevant orders for dismissal, contempt of court or with specific instructions.

**Preliminary Hearing<sup>60</sup>**

- 10. The Review Bench shall:
  - (a) Pronounce that the Court is conducting preliminary hearing in accordance with section 81.1 of the Code;
  - (b) Pronounce that the parties to the case are hereby summoned before the Court to appear in person in accordance with section 35 of the Code;
  - (c) Pronounce the power of the Court to adjudicate in accordance with section 28 of the Code;

- (d) Pronounce that the Constitutional case has been registered in accordance with section 31 and order payment of Court fees in accordance with section 132.3 of the Code;
- (e) Order the parties to make their submissions truthfully and Pronounce that the parties shall be held liable for perjury if they knowingly make a false declaration or give false evidence with regard to the issue or point in question in accordance with sections 369 and 370 of the Penal Code;
- (f) Order the parties that only those issues on appeal shall be considered and shall not hear the case *de novo* in accordance with section 110.3 of the Code;
- (g) Pronounce expeditious proceedings and rights of the parties to uninterrupted hearing during the proceedings in accordance with section 75 of the Code;
- (h) Order the due process of law in accordance with the principles of equal justice under law under section 3, open trial under section 4, non-interference under section 5, and impartiality under section 6 of the Code respectively;
- (i) Order the parties that their testimonies may be questioned at any time during the proceedings;
- (j) Pronounce that the parties may be subjected to contempt of court for showing disrespect to the Court during Court proceedings, failure to appear, absence without leave in accordance with sections 102 to 106 of the Code and sections 367 and 368 of the Penal Code;<sup>61</sup>
- (k) Pronounce that the defaulting party shall be liable to pay to the attending party daily allowance and travel costs in accordance with section 98 of the Code, if a party fails to attend hearings as per the schedule fixed;<sup>62</sup>

- (l) Order that the parties shall be allowed to present evidence in their defence, including the right to subpoena relevant witnesses and to compel the production of physical evidence on their behalf in accordance with sections 35.1, 36 and 84.1, and to cross-examine the opposing witnesses in accordance with section 90 of the Code. The witnesses and physical evidence must be within Bhutan in accordance with sections 86 and 87 of the Code;
- (m) Pronounce that the parties may give testimony orally or file a written statement during the proceedings in accordance with sections 50 of the Code;
- (n) Pronounce the right of the parties to have a *Jabmi* who is a Bhutanese citizen in accordance with section 33 of the Code;
- (o) Provide a list of licensed Bhutanese *Jabmis* for the parties to choose from, along with forms pertaining to selection or waiving the right to a *Jabmi* in accordance with section 33(b) of the Code;<sup>63</sup>
- (p) Pronounce that at any time after the institution of a suit, a plaintiff may, as against all or any of the defendants abandon his/her suit or part of his /her claim in accordance with section 153 of the Code and that in such case the plaintiff may be liable for such costs as the Court may award in accordance with section 153.1 of the Code;<sup>64</sup>
- (q) Pronounce that it shall be open to the parties to avail mutual settlement in civil cases at any stage of the proceedings in accordance with section 150 and that parties may request for an adjournment in accordance with section 150.2 of the Code;
- (r) Read out the petition of complaint/appeal and order the petitioner/appellant to make an oral submission;
- (s) Provide a copy of the petition or appeal to the respondent and inform him/her to study the petition or appeal carefully before

submitting the defence in accordance with section 133 of the Code;

- (t) Order the respondent to submit pleadings in accordance with section 137.1 of the Code; and
- (u) Schedule the next date for hearing and adjourn the proceeding/trial.<sup>65</sup>

### **Opening Statement**

11. The Review Bench shall:

- (a) Pronounce that the Court is conducting a hearing for an opening statement in accordance with section 82 of the Code;
- (b) Order the appellant/petitioner to submit the appeal/petition in detail;
- (c) Order that the parties shall not introduce fresh evidence on appeal or rely on evidence not produced during proceedings in the lower Court in accordance with section 110.4 of the Code;
- (d) Order the parties that only those issues on appeal shall be considered and shall not hear the case *de novo* in accordance with section 110.3 of the Code;
- (e) Read out the opening statement of the parties submitted in accordance with section 82 of the Code and order to make an oral submission;
- (f) Order the parties to submit the issues one by one orally;
- (g) If necessary, seek clarifications from the parties by asking questions regarding the opening statement submitted;
- (h) Provide a copy of the opening statement to the parties and inform him/her that he/she should study it carefully before

submitting his/her rebuttal. Adequate time shall be granted to the parties;

- (i) Pronounce that the parties shall be permitted to rebut every charge in accordance with section 83 of the Code; and
- (j) Schedule the next date for hearing and adjourn the proceeding/trial.

### **Rebuttal**

12. The Review Bench shall:

- (a) Pronounce that the Court is conducting hearing for rebuttal in accordance with section 83 of the Code,;
- (b) Read out the rebuttal of the parties and order to make an oral submission;
- (c) Order the parties to rebut the issues one by one both in writing and orally;
- (d) If necessary, seek clarifications from the parties by asking questions regarding the rebuttal submitted;
- (e) Order that the parties may submit their deposition;<sup>66</sup>
- (f) Provide a copy of the rebuttal to the parties and inform him/her that he/she should study the rebuttal carefully in preparation for further rebuttal; and
- (g) Schedule the date for next hearing and adjourn the proceeding/trial.

## **Evidence/Witness/Exhibit**

### 13. The Review Bench shall:

- (a) Pronounce that the Court is conducting hearing for submission of evidence in accordance with section 84 of the Code;
- (b) Pronounce that the parties may present evidence, exhibit or witnesses one by one in accordance with sections 84, 85, 86 and 87 of the Code;
- (c) Give opportunity to the parties and witnesses of uninterrupted hearing during the proceedings;
- (d) Order the parties and witnesses that their testimonies may be questioned at any time during the proceeding/trial;
- (e) Pronounce that the witnesses shall be held liable for perjury if they knowingly make a false declaration or give false evidence with regard to the issue or point in question in accordance with sections 369 and 370 of the Penal Code;
- (f) Pronounce that the witnesses may be subjected to contempt of court for showing disrespect to the Court during Court proceedings, failure to appear, absence without leave in accordance with sections 102 to 106 of the Code and sections 367 and 368 of the Penal Code;
- (g) Ensure that the evidence, exhibit or witnesses produced by the parties are admitted in accordance with the prescribed form;<sup>67</sup>
- (h) Read out the evidence and examine the exhibit if submitted to the Court; and

- (i) Schedule the next date for hearing and adjourn the proceeding/trial.

### **Independent Testimony**

- 14. If necessary, the Review Bench shall:
  - (a) Pronounce that the Court is conducting hearing for independent testimony in accordance with section 85 of the Code;
  - (b) Order the witnesses to make the submissions truthfully;
  - (c) Give opportunity to the witnesses of uninterrupted hearing during the proceedings/trial;
  - (d) Order that the witnesses' testimonies may be questioned at any time during the proceeding/trial;
  - (e) Order the witnesses to submit their submissions in deposition in accordance with section 50.1 of the Code;
  - (f) Read out the depositions submitted by witnesses and order confirmation as to its accuracy in accordance with sections 50.2 and 50.3 of the Code; and
  - (g) Adjourn the proceeding/trial.

### **Cross-Examination<sup>68</sup>**

- 15. The Review Bench shall:
  - (a) Pronounce that the Court is conducting hearing for cross-examination in accordance with section 90 of the Code;
  - (b) Order the witnesses to submit their submissions in deposition in accordance with section 50.1 of the Code;

- (c) Read out the depositions submitted by witnesses and order confirmation as to its accuracy in accordance with sections 50.2 and 50.3 of the Code;
- (d) Pronounce that the parties may cross-examine the opposing witnesses;
- (e) Choose to cross-examine the witnesses of either party in pursuance of Justice and Equity in accordance with section 90.3 of the Code;
- (f) Allow re-examination of their witnesses subsequent to cross-examination if any of the party desires in accordance with section 90.1 of the Code;
- (g) Order that the parties may make their submissions in deposition; and
- (h) Schedule the next date of hearing and adjourn the proceeding/trial.

#### **Judicial Investigation<sup>69</sup>**

- 16. After the submission of evidence or hearing of witnesses, if necessary, the concerned Court may conduct judicial investigation, if necessary in accordance with section 88 of the Code.

#### **Closing Argument<sup>70</sup>**

- 17. The Review Bench shall:
  - (a) Pronounce that the Court is conducting hearing for closing argument in accordance with section 92 of the Code;
  - (b) Ask the parties to emphasize and clarify the written arguments in the statements on the merits submitted to the Court;

- (c) If necessary, seek clarifications from the parties by asking questions regarding the statements submitted and issues in the case;
- (d) Give opportunity to the parties or their *Jabmis* to summarise their case and evidence;
- (e) Ensure that the Court has addressed all the issues of the appeal one by one;
- (f) Ensure the completion of prescribed forms and processes; and
- (g) Adjourn the case for Court deliberation in accordance with section 93 of the Code.

### **Court Deliberation**

18. The Bench shall deliberate and draft the judgment in accordance with sections 93 and 95 of the Code and ensure that:
  - (a) The *Drangpons* shall meet in private conference to discuss the case and to take a preliminary vote on each case;
  - (b) Whenever possible, the Court deliberation does not exceed ten days in accordance with section 94.3 of the Code;
  - (c) Where the Chief Justice is in the majority on a case decision, the Chief Justice shall decide who will write the opinion;
  - (d) Where the Chief Justice is in the minority, the *Drangpons* in the majority who is the senior most assumes the assignment duty;
  - (e) Draft opinions shall be privately circulated amongst the *Drangpons* until a final draft is agreed upon;

- (f) The dissenting *Drangpon* may give his/her reasons of dissent in the judicial opinion following the opinion of the majority in accordance with section 95 (c) of the Code;
- (g) The judgment shall not be signed by the Hon'ble *Drangpon* who was not present during the hearing of the case in accordance with section 95 (b) of the Code;
- (h) Professional secrecy and confidentiality concerning the case and deliberation is maintained in accordance with section 94 of the Code; and
- (i) The judgment shall be in accordance with section 96.3 of the Code.

### **Award of Judgment<sup>71</sup>**

#### 19. The Review Bench shall:

- (a) Pronounce that the Court is conducting hearing for award of judgment in accordance with section 96 of the Code;
- (b) Pronounce that the Court has addressed all the issues one by one;
- (c) Pronounce the number of pages of the judgment and that only the introduction of the case, court findings and the operative part of the judgment shall be read;
- (d) Order that the judgment shall be enforced in accordance with the operative part of the judgment. Failure to comply with the judgment decree for execution shall be deemed as contempt of court in accordance with section 104 of the Code and sections 367 and 368 of the Penal Code. Order that the affected party must move the Court for enforcement of the judgment decree; and

- (e) Order the posting of the judgment on the judiciary website and release of the operative part of the opinion to the public and the news media if necessary.

**PART 6**  
**APPEALS IN SUPREME COURT**

1. Every petition or plaint shall be filed before a Court of Law and no petition shall be entertained outside the Court in accordance with section 28(b) of the Civil and Criminal Procedure Code of Bhutan.
2. All inquiries and proceedings shall be conducted as expeditiously as possible in accordance with section 75(a) of the Code.
3. A case shall not be assigned to a *Drangpon* who may have or be reasonably construed to have conflict of interest in the matter at hand in accordance with section 73 of the Code.

4. The Registrar of the Supreme Court shall:
- (a) Register the appeal or review petition in the Miscellaneous Register of the Court in accordance with section 32 of the Code;<sup>72</sup>
  - (b) Ensure that the appeal or review petition is filed by a person or institution in accordance with sections 31.1 and 116 of the Code and Ga 2-2 and Ga 2-3 of the Inheritance Act;
  - (c) Ensure that there is a record of both parties appealing, in case where both parties are not satisfied and appeal;
  - (d) Ensure that the appeal/petition is admissible in accordance with section 132.1 of the Code;
  - (e) Ensure that the appeal or review petition has legal stamp and is signed by the appellant or petitioner or his/ her member of the family/legal guardian or *Jabmi* in accordance with section 132.2 of the Code;
  - (f) Ensure that the appeal or review petition has been filed within ten days of the award of judgment in accordance with section 109.1 of the Code. The Registry may extend the time to file a petition for a writ of certiorari for an additional period of ten days with an order specifying reasons why an extension of time is justified;
  - (g) Ensure that the petitioner or plaintiff has “legal standing” to file the petition or appeal and the petition involves a concrete case or controversy in accordance with section 31.2 of the Cod;
  - (h) Ascertain whether the appeal or review petition is subject to dismissal under the principle of *res-judicata* in accordance with section 115 of the Code;

- (i) Ensure that the appellant is informed that he/she shall be liable for the costs of litigation if the appeal is dismissed or judgment is upheld;<sup>73</sup> and
- (j) Ensure that the appellant is informed of the right to withdraw the appeal in accordance with section 153 of the Code.

### **In-Situ Proceedings**

- 5. The Court may hold proceedings or conduct hearings at any site other than the place where the Court is situated, whenever it considers that it is necessary, expedient or otherwise in the interest of justice to do so in accordance with section 121 of the Code.

### **Driglam Namzha**

- 6. The Registrar of the Supreme Court shall:
  - (a) Ensure the attendance of the parties;
  - (b) Ensure that all the relevant or necessary documents are submitted and are in order;
  - (c) Ensure that the Honb'le *Drangpon* is free;
  - (d) Submit the list of miscellaneous matters;
  - (e) Place the Miscellaneous Register before the Hon'ble *Drangpon*;
  - (f) Ensure that the parties are properly briefed with regard to the *Driglam Namzha* and that they conduct themselves in a manner consistent with and appropriate to the operation of a Court of law;

- (g) Ensure that parties are not in possession of arms, mobile phones, pagers, recording equipments, cameras and other electronic devices;
- (h) Ensure the order of precedence of the parties as per the miscellaneous registration and make them to wait outside the Courtroom; and
- (i) Usher in the parties in order of precedence with the permission of the Honb'le *Drangpons*.

#### Miscellaneous Hearing

- 7. The Chief Justice of Bhutan shall assign the appeal petition in *seriatim* to the *Drangpons*.
- 8. Each *Drangpon* shall:
  - (a) Conduct miscellaneous hearing in his/her Courtroom; and
  - (b) Prepare and submit legal briefs to all the *Drangpons*.
- 9. The *Drangpons* shall meet in the Chief Justice's conference hall and discuss the case. The *Drangpon* who conducts the miscellaneous hearing shall brief on the merits of the appeal.
- 10. A preliminary vote to either admit or dismiss the appeal shall be taken.

#### **Dismissal**<sup>74</sup>

11. The Supreme Court shall:
  - (a) Dismiss the appeal pronounce and issue a written order for the cause of dismissal in accordance with section 32.1(c) of the Code; and
  - (b) If the appeal is dismissed, pronounce that the affirmed judgment will be enforced by the subordinate court;
12. Where the *Drangpon* who conducts the miscellaneous hearing of the particular appeal is in the majority, he/she shall write the order for dismissal with reasons. If the *Drangpon* who conducted the miscellaneous hearing is in the minority, then the Chief Justice shall assign a *Drangpon* in the majority to write the dismissal order with reasons.
13. All the *Drangpons* will affix their signature on the dismissal order.

#### **Registration of Appeal<sup>75</sup>**

14. The Supreme Court shall:
  - (a) If the appeal is admissible in accordance with section 32.1(a) of the Code, admit the appeal and assign the case;
  - (b) Order that summons shall be issued in accordance with sections 35 and 39 of the Code;<sup>76</sup> and
  - (c) Conduct en banc hearing in the Chief Justice's Courtroom.

#### **Opening Statement<sup>77</sup>**

15. The Supreme Court shall:
  - (a) Pronounce that the Court is conducting a hearing for opening statement in accordance with section 82 of the Code;

- (b) Pronounce that the appeal/petition has been registered in accordance with section 31 and order payment of Court fees in accordance with section 132.3 of the Code;
- (c) Order the appellant/petitioner to submit the appeal/petition in detail;
- (d) Order that the parties shall not introduce fresh evidence on appeal or rely on evidence not produced during proceedings in the lower Court in accordance with section 110.4 of the Code;
- (e) Order the parties that only those issues on appeal shall be considered and shall not hear the case *de novo* in accordance with section 110.3 of the Code;
- (f) Read out the opening statement of the appellant submitted in accordance with section 82 of the Code and order to make an oral submission;
- (g) Order the parties to submit the issues one by one orally;
- (h) If necessary, seek clarifications from the parties by asking questions regarding the opening statement submitted;
- (i) Provide a copy of the opening statement to the parties and inform him/her that he/she should study it carefully before submitting his/her rebuttal. Adequate time shall be granted to the parties;
- (j) Pronounce that the parties shall be permitted to rebut every charge in accordance with section 83 of the Code; and
- (k) Schedule the next date for hearing and adjourn the proceeding.<sup>78</sup>

## **Rebuttal**

16. The Supreme Court shall:

- (a) Pronounce that the Court is conducting hearing for rebuttal in accordance with section 83 of the Code;
- (b) Read out the rebuttal of the parties and order to make an oral submission;
- (c) Order the parties to rebut the issues one by one both in writing and orally;
- (d) If necessary, seek clarifications from the parties by asking questions regarding the rebuttal submitted;
- (e) Order that the parties may submit their deposition;<sup>79</sup>
- (f) Provide a copy of the rebuttal to the parties and inform him/her that he/she should study the rebuttal carefully in preparation for further rebuttal; and
- (g) Schedule the date for closing argument and adjourn the proceeding/trial.

**Closing Argument<sup>80</sup>**

17. The Supreme Court shall:

- (a) Pronounce that the Court is conducting hearing for closing argument in accordance with section 92 of the Code;
- (b) Ask the parties to emphasize and clarify the written arguments in the statements on the merits submitted to the Court;
- (c) If necessary, seek clarifications from the parties by asking questions regarding the statements submitted and issues in the case;

- (d) Give opportunity to the parties or their *Jabmis* to summarise their case and evidence;
- (e) Ensure that the Court has addressed all the issues of the appeal one by one;
- (f) Ensure the completion of prescribed forms and processes; and
- (g) Adjourn the case for Court deliberation in accordance with section 93 of the Code.

### **Additional Hearings**

- 18. If necessary, the Supreme Court may conduct additional hearings for:
  - (a) Evidence/witness/exhibit;
  - (b) Independent testimony;
  - (c) Cross-examination; and/or
  - (d) Judicial investigation.

### **Court Deliberations**

- 19. The Bench shall deliberate and draft the judgment in accordance with sections 93 and 95 of the Code and ensure that:
  - (a) The *Drangpons* shall meet in private conference to discuss the case and to take a preliminary vote on each case;
  - (b) Whenever possible, the Court deliberations do not exceed ten days in accordance with section 94.3 of the Code;
  - (c) Where the Chief Justice is in the majority on a case decision, the Chief Justice shall decide who will write the opinion;

- (d) Where the Chief Justice is in the minority, the *Drangpon* in the majority who is the senior most assumes the assignment duty;
- (e) Draft opinions shall be privately circulated amongst the *Drangpons* until a final draft is agreed upon;
- (f) The dissenting *Drangpon* may give his/her reasons of dissent in the judicial opinion following the opinion of the majority in accordance with section 95 (c) of the Code;
- (g) The judgment shall not be signed by the Hon'ble *Drangpon* who was not present during the hearing of the case in accordance with section 95 (b) of the Code;
- (h) Professional secrecy and confidentiality concerning the case and deliberation is maintained in accordance with section 94 of the Code; and
- (i) The judgment shall be in accordance with section 96.3 of the Code.

#### **Award of Judgment<sup>81</sup>**

20. The Supreme Court shall:

- (a) Pronounce that the Court is conducting hearing for award of judgment in accordance with section 96 of the Code;
- (b) Pronounce that the Court has addressed all the issues one by one;
- (c) Pronounce the number of pages of the judgment and that only the introduction of the case, court findings and the operative part of the judgment shall be read;

- (d) Order that the judgment shall be enforced in accordance with the operative part of the judgment. Failure to comply with the judgment decree for execution shall be deemed as contempt of court in accordance with section 104 of the Code and sections 367 and 368 of the Penal Code. Order that the affected party must move the Court for enforcement of the judgment decree; and
- (e) Order the posting of the judgment on the judiciary website and release of the operative part of the opinion to the public and the news media if necessary.

**PART 7**  
**CHECKLIST FOR BENCH CLERKS**

1. The Bench Clerks shall ensure that:
  - (a) Forms 61, 62 and 63 are completed properly;
  - (b) The entries made in the above forms tally with the hearing dates entered in the judgment;
  - (c) The decision number along with the official Court seal in red ink is properly affixed prior to seeking the *Drangpons*' signature on the judgment;
  - (d) Mutual settlement agreement is affixed with legal stamp of required value and signed by the parties and their witnesses concerned with their Citizenship Identity Card numbers and proper addresses;
  - (e) Marriage certificate is affixed with photographs of both spouses and sealed with both "blue" and "red" official Court seals;<sup>82</sup>

- (f) The affidavit for Marriage certificate is affixed with legal stamp of required value and signed by both spouses and their witnesses;<sup>83</sup>
  - (g) All forms in use must comply with the required standard;
  - (h) Sections of the laws are quoted properly in the decision part of the judgment only while contents of the section may be used in the finding portion of the judgment; and
  - (i) All the documents and judgments are of proper standard and quality.
2. On appeal, the Bench Clerks shall ensure that:
- (a) Parties rebut the issues one by one both in writing and orally in accordance with section 83 of the Code;
  - (b) Evidence, exhibit or witnesses are produced and examined; and
  - (c) While drafting summary findings, all issues are addressed.

## **PART 8 MISCELLANEOUS**

### **Courtroom Decorum**

1. Where the authority of the Court is challenged, the Court has the power to punish. The contempt power is necessary for the protection of the Court from insults and disruptions while in the ordinary exercise of its duty, and to enable it to enforce its judgments and orders that are necessary for the due administration of justice and protection of rights of the citizens. **However**, though

necessity gives rise to the powers of contempt, prudence should control the frequency of their use. The power to order instant punishment should not be abused and exercised hastily or arbitrarily. The *Drangpon* must banish the slightest personal impulse for reprisal, but at the same time should not condone behaviour that injures the authority of the Court by being too lenient. The authority of a *Drangpon* to hold one in contempt, depriving as it does a person of his/her liberty is an authority that should be used rarely and with extreme caution. A person showing disrespect to the Court during Court proceedings (direct contempt that is, with all elements of the offence within the personal observation and knowledge of the Court) or failure to comply appropriately to a judicial order (indirect contempt that is, one that occurs in whole or in an essential part outside the presence of the Court) may be subjected to civil or criminal sanction in accordance with sections 102 to 107 of the Code and sections 367 and 368 of the Penal Code.

### **Contempt of Court**

2. In exercising the powers of contempt under section 102 to 107 of the Code and sections 367 and 368 of the Penal Code, the Bench shall ensure that:
  - (a) A potential contemnor is fully and fairly informed in clear and exact terms that his/her conduct is wrong and intolerable, and warned of the possible consequences of continued misbehaviour;
  - (b) Permission to present one's own case (*pro se defendant*) is revoked only when one engages in conduct which is so disruptive that the trial cannot proceed in an orderly manner;
  - (c) In all cases of indirect contempt the elements of due process and fair trial are complied with. A hearing must be convened to determine the facts, there must be a charging document, a rule to show cause to inform the offender of the nature of the

accusation, opportunity to prepare a defence, a chance to testify and call witnesses and the right to counsel; and

- (d) The contempt order must unmistakably and vividly describe the conduct deemed contemptuous, establishing that the contemnor's conduct was calculated to embarrass, hinder, or obstruct the court in its duties, or to derogate from the authority or dignity of the court, or to bring the administration of justice into disrepute.

### **Judicial Code of Conduct**

- 3. The *Drangpons* must abide by the following Judicial Code of Conduct:
  - (a) All *Drangpons* shall, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the Judicial System.
  - (b) A *Drangpon* shall perform his/her judicial duties without fear, favour, bias or prejudice.
  - (c) A *Drangpon* shall hear courteously, answer wisely, consider soberly and decide impartially.
  - (d) A *Drangpon* shall not be swayed by partisan interests, public clamour or fear of criticism.
  - (e) A *Drangpon* shall exercise the judicial function independently on the basis of the *Drangpon's* assessment of the facts and in accordance with a conscientious understanding of the law.
  - (f) A *Drangpon* shall refrain from indulging in habits and behaviour that infringe upon the performance of official duties or tarnish the image of a *Drangpon* or the Judiciary.

- (g) A *Drangpon* shall not do or direct to be done, in abuse of his/her office or power, any act prejudicial to the rights of any other person knowing that such act is unlawful or contrary to the law.
- (h) A *Drangpon* shall knowingly, while a proceeding is before him/her, not make any comment in public or otherwise, that might reasonably be expected to affect the outcome of such proceeding or impair the fairness of the process. This prohibition shall not apply in the case of making public statements for the due discharge of the *Drangpon's* official duties.
- (i) A *Drangpon* shall disqualify himself/herself from participating in any proceedings in which he/she is unable to decide the matter impartially or in which he has conflict of interest.
- (j) A *Drangpon* shall not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his/her family.
- (k) A *Drangpon* shall conduct himself/herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the Judiciary.
- (l) A *Drangpon* shall devote his/her professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in Court and the making of decisions, but also other tasks relevant to the judicial office or the Court's operations.
- (m) A *Drangpon* shall maintain order and decorum in proceedings before him/her. He/she shall require similar conduct of legal representatives, Court staff and other persons subject to his/her influence, direction or control.

- (n) A *Drangpon* shall exercise the power of appointment, promotion or performance evaluation impartially on the basis of merit, avoiding nepotism and favouritism.
- (o) A *Drangpon* shall be apolitical and not associate with any political organization.
- (p) A *Drangpon* shall submit to the Chief Justice of Bhutan the list of those cases which are unduly delayed and pending before him/her.
- (q) A *Drangpon* shall be guided by the principle of integrity and competence. He/she shall make every effort to ensure that his/her conduct is above reproach in the view of reasonable, fair minded and informed person.

## CONCLUSION

The Judiciary of Bhutan must strive to gain the trust and confidence of the people. All cases are deemed equal, whether it is a civil case or a criminal case. The *Drangpons* face big challenges to strike a correct balance. However, in the dispensation of justice, procedure must be followed and a proper balance achieved between delay and hurried justice.

The strength and failure of our judicial system, its utility and credibility as a necessary organ of the state in a civilized society, the respect it would evoke and the confidence it inspires will depend, upon the way it satisfies the hopes and aspirations of the people. The challenges in the quest for justice is in keeping the scales even in any legal battle between the rich and the poor, between the mighty and the weak, between the state and the citizen, without fear or favour based on Equal Justice and the Rule of Law. The ability of the *Drangpons* individually and collectively, to respect and honour the judicial office as a public trust is equally important, in order to preserve the integrity and independence of the judiciary. Respect for the Rule of Law and respect for the Judiciary are the greatest guarantors of order, constitutional democracy, and freedom of humankind.

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<sup>1</sup> Form no. 1

<sup>2</sup> Form no.42

<sup>3</sup> Form no.2

<sup>4</sup> Form no. 27/28/29

<sup>5</sup> Form no. 61/62

<sup>6</sup> Form no. 30/43/51

<sup>7</sup> Form no.54

<sup>8</sup> Form no.11,12 &13

<sup>9</sup> Form no.55

<sup>10</sup> Form no.22 (If party requests)

<sup>11</sup> Form no.24

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- <sup>12</sup> Form no.18
  - <sup>13</sup> Form no. 19
  - <sup>14</sup> Form no.20/48
  - <sup>15</sup> Form no.26
  - <sup>16</sup> Form no. 3/68
  - <sup>17</sup> Form no.67
  - <sup>18</sup> Form no.64
  - <sup>19</sup> Form no.66
  - <sup>20</sup> Form no.65
  - <sup>21</sup> Form no.25
  - <sup>22</sup> Form no. 5/31/32
  - <sup>23</sup> Form no.33/34/36/39
  - <sup>24</sup> Form no. 35
  - <sup>25</sup> Form no.1
  - <sup>26</sup> Form no. 42
  - <sup>27</sup> Form no.2
  - <sup>28</sup> Form no. 14/61/63
  - <sup>29</sup> Form no. 30/43/51
  - <sup>30</sup> Form no. 54
  - <sup>31</sup> Form no. 11/12/13
  - <sup>32</sup> Form no. 22
  - <sup>33</sup> Form no. 24
  - <sup>34</sup> Form no. 16/17/18/52/53
  - <sup>35</sup> Form no.19
  - <sup>36</sup> Form no. 20/48
  - <sup>37</sup> Form no. 26
  - <sup>38</sup> Form no. 3/4/44/69
  - <sup>39</sup> Form no. 64
  - <sup>40</sup> Form no.15
  - <sup>41</sup> Form no. 66
  - <sup>42</sup> Form no. 37/38
  - <sup>43</sup> Form no. 55
  - <sup>44</sup> Form no. 1
  - <sup>45</sup> Form no. 42
  - <sup>46</sup> Form no. 2
  - <sup>47</sup> Form no. 27/28/29
  - <sup>48</sup> Form no. 61/62/63
  - <sup>49</sup> Form no. 30/43/51
  - <sup>50</sup> Form no. 54
  - <sup>51</sup> Form no. 11/12/13
  - <sup>52</sup> Form no. 55
  - <sup>53</sup> Form no. 22 (if party requests)
  - <sup>54</sup> Form no. 24
  - <sup>55</sup> Form no. 16/17/18/52/53
  - <sup>56</sup> Form no. 19

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- <sup>57</sup> Form no. 20/48
  - <sup>58</sup> Form no. 26
  - <sup>59</sup> Form no. 3/70/44/71
  - <sup>60</sup> Form no. 61/62/63
  - <sup>61</sup> Form no. 30/43
  - <sup>62</sup> Form no. 54
  - <sup>63</sup> Form no. 11/12/13
  - <sup>64</sup> Form no. 55
  - <sup>65</sup> Form no. 22 (if party requests)
  - <sup>66</sup> Form no. 24
  - <sup>67</sup> Form no. 16/17/18/52/53
  - <sup>68</sup> Form no. 19
  - <sup>69</sup> Form no. 20/48
  - <sup>70</sup> Form no. 26
  - <sup>71</sup> Form no. 3/70/44/71
  - <sup>72</sup> Form no. 1
  - <sup>73</sup> Form no. 55
  - <sup>74</sup> Form no. 42
  - <sup>75</sup> Form no. 2
  - <sup>76</sup> Form no. 27/28/29
  - <sup>77</sup> Form no. 61/62/63
  - <sup>78</sup> Form no. 22
  - <sup>79</sup> Form no. 24
  - <sup>80</sup> Form no. 26
  - <sup>81</sup> Form no. 3/70/44/71
  - <sup>82</sup> Form no. 49
  - <sup>83</sup> Form no. 8